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Executive Orders

EXECUTIVE ORDER BJ 09-05

Commission on Streamlining Government

WHEREAS, the State of Louisiana faces a greater projected shortfall for fiscal year 2012 as compared to fiscal year 2010, due in large part from the anticipated expiration of billions in temporary federal stimulus dollars in the next two years;

WHEREAS, the loss of federal funds will leave a significant funding gap in the state budget for government expenditures;

WHEREAS, Louisiana needs to act now to reduce the size and cost of government in preparation for these severe revenue reductions; and

WHEREAS, input from public service and private sector leaders will assist in targeting state programs and agencies whose functions can be consolidated or eliminated and identifying opportunities for privatizing and outsourcing current state functions, while making sure that state-funded programs and services demonstrate effective and efficient performance and meet the needs of the citizens;

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

SECTION 1: The Commission on Streamlining Government (hereafter Commission) is hereby established. Its mission is to examine each state department or agency's constitutional and statutory functions, powers, duties and responsibilities to determine which of these functions, powers, duties and responsibilities can be

(1) eliminated,

(2) streamlined,

(3) consolidated,

(4) privatized, or

(5) outsourced in an effort to reduce the size and cost of state government.

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

A. Review whether an activity provided by a state agency or entity should be eliminated, streamlined, consolidated, privatized, or outsourced to provide the same or greater type and quality of activity, function, program, or service that would result in cost savings or greater efficiency or effectiveness of service.

B. Recommend elimination, consolidation, privatization, or outsourcing of a state agency or entity, department, or function if a proposed elimination, consolidation, privatization, or outsourcing is demonstrated to provide a more cost efficient or more effective manner of providing a governmental service.

C. Review agency activities, functions, programs, and services to ensure they are not duplicative and are necessary, meeting or exceeding performance standards, and meeting the needs of Louisiana citizens.

D. Evaluate the operation of public institutions and services to determine if, given the evolution of available alternative resources, these services may be provided in a more cost-effective manner without impacting the quality or availability of needed services.

E. Recommend standards, processes, and guidelines for the Commission and state agencies to use in order to review and evaluate government activities to eliminate, streamline, consolidate, privatize, or outsource.

SECTION 3: The Commission shall be composed of thirteen (13) members as follows, seven (7) of which shall form a quorum:

A. The Commissioner of the Division of Administration, as the Governor's designee;

B. The Speaker of the House of Representatives or the Speaker's designee;

C. The President of the Senate or the President's designee;

D. The State Treasurer;

E. The Secretary of the Department of Health and Hospitals;

F. The Secretary of the Department of Natural Resources;

G. The Executive Director of the Louisiana Workforce Commission;

H. The Chairman of the House Appropriations Committee;

I. The Chairman of the Senate Finance Committee;

J. Two (2) individuals engaged in private enterprise, appointed by the Governor;

K. One (1) individual engaged in private enterprise, appointed by the Speaker of the House of Representatives; and

L. One (1) individual engaged in private enterprise, appointed by the President of the Senate.

SECTION 4: The Commission may hold public hearings as part of its evaluation process, and may appoint advisory groups to conduct studies, research or analyses, and make reports and recommendations with respect to a matter within the jurisdiction of the Commission. At least one member of the Commission shall serve on each advisory group.

SECTION 5: The Commission shall submit an initial report of its recommendations, including recommendations requiring legislation or administrative action, to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate and Governmental Affairs Committee, the House and Governmental Affairs Committee, and the Commissioner of Administration no later than December 15, 2009.The Commission shall prepare the recommendation in the report as a reorganization plan and submit the plan to the Senate and Governmental Affairs Committee and the House and Governmental Affairs Committee for consideration by January 4, 2010. The plan shall be considered without amendment by the committees, meeting jointly, by February 1, 2010. If approved by each committee, legislative and executive action necessary to implement the approved reorganization plan shall be taken as soon as possible. The Commission shall submit a report

annually before January first consisting of the status and implementation of the reorganization plan approved by the Senate and Governmental Affairs Committee and the House and Governmental Affairs Committee to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate and Governmental Affairs Committee, and the House and Governmental Affairs Committee.

SECTION 6: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Commission in implementing the provisions of this Order.

SECTION 7: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 24th day of April, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0905#080

Emergency Rules

DECLARATION OF EMERGENCY

Office of the Governor
Division of Administration
Racing Commission

Jockey Fee Schedule (LAC 46:XLI.725)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective May 13, 2009, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule. The disparity in jockey mount fees between Louisiana and neighboring states is posing an immediate threat to Louisiana losing its pool of qualified jockeys. The change in fees represents a settlement among industry participants to thwart the threat of a jockey strike which would halt Louisiana racing.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLI. Horseracing Occupations
Chapter 7. Jockeys and Apprentice Jockeys
§725. Jockey Fee Schedule

A. Prior to the start of each race conducted by an association licensed by the commission, sufficient money shall be on deposit with the horsemen's bookkeeper in an amount equal to pay the losing mount fee of a jockey for that race. In the absence of a special agreement, the fee of a jockey shall be as follows.

Purse	Win	Second	Third	Unplaced
$400 and under	$27	$19	$17	$16
500	30	20	17	16
600	36	22	17	16
700-900	10%	25	22	20
1,000-1,400	10%	30	25	22
1,500-1,900	10%	35	30	28
2,000-3,400	10%	45	35	33
3,500-4,900	10%	70	60	50
5,000-9,900	10%	80	65	60
10,000-14,900	10%	5%	70	65
15,000-24,900	10%	5%	5%	70
25,000-49,900	10%	5%	5%	75
50,000-99,900	10%	5%	5%	90
100,000 and up	10%	5%	5%	115

B. Failure, refusal and/or neglect of a trainer to timely deposit or have deposited the aforesaid jockey fee for a horse entered to race, on or before the time specified herein, shall be a violation of this Section. Each such violation shall be punishable by a fine of not less than $200 and the failure to pay such fine within 48 hours of imposition thereof shall be grounds for suspension. Additionally, an amount equal to the jockey fee actually earned by the jockey in accordance with the aforesaid schedule shall be paid to the jockey earning same within 48 hours of the imposition of the aforesaid fine, and failure to pay said jockey fee within the time specified herein shall be an additional grounds for suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148, R.S. 4:150 and R.S. 4:151.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:431 (December 1976), amended LR 3:28 (January 1977), LR 4:276 (August 1978), LR 5:23 (February 1979), LR 12:12 (January 1986), amended by the Department of Economic Development, Racing Commission, LR 16:112 (February 1990), amended by the Governor, Division of Administration, Racing Commission, LR 35:

Charles A. Gardiner III
Executive Director

0905#020

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Adult Dentures—Reimbursement Rate Reduction
(LAC 50:XXV.701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXV.701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the provisions governing adult denture services in LAC 50:XVII under the Durable Medical Equipment Program and repromulgated these provisions as LAC 50:XXV Chapters 1-7 (*Louisiana Register*, Volume 31, Number 7).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has determined that

it is necessary to amend the provisions governing the reimbursement methodology for adult denture services to reduce the reimbursement rates. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Adult Dentures Program by approximately $286,287 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for adult denture services to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXV. Adult Dentures
Chapter 7. Reimbursement
§701. Fees

A. ...

B. Effective for dates of service on or after May 1, 2009, reimbursement for adult denture services shall be reduced by 11 percent of the fee amounts on file as of April 30, 2009.

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 31:81 (January 2005), repromulgated LR 31:1589 (July 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#005

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

End Stage Renal Disease Facilities
Reimbursement Rate Reduction
(LAC 50:XI.6901 and 6903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.6901 and adopts §6903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1), et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing Medicaid reimbursement for co-insurance and deductibles for Medicare Part B claims for hemodialysis services (*Louisiana Register*, Volume 30, Number 5). As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to amend the provisions of the May 20, 2004 Rule to reduce the reimbursement rates paid for services provided by end stage renal disease (ERSD) facilities (*Louisiana Register*, Volume 35, Number 3).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has determined that it is necessary to further reduce the reimbursement rates paid to end stage renal disease facilities. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately $3,224,504 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for services provided by end stage renal disease facilities to further reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XI. Clinic Services
Subpart 9. End Stage Renal Disease Facilities
Chapter 69. Reimbursement
§6901. Non-Medicare Claims

A. For non-Medicare claims, end stage renal disease (ESRD) facilities are reimbursed a hemodialysis composite rate. The composite rate is a comprehensive payment for the complete hemodialysis treatment in which the facility assumes responsibility for providing all medically necessary routine dialysis services.

B. Covered non-routine dialysis services, continuous ambulatory peritoneal dialysis (CAPD), continuous cycling peritoneal dialysis (CCPD), epogen (EPO) and injectable drugs are reimbursed separately from the composite rate.

C. Effective for dates of service on or after February 26, 2009, the reimbursement to ESRD facilities shall be reduced by 3.5 percent of the rates in effect on February 25, 2009.

D. Effective for dates of service on or after May 1, 2009, the reimbursement to ESRD facilities shall be reduced by 7.16 percent of the rates in effect on April 30, 2009.

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 30:1022 (May 2004), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§6903. Medicare Part B Claims

A. For Medicare Part B claims, ESRD facilities are reimbursed for full co-insurance and deductibles.

B. The Medicare payment plus the amount of the Medicaid payment (if any) shall be considered to be payment in full for the service. The recipient does not have any legal liability to make payment for the service.

C. Effective for dates of service on or after February 26, 2009, the reimbursement to ERSD facilities for Medicare Part B claims shall be reduced by 3.5 percent of the rates in effect on February 25, 2009.

D. Effective for dates of service on or after May 1, 2009, the reimbursement to ESRD facilities for Medicare Part B claims shall be reduced by 7.16 percent of the rates in effect on April 30, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#013

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice
Money Follows the Person Rebalancing Demonstration
(LAC 50:XXI.Chapter 111)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.Chapter 111 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 provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the rules governing the Children's Choice Waiver in a codified format for inclusion in the Louisiana Administrative Code, including the provisions governing the availability and allocation of waiver opportunities (*Louisiana Register*, Volume 28, Number 9). The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions of the September 20, 2002 Rule governing the Children's Choice Waiver to clarify the general provisions of the waiver and to adopt provisions for the allocation of additional waiver opportunities within the Children's Choice Waiver for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35 Number 1). The Money Follows the Person Rebalancing Demonstration is a transition program that targets individuals using qualified institutional services and moves them to home and community-based long-term care services. This Emergency Rule is being promulgated to continue the provisions of the January 20, 2009 Emergency Rule. This action is being taken to secure enhanced federal revenue.

Effective May 21, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends the provisions governing the Children's Choice Waiver.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 9. Children's Choice

Chapter 111. General Provisions

§11101. Introduction

A. The Children's Choice (CC) Waiver is a home and community-based services (HCBS) program that offers supplemental support to children with developmental disabilities who currently live at home with their families, or who will leave an institution to return home.

1. - 3.e. Repealed.

B. The Children's Choice Waiver is an option offered to children on the Developmental Disabilities Request for Services Registry (DDRFSR) for the New Opportunities Waiver (NOW) Program. Families may choose to accept a Children's Choice waiver offer or remain on the request for services registry (RFSR).

C. Children's Choice Waiver participants are eligible for all medically necessary Medicaid services in addition to Children's Choice Waiver services.

D. The number of participants in the Children's Choice Waiver is contingent upon available funding.

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 26:2793 (December 2000), repromulgated for LAC, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:

§11103. Recipient Qualifications

A. The Children's Choice Waiver is available to children who:

1. are from birth through age 18;

2. are on the Developmental Disabilities Request for Services Registry;

3. meet all of the financial and non-financial Medicaid eligibility criteria for home and community-based services (HCBS) waiver services:

a. income less than three times the Supplemental Security Income (SSI) amount for the child (excluding consideration of parental income);

b. resources less than the SSI resource limit of $2,000 for a child (excluding consideration of parental resources);

c. SSI disability criteria;

d. intermediate care facility for the developmentally disabled (ICF/DD) level of care criteria; and

e. all other non-financial requirements such as citizenship, residence, Social Security number, etc.

B. The plan of care must be sufficient to assure the health and welfare of the waiver applicant/participant in order to be approved for waiver participation or continued participation.

C. Children who reach their nineteenth birthday while participating in the Children's Choice Waiver will transfer with their waiver opportunity to an HCBS waiver serving adults who meet the criteria for an ICF/DD level of care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:

§11105. Money Follows the Person Rebalancing Demonstration

A. The Money Follows the Person (MFP) Rebalancing Demonstration is a federal demonstration program awarded by the Centers for Medicare and Medicaid Services to the department. The demonstration is a transition program that targets individuals using qualified institutional services and moves them to home and community-based long-term care services.

1. For purposes of these provisions, a qualified institution is a hospital, nursing facility, or intermediate care facility for people with developmental disabilities.

B. Children must meet the following criteria for participation in the MFP Rebalancing Demonstration.

1. Children with a developmental disability must:

a. be from birth through 18 years of age;

b. occupy a licensed, approved and enrolled Medicaid nursing facility bed for at least six months or have been hospitalized in an acute care hospital for six months with referral for nursing facility placement; and

c. be Medicaid eligible, eligible for state developmental disability services and meet ICF/DD level of care.

2. The participant or his/her authorized representative must provide informed consent for both transition and participation in the demonstration.

C. Children who participate in the demonstration are not required to have a protected request date on the DDRFSR. Children who are under the age of three years old and are not on the DDRFSR will be added to the DDRFSR at the age of three, or older, with a protected date that is the date of their approval to participate.

D. Children's Choice Waiver opportunities created using the MFP methodology do not create a permanent funding shift. These opportunities shall be funded on an individual basis for the purpose of this demonstration program only.

E. All other Children's Choice Waiver provisions apply to the Money Follows the Person Rebalancing Demonstration.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:

§11107. Allocation of Waiver Opportunities

A. The order of entry in the Children's Choice Waiver is first come, first served from a statewide list arranged by date of application for the Developmental Disabilities Request for Services Registry for the New Opportunities Waiver, with the exception of the Money Follows the Person Rebalancing Demonstration waiver opportunities which are allocated to demonstration participants only.

1. Families shall be given a choice of accepting an opportunity in the Children's Choice Waiver or remaining on the DDRFSR for the NOW.

B. An additional 20 Children's Choice Waiver opportunities shall be created for the Money Follows the Person Rebalancing Demonstration Program and must only be filled by a demonstration participant. No alternate may utilize an MFP Rebalancing Demonstration opportunity.

1. The MFP Rebalancing Demonstration will stop allocation of opportunities on September 30, 2011.

a. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed before September 30, 2011, the opportunity will be returned to the MFP Rebalancing Demonstration pool and an offer will be made based upon the approved program guidelines.

b. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed after September 30, 2011, the opportunity will cease to exist.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#086

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice—Reimbursement Rate Reduction
(LAC 50:XXI.12101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.12101 in

the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the Children's Choice Waiver to implement an hourly wage enhancement payment to providers for direct care staff and direct support professionals who provide center-based respite services to Children's Choice Waiver recipients (*Louisiana Register*, Volume 34, Number 2).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has determined that it is necessary to amend the provisions governing the reimbursement methodology for Children's Choice Waiver services to reduce the reimbursement rates. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency rule will reduce expenditures in the Medicaid Program by approximately $834,625 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends the provisions governing the reimbursement methodology for the Children's Choice Waiver to reduce the reimbursement rate.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 9. Children's Choice
Chapter 121. Reimbursement
§12101. Reimbursement Methodology

A. - B.4.j.iv. ...

C. Effective for dates of service on or after May 1, 2009, the reimbursement rates for Children's Choice Waiver services shall be reduced by 7 percent of the rates on file as of April 30, 2009.

1. Environmental accessibility adaptation services shall be excluded from the rate 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 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:

Implementation of the provisions of this Rule is 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 Jerry Phillips, 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.

Alan Levine
Secretary

0905#006

DECLARATION OF EMERGENCY

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

Home and Community Based Services Waivers
Elderly and Disabled Adults
Reimbursement Rate Reduction
(LAC 50:XXI.9101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends LAC 50:XXI.9101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S.

49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of Aging and Adult Services amended the provisions governing the Elderly and Disabled Adult (EDA) Waiver to adopt provisions governing the reimbursement methodology for the EDA Waiver services, including implementation of an hourly wage enhancement payment to providers for direct care staff (*Louisiana Register*, Volume 34, Number 2).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for the EDA Waiver to reduce the reimbursement rates paid for designated waiver services (*Louisiana Register*, Volume 35, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Effective June 2, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends the provisions governing the reimbursement methodology for the EDA Waiver to reduce the reimbursement rates paid for designated services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 7. Elderly and Disabled Adults
Chapter 91. Reimbursement
§9101. Reimbursement Methodology

A. - B.8.d. …

C. Effective for dates of service on or after February 1, 2009, the reimbursement rate for companion services shall be reduced by 3.5 percent of the rate on file as of January 31, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:251 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:

Implementation of the provisions of this Rule is 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 Jerry Phillips, 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.

Alan Levine
Secretary

0905#087

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver—Reimbursement Rate Reduction (LAC 50:XXI.14301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.14301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The Secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the Secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the New Opportunities Waiver (NOW) to implement a wage enhancement payment for direct support professionals who provide certain services to NOW recipients (*Louisiana Register*, Volume 34, Number 2).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for the New Opportunities Waiver to reduce the reimbursement rate paid for certain services (*Louisiana Register*, Volume 35, Number 2). The department now proposes to amend the February 1, 2009 Emergency Rule to further clarify the provisions governing the services affected by the reimbursement rate reduction.

Effective May 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends the provisions of the February 1, 2009 Emergency Rule governing the reimbursement methodology for the New Opportunities Waiver.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 11. New Opportunities Waiver
Chapter 143. Reimbursement
§14301. Reimbursement Methodology

A. - F.10.d. …

G. Effective for dates of service on or after February 1, 2009, the reimbursement rate for certain services provided in the NOW Waiver shall be reduced by 3.5 percent of the rate in effect on January 31, 2009.

1. The reimbursement rates shall be reduced for the following services:

a. individualized and family support services;
b. center-based respite care;
c. community integration development;
d. residential habilitation-supported independent living;
e. substitute family care;
f. day habilitation;
g. supported employment;
h. employment-related training; and
i. professional services.

2. The following services shall be excluded from the rate reduction:

a. environmental accessibility adaptations;
b. specialized medical equipment and supplies;
c. personal emergency response systems (PERS);
d. skilled nursing services; and
e. one-time transitional expenses.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#081

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver—Resource Allocation Model
(LAC 50:XXI.13704)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopts LAC 50:XXI.13704 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 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 Community Supports and Services implemented a home and community based services waiver, the New Opportunities Waiver (NOW), designed to enhance the support services available to individuals with developmental disabilities *(Louisiana Register*, Volume 30, Number 6).

In recognition of escalating program expenditures, Senate Resolution 180 and House Resolution 190 of the 2008 Regular Session of the Louisiana Legislature directed the department to develop and implement cost control mechanisms to provide the most cost-effective means of financing for the New Opportunities Waiver. In compliance with these legislative directives, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions governing the New Opportunities Waiver to implement uniform needs-based assessments to determine the level of support needs for NOW recipients and to establish a resource allocation model based on the uniform needs-based assessments (*Louisiana Register*, Volume 35, Number 1). This Emergency Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

This action is being taken to avoid a future budget deficit and to assure the sustainability of home and community-based services. In addition, it is anticipated that this action will promote the health and well-being of NOW recipients through the accurate identification and evaluation of the supports needed to safely maintain these individuals in their homes and communities.

Effective June 2, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends the provisions governing the New Opportunities Waiver.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 11. New Opportunities Waiver
Chapter 137. General Provisions
§13704. Resource Allocation Model

A. Effective February 1, 2009, uniform needs-based assessments and a resource allocation model will be implemented in the service planning process for the Medicaid recipients participating in the New Opportunities Waiver.

1. The uniform needs-based assessments shall be utilized to determine the level of support needs of individuals with developmental disabilities.

2. The purpose of the resource allocation model is to assign service units based on the findings of the assessments.

3. Within the resource allocation model, there is a determination of an acuity level for individual and family support (IFS) services.

a. Initially, the acuity level will only be applied to individual and family support (IFS) services for recipients age 16 or older. The current service planning process will continue to be used for all other NOW service recipients.

b. The recipient or his/her representative may request a reconsideration and present supporting documentation if he/she disagrees with the amount of assigned IFS service units. If recipient disagrees with the reconsideration decision, he/she may request a fair hearing through the formal appeals process.

4. Implementation of the resource allocation model will be phased-in for the allocation of new waiver opportunities and renewal of existing waiver opportunities beginning February 1, 2009.

B. The following needs-based assessment instruments shall be utilized to determine the level of support needs of NOW recipients:

1. the Supports Intensity Scale (SIS); and
2. Louisiana Plus (LA Plus).

C. The Supports Intensity Scale is a standardized assessment tool designed to evaluate the practical support requirements of individuals with developmental disabilities in 85 daily living, medical and behavioral areas.

1. SIS measures support needs in the areas of:
   a. home living;
   b. community living;
   c. lifelong learning;
   d. employment;
   e. health and safety;
   f. social activities; and
   g. protection and advocacy.

2. SIS then ranks each activity according to frequency, amount and type of support. A supports intensity level is determined based on a compilation of scores in General Supports, Medical Supports and Behavior Supports.

D. Louisiana Plus is a locally developed assessment tool designed to identify support needs and related information not addressed by SIS. LA Plus serves as a complement to SIS in the support planning process. LA Plus is used to evaluate the individual's support needs based on information and data obtained from four areas of the person's life.

1. Support needs scale measurements including:
   a. material supports;
   b. vision related supports;
   c. hearing related supports;
   d. supports for communicating needs;
   e. positive behavior supports;
   f. physicians supports;
   g. professional supports (e.g., registered nurse, physical therapist, occupational therapist, etc.); and
   h. stress and risk factors.

2. Living arrangements and program participation including:
   a. people living in the home;
   b. natural supports in the home;
   c. living environments; and
   d. supports and service providers.

3. Medical and diagnostic information findings including:
   a. diagnoses;
   b. medications and dosages; and
   c. need for relief from pain or illness.

4. Personal satisfaction reports including:
   a. agency supports provided at home;
   b. work or day programs;
   c. living environment;
   d. family relationships; and
   e. social relationships.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:

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 (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#088

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Supports Waiver—Reimbursement Rate Reduction
(LAC 50:XXI.6101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.6101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amended the provisions governing the reimbursement methodology for the Supports Waiver to implement a wage enhancement payment to providers for direct support professionals and amended the service provisions to include support coordination as a covered service (*Louisiana Register*, Volume 34, Number 4).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has determined that it is necessary to amend the provisions governing the reimbursement methodology for Supports Waiver services to reduce the reimbursement rates. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency rule will reduce expenditures in the Medicaid Program by approximately $1,060,538 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends the provisions governing the reimbursement methodology for the Supports Waiver Program to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 5. Supports Waiver
Chapter 61. Reimbursement Methodology
§6101. Reimbursement Methodology

A. - J. ...

K. Effective for dates of service on or after May 1, 2009, the reimbursement rates for Supports Waiver services shall be reduced by 6.25 percent of the rates on file as of April 30, 2009.

1. Personal emergency response system (PERS) services shall be excluded from the rate 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, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#007

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Home Health Program—Durable Medical Equipment Reimbursement Reduction (LAC 50:XIII.10301)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XIII.103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage and reimbursement for medical equipment, supplies and appliances in the Home Health Program. Reimbursement for these services is either the lesser of: billed charges; 70 percent of either the applicable Medicare fee schedule or the manufacturer's suggested retail price (MSRP); or the lowest cost at which the item has been determined to be widely available. As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the bureau promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for medical equipment, supplies and appliances to reduce the reimbursement rates and to repromulgate the general

provisions governing the reimbursement methodology, in its entirety, in the appropriate place in the *Louisiana Administrative Code (Louisiana Register*, Volume 35, Number 2).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has now determined that it is necessary to further reduce the reimbursement rates paid for medical equipment, supplies and appliances. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately $649,626 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing medical equipment, supplies and appliances in the Home Health Program to further reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIII. Home Health Program
Subpart 3. Medical Equipment, Supplies and Appliances
Chapter 103. Reimbursement Methodology
§10301. General Provisions

A. Unless otherwise stated in this Part XIII, the reimbursement for all medical equipment, supplies and appliances is established at:

1. 70 percent of the 2000 Medicare fee schedule for all procedure codes that were listed on the 2000 Medicare fee schedule and at the same amount for the Health Insurance Portability and Accountability Act (HIPAA) compliant codes which replaced them; or

2. 70 percent of the Medicare fee schedule under which the procedure code first appeared; or

3. 70 percent of the manufacturer's suggested retail price (MSRP) amount; or

4. billed charges, whichever is the lesser amount.

B. If an item is not available at the rate of 70 percent of the applicable established flat fee or 70 percent of the MSRP, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

C. Effective for dates of service on or after February 1, 2009, the reimbursement paid for the following medical equipment, supplies, appliances and repairs shall be reduced by 3.5 percent of the rate on file as of January 31, 2009:

1. ambulatory equipment;

2. bathroom equipment;

3. hospital beds, mattresses and related equipment; and

4. the cost for parts used in the repair of medical equipment, including the parts used in the repair of wheelchairs.

D. Effective for dates of service on or after May 1, 2009, the reimbursement paid for customized wheelchairs shall be:

1. the manufacturer's suggested retail price minus 26.4 percent for manual custom wheelchairs; and

2. the manufacturer's suggested retail price minus 23.6 percent for electric wheelchairs.

E. Effective for dates of service on or after May 1, 2009, the reimbursement paid for certain medical equipment, supplies and appliances shall be reduced by 8 percent of the rates on file as of April 30, 2009.

1. The following medical equipment, supplies and appliances are excluded from the rate reduction:

a. enteral therapy pumps and related supplies;

b. intravenous therapy and administrative supplies;

c. apnea monitor and accessories;

d. nebulizers;

e. hearing aids and related supplies;

f. respiratory care (other than ventilators and oxygen);

g. tracheostomy and suction equipment and related supplies;

h. ventilator equipment;

i. oxygen equipment and related supplies;

j. vagus nerve stimulator and related supplies; and

k. augmentative and alternative communication devices.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#014

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Home Health Program—Durable Medical Equipment
Reimbursement Reduction (LAC 50:XIII.103)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIII.103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The Secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the Secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization

review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage and reimbursement for medical equipment, supplies and appliances in the Home Health Program. Reimbursement for these services is either the lesser of: billed charges; 70 percent of either the applicable Medicare fee schedule or the manufacturer's suggested retail price (MSRP); or the lowest cost at which the item has been determined to be widely available.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for medical equipment, supplies and appliances covered under the Home Health Program to reduce the reimbursement rates and to repromulgate the general provisions governing the reimbursement methodology, in its entirety, in the appropriate place in the *Louisiana Administrative Code (Louisiana Register,* Volume 35, Number 2). The department now proposes to amend the February 1, 2009 Emergency Rule to further clarify the general provisions governing the reimbursement of medical equipment, supplies and appliances.

Effective May 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 1, 2009 Emergency Rule governing the reimbursement methodology for medical equipment, supplies and appliances covered under the Home Health Program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIII. Home Health Program
Subpart 3. Medical Equipment, Supplies and Appliances
Chapter 103. Reimbursement Methodology
§10301. General Provisions

A. Unless otherwise stated in this Part XIII, the reimbursement for all medical equipment, supplies and appliances is established at:

1. 70 percent of the 2000 Medicare fee schedule for all procedure codes that were listed on the 2000 Medicare fee schedule and at the same amount for the Health Insurance Probability and Accountability Act (HIPAA) compliant codes which replaced them; or

2. 70 percent of the Medicare fee schedule under which the procedure code first appeared; or

3. 70 percent of the manufacturer's suggested retail price (MSRP) amount; or

4. billed charges, whichever is the lesser amount.

B. If an item is not available at the rate of 70 percent of the applicable established flat fee or 70 percent of the MSRP, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

C. Effective for dates of service on or after February 1, 2009, the reimbursement paid for the following medical equipment, supplies, appliances and repairs shall be reduced by 3.5 percent of the rate on file as of January 31, 2009:

1. ambulatory equipment;

2. bathroom equipment;

3. hospital beds, mattresses and related equipment; and

4. the cost for parts used in the repair of medical equipment, including the parts used in the repair of wheelchairs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#082

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Hospice—Payment for Long Term Care Residents
Reimbursement Rate Reduction (LAC 50:XV.4307)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.4307 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The Secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the Secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 1902(a)(13)(B) of the Social Security Act allows Medicaid programs to pay hospice providers an additional amount equal to at least 95 percent of the nursing facility or

intermediate care facility for persons with developmental disabilities (ICF/DD) per diem rate when hospice patients are residents of nursing facilities or ICF/DDs. Pursuant to Section 1902, the department established provisions to pay hospice providers 100 percent of the long term care facility's per diem rate *(Louisiana Register*, Volume 28, Number 6*)*. At the recommendation of the Centers for Medicare and Medicaid Services (CMS), the department amended the provisions of the June 20, 2002 Rule governing hospice services covered under the Medicaid Program to clarify the hospice payment rate provisions (*Louisiana Register*, Volume 34, Number 3).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for hospice services provided to long term care residents to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). The department now proposes to amend the February 1, 2009 Emergency Rule to further clarify the provisions governing the reimbursement methodology for hospice services provided to long term care residents.

Effective May 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 1, 2009 Emergency Rule governing the reimbursement methodology for hospice services provided to long term care residents.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 3. Hospice
Chapter 43. Reimbursement
§4307. Payment for Long Term Care Residents

A. Pursuant to Section 1902(a)(13)(B) of the Social Security Act, an additional amount will be paid to hospice providers for routine home care and continuous home care to take into account the room and board furnished by a long term care facility for a Medicaid recipient:

1. who is residing in a nursing facility or intermediate care facility for persons with developmental disabilities (ICF/DD);

2. who would be eligible under the State Plan for nursing facility services or ICF/DD services if he or she had not elected to receive hospice care;

3. who has elected to receive hospice care; and

4. for whom the hospice agency and the nursing facility or ICF/DD have entered into a written agreement in accordance with the provisions set forth in the Licensing Standards for Hospice Agencies (LAC 48:I.Chapter 82), under which the hospice agency takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual.

B. Under these circumstances, payment to the facility is discontinued and payment is made to the hospice provider which must then reimburse the facility for room and board.

C. The rate reimbursed to hospice providers shall be 95 percent of the per diem rate that would have been paid to the facility for the recipient if he/she had not elected to receive hospice services.

1. This rate is designed to cover "room and board" which includes performance of personal care services, including assistance in the activities of daily living, administration of medication, maintaining the cleanliness of the patient's environment, and supervision and assistance in the use of durable medical equipment and prescribed therapies.

2. This rate is in addition to the routine home care rate or the continuous home care rate.

D. Any patient liability income (PLI) determined by the Bureau will be deducted from the additional payment. It is the responsibility of the Medicaid enrolled facility to collect the recipient's PLI.

E. - F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1471 (June 2002), LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#083

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Outlier Payment Reduction
(LAC 50:V.954)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.954 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as

allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for payments to disproportionate share hospitals for catastrophic costs associated with providing medically necessary services to children less than six years of age (*Louisiana Register*, Volume 20, Number 6). These provisions also addressed payments to all acute care hospitals for catastrophic costs associated with providing medically necessary services to infants one year of age or younger. An outlier payment is calculated on an individual case basis and paid at cost if the covered charges for medically necessary services exceed a designated percent of the prospective payment. The June 20, 1994 Rule was subsequently amended to: 1)reduce the outlier payments made to private (non-state) hospitals by amending the definition of marginal cost; 2) change the base period for the hospital calculation of payments; and 3) establish a deadline for receipt of the written request for outlier payments (*Louisiana Register*, Volume 29, Number 6).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the department has determined that it is necessary to amend the provisions of the June 20, 2003 Rule to reduce outlier payments made to non-rural, non-state hospitals, and to adopt these provisions in a codified format for inclusion in the *Louisiana Administrative Code*. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Hospital Services Program by approximately $59,464,121 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services to reduce outlier payments made to non-rural, non-state hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§954. Outlier Payments

A. Pursuant to §1902(s)(1) of Title XIX of the Social Security Act, additional payments called outlier payments shall be made to hospitals for catastrophic costs associated with inpatient services provided to:

1. children less than six years of age who receive services in a disproportionate share hospital setting; and

2. infants less than one year of age who receive services in any acute care hospital setting.

B. The marginal cost factor for outlier payments is considered to be 100 percent of costs after the costs for the case exceed the sum of the hospital's prospective payment and any other payment made on behalf of the patient for that stay by any other payee.

1. Cost is defined as the hospital-specific cost to charge ratio based on the hospital's cost report period ending in state fiscal year (SFY) 2006 (July 1, 2005 through June 30, 2006) multiplied by the total billed charges for an outlier claim.

C. Effective for dates of service on or after May 1, 2009, if covered charges for each individual case, as defined in §954.A, exceeds both $750,000 and 200 percent of the prospective payment, reimbursement shall be the lesser of 100 percent of the hospital's marginal cost for the claim or a pro rata share of the annual amount of claims submitted by all hospitals multiplied by the total amount authorized for outlier payments for that state fiscal year (July 1 through June 30).

D. For dates of service in the period May 1, 2009 through June 30, 2009, the amount authorized for outlier payments is $833,333. For dates of service in SFY 2010 and subsequent years, the amount authorized is $5,000,000 for each state fiscal year.

E. To qualify as a payable outlier claim, a deadline of not later than six months subsequent to the date that the final claim is paid shall be established for the receipt by the department of the written request for outlier payments.

F. Outlier payments to hospitals shall be made annually on a date not later than the end of the first quarter of each state fiscal year for those qualifying outlier claims submitted for dates of service in prior state fiscal years. If an outlier claim submission with dates of service in a prior state fiscal year is received by the department after the last day of July, it will not be considered for payment until the following state fiscal year.

1. Payments for prior state fiscal years shall be adjusted annually if the department receives subsequent qualifying outlier claims with dates of service in a prior state fiscal year for which outlier payments have already been made.

2. The hospital specific cost to charge ratio shall be reviewed bi-annually and updated according to the current cost report data.

G. For new hospitals and hospitals that did not provide Medicaid Neonatal Intensive Care Unit (NICU) services in SFY 2006, the hospital specific cost to charge ratio will be calculated based on the first full year cost reporting period that the hospital was open or that Medicaid NICU services were provided.

H. Outlier payments are not payable for transplant procedures.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#016

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Reimbursement Rate Reduction
(LAC 50:V.953, 955, and 959)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953, §955 and §959 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with the directives of Act 17 of the 2006 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology for inpatient hospital services to increase the Medicaid reimbursement rates paid to private hospitals and free-standing and distinct part psychiatric units *(Louisiana Register,* Volume 33, Number 2). The bureau subsequently adopted a Rule to provide for a supplemental Medicaid payment to non-rural, non-state acute care hospitals for having a Medicaid inpatient utilization greater than thirty percent (hereafter referred to as high Medicaid)and teaching hospitals for furnishing additional graduate medical education services as a result of the suspension of training programs at the Medical Center of Louisiana in New Orleans due to the impact of Hurricane Katrina *(Louisiana Register,* Volume 34, Number 5). As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the bureau promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates (*Louisiana Register,* Volume 35, Number 2).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has determined that it is necessary to further reduce the reimbursement rates paid for inpatient hospital services. This action is necessary to avoid a budget deficit in the medical assistance programs. Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) inpatient hospital services under the State Plan are available at least to the extent that they are available to the general population in the state. It is estimated that implementation of this Emergency Rule will reduce expenditures for inpatient hospital services by approximately $45,265,570 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services to further reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospitals
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§953. Acute Care Hospitals

A. - B.3. …

C. Effective for dates of service on or after February 20, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 3.5 percent of the per diem rate on file as of February 19, 2009.

1. Payments to the following hospitals and/or specialty units for inpatient hospital services shall be exempted from these reductions:

a. small rural hospitals, as defined in R.S. 40:1300.143; and

b. high Medicaid hospitals, level III Regional Neonatal Intensive Care Units and level I Pediatric Intensive Care Units as defined in R.S. 46.979;

2. For the purposes of qualifying for the exemption to the reimbursement reduction as a high Medicaid hospital, the following conditions must be met.

a. The inpatient Medicaid days utilization rate for high Medicaid hospitals shall be calculated based on the cost report filed for the period ending in state fiscal year 2007 and received by the department prior to April 20, 2008.

b. Only Medicaid covered days for inpatient hospital services, which include newborn and distinct part psychiatric unit days, are included in this calculation.

c. Inpatient stays covered by Medicare Part A cannot be included in the determination of the Medicaid inpatient utilization days rate.

D. Effective for dates of service on or after February 20, 2009, the amount appropriated for quarterly supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be reduced to $4,925,000. Each qualifying hospital's quarterly supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

E. Effective for dates of service on or after May 1, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 7.16 percent of the per diem rate on file as of April 30, 2009.

1. Payments to small rural hospitals as defined in R.S. 40:1300.143 shall be exempt from this 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 34:876 (May 2008), LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§955. Long Term Hospitals

A. …

B. For dates of service on or after February 20, 2009, the prospective per diem rate paid to long term hospitals for inpatient services shall be reduced by 3.5 percent of the rate on file as of February 19, 2009.

1. Payments for inpatient hospital services to high Medicaid hospitals classified as long term hospitals shall be exempted from these reductions.

2. For the purposes of qualifying for the exemption to the reimbursement reduction as a high Medicaid hospital, the following conditions must be met.

a. The inpatient Medicaid days utilization rate for high Medicaid hospitals shall be calculated based on the cost report filed for the period ending in state fiscal year 2007 and received by the department prior to April 20, 2008.

b. Only Medicaid covered days for inpatient hospital services, which include newborn and distinct part psychiatric unit days, are included in this calculation.

c. Inpatient stays covered by Medicare Part A cannot be included in the determination of the Medicaid inpatient utilization days rate.

C. Effective for dates of service on or after May 1, 2009, the prospective per diem rate paid to long term hospitals for inpatient services shall be reduced by 7.16 percent of the per diem rate on file as of April 30, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§959. Inpatient Psychiatric Hospital Services

A. …

B. Effective for dates of service on or after February 20, 2009, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units shall be reduced by 3.5 percent of the rate on file as of February 19, 2009.

1. Distinct part psychiatric units that operate within an acute care hospital that qualifies as a high Medicaid hospital, as defined in §953.C.2, are exempt from the rate reduction.

C. Effective for dates of service on or after May 1, 2009, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units shall be reduced by 7.16 percent of the rate on file as of April 30, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#015

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Facility Need Review—Home and Community-Based Service Providers (LAC 48:I.12501-12505 and 12523)

The Department of Health and Hospitals, Bureau of Health Services Financing hereby rescinds and replaces the previous amendments to LAC 48:I.12501-12505 and the adoption of §12523 due to the inadvertent omission of pertinent text. The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.12501-12505 and adopts §12523 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2116. 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 adopted provisions governing the inclusion of adult residential care providers in the Facility Need Review Program and reorganized Chapter 125 of Title 48 of the Louisiana Administrative Code (*Louisiana Register*, Volume 34, Number 12). The department now proposes to amend the December 20, 2008 Rule to adopt provisions governing the inclusion of licensed home and community-based service (HCBS) providers in the Facility Need Review Program.

This action is being taken to promote the health and welfare of recipients by assuring their access to home and community-based services rendered by appropriately regulated and licensed providers. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2008-2009.

Effective April 13, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the facility need review process to include licensed home and community-based service providers.

Title 48
PUBLIC HEALTH—GENERAL
Part 1. General Administration
Subpart 5. Health Planning
Chapter 125. Facility Need Review
Subchapter A. General Provisions
§12501. Definitions

A. Definitions. When used in this Chapter the following terms and phrases shall have the following meanings unless the context requires otherwise.

* * *

Home and Community Based Service (HCBS) Providers—those agencies, institutions, societies, corporations, facilities, person or persons, or any other group intending to provide or providing respite care services, personal care attendant (PCA) services, or supervised independent living (SIL) services, or any combination of services thereof, including respite providers, SIL providers, and PCA providers.

* * *

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 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§12503. General Information

A. The Department of Health and Hospitals will conduct a facility need review (FNR)to determine if there is a need for additional facilities, beds or units to enroll to participate in the Title XIX Program for the following facility types:

1. nursing facilities;
2. skilled nursing facilities;
3. intermediate care facilities for persons with developmental disabilities.

B. 42 CFR Part 442.12(d) allows the Medicaid agency to refuse to execute a provider agreement if adequate documentation showing good cause for such refusal has been compiled (i.e. when sufficient beds are available to serve the Title XIX population). The Facility Need Review Program will review applications for additional beds, units and/or facilities to determine whether good cause exists to deny participation in the Title XIX Program to prospective providers of those services subject to the FNR process.

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. adult residential care providers or facilities; or
2. home and community-based service providers, as defined under this Chapter.

D. The department shall be responsible for reviewing proposals for facilities, beds, units, and agencies submitted by health care providers seeking to be licensed or to participate in the Medicaid Program. The secretary or his designee shall issue a decision of approval or disapproval.

1. The duties of the department under this program include, but are not limited to:

a. determining the applicability of these provisions to all requests for approval to enroll facilities, beds, or units in the Medicaid Program or to license facilities, units, providers or agencies;

b - d. …

E. No nursing facility, skilled nursing facility, or ICF-DD bed, nor provider units/beds shall be enrolled in the Title XIX Program unless the bed has been approved through the FNR Program. No adult residential care provider or home and community-based services provider may be licensed by the department unless the facility, unit or agency has been approved through the FNR Program.

1. - 4. Repealed.

F. Grandfather Provision. An approval shall be deemed to have been granted under this program without review for NFs, ICFs-DD and/or beds that meet one of the following descriptions:

1. all valid Section 1122 approved health care facilities/beds;
2. all valid approvals for health care facilities/beds issued under the Medicaid Capital Expenditure Review Program prior to the effective date of this program;
3. all valid approvals for health care facilities issued under the Facility Need Review Program; or
4. all nursing facility beds which were enrolled in Medicaid as of January 20, 1991.

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers and ICFs-DD that meet one of the following conditions:

1. HCBS providers which were licensed by January 31, 2009 or had a completed initial licensing application submitted to the department by June 30, 2008; or
2. existing licensed ICFs-DD that are converting to the proposed Residential Options Waiver.

H. Exemptions from the facility need review process shall be made for:

1. a nursing facility which needs to be replaced as a result of destruction by fire or a natural disaster, such as a hurricane; or
2. a nursing facility and/or facility building owned by a government agency which is replaced due to a potential health hazard.

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 30:1483 (July 2004), LR 34:2612 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§12505. Application and Review Process

A. FNR applications shall be submitted to the Bureau of Health Services Financing, Health Standards Section, Facility Need Review Program. Application shall be submitted on the forms (on 8.5 inch by 11 inch paper) provided for that purpose, contain such information as the department may require, and be accompanied by a nonrefundable fee of $10 per bed or unit. The nonrefundable application fee for an HCBS provider shall be a flat fee of $150.00. An original and three copies of the application are required for submission.

1. - 3.e.i.…

ii. acknowledgement that failure to meet the time-frames established in this Chapter will result in automatic expiration of the FNR approval for the ARCP units.

B. – B.3.b. …

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:812 (August 1995), amended LR 34:2612 (December 2008), LR 35:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12523. Home and Community-Based Service Providers

A. No HCBS provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of a HCBS provider license. Once the FNR Program approval is granted, an HCBS provider is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

B. The service area for proposed or existing HCBS providers is the DHH region in which the provider is or will be licensed.

C. Determination of Need/Approval

1. The department will review the application to determine if there is a need for an additional HCBS provider in the geographic location for which the application is submitted.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application, and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed.

3. In reviewing the application, the department may consider, but is not limited to, evidence showing:

a. the number of other HCBS providers in the same geographic location and region servicing the same population; and

b. allegations involving issues of access to health care and services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

D. Applications for approvals of licensed providers submitted under these provisions are bound to the description in the application with regard to the type of services proposed as well as to the site and location as defined in the application. FNR approval of licensed providers shall expire if these aspects of the application are altered or changed.

E. FNR approvals for licensed providers are non-transferrable, and are limited to the location and the name of the original licensee.

1. The FNR approval shall not be transferred to another party or entity or be moved to another location without the submission of a new application to and approval by the department's FNR Program. Approval of licensed providers shall automatically expire if moved or transferred without application to and approval by the FNR Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#002

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Medical Transportation Program
Emergency Ambulance Services—Reimbursement Rate Reduction (LAC 50:XXVII.325 and 353)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.325 and 353 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for emergency and non-emergency ambulance transportation services to increase the reimbursement for ground mileage and ancillary services *(Louisiana Register,* Volume 33, Number 8*)* and repromulgated the existing provisions in a codified format for inclusion in the *Louisiana Administrative Code*. The bureau amended the previsions governing the reimbursement methodology for emergency medical transportation to increase the reimbursement rates for rotor winged aircraft emergency transportation services and

repromulgated the existing Rule in its entirety for the purpose of adopting those provisions in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register*, Volume 35, Number 1*)*.

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has determined that it is necessary to reduce the reimbursement rate for emergency medical transportation services. This action is being taken in order to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency rule will reduce expenditures in the Medicaid Program by approximately $2,831,171 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for emergency medical transportation to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXVII. Medical Transportation Program
Chapter 3. Emergency Medical Transportation
Subchapter B. Ground Transportation
§325. Reimbursement

A. - E. ...

F. Effective for dates of service on or after May 1, 2009, the reimbursement rates for emergency ambulance transportation services shall be reduced by 7 percent of the rate on file for April 30, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter C. Aircraft Transportation
§353. Reimbursement

A. - D. ...

E. Effective for dates of service on or after May 1, 2009, the reimbursement rates for fixed winged and rotor winged emergency air ambulance services shall be reduced by 7 percent of the rate on file as of April 30, 2009.

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 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#008

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Ambulance Services
Reimbursement Rate Reduction
(LAC 50:XXVII.571)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.571 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1), et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for emergency and non-emergency ambulance transportation services to increase the ground mileage and the ancillary services (*Louisiana Register*, Volume 34, Number 5).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has determined that it is necessary to reduce the reimbursement rates paid for non-emergency ambulance services. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medical Transportation Program by approximately $805,552 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the

provisions governing the reimbursement methodology for non-emergency ambulance services to reduce the reimbursement rate.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part. XXVII. Medical Transportation Program
Chapter 5. Non-Emergency Medical Transportation
Subchapter D. Reimbursement
§571. Non-Emergency Ambulance Transportation

A. - C. …

D. Effective for dates of service on or after May 1, 2009, the reimbursement rates provided for non-emergency ambulance services is reduced by 7 percent of the rate in effect on April 30, 2009.

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 33:462 (March 2007), LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#009

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
Reimbursement Rate Reduction—(LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.573 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology for non-emergency medical transportation to increase the reimbursement rates (*Louisiana Register*, Volume 33, Number 3).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has now determined that it is necessary to reduce the reimbursement rates paid for non-emergency medical transportation services.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately $955,539 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency medical transportation services to reduce the reimbursement rate.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXVII. Medical Transportation Program
Chapter 5. Non-Emergency Medical Transportation
Subchapter D. Reimbursement
§573. Non-Emergency, Non-Ambulance Transportation

A. - B. ...

C. For dates of service on or after May 1, 2009, the reimbursement rate for non-emergency, non-ambulance medical transportation services shall be decreased by 7.2 percent of the rates in effect on April 30, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#019

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Mental Health Rehabilitation Program
Reimbursement Rate Reduction (LAC 50:XV.901)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.901 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed the existing Rules governing the administration of the Mental Health Rehabilitation (MHR) Program that had been promulgated prior to 2004 and adopted revised provisions governing MHR services, including the reimbursement methodology (*Louisiana Register*, Volume 31, Number 5). The reimbursement paid for MHR services is a flat fee for each covered service provided to a qualified recipient.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for MHR services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Effective June 2, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for mental health rehabilitation services to reduce the reimbursement rate.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 1. Mental Health Rehabilitation
Chapter 9. Reimbursement
§901. Reimbursement Methodology

A. - B. …

C. Effective for dates of service on or after February 1, 2009, the reimbursement rates for MHR services shall be reduced by 3.5 percent of the fee amounts on file as of January 31, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended LR 35:

Implementation of the provisions of this Rule is 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 Jerry Phillips, 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.

Alan Levine
Secretary

0905#089

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facility Minimum Licensing Standards
Emergency Preparedness Electronic Reporting
Requirements (LAC 48:I.9729)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.9729 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2009.2-2009.11. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing emergency preparedness requirements for nursing facilities to allow a licensed nursing facility to inactivate its license for a period of time due to a declared disaster or other emergency situation (*Louisiana Register*, Volume 35, Number 2). The department now proposes to amend the February 20, 2009 Rule to establish provisions requiring all nursing facilities licensed in Louisiana to file electronic reports of their operational status during declared disasters or other emergency situations.

This action is being taken to prevent imminent peril, during and immediately after declared disasters or other emergencies, to the health and well-being of Louisiana citizens who depend on nursing facility services. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2008-2009.

Effective May 5, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing emergency preparedness for all nursing facilities licensed in Louisiana.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing
Chapter 97. Nursing Facilities
Subchapter B. Organization and General Services
§9729. Emergency Preparedness

A. - B.3. …

4. Effective immediately, upon declaration by the secretary and notification to the Louisiana Nursing Home Association and Gulf States Association of Homes and Services for the Aging, all nursing facilities licensed in Louisiana shall file an electronic report with the HSS emergency preparedness webpage/operating system, or a successor operation system, during a declared disaster or other public health emergency.

a. The electronic report will enable the department to monitor the status of nursing facilities during and immediately following an emergency event.

b. The electronic report shall be filed twice daily at 7:30 a.m. and 2:30 p.m. throughout the duration of the disaster or emergency event.

c. The electronic report shall include, but is not limited to the following:

i. status of operation (open, limited or closed);

ii. availability of beds;

iii. resources that have been requested by the nursing facility from the local or state Office of Emergency Preparedness;

iv. generator status;

v. evacuation status;

vi. shelter in place status; and

vii. other information requested by the department.

NOTE: The electronic report is not to be used to request resources or to report emergency events.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.2–2009.11.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:49 (January 1998), amended LR 32:2261 (December 2006), amended LR 34:1917 (September 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing LR 35:248 (February 2009), amended LR 35:

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, 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.

Alan Levine
Secretary

0905#024

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services

Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Reduction
(LAC 50:V.5313, 5513, 5713, 5913 and 6115)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.5313, §5513, §5713, §5913 and to adopt §6115 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the reimbursement methodology for outpatient hospital services (*Louisiana Register*, Volume 22, Number 1). In compliance with the directives of Act 17 of the 2006 Regular Session of the Louisiana Legislature, the bureau amended the provisions governing the reimbursement methodology for outpatient hospital services to increase the reimbursement paid to private (non-state)acute care hospitals for cost-based outpatient services (*Louisiana Register*, Volume 33, Number 2). As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to reduce the reimbursement paid to non-rural, non-state hospitals for outpatient services (Louisiana Register, Volume 35, Number 2). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has now determined that it is necessary to amend the February 20, 2009 Emergency Rule and to further reduce the reimbursement rates paid to non-rural, non-state hospitals for outpatient services. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency rule will reduce expenditures in the Medicaid Program by approximately $12,149,942 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for certain outpatient hospital services to further reduce the reimbursement rates.

Title 50
PULIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospitals
Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery
Subchapter B. Reimbursement Methodology
§5313. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Effective for dates of service on or after May 1, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 7.16 percent of the fee schedule on file as of April 30, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:

Chapter 55. Clinic Services
Subchapter B. Reimbursement Methodology
§5513. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Effective for dates of service on or after May 1, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 7.16 percent of the fee schedule on file as of April 30, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:

Chapter 57. Laboratory Services
Subchapter B. Reimbursement Methodology
§5713. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Effective for dates of service on or after May 1, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 7.16 percent of the fee schedule on file as of April 30, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:

Chapter 59. Rehabilitation Services
Subchapter B. Reimbursement Methodology
§5913. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Effective for dates of service on or after May 1, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by 7.16 percent of the fee schedule on file as of April 30, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:

Chapter 61. Other Outpatient Hospital Services
Subchapter B. Reimbursement Methodology
§6115. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 3.5 percent of the rates effective as of February 19, 2009. Final reimbursement shall be at 83.18 percent of allowable cost through the cost settlement process.

B. Effective for dates of service on or after May 1, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 7.16 percent of the rates effective as of April 30, 2009. Final reimbursement shall be at 77.22 percent of allowable cost through the cost settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#010

DECLARATION OF EMERGENCY

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

Personal Care Services—Long Term
Reimbursement Rate Reduction (LAC 50:XV.12917)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends LAC 50:XV.12917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Pursuant to the Deficit Reduction Act of 2005, the Department of Health and Hospitals, Office of Aging and Adult Services amended the provisions governing long-term personal care services to implement a pilot program called the Louisiana Personal Options Program (La POP) which allows Medicaid recipients to direct and manage their own personal care services (*Louisiana Register*, Volume 34, Number 12). The December 20, 2008 Rule also amended the provisions governing the reimbursement methodology for long-term personal care services to establish a payment methodology for La POP.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for long-term personal care services to reduce the reimbursement rate (*Louisiana Register*, Volume 35, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 1, 2009 Emergency Rule.

Effective June 2, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends the provisions governing the reimbursement methodology for long term personal care services to reduce the reimbursement rate.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 9. Personal Care Services
Chapter 129. Long Term Care
§12917. Reimbursement Methodology

A. - C.3. …

D. Effective for dates of service on or after February 1, 2009, the reimbursement rate for long-term personal care services shall be reduced by 3.5 percent of the rate on file as of January 31, 2009.

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 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:

Implementation of the provisions of this Rule is 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 Jerry Phillips, 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.

Alan Levine
Secretary

0905#090

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Pharmacy Program—Prior Authorization
for Tamiflu and Relenza (LAC 50:XXIX.108)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXIX.108 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Program in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 32, Number 6). The bureau amended the June 20, 2006 Rule to

adopt new provisions governing the reimbursement of antihemophilia drugs (*Louisiana Register,* Volume 34, Number 5).

The Centers for Disease Control (CDC) has issued guidance and recommendations for medical practitioners with patients who have a confirmed or suspected diagnosis of Swine Influenza A (H1N1) virus infection. Tamiflu® and Relenza® are FDA-approved antiviral drugs that are effective against the current strain of Swine Influenza A (H1N1) virus. In order to assure the appropriate use of these drugs and to maintain adequate supplies, the department proposes to adopt provisions governing the prior authorization of Tamiflu® and Relenza®.

This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens with confirmed or suspected Swine Influenza A (H1N1) viral infection, and to assure that adequate supplies of drugs to treat the infection are available.

Effective May 5, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing prior authorization of Tamiflu® and Relenza® in the Pharmacy Program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy
Chapter 1. General Provisions
§108. Prior Authorization of Tamiflu® and Relenza®

A. Tamiflu® and Relenza® are both FDA-approved antiviral drugs that are effective against Swine Influenza A (H1N1) virus. Tamiflu® is FDA-approved to treat and prevent influenza in persons one year of age and older. Relenza® is FDA-approved for treatment of influenza in persons seven years of age and older and for prevention of influenza in persons five years of age and older.

B. In order for the Medicaid Program to provide reimbursement for Tamiflu® and Relenza®, the prescribing practitioner must contact the call center at the University of Louisiana at Monroe (ULM) to request prior authorization. The prior authorization request must contain the following information:

1. a statement that the patient has tested positive for Influenza A with a rapid influenza test; and
2. one of the following ICD-9-CM codes:
   a. 487.0—influenza with pneumonia;
   b. 487.1—influenza with other respiratory manifestations; or
   c. 487.8—influenza with other manifestations.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, 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.

Alan Levine
Secretary

0905#050

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Pharmacy Program Prior Authorization for Tamiflu and Relenza (LAC 50:XXIX.108)

The Department of Health and Hospitals, Bureau of Health Services Financing rescinds LAC 50:XXIX.108 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Program in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register,* Volume 32, Number 6). The bureau amended the June 20, 2006 Rule to adopt new provisions governing the reimbursement of antihemophilia drugs (*Louisiana Register,* Volume 34, Number 5).

The Centers for Disease Control (CDC) issued guidance and recommendations for medical practitioners with patients who have a confirmed or suspected diagnosis of Swine Influenza A (H1N1) virus infection. Tamiflu® and Relenza® are FDA-approved antiviral drugs that are effective against the current strain of Swine Influenza A (H1N1) virus. In order to assure the appropriate use of these drugs and to maintain adequate supplies, the department promulgated an Emergency Rule to adopt provisions governing the prior authorization of Tamiflu® and Relenza® (*Louisiana Register*, Volume 35, Number 5). The department now proposes to rescind the May 5, 2009 Emergency Rule.

This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who may require these antiviral drugs for treatment of confirmed or suspected Swine Influenza A (H1N1) viral infection.

Effective May 8, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing rescinds the May 5, 2009 Emergency Rule governing the prior authorization of Tamiflu® and Relenza® in the Pharmacy Program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy
Chapter 1. General Provisions
§108. Prior Authorization of Tamiflu® and Relenza®

A. - B. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Interested persons may submit written comments to Jerry Phillips, Department of Health and Hospitals, 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.

Alan Levine
Secretary

0905#084

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Professional Services Program—Anesthesia Services
Reimbursement Rate Reduction
(LAC 50:IX.15111)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.15111 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule amending the provisions governing the billing and reimbursement methodology for anesthesia services (*Louisiana Register, Volume 30, Number 5*). As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the department promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for anesthesia services to reduce the reimbursement rates paid to certified registered nurse anesthetists (CRNA's) for services rendered to Medicaid recipients (*Louisiana Register,* Volume 35, Number 3).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has determined that it is necessary to further reduce the reimbursement rates paid to CRNAs. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Professional Services Program by approximately $1,202,843 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for anesthesia services to further reduce the reimbursement rates paid to certified registered nurse anesthetists.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 15. Reimbursement
Chapter 151. Reimbursement Methodology
§15111. Anesthesia Services

A. The most appropriate procedure codes and modifiers shall be used when billing for surgical anesthesia procedures and/or other services performed under the professional licensure of the physician (anesthesiologist or other specialty) or certified registered nurse anesthetist (CRNA).

B. Formula-Based Reimbursement. Reimbursement is based on formulas related to 100 percent of the 2003 Medicare Region 99 payable.

C. Flat Fee Reimbursement

1. Reimbursement for maternity related anesthesia services is a flat fee except for general anesthesia related to a vaginal delivery which is reimbursed according to a formula.

2. Other anesthesia services that are performed under the professional licensure of the physician (anesthesiologist or other specialty) or CRNA are reimbursed a flat fee based on the appropriate procedure code.

D. Effective for dates of service on or after February 26, 2009, the reimbursement rates paid to CRNAs will be reduced by 3.5 percent of the reimbursement as of February 25, 2009.

E. Effective for dates of service on or after May 1, 2009, the reimbursement rates paid to CRNAs will be reduced by 7.16 percent of the reimbursement rates on file as of April 30, 2009.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#017

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Prosthetics and Orthotics—Reimbursement Rate Reduction (LAC 50:XVII.501)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XVII.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement for prosthetic and orthotic devices to repeal the reimbursement methodology for specific items and to increase the reimbursement rates (*Louisiana Register*, Volume 34, Number 5). As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for prosthetic and orthotic devices to further reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 3).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has now determined that it is necessary to amend the March 7, 2009 Emergency Rule to further reduce the reimbursement for prosthetic and orthotic devices. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency rule will reduce expenditures in the Medicaid Program by approximately $429,512 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for prosthetics and orthotics to further reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XVII. Prosthetics and Orthotics
Subpart 1. General Provisions
Chapter 5. Reimbursement
§501. Reimbursement Methodology

A. - B. …

C. Effective for dates of service on or after March 7, 2009, the reimbursement for prosthetic and orthotic devices shall be reduced by 3.5 percent of the fee amounts on file as of March 6, 2009.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

D. Effective for dates of service on or after May 1, 2009, the reimbursement for prosthetic and orthotic devices shall be reduced by 8 percent of the fee amounts on file as of April 30, 2009.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

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 31:1597 (July 2005), amended LR 34:881 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is contingent upon the approval of the Joint Legislative Committee on the Budget and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0905#011

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Targeted Case Management—Reimbursement Rate Reduction (LAC 50:XV.10701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary

shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for targeted case management services to: 1) require case management agencies to bill in 15 minute increments; 2) establish cost reporting requirements; and 3) increase the reimbursement rate paid for targeted case management services provided to infants and toddlers (*Louisiana Register*, Volume 35, Number 1). As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the bureau amended the provisions governing the reimbursement methodology for targeted case management to reduce the reimbursement rate. This rate reduction was not applicable to Infants and Toddlers and Early and Periodic Screening, Diagnosis and Treatment case management (*Louisiana Register*, Volume 35, Number 2).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act, the bureau has now determined that it is necessary to amend the February 1, 2009 Emergency Rule to further reduce the reimbursement rates for targeted case management services. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency rule will reduce expenditures in the Medicaid Program by approximately $1,307,513 for state fiscal year 2009-2010.

Effective May 1, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for targeted case management to further reduce the reimbursement rate.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 7. Targeted Case Management
Chapter 107. Reimbursement
§10701. Reimbursement

A. - D. …

E. Effective for dates of service on or after February 1, 2009, the reimbursement for case management services provided to the following targeted populations shall be reduced by 3.5 percent of the rates on file as of January 31, 2009:

1. participants in the Nurse Family Partnership Program;

2. individuals with developmental disabilities who are participants in the New Opportunities Waiver; and

3. individuals with disabilities resulting from HIV.

F. Effective for dates of service on or after May 1,2009, the reimbursement to non-state providers of case management services provided to the following targeted populations shall be reduced by 6.25 percent of the rates on file as of April 30, 2009:

1. participants in the Nurse Family Partnership Program;

2. individuals with developmental disabilities who are participants in the New Opportunities Waiver; and

3. individuals with disabilities resulting from HIV.

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 30:1040 (May 2004), amended LR 31:2032 (August 2005), amended LR 35:74 (January 2009), amended, LR 35:

Implementation of the provisions of this Rule is 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 Jerry Phillips, 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.

Alan Levine
Secretary

0905#012

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Targeted Case Management—Reimbursement Rate Reduction (LAC 50:XV.10701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The Secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the Secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S.

49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for targeted case management services to: 1) require case management agencies to bill in 15 minute increments; 2) establish cost reporting requirements; and 3) increase the reimbursement rate paid for targeted case management services provided to infants and toddlers (*Louisiana Register*, Volume 35, Number 1).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for targeted case management to reduce the reimbursement rate (*Louisiana Register*, Volume 35, Number 2). This rate reduction was not applicable to Infants and Toddlers and EPSDT case management. The department now proposes to amend the February 1, 2009 Emergency Rule to further clarify the targeted populations impacted by the rate reduction.

Effective May 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 1, 2009 Emergency Rule governing the reimbursement methodology for targeted case management.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart7. Targeted Case Management
Chapter 107. Reimbursement
§10701. Reimbursement

A. - D. …

E. Effective for dates of service on or after February 1, 2009, the reimbursement for case management services provided to the following targeted populations shall be reduced by 3.5 percent of the rates on file as of January 31, 2009:

1. participants in the Nurse Family Partnership Program;
2. individuals with developmental disabilities who are participants in the New Opportunities Waiver; and
3. individuals with disabilities resulting from HIV.

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 30:1040 (May 2004), amended LR 31:2032 (August 2005), amended LR 35:XXX (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions of this Rule is 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 Jerry Phillips, 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.

Alan Levine
Secretary

0905#085

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Licensed Professional Counselors Board of Examiners

Licensure Requirements (LAC 46:LX.Chapter 33)

In accordance with the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B) et seq., the Licensed Professional Counselors Board of Examiners is declaring an Emergency Rule to revise Sections 3303 and 3307-3313 of the Board Rules (Title 46, Part LX of the *Louisiana Administrative Code*), relative to the academic requirements for licensure of Marriage and Family Therapists.

The effective date of this Emergency Rule is May 16, 2009, and it shall be in effect for 120 days, or until a final rule is promulgated, whichever occurs first.

The Emergency Rule is necessary to clarify requirements for Licensed Marriage and Family Therapists and Marriage and Family Therapy Interns as to graduate degrees and academic clinical supervision.

There will be no adverse fiscal impact on the state as a result of this Rule insasmuch as the Licensed Professional Counselors Board of Examiners operates solely on self-generated funds. Further, it will benefit the consumer by helping to assure strict and definite academic requirements for licensure of Licensed Marriage and Family Therapists.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LX. Licensed Professional Counselors Board of Examiners
Subpart 2. Professional Standards for Licensed Marriage and Family Therapists
Chapter 33. Requirements for Licensure
§3303. Definitions

Allied Mental Health Discipline—repealed.

* * *

Appropriate Graduate Degree—repealed.

* * *

Marriage and Family Therapist Intern or MFT Intern—a person registered with the board who is receiving MFT approved post-graduate supervision.

Recognized Educational Institution—repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:155 (February 2003), amended LR 29:2784 (December 2003), LR 35:

§3307. Specific Licensing Requirements for Applications Made on or before June 30, 2004

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:155 (February 2003), amended LR 29:2785 (December 2003), repealed LR 35:

§3309. Specific Licensing Requirements for Applications Made on or before June 30, 2004

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:156 (February 2003), amended LR 29:2785 (December 2003), repealed LR 35:

§3311. Academic Requirements

A. The advisory committee and board have determined that *meets the standards* as provided in RS 37:1101(12) means:

1. a master's or doctoral degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) in a regionally accredited educational institution or a certificate in marriage and family therapy from a post-graduate training institute accredited by COAMFTE; or

2. a master's or doctoral degree in marriage and family therapy or marriage and family counseling from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) in a regionally accredited educational institution with a minimum of six graduate courses in marriage and family therapy including coursework on the AAMFT Code of Ethics and a minimum of 500 supervised direct client contact hours, with a minimum of 250 hours of these 500 hours with couples and families, and a minimum of 100 hours of face-to-face supervision. The training of the supervisor must be equivalent to that of an AAMFT Approved Supervisor or AAMFT Supervisor Candidate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:156 (February 2003), amended LR 29:2785 (December 2003), LR 35:

§3313. Examination Requirements

A. The examination for licensure shall be the national marriage and family therapy examination as determined by the advisory committee. No other examination will be accepted.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:158 (February 2003), amended LR 35:

§3315. Supervision Requirements

A. General Provisions

1. Applicants who meet the degree or certification requirements must successfully complete a minimum of two years of work experience in marriage and family therapy under qualified supervision in accordance with COAMFTE supervision standards as described in this Section.

B. Definitions for Supervision

* * *

MFT Intern—a person registered with the board who is receiving supervision from an LMFT-approved supervisor or LMFT-registered supervisor candidate.

* * *

C. Supervision Requirements for Licensure

1. A registered MFT intern must complete a minimum of two years of post-graduate work experience in marriage and family therapy that includes at least 3,000 hours of clinical services to individuals, couples, or families.

1.a. - 7.e. ...

D. Qualifications of an LMFT-Approved Supervisor and an LMFT-Registered Supervisor Candidate

1. - 2. ...

3. A person who wishes to become an LMFT-approved supervisor must be a licensed marriage and family therapist and must submit a completed application that documents that he or she meets the requirements. in one of two ways.

a. The applicant may meet the requirements by meeting the following coursework, experience, and supervision of supervision requirements.

i. Coursework requirements:

(a). a one-semester graduate course in marriage and family therapy supervision from a regionally accredited institution; or

(b). an equivalent course of study consisting of a 15-hour didactic component and a 15-hour interactive component in the study of marriage and family therapy supervision approved by the advisory committee. The interactive component must include a minimum of four persons.

ii. Experience requirements:

(a). has a minimum of two years experience as a licensed marriage and family therapist.

iii. Supervision of supervision requirements:

(a). 36 hours of supervision of supervision for marriage and family therapy must be taken from an LMFT-approved supervisor.

(b). - (c). repealed.

b. …

4. LMFT-Registered Supervisor Candidate

a. …

i. includes documentation of a minimum of two years of experience as a licensed marriage and family therapist;

a.ii. - d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:158 (February 2003), amended LR 29:2787 (December 2003), LR 35:

Eddye Boeneke
Executive Director

0905#035

DECLARATION OF EMERGENCY

Department of Social Services
Office of Family Support

Jobs for America's Graduates Louisiana (JAG-LA) Program
(LAC 67:III.5591)

The Department of Social Services, Office of Family Support, has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedure Act to amend LAC 67:III:5591, Jobs for America's Graduates Louisiana (JAG-LA) Program a TANF Initiative. This Emergency Rule, effective June 3, 2009, will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule which was published February 20, 2009, and was effective February 3, 2009, 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 the July 20, 2009 issue.)

The agency is expanding the age range of participants and the scope of services of the JAG-LA Program to keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically, and to assist students in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

The authorization for emergency action in this matter is contained in Act 19 of the 2008 Regular Session of the Louisiana Legislature.

Title 67
SOCIAL SERVICES
Part III. Office of Family Support
Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives
Chapter 55. TANF Initiatives
§5591. Jobs for America's Graduates Louisiana (JAG-LA) Program

A. Effective July 1, 2007, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Education for the Jobs for America's Graduates Louisiana (JAG-LA) Program to help keep in school those students at risk of failing in school, to capture out-of-school youth in need of a high school education, to provide an avenue for achieving academically, and to assist students in ultimately earning recognized credentials that will make it possible for them to exit school and enter post-secondary education and/or the workforce.

B. These services meet the TANF Goal 3 to prevent and reduce the incidence of out of wedlock pregnancies by providing intervention and improved life prospects for students who show evidence of failing, dropping out or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, imprisonment, and/or other undesirable outcomes which may lead to the detriment and impoverishment of youth.

C. Eligible participants in the JAG-LA Program shall be 12-22 years of age and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related barriers.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 18, 2007 Reg. Session. Act 19, 2008 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2468 (November 2007), amended LR 34:698 (April 2008), LR 35:

Kristy H. Nichols
Secretary

0905#078

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2009 Spring Inshore Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters, the Wildlife and Fisheries Commission does hereby set the 2009 Spring Shrimp Season in Louisiana state waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana's inside waters from the Mississippi/Louisiana State line to the eastern shore of South Pass of the Mississippi River, to open at 7:30 am May 18, 2009 except the open waters of Breton and Chandeleur Sounds as described by the double-rig line (LA R.S. 56:495.1(A)2) which shall open at 7:30 am May 11, 2009, and

Shrimp Management Zone 2, that portion of Louisiana's inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island and that portion of the State's Outside Waters south of the Inside/Outside Shrimp Line as described in R.S. 56:495 from the western shore of Freshwater Bayou at 92 degrees 18 minutes 33 seconds west longitude to the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel Buoy Line to open at 7:30 am May 11, 2009.

Shrimp Management Zone 3, that portion of Louisiana's inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island westward to the Louisiana/Texas State Line, to open at 7:30 am May 25, 2009.

The Commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to close any portion of the State's inside waters to protect small white shrimp if biological and technical data indicates the need to do so, or enforcement problems develop.

Robert J. Samanie, III
Chairman

0905#052

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Fishing Closure—Plaquemines Parish

In accordance with the emergency provisions of R.S. 49:953.B and R.S.49:967.D of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries Commission hereby closes, effective immediately, May 7, 2009, to recreational and commercial fishing an area located just south of Port Sulphur in Plaquemines Parish, more specifically described as follows: those waters bounded on the north by St. Jude Road, on the east by the Mississippi River main levee, on the south by Milan Drive and on the west by the back levee of the drainage ditch. Effective with the closure, no person shall take or possess or attempt to take any species of fish from waters within the closed area. No person shall possess while on the waters of the closed area any fishing gear capable of taking fish.

The Commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to broaden or to reopen the area closed to fishing if biological and technical data indicates the need to do so. This Declaration of Emergency shall remain in effect for a period of 90 days unless circumstances dictate that it be extended or circumstances warrant that the closure be lifted.

Robert J. Samanie, III
Chairman

0905#053

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Office of Fisheries

Fishing Closure—South of Plaquemines Parish

In accordance with the emergency provisions of R.S. 49:953.B and R.S.49:967.D of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Department of Wildlife and Fisheries hereby closes to recreational and commercial fishing an area located just south of Port Sulphur in Plaquemines Parish. Specifically, those waters bounded on the north by St. Jude Road, on the east by the Mississippi River main levee, on the south by Milan Drive and on the west by the back levee of the drainage ditch. Effective with the closure, no person shall take or possess or attempt to take any species of fish from waters within the closed area. No person shall possess while on the waters of the closed area any fishing gear capable of taking fish. This area will remain closed to fishing until reopened by the Secretary of the Department of Wildlife and Fisheries.

Robert J. Barham
Secretary

0905#054

Rules

RULE

Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences

Pesticides—Examinations, Restriction,
Water and Fish Tissue Sampling
(LAC 7.XXIII.103, 121, 125, 129, 143, 173, 181, and 205)

Editor's Note: Section 181 is being repromulgated to correct citation errors. The orginiral Rule may be viewed in its entirety on pages 626-628 of the April 20, 2009 edition of the *Louisiana Register*.

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statutes, R.S. 3:3203, 3:3271, and 3:3306, the Commissioner of Agriculture and Forestry, has amended regulations regarding pesticides to: add definitions and make other technical changes; provide for failure to pass an examination and cheating on examinations; changes the name of the right-of-way pest control category for commercial applicators; provide a numbering system for subcategories that agricultural consultants may become certified for; repeal a restriction on application of pesticides; repeal the requirement for publication in the *Louisiana Register* of an annual list of pesticides which, upon disposal, are declared by the EPA to be hazardous waste; and change the water monitoring frequency from monthly to quarterly and the fish tissue sampling from annually to on an as needed basis. These amendments have been made to improve the implementation of the provisions of the Louisiana Pesticide Law (R.S. 3:3201 et seq.).

Title 7
AGRICULTURE AND ANIMALS
Part XXIII. Pesticides
Chapter 1. Advisory Commission on Pesticides
Subchapter S. Unused Portions of Pesticides and/or Rinsate of Pesticides Classified as Hazardous Wastes
§181. Constructive Recycling

A. Applicators of pesticides covered under this Section may recover and constructively reuse any unused portions of such pesticides and/or any rinsate of such pesticides by one of the following methods:

1. by immediate reapplication of the unused portion of the pesticide and/or the rinsate in accordance with label and labeling requirements for that pesticide;
2. by transferring to a closed containment system meeting the requirement of §183; or
3. by disposal in a permitted hazardous waste facility.

B. All unused pesticides and/or rinsate from pesticides, classified as a hazardous waste upon disposal, must be removed from containment tanks in less than 90 days after deposit therein. Each containment tank must be cleaned by triple-rinsing or by procedures equivalent to triple-rinsing. The tank contents and rinsate shall be applied in accordance with the label and labeling requirements governing the initial application of the pesticide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:398 (May 1984), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 24:282 (February 1998), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 35:628 (April 2009), repromulgated LR 35:870 (May 2009).

Mike Strain, DVM
Commissioner

0905#049

RULE

Department of Economic Development
Office of the Secretary
Office of Business Development
and
Louisiana Economic Development Corporation

Economic Development Award Program (EDAP) and
Economic Development Loan Program (EDLOP)
(LAC 13:III.Chapter 1)

The Louisiana Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and as authorized by R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, has amended, supplemented, expanded and re-adopted LAC 13:III.Chapter 1, the rules of the Economic Development Award Program (EDAP) and the Economic Development Loan Program (EDLOP).

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, have found a need to amend, supplement and expand certain provisions of the rules and to re-adopt the rules for the regulation of the Economic Development Award Program (EDAP) and the Economic Development Loan Program (EDLOP). The amendments to these rules supplement, expand and update some of the definitions and other provisions provided in the rules of these programs which promote economic development in this state by helping to successfully secure the creation and/or retention of jobs by business entities newly locating in Louisiana or which may already exist in Louisiana and are relocating and/or expanding their operations, but require state assistance for such development as an incentive to influence the company's decision to locate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana, all of which will further promote economic development in

Louisiana. Without the revisions and re-adoption of these rules the state may suffer the loss of business investment and economic development projects creating and/or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13
ECONOMIC DEVELOPMENT
Part III. Financial Assistance Programs

Chapter 1. Economic Development Award Program (EDAP) and Economic Development Loan Program (EDLOP)

Subchapter A. Economic Development Award Program (EDAP)

§101. Economic Development Award Program (EDAP); Preamble and Purpose

A. The Economic Development Award Program (EDAP) is vital to support the state's commitment to Targeted Industry Based Economic Development, and the state's long term goals as set forth in *Louisiana: Vision 2020*, which is the Master Plan for Economic Development for the state of Louisiana.

B. The purpose of this EDAP program is to finance publicly-owned infrastructure for industrial or business development projects that promote targeted industry economic development and that require state assistance for basic infrastructure development. Additionally, the Louisiana Department of Economic Development, with the approval of the Board of Directors of Louisiana Economic Development Corporation, may take necessary steps to successfully secure projects in highly competitive bidding circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:860 (June 2003), LR 31:902 (April 2005), LR 35:871 (May 2009).

§103. Definitions

Applicants—the company or business enterprise and the public entity, collectively, requesting financial assistance from LED under this program.

Award—funding of financial assistance, appropriations, performance-based grants or loans approved under this program for eligible applicants.

Award Agreement—that agreement or contract hereinafter referred to between the company, the public entity, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

Awardee—an applicant receiving an award under this program.

Basic Infrastructure Project—refers to those infrastructure projects funding for which is to be provided under this program.

Company—the business enterprise, being a legal entity duly authorized to do and doing business in the state of Louisiana, for which the project is being undertaken.

Default—the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, to employ or to retain the employment of the number of employees as agreed, or to maintain the compensation or payroll levels as agreed; the failure to pay or to repay the loan or interest due thereon as agreed; or the failure to meet a financial obligation.

EDAP—the Economic Development Award Program.

Employee—a Louisiana resident hired by a company for permanent full-time employment.

Infrastructure—considered to be basic hard assets, permanent type assets, such as land, buildings, structures, substantial, installed or permanently attached machinery and/or equipment, streets, roads, highways, rights-of-way or servitudes, including paving or other hard surfacing, piping, drainage and/or sewage facilities, utility lines, poles and facilities, railroad spurs, tracks, cross ties, and all things similar or appurtenant thereto, and including costs related to the purchase, design, location, construction, and/or installation of such hard assets.

Infrastructure Project—refers to the undertaking for which an award is granted hereunder for the purchase, or new construction, improvement or expansion of land, roadways, parking facilities, equipment, bridges, railroad spurs, utilities, water works, drainage, sewage, buildings, ports and waterways.

Jobs Credits—refers to credits applied to repay the unpaid balance on a loan award in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

LEDC Board—the Board of Directors of the Louisiana Economic Development Corporation.

Loan or *Loan Award*—funding of financial assistance approved under this program for eligible applicants, which is to be repaid over a period of time by the awardee/borrower. Such financial assistance loans may be repaid either with or without interest, and may be repaid by applying "Jobs Credits" to the unpaid balance, and in the event "Jobs Credits" are utilized and earned, any interest due may also be waived, all to be determined by the LEDC Board or by the LED or LEDC staff.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term "Permanent Full-Time Equivalent Jobs".

Program—the Economic Development Award Program, including Basic Infrastructure Projects that are undertaken by LED, LEDC, the public entity and the company pursuant to these rules and the bylaws of LEDC.

Project—an expansion, improvement and/or provision of infrastructure for a public entity that promotes economic development, for which LED and LEDC assistance is requested under this program as an incentive to influence a

company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

Public Entity or *Sponsoring Entity*—the public or quasi-public entity responsible for engaging in the award agreement and pursuant thereto is responsible for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

Secretary—the Secretary of the Department of Economic Development, who is also the President of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:902 (April 2005), LR 35:871 (May 2009).

§105. General Principles

A. The following general principles will direct the administration of the Economic Development Award Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of LED or LEDC.

2. An award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Awards must reasonably be demonstrated to result in the improvement of or enhancement to the economic development and well-being of the state and local community or communities wherein the project is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and to the local community or communities wherein the project is or is to be located will be considered in making the award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the award.

7. Appropriate cost matching or funds matching by the applicants, private investors, the local community and/or local governing authority, as well as among project beneficiaries will be a factor in the consideration of the award.

8. At the discretion of the LEDC Board, a two year moratorium from the date of an LEDC Board approval or award of a grant may be required on additional EDAP awards to the same company at the same location; and a company shall not be eligible for or receive a another EDAP award so long as the same company is currently still obligated under an existing EDAP award involving the same location, or an existing EDLOP loan award involving the same location. (This provision shall not prohibit a combination EDAP award and EDLOP loan award made at the same time in connection with one project.)

9. Award funds shall be utilized for the approved project only.

10. Whether or not an award will be made is entirely in the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC Board may, in its discretion, deem to be pertinent.

11. The approval or rejection of any application for an award shall not establish any precedent and shall not bind the LEDC Board, the LED Secretary or the staff of LED or LEDC to any course of action with regard to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005), LR 35:872 (May 2009).

§107. Eligibility

A. An eligible application for the award must meet the general principles set forth above and the criteria set forth below, and the infrastructure project must be or will be owned by, and the ownership benefits or rights resulting from the infrastructure project must inure to the benefit of one of the following:

1. a public or quasi-public entity; or
2. a political subdivision of the state.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving an award, fail to maintain its eligibility during the term of the award agreement, the LEDC Board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for awards under this program are:

a. retail businesses, enterprises and/or operations;

b. real estate businesses, enterprises, operations and/or developments;

c. lodging or hospitality businesses, enterprises and/or operations;

d. assisted living businesses, enterprises or operations, retirement communities, or nursing homes; or

e. gaming or gambling businesses, enterprises and/or operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog

sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services, assisted living or nursing services, and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005), LR 35:872 (May 2009).

§109. Criteria for Basic Infrastructure Projects

A. In addition to the general principles set forth in §105 and the eligibility requirements in §107 above, basic infrastructure projects must meet the criteria hereinafter set forth for an award under the program.

1. Job Creation and/or Retention and Capital Investment

a. Basic infrastructure projects must create or retain at least 10 permanent full-time jobs in Louisiana, at the project location.

b. Consideration will be given for projects having a significant new private capital investment.

c. The number of jobs to be retained and/or created and the compensation or payroll levels to be maintained as stated in the application for basic infrastructure projects will be strictly adhered to, and will be made an integral part of the award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.

6. The minimum award request size shall be $50,000.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.

8. If a company does not start the project or begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, within six months after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication. LED or LEDC may require written, signed documentation demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003), LR 31:904 (April 2005), LR 35:873 (May 2009).

§111. Application Procedure for Basic Infrastructure Projects

A. The applicants must submit an application to LED or LEDC on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including business projections and, at the discretion of LED or LEDC, either audited financial statements, or an independent CPA certification of the company's net worth sufficient to demonstrate to LED or LEDC the financial ability of the company considering the circumstances relating to the award, as well as financial statements of any guarantors which may also be required by LED or LEDC at its discretion;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. evidence of the number, types and compensation or payroll levels of jobs to be created or retained by the company in connection with the project, and the amount of capital investment for the project;

4. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project described in the award application; and

5. any additional information that LED or LEDC may require.

B. The applicants and their applications must meet the general principles of §105, the eligibility requirements under §107, and meet the criteria set forth in §109 above, in order to qualify for an award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005), LR 35:873 (May 2009).

§113. Submission and Review Procedure for Basic Infrastructure Projects

A. Applicants must submit their completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by LED or LEDC staff. Input may be required

from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented; and/or

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, will be prepared and utilized by LED or LEDC.

C. Upon determination that an application meets the general principles of §105, the eligibility requirements under §107, and meets the criteria set forth for this program under §109, the Secretary of LED and/or the LED or LEDC staff will then make a recommendation to the LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC Board in its discretion, after considering the recommendation of the Secretary of LED and/or the staff of LED or LEDC. The LED director or the targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC Board as to the approval or disapproval of the award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005), LR 35:873 (May 2009).

§115. General Award Provisions

A. Except where indicated, these provisions shall be applicable to Basic Infrastructure Awards. All agreements, including those resulting from any expedited procedures, shall demonstrate the intent of the company, the public entity, LED, and LEDC to enter into the following.

1. Award Agreement. A written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, the public entity and the company(ies). The agreement will specify the amount of the award, the terms and conditions of any loan award, the performance objectives and requirements the company(ies) and the public entity will be required to meet, and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, and the compensation or payroll levels of such jobs. Under the agreement, the public entity will oversee the progress of the project. LED or LEDC will disburse funds to the public entity in a manner determined by LED or LEDC.

2. Funding

a. Eligible project costs may include costs related to the design, location, construction and/or installation of basic infrastructure hard assets, including, but not limited to, the following:

i. engineering and architectural expenses related to the project;

ii. site (land) and/or building acquisition;

iii. site preparation;

iv. construction, renovation and/or rebuilding expenses; and/or

v. building materials.

b. Project costs ineligible for award funds include, but are not limited to:

i. recurrent expenses associated with the project (e.g., operation and maintenance costs);

ii. company moving expenses;

iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity;

v. refinancing of existing debt, public or private;

vi. furniture, fixtures, computers, consumables, transportation equipment, rolling stock or movable equipment.

B. Amount of Award. Following the appropriation of funds for each fiscal year, the Board of Directors of LEDC shall allocate the amount of such funds available for Basic Infrastructure Awards.

1. For Basic Infrastructure Awards, matching funds shall be a consideration, and:

a. The portion of the total project costs financed by the award may not exceed:

i. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. 75 percent for projects in parishes with unemployment rates above the statewide average; or

iii. 50 percent for all other projects.

b. Other state funds cannot be used as the match for EDAP funds.

c. All monitoring will be done by LED or LEDC. Expenditures for monitoring or fiscal agents may be deducted from awards.

d. The award amount shall not exceed 25 percent of the total funds allocated to the Basic Infrastructure Awards Program during a fiscal year, plus any rollover funds from the previous year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of $3.1 million.

e. The LEDC Board of Directors, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

C. Loan Award. In the event the award of financial assistance is to be in the form of a loan, which in the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC, either may or may not require the payment of interest at a rate to be determined by the LEDC Board (after considering the recommendation of the secretary and/or the staff of the LED or the LEDC), or by the staff of the LED or the LEDC in the absence of a determination by the LEDC

Board; and/or the loan may also be repaid by allowing *jobs credits* to be applied to the unpaid balance of the loan in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term, and in the event *jobs credits* are utilized and earned, any interest due may also be waived.

D. Conditions for Disbursement of Funds

1. Award funds will be available to the public entity on a reimbursement basis in accordance with the award agreement following submission of required documentation to LED or LEDC from the public entity.

2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC Board of Directors will be considered eligible for reimbursement.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement (contract) has been agreed upon, signed and executed.

3. Award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed or obtained;

c. all other closing conditions specified in the award agreement have been satisfied.

4. Awardees will be eligible for the advancement of award funds on an as needed reimbursement basis, with requests for such funds supplemented with invoices or appropriate documentation showing the use of the funds, after all or substantially all of the conditions required by the award agreement have been met, performed or completed. After the awardee has met all such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the award agreement, the award amount may be disbursed to the borrower as provided in the paragraphs below after the staff of LED or LEDC or its designee has determined, or, if deemed to be appropriate by the staff, inspects the project, circumstances or documentation to assure that all or substantially all of the conditions required by the award agreement have been met, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when LED or LEDC has determined, in its discretion, that the benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though 100 percent of all stated conditions of the award agreement may not have been fully met or achieved.

5. After the conditions required by the award agreement have been met or satisfactorily performed or completed as provided above, and in the event the award is intended to fund one or more purchases, all award funds (100 percent) needed to fund the purchase shall be available for disbursement or reimbursement following the completion of each of the respective purchases and appropriate inspections of the project by LED staff, or following the receipt and LED staff approval of appropriate invoices or sales describing the items or improvements purchased.

6. After the conditions required by the loan award agreement have been met or satisfactorily performed or completed as provided above, awardees will be eligible for disbursement or reimbursement of other award funds for the performance of tasks, work or construction projects at 90 percent of the amount requested until all or substantially all of the tasks or work required by the award agreement have been performed or completed. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final 10 percent of the award amount will be paid after LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when LED or LEDC has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though 100 percent of all stated objectives of the award agreement may not have been fully achieved.

E. Compliance Requirements

1. Companies and public entities shall be required to submit progress reports, describing the progress towards the performance objectives specified in the award agreement. Progress reports by public entity shall include a review and certification of company's hiring records and the extent of company's compliance with contract employment commitments, including number of jobs created and/or retained, and the compensation or payroll levels achieved and maintained. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by LED or LEDC to support the company's reported progress toward the achievement of performance objectives, employment and compensation or payroll level requirements. Further, public entity shall oversee the timely submission of reporting requirements of the company to LED.

2. Award Agreements will contain "clawback" or refund provisions to protect the state in the event of a default. In the event a company or public entity fails to timely start or to proceed with and/or complete its project, or fails to timely meet its performance objectives and/or any employment requirements, including but not limited to the retention or creation of the number of jobs or the reaching or maintaining of compensation or payroll levels within the time and for the term agreed, as specified in its agreement with LED and LEDC, any such acts, omissions or failures shall constitute a default under the award agreement, and LED and LEDC shall retain all rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives,

that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event a company or public entity knowingly files a false statement in its application or in a progress report or other filing, the company or public entity and/or their representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company, public entity, or party to an award agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC is authorized to notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the public entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997); amended by the Department of Economic Development, Office of the Secretary, LR 23:1640 (December 1997), LR 25:239 (February 1999), LR 26:238 (February 2000); amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), LR 31:905 (April 2005), LR 35:874 (May 2009).

§117. Conflicts of Interest

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), amended LR 31:906 (April 2005), repealed LR 35:876 (May 2009).

§119. Reserved.

§121. Reserved.

§123. Reserved.

§125. Reserved.

§127. Reserved.

§129. Reserved.

Subchapter B. Economic Development Loan Program (EDLOP)

§131. Economic Development Loan Program (EDLOP); Preamble and Purpose

A. The Economic Development Loan Program (EDLOP) is vital to support, promote and enhance the state's commitment to economic development, and the state's long term goals as set forth in *Louisiana: Vision 2020*, which is the long-term Master Plan for Economic Development for the state of Louisiana. This program is a supplement to and an expansion or extension of the already existing Economic Development Award Program (EDAP).

B. The purpose of this program is to assist in the financing or loan funding of privately-owned property and improvements, including the purchase or leasing of a building site, the purchase or construction, renovation, rebuilding and improvement of buildings, their surrounding property, for machinery and equipment purchases and rebuilding, the demolition or removal of existing buildings and/or improvements if a part of the site preparation for the construction of new buildings and/or improvements, and for additional costs related to and incurred in connection with the location or relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, all for business enterprises newly locating in Louisiana or for businesses already existing in this state which are expanding their operations and that require state assistance for such development, location and/or relocation, rebuilding or other such improvement, and for which LED and LEDC assistance is requested under this program, all of which will promote economic development and provide an incentive to influence a company's decision to locate or relocate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:906 (April 2005), amended LR 35:876 (May 2009).

§133. Definitions

Applicant—the company or business enterprise requesting or seeking financial assistance, specifically a loan, from LED and LEDC under this program. The applicant may be, but is not required to be, joined in the application by any other person, public or private entity, as a co-applicant or as a guarantor.

Award—funding of financial assistance, specifically a performance-based loan, approved under this program for eligible applicants, which is to be repaid over a period of time by the awardee/borrower.

Award Agreement—that agreement or contract hereinafter referred to between the company, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

Awardee—an applicant, company or business enterprise receiving a loan award under this program.

Borrower—the company or business enterprise receiving and accepting a loan award under this program.

Company—the business enterprise, being a legal entity duly authorized to do and doing business in the state of Louisiana, in need of loan funding for a project pursuant to these rules, which is undertaking the project or for which the project is being undertaken, and which is seeking or receiving a loan award under this program.

Default—the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, to employ or to retain the employment of the number of employees as agreed, or to maintain the compensation or payroll levels as agreed; the failure to pay or to repay the loan or interest due thereon as agreed; or the failure to meet a financial obligation.

EDLOP—the Economic Development Loan Program.

Employee—a Louisiana resident hired by a company for permanent full-time employment.

Financed Lease—a lease entered into that satisfies the criteria of a lease intended as a security device for the payment or repayment of a debt, a loan or an obligation; in

which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the installment payments of the loan shall be the lease or rental payments.

Guaranty—an agreement, promise or undertaking by a second party to make the payment of a debt or loan or to perform an obligation in the event the party liable in the first instance fails to make payment or to perform an obligation.

Jobs Credits—refers to credits applied to repay the unpaid balance on a loan award in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

LEDC Board—the Board of Directors of the Louisiana Economic Development Corporation.

Loan or *Loan Award*—funding of financial assistance approved under this program for eligible applicants, which is to be repaid over a period of time by the awardee/borrower. Such financial assistance loans may be repaid either with or without interest, and may be repaid by applying *jobs credits* to the unpaid balance, and in the event *jobs credits* are utilized and earned, any interest due may also be waived, all to be determined by the LEDC Board or by the LED or LEDC staff.

Loan Agreement, *Award Agreement* or *Loan Award Agreement*—that agreement or contract hereinafter referred to between the company, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the terms and conditions of the loan to be provided pursuant to these rules, and the performance objectives and requirements of the company as consideration for the award of the loan provided pursuant to the company's application and these rules.

Loan Participation—the sharing by one lender of a part or portion of a loan with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds, or may purchase a portion of the loan, and which participant or participants would be entitled to share in the proceeds of the loan repayments and interest income.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term *permanent full-time equivalent jobs*.

Program—the Economic Development Loan Program (EDLOP), involving such projects that are undertaken by LED, LEDC and the company pursuant to these rules and the bylaws of LEDC.

Project or *Infrastructure Project*—refers to the undertaking for which a loan award is sought and/or is granted hereunder for the purchase or lease of a to be privately-owned or leased building site, or for the purchase, construction, improvement, expansion, renovation, rebuilding or expansion of privately-owned or leased buildings and their surrounding property, including parking facilities, private roads, railroad spurs and utility needs, including electrical, gas, telephone, water and sewerage lines, as well as certain qualified machinery and equipment, and for additional costs related to and incurred in connection with the location or relocation of the business enterprise, including appropriate professional and/or real estate fees and commissions, for a private entity which will promote economic development, for which LED and LEDC assistance is requested under this EDLOP program as an incentive to influence the company's decision to locate or relocate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana.

Promissory Note—a written promise to pay or repay a specified amount of money, either with or without interest, on a stated date, or within a stated time, in installments, or on demand.

Secretary—the Secretary of the Department of Economic Development, who is also the President of LEDC.

Security Interest—a lien, incumbrance or mortgage affecting movable or immovable property given by a debtor or borrower in favor of a creditor or lender to assure the debtor's or borrower's payment or repayment of a debt or promise to pay an amount of money, or for the fulfillment or performance of an obligation. A security interest may also be reserved in favor of the creditor or lender in the form of a lease, commonly called a *financed lease*; in which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the lease or rental payments shall be the installment payments of the loan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005), amended LR 35:00876 (May 2009).

§135. General Principles

A. The following general principles will direct the administration of the Economic Development Loan Program.

1. Loan awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of LED or LEDC.

2. A loan award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Loan awards must reasonably be demonstrated to result in an improvement of or enhancement to economic development of the state and the local community wherein the business is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and criteria, and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and the local community will be considered in approving the loan award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the loan award.

7. Appropriate cost matching or funds matching by the loan beneficiary, as well as private investors, the local

community, local public entities, and/or local governing authority, will be a factor in the consideration of the loan award.

8. Loan funds shall be utilized for the approved project only.

9. A company shall not be eligible for more than one EDLOP loan award within a two year period; and a company shall not be eligible for or receive a another loan award of EDLOP funds so long as the same company is currently paying or is still obligated under an existing EDLOP loan award involving the same location, or an existing EDAP award involving the same location. (This provision shall not prohibit a combination EDAP award and EDLOP loan award made at the same time in connection with one project.)

10. Whether or not a loan award will be made is entirely in the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC Board may, in its discretion, deem to be pertinent.

11. The approval or rejection of any application for a loan award shall not establish any precedent and shall not bind the LEDC Board, the LED Secretary or the staff of LED or LEDC to any course of action with regard to any application.

12. A loan award may also take the form of a loan participation, wherein LED or LEDC may act as the originator of the loan, and may share or participate a portion of the loan with another lender or other lenders; or LED or LEDC may act as a participant in a loan, and accept a portion or a share of a loan originated by another lender or other lenders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005), amended LR 35:877 (May 2009).

§137. Eligibility

A. An eligible application for the loan award must be consistent with the general principles set forth in §135 above and the criteria set forth in §139 below, must demonstrate a need for the funding of the project consistent with these rules, and the project must be or will be owned by, and the ownership benefits or rights resulting from the project must inure to the benefit of the applicant company or business enterprise, which will also be the borrower.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving a loan award, fail to maintain its eligibility during the term of the award agreement, the LEDC Board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for loans under this program shall include:

a. retail businesses, enterprises and/or operations;

b. real estate businesses, enterprises, operations and/or developments;

c. lodging or hospitality businesses, enterprises and/or operations;

d. assisted living businesses, enterprises or operations, retirement communities, or nursing homes; or

e. gaming or gambling businesses, enterprises and/or operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services, assisted living or nursing services, and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005), amended LR 35:878 (May 2009).

§139. Criteria for Projects

A. In addition to the general principles set forth in §135 and the eligibility requirements in §137 above, projects must meet the criteria hereinafter set forth for a loan award under this program.

1. Job Creation and/or Retention and Capital Investment

a. Projects must create or retain at least 10 jobs considered to be permanent full-time jobs in Louisiana, at the project location.

b. Consideration will be given for projects having a significant new private capital investment.

c. The number of jobs to be retained and/or created and the compensation or payroll levels to be maintained as stated in the application for projects will be strictly adhered to, and will be made an integral part of the loan award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to provide, expand or improve basic structural infrastructure and its use by the company, and secondary consideration will be given to projects involving machinery and equipment purchases or rebuilding.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.

6. The minimum loan award request size shall be $50,000.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.

8. If a company does not start the project or begin the purchase or the construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, or execute purchase orders for machinery and equipment or orders for the rebuilding of machinery and equipment within 120 days after its application approval, the LEDC Board of Directors, at its discretion, may cancel funding for the project, or require reapplication. Copies of written, signed documentation may be required by LED or LEDC demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005), amended LR 35:878 (May 2009).

§141. Application Procedure for Projects

A. The applicant must submit an application to LED or LEDC by letter or on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including business projections and audited financial statements showing the financial ability of the company, as well as financial statements of any guarantors which may also be required by LED or LEDC at its discretion;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. a cash flow analysis of the project, providing detailed support for the use of the funding to be provided, and a proposed repayment schedule for the loan which is consistent with the revenues to be generated by the project;

4. evidence of the number, types and compensation or payroll levels of jobs to be created or retained by the company in connection with the project, the period of time for which the company will commit to maintain the new and/or retained jobs, and the amount of capital investment for the project;

5. a statement or disclosure as to whether or not the company has sought or applied for any other type of financing (public or private) for this project, and the results or disposition of that search and/or application, including documentation from any commercial banks specifying the reasons why the banks would not extend a loan to the applicant;

6. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project to be financed by the requested loan award; and

7. any additional information that LED or LEDC may require.

B. The applicant and its application must meet the general principles of §135, the eligibility requirements in §137, and meet the criteria set forth in §139 above, in order to qualify for a loan award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), amended LR 35:879 (May 2009).

§143. Submission and Review Procedure for Projects

A. An applicant must submit its completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by the staff of LED or LEDC. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented; and/or

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, will be prepared and utilized by LED or LEDC.

C. Upon determination that an application meets the general principles of §135, the eligibility requirements under §137, and meets the criteria set forth for this program under §139, the Secretary of LED and/or the staff of LED or LEDC staff will then make a recommendation to the LEDC Board of Directors. The application will then be reviewed and approved or rejected by the LEDC Board in its discretion, after considering the recommendation of the Secretary of LED and/or the staff of LED or LEDC. The LED director or targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC Board as to the approval or disapproval of the loan award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), amended LR 35:879 (May 2009).

§145. General Loan Award Provisions

A. These provisions shall be applicable to loan awards. Loan award agreements resulting from the procedures for loan awards shall demonstrate the intent of the company, the LED, and LEDC to enter into the following.

1. Loan Agreement, Award Agreement or Loan Award Agreement. After a loan award has been approved, a written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, and the company or business enterprise receiving the loan award. The agreement will specify the amount, the terms and conditions of the loan; the performance objectives and requirements the company will be required to meet; and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, as well as the compensation or payroll levels of such jobs. Under the agreement, the staff of the LED or LEDC or their

area representatives will oversee or monitor the progress of the project. LED or LEDC will disburse funds to the company, the borrower, in a manner determined by LED or LEDC.

2. Loan Term. The loan repayment term shall not exceed seven years. If necessary and appropriate, a repayment term may be structured with a balloon payment at the end of the last year of the loan. Refinancing of the balloon payment will not be permitted.

3. Promissory Note. When appropriate, the borrower shall execute an appropriate promissory note containing a promise to pay or repay the loan funds which in the discretion of the LEDC Board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC, either may or may not require the payment of interest at a rate to be determined by the LEDC Board (after considering the recommendation of the secretary and/or the staff of the LED or the LEDC), or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board; and/or the loan may also be repaid by allowing jobs credits to be applied to the unpaid balance of the loan in an amount determined by the LEDC Board or by the LED or LEDC staff for each of the new permanent full-time jobs that are created and filled with a permanent full-time employee hired by the company within the agreed employment term, and in the event jobs credits are utilized and earned, any interest due may also be waived. The rate of interest shall not be less than the then current U.S. Government Treasury Security Rate that coincides with the term or time period of the loan at the time of the loan award approval, nor more than 2.5 percent above such Treasury Security Rate; and such promissory note may provide for the repayment of such funds on a stated date, or within a stated time, in installments or on demand, as determined by the LEDC Board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such repayment terms, or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board.

4. Collateral. For the purposes of establishing an acceptable Loan to Value (LtV) ratio for loan collateral, the applicant must present to LED or LEDC staff a current appraisal of the item being funded, or its documented purchase price. Once the total loan request has been determined and the value of the item to be funded has been substantiated, LED or LEDC staff will determine the eligible LtV based on the criteria established by LED or LEDC staff and these rules. LED or LEDC staff shall have the discretion and ability to reduce the LtV based on the applicant's financial ability to repay the loan. If LED or LEDC staff determines the applicant is financially unable to meet a predetermined debt service coverage ratio of 1.25 to 1 (1.25:1), the loan amount shall be reduced in order that the LtV may be reduced accordingly to meet the require debt service coverge ratio.

5. Security Interest. When appropriate, and if required by the LEDC Board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such security interest, or by the staff of the LED or the LEDC in the absence of a determination by the LEDC Board, the borrower shall execute an appropriate security instrument or document providing the LEDC and/or LED a security interest in such movable and/or immovable property or any other assets of the borrower as the LEDC Board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such security instrument or document to contain all appropriate, usual, customary, and generally accepted Louisiana security provisions.

6. Financed Lease. When appropriate, and if required by the LEDC Board in its discretion, considering the recommendation of the secretary and/or the staff of LED or EDC as to such security interest, the borrower shall execute an appropriate lease for the purpose of financing and providing security for the loan as the LEDC Board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such financed lease to contain all appropriate, usual, customary, and generally accepted Louisiana lease and security provisions.

7. Examination/Audit of Books, Records and Accounts. LEDC, LED and the state shall retain and shall have the right to examine/audit all books, records and accounts of the borrower and its project at any time and from time to time, as well as all books, records and assets of any and all guarantors.

8. Guaranties. Should the circumstances warrant, and if required by the LEDC Board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to the need for any such guaranty, a guaranty or guaranties of the borrower's obligation to pay or repay the loan proceeds or any part thereof, or a guaranty or guaranties of the company's obligations to perform any or all of its performance requirements or obligations under the loan award agreement, shall be required from any person or persons, company, companies, business enterprise, or any public entity or governmental authority.

9. Execution of Documents. If a borrower does not execute the appropriate documentation which has been prepared by the staff of LED or LEDC for the loan award transaction within 60 days after the completed documentation has been forwarded to the borrower, the borrower shall be required to appear before the LEDC Board to explain the delay, and the LEDC Board shall have the right to reconsider the loan award, and may either withdraw the loan award or grant an extension of time to the borrower. In the event the borrower does not execute the documentation within the additional time extended to it, the LEDC Board, in its discretion, may withdraw the loan award.

10. Funding

a. Eligible project costs may include, but not be limited to, the following:

i. site (land) and/or building acquisition;

ii. real estate fees and/or commissions paid in connection with the acquisition or leasing of land, buildings and/or office space for the location of the business operation;

iii. engineering and architectural expenses related to the project;

iv. site preparation;

v. construction, renovation and/or rebuilding expenses;

vi. building materials;

vii. purchases or rebuilding of capital machinery and/or equipment having an Internal Revenue Service (IRS)

depreciable life of at least seven years. If any such eligible machinery and/or equipment to be financed by the loan award is not to be located on property owned by the borrower, the owners, lessors and lessees of such private or public property shall each execute an appropriate written lien waiver or release allowing representatives of LED or LEDC to enter upon such private or public property and remove therefrom any or all of such machinery and/or equipment at any time either the LED or the LEDC shall determine such to be in its security interest to do so.

b. Project costs ineligible for award funds include, but are not limited to:

i. recurrent expenses associated with the project (e.g., operation and maintenance costs);

ii. company moving expenses;

iii. expenses already approved for funding through the general appropriations bill, or for cash approved through the capital outlay bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. refinancing of existing debt; and/or

v. costs related to furniture, fixtures, computers, consumables, transportation equipment, rolling stock, or any machinery and/or equipment having an IRS depreciable life of less than seven years.

11. Loan Participation. If and when appropriate, LED or LEDC, as the originator, may share a part or portion of a loan, with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds or may purchase a portion of the loan; or LED or LEDC, as a participant, may share in a part or portion of a loan originated by another lender or other lenders, by providing a portion of the loan funds or by purchasing a portion of the loan; in either of which cases the participant or participants shall share in the proceeds of the loan repayments and interest income, and an appropriate loan participation agreement shall be executed between the lenders designating the shares of the parties, outlining the various rights and responsibilities of the parties, providing for the servicing/collecting of the indebtedness, providing for the payment of any fees and reimbursement of any expenses of the servicing party, and containing the usual and customary provisions of such agreements.

B. Allocation of Amount for Loan Awards. Following the appropriation of funds for each fiscal year, the Board of Directors of LEDC shall allocate, and may revise from time to time, the amount of such funds available for Economic Development Loan Awards.

1. Regarding the amount of such loan awards, matching funds shall be a consideration, and:

a. the portion of the total project costs financed by the loan award may not exceed:

i. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. 75 percent for projects in parishes with unemployment rates above the statewide average; or

iii. 50 percent for all other projects.

b. Other state funds cannot be used as the match for EDLOP funds.

c. All monitoring will be done by the staff of LED or LEDC and/or their regional representatives. Expenditures for monitoring or fiscal agents may be deducted from such loan awards, at the discretion of the LEDC Board, considering the recommendation of the secretary and/or the staff of the LED or the LEDC as to such deductions.

d. The loan award amount shall not exceed 25 percent of the total funds allocated to the loan awards program during a fiscal year, plus any rollover funds from the previous year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of $3.1 million.

e. The LEDC Board of Directors, in its discretion, considering the recommendation of the secretary and/or the staff of the LED or the LEDC as to the limitation of the amount of such loan awards, may limit the amount of loan awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

2. Resources shall be allocated by the Board of Directors of LEDC, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, in order to effect the best allocation of resources, based upon the number of projects anticipated to require similar funding and the availability of program funds.

C. Conditions for Disbursement of Funds

1. Loan award funds will be available and funded to the borrower pursuant to the loan award agreement following submission of all signed required documentation to LED or LEDC from the company or business enterprise.

2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC Board of Directors will be considered eligible for such loan awards.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement or loan award agreement (contract) has been agreed upon, signed and executed.

3. Loan award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all required technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed, issued and/or obtained, in the event that such are required in connection with the project; and

c. all other closing conditions specified in the loan award agreement have been satisfied.

4. Awardees will be eligible for the advancement of loan funds on an as needed basis, with requests for such funds supplemented with invoices or appropriate documentation showing the use of the funds, after all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. After the awardee has met all such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the loan award agreement, the loan amount may be disbursed to the borrower as provided in the paragraphs below after the staff

of LED or LEDC or its designee has determined, or, if deemed to be appropriate by the staff, inspects the project, circumstances or documentation to assure that all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when LED or LEDC has determined, in its discretion, that the benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though 100 percent of all stated conditions of the loan award agreement may not have been fully met or achieved.

5. After the conditions required by the loan award agreement have been met or satisfactorily performed or completed as provided above, and in the event the award is intended to fund one or more purchases, all award funds (100 percent) needed to fund the purchase shall be available for disbursement or reimbursement following the completion of each of the respective purchases and appropriate inspections of the project by LED staff, or following the receipt and LED staff approval of appropriate invoices or sales describing the items or improvements purchased.

6. After the conditions required by the loan award agreement have been met or satisfactorily performed or completed as provided above, awardees will be eligible for disbursement or reimbursement of other award funds for the performance of tasks, work or construction projects at 90 percent of the amount requested until all or substantially all of the tasks or work required by the award agreement have been performed or completed. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final 10 percent of the award amount will be paid after LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when LED or LEDC has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though 100 percent of all stated objectives of the award agreement may not have been fully achieved.

D. Withdrawal of Loan Award Funds. The borrower must make the first draw of funds on the loan award within six months from the effective date of the loan award agreement (the effective date being the date the loan award was approved by the LEDC Board); otherwise the borrower shall be required to appear before the LEDC Board to explain the delay in the project; and should no funds be drawn within an additional three months from the effective date of the loan award agreement, the borrower shall again be required to appear before the LEDC Board to explain the delay in the project, and the LEDC Board shall have the option and right to reconsider this loan award, and may either withdraw the loan award or grant an extension of time to the borrower. In the event the borrower does not draw any of the loan award funds within the additional time extended to it, the LEDC Board, in its discretion, may withdraw the loan award.

E. Compliance Requirements

1. Companies shall be required to submit to LED or to LEDC periodic progress reports, describing the progress toward the achievement of performance objectives and requirements specified in the loan award agreement. Progress reports shall include a review and certification by the company of its timely promissory note payments, and a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments, including number of jobs created and/or retained, and the compensation or payroll levels achieved and maintained. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by LED or LEDC to support the company's reported progress toward the achievement of performance objectives, employment and compensation or payroll level requirements. Further, LED or LEDC staff shall oversee the timely submission of reporting requirements by the company.

2. Loan Award Agreements will contain "clawback" or refund provisions to protect the state in the event of a default. In the event a company fails to timely start or to proceed with and/or complete its project, or fails to timely meet its note or installment payment obligations, its performance objectives and/or any employment requirements, including but not limited to the retention or creation of the number of jobs or the reaching or maintaining of compensation or payroll levels within the time and for the term agreed, as specified in its agreement with LED and LEDC, any such acts, omissions or failures shall constitute a default under the award agreement, promissory note, security instrument or agreement, lease or other document or agreement entered into in connection with the loan award, and LED and LEDC shall retain all rights to withhold loan award funds, modify the terms and conditions of the loan award, to reclaim the unpaid balance of all disbursed loan funds from the company and/or foreclose on its security interest, or in its discretion to reclaim only a portion of the disbursed loan funds in an amount commensurate with the scope of the unmet performance objectives and/or requirements and the foregone benefits to the state. In the last instance, reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives and/or requirements, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event an applicant or company knowingly files a false statement in its application or in a progress report or other filing, the company and/or its representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company or party to an award agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC shall notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify

any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct, at any time and from time to time, full financial and performance audits of a company and its project, including all relevant accounts, records and documents of the company and/or the guarantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005), amended LR 35:879 (May 2009).

§147. Conflicts of Interest

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:912 (April 2005), repealed LR 35:883 (May 2009).

Stephen M. Moret
Secretary

0905071

RULE

Department of Economic Development
Office of the Secretary
Office of Business Development
and
Louisiana Economic Development Corporation

Workforce Development and Training Program
(LAC 13:III.Chapter 3)

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and as authorized by R.S. 51:2331 et seq., 36:104, 36:108 and 51:2312, has amended, supplemented and re-adopted LAC 13:III.Chapter 3, being the rules of the Workforce Development and Training Program.

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, have found a need to amend, supplement and re-adopt the rules for the regulation of the Workforce Development and Training Program in order to add, revise and update some definitions and other provisions of the rules for this program which promotes economic development in this state by helping to provide funding for training for new and existing employees and thereby secure the creation and/or retention of jobs by businesses located in this state. Without the revisions and re-adoption of these rules the state may suffer the loss of business investment and economic development projects which would create and/or retain jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13
ECONOMIC DEVELOPMENT
Part III. Financial Assistance Programs
Chapter 3. Workforce Development and Training Program

§301. Preamble and Purpose

A. Workforce Development and Training is vital to support the state's commitment to Targeted Industry Based Economic Development, and the state's long-term goals as set forth in Louisiana: Vision 2020, which is the Master Plan for Economic Development for the state of Louisiana.

B. The purpose of the program is to provide a source of funding in order to enable the development of and provide customized workforce training programs for existing and prospective employees of existing and prospective Louisiana businesses as a means of improving the competitiveness and productivity of Louisiana's workforce and business community; and to assist Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, (March 1999), LR 25:1664 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1064 (July 2003), LR 35:883 (May 2009).

§303. Definitions

Applicant—the business entity or company authorized to do business in Louisiana requesting a training award from LED and LEDC under this program.

Award—funding of financial assistance, including performance-based grants, approved under this program for eligible training activities.

Award Agreement—that agreement or contract hereinafter referred to between the company, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

Company—the business enterprise undertaking the workforce training project, and the successful applicant receiving or granted an award under this program.

Contract—a legally enforceable Award Agreement between LED, LEDC and the successful applicant or company governing the terms and the conditions of the training award.

Employee—a Louisiana resident hired by a company for permanent full-time employment.

Jobs—refers to *permanent full-time jobs*, direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term *permanent full-time equivalent jobs*.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

LEDC Board—the Board of Directors of the Louisiana Economic Development Corporation.

Net Benefit Return to the State—the determination of whether or not the value to the state is equal to or exceeds the amount of the award to the company.

Percentage of Achieved Performance Objectives as Provided in the Contract—an average of that portion achieved by the company of the permanent full-time jobs created or upgraded, and that portion achieved by the company of the annual salary levels to be reached, as provided in the contract. The two portions are to be added together, and the total figure is then divided by two, in order to yield the average percentage.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. This term also includes the term *permanent full-time equivalent jobs*.

Preference—the discretionary granting of an advantage or priority to one applicant or application over others; allows extra consideration to be given to one applicant or application over others, with regard to the availability of funding.

Program—the Workforce Development and Training Program.

Project—the workforce training endeavor that will enhance the qualifications and productivity of a company's workforce, its employees and prospective employees, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate, maintain or expand its operations in Louisiana, to increase its capital investment in Louisiana, to locate a facility in this state, and/or to employ residents of this state.

Secretary—the Secretary of the Louisiana Department of Economic Development, who is, by law, also the President of the Louisiana Economic Development Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, (March 1999), LR 25:1664 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), amended by the Department of Economic Development, Office of Business Development, and Louisiana Economic Development Corporation, LR 33:44 (January 2007), LR 35:883 (May 2009).

§305. General Principles

A. The following general principles will direct the administration of the Workforce Development and Training Program:

1. LEDC shall serve as the single review board for this Workforce Development and Training Program which is to be administered by LED;

2. training awards are not to be construed as an entitlement for companies located or locating in Louisiana; and such awards shall be subject to the discretion of the LEDC Board;

3. awards must reasonably be expected to be a significant factor in a company's location, investment, expansion and/or training decisions;

4. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;

5. the anticipated economic benefits to the state will be considered as a requirement in making the award;

6. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate;

7. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers; and

8. award funds shall be utilized for the approved training project only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), LR 35:884 (May 2009).

§307. Program Descriptions

A. This program provides two types of training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies. The training to be funded can include:

1. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a portion of the trainees;

2. on-the-job (and/or upgrade) training for employees that is needed to bring the employees up to a minimum skill and/or productivity level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), LR 35:884 (May 2009).

§309. Eligibility

A. An eligible applicant is a company authorized to do business in Louisiana and an employer that seeks customized training services to provide training in a particular industry.

B. The following types of businesses are not eligible for the award of workforce development funds: retail businesses, enterprises and/or operations; real estate businesses, enterprises, operations and/or developments; trucking companies, businesses or enterprises; lodging or hospitality businesses or enterprises; assisted living businesses or enterprises, retirement communities, or nursing homes; and gaming or gambling businesses or enterprises.

C. Employees to be trained must be residents of Louisiana and employed in Louisiana, except for projects

locating at Stennis Space Center in Mississippi. Employees to be trained under this program for projects at Stennis Space Center must be Louisiana residents.

D. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to its failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceedings, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has a previous contract with the Department of Economic Development or LEDC in which the company is in default and/or is not in compliance.

E. A company must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), LR 35:884 (May 2009).

§311. Criteria

A. General (These apply to all training programs administered under these rules.)

1. Preference may be given to applicants in industries identified by the state as targeted industries or as industries located in targeted areas, and to applicants locating in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. If a company does not begin the project within 180 days after application approval, the LEDC, upon the recommendation of LED staff or the Secretary of LED, may cancel funding of the training project, or may require reapplication.

4. The number of jobs to be retained and/or created as stated in the application will be adhered to and will be made an integral part of the award agreement.

B. Pre-Employment, Upgrade and On-the-Job Training

1. Applicants must initially create in this state at least 10 net new permanent full-time jobs, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 existing permanent full-time employees.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, LR 33:44 (January 2007), LR 35:885 (May 2009).

§313. Application Procedure

A. LED will provide a standard application form which applicants will be required to use to apply for assistance under this program. The application form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;

3. the specific training programs for which LED and LEDC assistance is requested, including descriptions of the methods, providers and costs of the proposed training;

4. a fully developed business plan, with financial statements and projections; and

5. any additional information either LED or LEDC may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), LR 35:885 (May 2009).

§315. Submission and Review Procedure

A. Applicants must submit their completed application to LED for review and evaluation. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and/or other state agencies as needed, in order to:

1. evaluate the importance of the proposed training to the economic well-being of the state and local communities;

2. identify the availability of existing training programs which could be adapted to meet the employer's needs;

3. verify that the business will continue to operate during the period of the contract; and/or

4. determine if the employer's training plan is cost effective.

B. An economic cost-benefit analysis tailored to the applicant's request shall be conducted by LED to determine the net benefit to the state and/or local community of the proposed training award. The accomplishment of the net benefit return to the state shall not exceed two years.

C. Upon determination that an application meets the general principles, eligibility requirements, and criteria for this program, LED staff will then make a recommendation to the LEDC Board; and the LEDC Board will then review and either approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December

1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003), LR 35:885 (May 2009).

§317. General Award Provisions

A. Award Agreement

1. A written award agreement, contract or cooperative endeavor agreement will be executed between LEDC, acting through the LED, and the successful applicant or company. The award agreement will specify the amount of the award, the terms and conditions of the award, the performance objectives expected of the company and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training, job creation and/or retention, and the achievement of employee salary levels to be reached by the company.

2. LED will oversee the progress of the company's training and will disburse funds to the company on an as needed reimbursement basis as provided by the award agreement, based on cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, submitted by the company on a form provided by LED. LED may request the company at any time and from time to time to submit additional or supporting information.

3. Funds may be used for training programs extending up to and not exceeding a term of two years in duration.

4. Contracts issued under previous rules may be amended to reflect current regulations as of the date of the most recent change, upon the request of the company, the recommendation of LED, and the approval of LEDC.

B. Funding

1. The Louisiana Workforce Development and Training Program offers financial assistance in the form of a performance-based grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

a. instruction costs—wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. materials and supplies costs—training texts and manuals, audio/visual materials, raw materials for manufacturer's training purposes only and Computer Based Training (CBT) software; and

c. other justifiable costs—when necessary for training, such as facility and/or equipment rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. travel costs, including but not limited to travel for trainers, training coordinators and trainees;

c. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-Computer Based Training (CBT) software), unless owned by a public training provider;

d. out-of-state publicly supported schools;

e. employee handbooks;

f. scrap produced during training for resale;

g. food, refreshments; and

h. awards.

4. Training activities eligible for funding consist of:

a. industry-specific or company-specific skills—skills which are unique to a particular industry or to a company's workplace, equipment and/or capital investment;

b. quality standards skills—skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

c. other skills—skills pertaining to instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

1. Funds will be available on an as-needed reimbursement basis following submission to LED by the company of required documentation (Cost Reports, and any supporting documentation if requested by LED). Only funds spent on the project after LEDC's approval will be considered eligible for reimbursement. However, funds will not be available for reimbursement to the company until an award agreement, training agreement or contract between the company and LEDC has been finalized and executed.

2. A company will be eligible for reimbursement on a percentage of achieved performance objectives as provided in the award agreement or contract, until all or substantially all of its contracted performance objectives have been met. After the company has achieved all or substantially all of its contracted performance objectives, any remaining unpaid portion of the grant award will be made available for reimbursement. Performance objectives shall be considered substantially achieved when LED and LEDC have determined that the benefits to the state anticipated or expected as a result of the training project have been achieved, even though 100 percent of all stated objectives of the award agreement (or contract) may not have been fully achieved.

D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, the company shall be required to complete and submit to LED Cost Reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, along with progress reports describing the company's progress toward the performance objectives specified in its contract with LEDC. Such progress reports shall include a review and certification of the company's hiring records (with copies of the company's quarterly LA. Dept. of Labor ES-4 Form filings to be attached), and the extent of the company's compliance with contract employment commitments. Further, LED shall oversee the timely submission of reporting requirements by the company.

2. The termination during the contract period of employees who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

3. In the event a company fails to meet its performance objectives as specified in its contract, LEDC shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or to reclaim disbursed funds from the company in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED and on the recommendation of the secretary. Reclamation shall not begin unless LED has determined, with the concurrence of LEDC, after an analysis of the benefits to the state of the training project and the unmet performance objectives, that the state has not satisfactorily or adequately been compensated for its costs through the benefits provided by the training project.

4. In the event a company knowingly files a false statement in its application or in a progress report, the company may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133.

A. LEDC shall retain the right, for itself, for the legislative auditor, for the Office of the Governor, Division of Administration, and for LED, to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1067 (July 2003), LR 35:886 (May 2009).

§319. Contract Monitoring

A. All monitoring will be done by LED or by an independent contractor under contract with LED or LEDC. A portion of the fiscal year's appropriation, up to 5 percent or a maximum of $200,000, may be used by LED to fund administration or monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2312, and 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:244 (February 1999), LR 25:1665 (September 1999), LR 26:244 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1068 (July 2003), LR 35:887 (May 2009).

§321. Conflicts of Interest

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1068 (July 2003), repealed LR 35:887 (May 2009).

Stephen M. Moret
Secretary

0905#070

RULE

Department of Economic Development
Office of the Secretary

Governor's Economic Development Rapid Response Program (LAC 13:V.Chapter 2)

The Louisiana Department of Economic Development, Office of the Secretary, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and as authorized by R.S. 36:104 and 36:108, has amended, supplemented and re-adopted LAC 13:V.Chapter 2, the rules of the Governor's Economic Development Rapid Response Program.

The Department of Economic Development, Office of the Secretary, has found a need to amend, supplement and re-adopt the rules regulating of the governor's Economic Development Rapid Response Program to revise and update some of the definitions and other provisions of this program which promotes economic development in this state by helping to provide opportunities for immediate funding of all or a portion of economic development projects in order to successfully secure the creation or retention of jobs by a business entity in Louisiana under such circumstances as may be determined appropriate by the Secretary of Economic Development and the governor of Louisiana. Without the revisions and re-adoption of these rules the state may suffer the loss of business investment and economic development projects creating and/or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13
ECONOMIC DEVELOPMENT
Part V. Office of the Secretary
Chapter 2. Governor's Economic Development Rapid Response Program

§201. Purpose

A. The Secretary of the Department of Economic Development and the governor of this state, on their own initiative, may offer an award of financial assistance to a business entity under circumstances they, in their discretion, determine to be appropriate; and they may in their discretion require the business entity to submit some or all of the information required of applicants under these rules, or they may invite a business entity to become an applicant to request an award of financial assistance subject to the rules of this program.

B. The purpose of this program is to provide an application, review and approval process for applicants to seek state financial assistance for immediate funding of all or a portion of economic development projects in order to successfully secure the creation and/or retention of jobs by a business entity in Louisiana under such circumstances as may be determined appropriate by the Secretary of Economic Development and the governor of Louisiana, in their discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005), amended LR 35:887 (May 2009)

§203. Definitions

A. The following definitions shall be applicable to this program.

Applicant—the company or business entity, that pursuant to applicable Louisiana law, is duly authorized to do business in Louisiana and is in good standing as certified by the office of the Louisiana Secretary of State and/or any public entity requesting financial assistance from the state under this program that represents the set of circumstances through which funding may be applicable under these rules.

Award—funding of financial assistance, which may include a performance-based grant, loan, and/or loan guaranty, for eligible applicants under this program.

Award Agreement—the agreement or contract hereinafter referred to between the company and/or the public entity, and LED through which, by cooperative endeavor agreement, loan guaranty agreement, or otherwise, the parties set forth the amount of the grant, loan or loan guaranty award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

Company—a company or other business entity, duly authorized to do business in Louisiana and in good standing as certified by the Louisiana Secretary of State, that pursuant to these rules may be eligible to seek the funding of a project under this program.

Default—the failure to perform a task, to fulfill an obligation, or to do what is required; the failure to create new jobs or the number of new jobs as agreed, to employ or to retain the employment of the number of employees as agreed, or to maintain the compensation or payroll levels as agreed; the failure to pay or to repay the loan or interest due thereon as agreed; or the failure to meet a financial obligation.

Department—the Louisiana Department of Economic Development.

Economic Development Project—the undertaking for which an award is granted, under the circumstances presented, that provides the opportunity for immediate funding of a project or portion of a project that will serve to finalize the commitment of a business entity for the creation and/or retention of jobs in Louisiana.

Jobs—refers to permanent full-time jobs, being direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week. Also includes the term *permanent full-time equivalent jobs*.

LED—the Louisiana Department of Economic Development.

Program—the Governor's Economic Development Rapid Response Program that is undertaken and administered, overseen or supervised by LED, pursuant to these rules and an award agreement with the applicant after becoming an award recipient that serves the purposes of obtaining or retaining an Economic Development Project.

Project—economic activity that, in whole or in part, as determined appropriate by the Secretary of Economic Development and the governor of Louisiana, will result in the creation and/or retention of jobs and for which assistance is requested under this program as a decisive influence in the decision of an entity to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana in such a manner that will create and/or retain jobs.

Public Entity—the public or quasi-public entity that:

a. pursuant to these rules, may be eligible to seek funding, through a grant, a loan or a loan guaranty, for a project; or

b. that may, with a company, apply for funding through a grant, a loan or a loan guaranty pursuant to these rules; or

c. that, pursuant to the request of LED, may be responsible for engaging in the award agreement and thereby responsible for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

Secretary—the Secretary of the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005), amended LR 35:888 (May 2009).

§205. General Principles

A. The following general principles will direct the administration of the Governor's Economic Development Rapid Response Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and the secretary and governor have the sole discretion to determine whether or not each particular business entity or application meets the criteria for the award as provided herein, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of a company's award status.

2. The economic benefit of the award to the state must equal or exceed the value of the award to the recipient.

3. The immediate nature of the award, and the competitive circumstances, as well as the need for and the immediate use of the funds through a grant, loan or loan guaranty pursuant to the award must reasonably be expected to be a significant factor in a company's location, investment, retention and/or expansion decisions.

4. The award agreements entered into pursuant to this program shall reflect a commitment by the recipient of the award for the creation and/or retention of jobs, their compensation or payroll levels, and other economic consequences as represented in the application for the award, and shall include such provisions as will protect the state's investment in the award in the event that the recipient of the award fails to meet its representations.

5. The state anticipates negotiating with each company seeking an award based on the individual merits of each project, with the goal of seeking the best return on investment for the state's citizens over the longest possible period of time.

6. Awards shall be administered or overseen by or under the supervision of the LED.

7. Contracts for awards will contain "clawback" (or refund) provisions to protect the state in the event of a default. In the event a company or public entity fails to timely start or to proceed with and/or complete its project, or fails to timely meet its performance objectives and/or any

employment requirements, including but not limited to the retention or creation of the number of jobs or the reaching or maintaining of compensation or payroll levels within the time and for the term agreed, as specified in its award agreement with LED, any such acts, omissions or failures shall constitute a *default* under the award agreement, and LED shall retain all rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless LED has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005), amended LR 35:888 (May 2009).

§207. Eligibility

A. An eligible application for the award must meet the eligibility requirements set forth in this section, the general principles set forth in §205 above and the criteria set forth in §209 below.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has or has had another contract with LED in which the company is in default and/or is not in compliance.

C.1. Businesses not eligible for awards under this program are:

a. retail businesses, enterprises and/or operations;

b. real estate businesses, enterprises, operations and/or developments;

c. lodging or hospitality businesses, enterprises and/or operations;

d. assisted living businesses, enterprises or operations, retirement communities, or nursing homes; or

e. gaming or gambling businesses, enterprises and/or operations.

2. This provision shall not apply, however, to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to the above business enterprises, provided that retail sales, hospitality services, assisted living, retirement or nursing home services, and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005), amended LR 35:889 (May 2009).

§209. Criteria

A. These rules seek to maximize both the economic development from a particular award pursuant to this program and to more efficiently utilize taxpayer money in pursuing the goals of economic development.

B. Among the factors that may be taken into account in the review of award requests are the following:

1. actual local governmental commitment to the project (including the sharing of responsibility for the company's compliance with the terms and conditions of the award);

2. availability of other federal, state, local or private funding programs for the project;

3. jobs created, jobs retained, compensation or payroll levels, company investment prior to the request for the project, and company commitment to match funds that will equal or exceed the amount of the award grant, loan or loan guaranty;

4. company membership in and utilization of cooperative organizations for industry best practices and improvement;

5. evaluation of overall industry performance in the context of the goals of *Louisiana: Vision 2020*;

6. compelling evidence that the award, if approved, will retain and/or create jobs; that the award, when committed and implemented, needs immediate funding; and the immediate funding is the final necessary commitment to secure the project;

7. the period of time that the company will commit to maintain its new and/or retained jobs and their compensation or payroll levels; and

8. the terms of the "clawback" (or refund) provisions, in the event of a default.

C. Representation as to the applicant's need for the funds, as well as the ability to put the funds to use after the award is granted will also be an important consideration in the grading of a particular application. Entry into a contractual agreement and the use of the funds within a specified period after the award is granted will be a factor in the secretary's or the department's recommendations to the governor as to the terms and conditions for the award.

D. The department will pursue a policy of negotiation of the award with the award applicant in order to assure that only necessary funds that are supported by evidence of need, availability and use, as well as commitment to, and likely success of the project, will arise from the final approval of the project in accordance with secretary and/or departmental recommendations upon which the award is conditioned and administered by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005), amended LR 35:889 (May 2009).

§211. Application Procedure

A. The applicant(s) must submit to LED an application, which may be in letter form or in a more formal application format, which shall contain, but not be limited to, the following:

1. an overview of the company, its history, and the business climate in which it operates, including audited or certified financial statements and business projections;

2. preliminary or final construction, operation or other plans and a timetable for the project, including the time period for which the rapid response funding is necessary;

3. evidence as to the need for immediate funding;

4. a detailed description of the anticipated or proposed use or expenditure of the funds sought for the project;

5. evidence of the number, types and compensation or payroll levels of the jobs to be created and/or retained which will be filled with employees by the company in connection with the project, and the amount of capital investment to be made for the project;

6 details of the health insurance coverage that is or will be offered to employees at all levels of the company;

7. the period of time for which the company will commit to maintain the newly created and/or retained jobs and their compensation or payroll levels;

8 the application must demonstrate adherence to and overall consistency with the general principles and criteria set forth above; and

9. the application is to set forth facts and representations that in addition to those required by Paragraphs A.1.-A.8. above, fulfill the general principles of §205, the eligibility requirements under §207, and meet the criteria set forth in §209 above, in order to qualify for an award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005), amended LR 35:889 (May 2009).

§213. Submission and Review Procedure

A. Applicants must submit their completed application to LED for review and evaluation. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, targeted industry directors, other staff of the Department of Economic Development and other state agencies as needed in order to evaluate the project in the context of these rules and with respect to the overall economic well-being of the state and local communities. LED may determine that advice of a third party may be appropriate to its analysis of the application and may undertake such a review as part of this procedure.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities will be prepared by LED and must establish that the award hereunder is in accordance with the requirements of Article VII, Section 14 of the Louisiana Constitution.

C. Upon determination that an application meets the general principles of §205, the eligibility requirements under §207, and meets the criteria set forth for this program under §209, LED staff will then make a recommendation to the secretary, who may accept or reject the staff's recommendation. The secretary may or may not, in his discretion, then make his own recommendation to the governor, which may or may not follow the recommendation of the staff. The application will then be reviewed and approved or rejected by the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005), amended LR 35:890 (May 2009).

§215. General Award Provisions

A. In the event the secretary and the governor determine, in their discretion, that the award would be appropriate, an award agreement resulting from the expedited procedures for the award shall demonstrate the intent and commitments of the company, the public entity, and LED to enter into an award agreement consistent with the Constitution and laws of the state of Louisiana and with these rules.

1. An award agreement will be executed between LED and the award recipient, and may include as a party the public entity through which the funding is to be administered. The award agreement will specify the amount of the grant or loan award or loan guaranty, the terms and conditions of the award, the performance objectives expected of the company and/or the public entity, and the compliance requirements to be enforced in exchange for state financial assistance, including, but not limited to, the company's commitments and time lines as to the number of jobs to be created and/or retained and their compensation and payroll levels, and commitments and time lines for investment. Under the agreement, the public entity or LED will oversee the progress of the project. LED will disburse funds to the public entity and/or company in a manner determined by LED, and there shall be appropriate securitization of the award in a manner consistent with normal commercial practices.

2. Eligible project costs may include an advance of funds to provide the necessary commitment that will, in the opinion of the secretary, or LED and the governor, provide for the project and may include matters that in whole or in part provide for engineering and architectural expenses; costs associated with site, building and/or office space acquisition and/or leasing; site preparation costs; construction expenses; building materials; office expenses including furniture, fixtures, computers, consumables, transportation equipment, rolling stock or equipment; relocation or moving expenses; real estate fees, commissions, compensation or associated costs; training expenses, including pre-employment training, assessments, classroom training, on-the-job training, and other justifiable training expenses; and any other justifiable costs. Commitment to funding of these costs may be made, provided that the entity receiving these funds shall comply with the public bid laws to the extent that such laws are applicable.

3. Project costs ineligible for award funds include, but are not limited to, matters such as the refinancing of existing debt, public or private, and expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds.

4. The secretary, or LED and/or the governor, may limit the amount of awards under this program to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

5. Award funds will be available to the public entity and/or company on an as-needed reimbursement basis following submission to LED of required documentation (cost reports, and any supporting documentation, if requested by LED) as set forth in the award agreement between the parties.

6. Award funds will not be available for disbursement until:

a. the LED and the award recipient(s) have entered into an award agreement that is in fulfillment of these rules and is in accordance with the representations made by the applicant(s) for the award; and

b. confirmation is received that all closing conditions specified in the award agreement and any other necessary preconditions to the funding of the award or the implementation of the project have been satisfied.

7. The award recipient shall be required to submit progress reports, describing the progress toward the performance objectives specified in the award agreement. Progress reports shall include a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments, including number of jobs created and/or retained, and the compensation or payroll levels achieved and maintained. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports, cost reports, or as otherwise requested by LED to support the company's reported progress toward the achievement of performance objectives, employment and compensation or payroll level requirements. Further, either LED or the public entity (if a party to the award agreement) shall oversee the timely submission of reporting requirements of the company to LED.

8. In the event a party to the award agreement fails to meet its performance objectives as specified in its award agreement with LED, LED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state or as may be otherwise provided by the award agreement between the parties.

9. In the event an applicant or other person is reasonably believed to have filed a false statement in its application or in a progress report or other filing, the LED shall immediately notify the District Attorney of the Parish of East Baton Rouge and may also notify any other appropriate law enforcement personnel so that an investigation may be undertaken with respect to the application of state funds to the project.

10. LED shall retain the right to require and/or conduct financial and performance audits of a company, the public entity and/or project, including all relevant records, accounts and documents of the company and the public entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005), amended LR 35:890 (May 2009).

Stephen M. Moret
Secretary

0905#072

RULE

Board of Elementary and Secondary Education

Bulletin 104—Louisiana Pre K-12 Educational Technology Standards (LAC 28:LXXV.Chapter 1)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 104—Louisiana PreK-12 Educational Technology Standards*. This document replaces in its entirety any previously advertised version and amends the title of the bulletin to include PreK. The revised standards added Technology Standards for PreK. The previous standards included K-12. All standards were updated to reflect changes in the skills students need to learn effectively and address the new and emerging instructional technologies in grades PreK-12. The new standards were updated to align with the National Educational Technology Standards.

Title 28
EDUCATION
Part LXXV. Bulletin 104—Louisiana PreK-12 Educational Technology Standards

Chapter 1. Purpose

Subchapter A. Educational Technology

§101. Mission Statement

A. The Louisiana PreK-12 Educational Technology Standards for Students provide a framework for preparing students for learning in a global, digital society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:891 (May 2009).

§103. Philosophy

A. The Louisiana PreK-12 Educational Technology Standards are based on the National Educational Technology Standards for Students (NETS-S) and the Louisiana State Content Standards. These technology standards support the beliefs set forth by the state educational technology goal:

> "All Louisiana educators and learners will benefit from technology-rich environments that support student achievement and produce lifelong learners able to succeed in an information society."

B. The Louisiana PreK-12 Educational Technology Standards are intended to be infused into the foundation skills and core understandings embodied in the Louisiana Content Standards. These standards and performance indicators are anticipated to assist teachers in preparing all students to be lifelong learners and contributing members of a global society. Infusion of these standards will be varied and dynamic, reflecting the diversity of instructional and student needs in our schools and districts.

C. All students must have regular opportunities to use technology to develop skills that encourage personal productivity, creativity, critical thinking, and collaboration in the classroom and in daily life. The technology standards promote the development of Information and

Communication Technology (ICT) literate students who learn, plan, produce, and innovate in a digital world. These standards foster ethical usage and digital citizenship for a competitive global society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:891 (May 2009).

§105. Definition

A. *ICT* stands for information and communication technology. This acronym is used throughout much of the world in place of the word *technology* when referring to skills or standards for technology use.

B. *Educational technology* refers to the application of technology skills for learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:892 (May 2009).

Subchapter B. Standards

§107. Creativity and Innovation (1)

A. Students demonstrate creative thinking, construct knowledge, and develop innovative products and processes using technology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:892 (May 2009).

§109. Communication and Collaboration (2)

A. Students use digital media and environments to communicate and work collaboratively, including at a distance, to support individual learning and contribute to the learning of others.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:892 (May 2009).

§111. Research and Information Fluency (3)

A. Students apply digital tools to gather, evaluate, and use information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:892 (May 2009).

§113. Critical Thinking, Problem Solving, and Decision Making (4)

A. Students use critical thinking skills to plan and conduct research, manage projects, solve problems, and make informed decisions using appropriate digital tools and resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2012 (December 2008), amended LR 35:892 (May 2009).

§115. Digital Citizenship (5)

A. Students understand human, cultural, and societal issues related to technology and practice legal and ethical behavior.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2013 (December 2008), amended LR 35:892 (May 2009).

§117. Technology Operations and Concepts (6)

A. Students demonstrate a sound understanding of technology concepts, systems, and operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2013 (December 2008), amended LR 35:892 (May 2009).

Subchapter C. Performance Indicators

§119. Grades PreK-2

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Illustrate and communicate original ideas and stories using electronic tools and media-rich resources. (1, 2)
2. Identify, research, and collect data on an issue using digital resources and propose a developmentally appropriate solution. (1, 3, 4)
3. Engage in learning activities with learners from multiple cultures through electronic means. (2, 6)
4. In a collaborative work group, use a variety of technologies to produce a digital presentation or product in a grade level appropriate curriculum area. (1, 2, 6)
5. Find and evaluate information related to topic of interest using digital resources. (3)
6. Use simulations and graphical organizers to explore and depict concepts. (1, 3, 4)
7. Demonstrate the safe, ethical, and cooperative use of technology. (5)
8. Independently apply digital tools and resources to address a variety of tasks and problems. (4, 6)
9. Communicate about technology using developmentally appropriate and accurate terminology. (6)
10. Demonstrate the ability to navigate in virtual environments such as electronic books, simulation software, and the Internet. (6)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2013 (December 2008), amended LR 35:892 (May 2009).

§121. Grades 3-5

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Produce a media-rich digital presentation. (1, 2, 3, 4)
2. Use digital-imaging technology to modify or create original works. (1, 2, 6)
3. Recognize bias in digital resources while researching an issue with guidance from the teacher. (3, 4)
4. Select and use digital tools, instruments, and measurement devices to collect, organize, and analyze data while conducting experiments, evaluating theories and/or testing hypotheses. (3, 4, 6)
5. Identify and investigate a world issue and generate a possible solution using digital tools and resources. (3, 4)

6. Conceptualize, guide, and manage individual or group learning projects using digital tools with teacher support. (4, 6)

7. Practice injury prevention by applying a variety of ergonomic strategies when using technology. (5)

8. Discuss the ethical use of technologies and the effect of existing and emerging technologies on individuals, society, and the global community. (5, 6)

9. Communicate about technology using developmentally appropriate and accurate terminology. (6)

10. Apply previous knowledge of digital technology operations to analyze and resolve current hardware and software issues. (4, 6)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2014 (December 2008), amended LR 35:892 (May 2009).

§123. Grades 6-8

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Apply existing knowledge to create original works as a means of personal or group expression. (1, 2, 6)

2. Describe and illustrate a grade level appropriate concept or process using a model, simulation, or concept-mapping software. (1, 2)

3. Use collaborative electronic authoring tools to explore common curriculum content from multicultural perspectives with other learners. (2, 3, 4, 5)

4. Participate in a cooperative learning project in an online community or virtual environment. (2)

5. Integrate a variety of file types to create and illustrate a document or presentation. (1, 6)

6. Evaluate electronic resources to determine the credibility of the author and publisher, and the accuracy of the content. (3, 4, 5)

7. Use appropriate tools to collect, view, analyze and ethically use information for a variety of sources and media to process data and report results. (1, 3, 4, 5)

8. Gather data, examine patterns, and apply information for decision making using electronic tools and resources. (1, 4)

9. Use information, media, and technology in a safe, ethical and responsible manner which includes following the school's acceptable use policy, adhering to copyright laws, respecting the rights of others, and employing proper etiquette in all forms of communication. (5)

10. Demonstrate responsible digital citizenship including the respect for intellectual property of others. (3, 5)

11. Develop and apply strategies for identifying and solving routine hardware and software problems. (4, 6)

12. Successfully complete online assessments and/or surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2014 (December 2008), amended LR 35:893 (May 2009).

§125. Grades 9-12

A. The following performance indicators should be used as standards in integrating technology into the content standards.

1. Design, develop, test, and evaluate a model or simulation (i.e. digital learning game) to demonstrate knowledge and skills related to curriculum content. (1, 4)

2. Create and publish an online collection (i.e. Art Gallery, Geometric toolbox, Timelines, etc.) of examples and commentary that demonstrate an understanding of different historical periods, cultures, and countries. (1, 2)

3. Select digital tools or resources to use for a real-world task and justify the selection based on their efficiency and effectiveness. (3, 6)

4. Design a cooperative learning project for an online community. (1, 2, 4)

5. Identify a complex global issue, develop a systematic plan of investigation, and present a viable solution. (1, 2, 3, 4)

6. Analyze the capabilities and limitations of current and emerging technology resources and access their potential to address personal, social, lifelong learning, and future career needs. (4, 5, 6)

7. Design a user friendly Web site that meets accessibility requirements. (1, 5)

8. Model legal and ethical behaviors when using information and technology by selecting, acquiring, and citing resources. (3, 5)

9. Create electronic media-rich presentations for other students on the appropriate and ethical use of digital tools and resources. (1, 5)

10. Configure and troubleshoot hardware, software, and productivity. (4, 6)

11. Successfully complete online assessments and/or surveys. (6)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2014 (December 2008), amended LR 35:893 (May 2009).

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RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State (OS) Certificate
(LAC 28:CXXXI.309)

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:* §309, Out-of-State (OS) Certificate. The revision of this policy would allow a state department of education or college dean of education to verify the eligibility for certification of an out-of-state

graduate of an education program. The current policy does not allow for a dean of education to verify the eligibility for certification of an out-of-state graduate.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 3. Teaching Authorizations and Certifications
Subchapter A. Standard Teaching Authorizations
§309. Out-of-State (OS) Certificate

A. - B.2. ...

3. hold a standard out-of-state teaching certificate; or if no certificate was issued, a letter from the state department of education or college of education dean verifying eligibility in that state for a certificate in the certification area(s);

B.4. - C.1.c.iv.(b). ...

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 32:1799 (October 2006), amended LR 33:433 (March 2007), LR 34:1611 (August 2008), LR 35:894 (May 2009).

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RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Orientation and Mobility
(LAC 28:CXXXI.410)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, Board of Elementary and Secondary Education amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel:* §410. Orientation and Mobility. This revision will allow the issuance of an Ancillary School Service certificate in the area of Orientation and Mobility. Individuals who maintain national certification in orientation and mobility and have completed master's or bachelor's degree programs in this field will qualify for this certification. At present the individuals that are working with blind students in Louisiana schools do not hold any type of certification. This change in policy will allow these individuals to receive certificates to service in this area.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 4. Ancillary School Service Certificates
§410. Orientation and Mobility

A. Orientation and Mobility—Valid as long as holder maintains a current national certification in orientation and mobility.

1. Eligibility requirements:

a. bachelor's or master's degree in orientation and mobility; or

b. completion of an individual plan of study in orientation and mobility at a regionally accredited college or university; and

c. current certification issued by the Academy for Certification of Vision Rehabilitation and Educational Professionals (COMS); or

d. current certification issued by the National Blindness Professional Certification Board (NOMC).

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 32:1811 (October 2006), amended LR 34:433 (March 2008), LR 35:894 (May 2009).

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0905#040

RULE

Board of Elementary and Secondary Education

Bulletin 1508—Pupil Appraisal Handbook
(LAC 28:CI.Chapters 1-15)

Editor's Note: This Rule becomes effective on July 1, 2009.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1508—Pupil Appraisal Handbook*. This document replaces in its entirety any previously advertised versions. *Bulletin 1508—Pupil Appraisal Handbook*, includes procedures and criteria for locating, identifying, and evaluating students eligible for special education and/or related services. A general description of the evaluation process encompasses personnel, evaluation, responsibilities, and rights of students and parents and timelines to be observed. Specific descriptions are provided for each exceptionality including the definition, screening, criteria, and evaluation and reevaluation procedures. The handbook is intended to comply with Bulletin 1706, Subpart A—*Regulations for Students with Disabilities* (R.S.17:1941 et seq.), Bulletin 1706, Subpart B—*Regulations for Gifted/Talented Students*, and the regulations governing the Individuals with Disabilities Education Act (IDEA), 34 CFR §300.309. Louisiana Revised Statute 17:1941 et seq., requires the Division of Student and School Performance to provide guidelines for the determination of children eligible for special education and related services. Bulletin 1706, Subpart A—*Regulations for Students with Disabilities* (R.S.17:1941 et seq.), and Bulletin 1706, Subpart B—*Regulations for Gifted/Talented Students*, also requires procedures, standards, and criteria for identifying children eligible for special education and/or related services.

Title 28
EDUCATION
Part CI. Bulletin 1508—Pupil Appraisal Handbook
Chapter 1. LEA Responsibilities
§101. Introduction

A. This handbook is the regulatory guide for pupil appraisal personnel when conducting individual evaluations of students suspected of being exceptional and in need of

special education and related services, and as a reference for persons requiring specific information regarding the determination of eligibility for special education services. The reference to an exceptionality includes any disability term as well as gifted and talented.

B. The Criteria for Eligibility describes the minimal data that must be obtained in order to determine whether the student has an exceptionality and is in need of special education services. The Procedures for Evaluation specify minimal areas of data collection, and at times suggest the professional who is usually most qualified to gather and interpret the data in a certain area. Any deviations from or exceptions to procedures in this handbook shall be explained in the integrated written evaluation report.

C. The format has been revised to more sequentially reflect the steps necessary to determine if the student's responsiveness to general education interventions is sufficient to allow him/her to show progress within the general curriculum. If adequate progress is not evident, the bulletin describes the continuum of actions to be taken by the LEA through pupil appraisal personnel in determining eligibility for special education and related services.

D. This revision of Bulletin 1508 includes hyperlinks that will assist the reader in locating pertinent sections. These hyperlinks will only be active when the bulletin is viewed on-line at www.louisianaschools.net or downloaded to a computer or other electronic device for viewing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:894 (May 2009), effective July 1, 2009.

§103. Child Find Guidelines

A. General Information

1. The Local Educational Agency (LEA) shall ensure that:

a. all students with exceptionalities residing in the district, including students with exceptionalities who are homeless children or who are wards of the state, and students with exceptionalities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

b. a practical method is developed and implemented to determine which students are currently receiving needed special education and related services.

2. Each LEA shall document that on-going identification activities are conducted to identify, locate, and evaluate each student who is suspected of having an exceptionality, is in need of special education and related services, and meets the criteria listed below:

a. is enrolled in an educational program operated by or under the jurisdiction of a public agency;

b. is enrolled in a private school program within the geographical jurisdiction of a public agency;

c. is enrolled in a public or private preschool or day care program; or

d. is not enrolled in a school, except for students who have graduated with a regular high school diploma.

B. Child find shall also include:

1. students who are suspected of being students with exceptionalities and in need of special education, even though they are advancing from grade to grade; and

2. highly mobile students, including migrant students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:895 (May 2009), effective July 1, 2009.

§105. Pupil Appraisal Services

A. Pupil appraisal services comprise an integral part of the total instructional program of the LEA. The purpose of pupil appraisal services is to assist students who have academic, behavioral, and/or communication challenges, adjustment difficulties, or other special needs which are adversely impacting the student's educational performance by providing services to students, parents, teachers, and other school personnel. These services include, but are not limited to the examples provided below:

1. assistance to teachers and other school personnel in the development and implementation of behavioral and/or instructional interventions through a district's Response to Intervention (RTI) process, positive behavior support process, or other intervention processes;

2. provision of support services to non-disabled students with academic, behavioral and/or communication difficulties;

3. consultation with parents, students, teachers, and other personnel on topics such as instructional or behavioral modifications, exceptional students, and child development;

4. provision of staff development to school personnel on topics such as assessment, interventions, or child development;

5. evaluation of students to determine whether they are exceptional and in need of special education and related services;

6. interpretation of evaluation findings to school personnel and parents;

7. provision of related services to students with exceptionalities; and

8. referral to other appropriate agencies for services when warranted.

B. Pupil appraisal personnel are not limited to providing services solely to students referred for an individual evaluation. Many students experiencing academic, behavior and/or communication difficulties may be helped through recommendations made by pupil appraisal personnel for use in the general education classroom, enabling the student to benefit from instruction in the general education curriculum and eliminating the need for referral for an individual evaluation. Major functions of pupil appraisal personnel should include being child/student advocates and assisting students to remain in and profit from the general education curriculum whenever possible. When a student, as a result of an individual evaluation, qualifies for special education and related services, pupil appraisal personnel will recommend those services and supports needed to assist the teachers and parents of the student in providing appropriate special educational services in the least restrictive environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:895 (May 2009), effective July 1, 2009.

§107. Qualified Examiners

A. The Individuals with Disabilities Education Act (IDEA) and Louisiana Revised Statutes 17:1941 et seq., require that a student suspected of being exceptional receive a comprehensive multidisciplinary evaluation conducted by qualified examiners. Qualified examiners include pupil appraisal professionals certified by the state Department of Education and professionals from other agencies or in private practice, as described in this Section.

1. Professional members of a pupil appraisal system include certified Assessment Teachers/Educational Consultants/Educational Diagnosticians, Certified School Psychologists, Qualified School Social Workers; Speech/Language Pathologists, Adapted Physical Education Teachers; Audiologists; Certified School Nurses, Occupational Therapists, Physical Therapists, Speech and Hearing Therapists, and Speech/Hearing/Language Specialists.

2. LEAs shall regularly employ certified pupil appraisal personnel to conduct individual evaluations, but may also employ others as listed below:

a. qualified examiners available from the Department of Health and Hospitals, the Department of Public Safety and Corrections, the State Board Special Schools, or other public agencies;

b. private qualified examiners contracted to provide specialized assessments;

c. the student's teacher(s) as member(s) of the evaluation team;

d. a combination of the personnel listed above.

3. LEA-selected evaluators in music, theatre, or visual arts must not be employed by the LEA conducting the evaluation and must be on the state Department of Education approved evaluator list.

4. Regardless of the approach used for conducting individual evaluations, LEAs retain full responsibility for the individual evaluation. Any failure by an employee or contractor to meet the requirements of this Handbook constitutes a failure by the LEA to comply with *Bulletin 1706: Regulations for the Implementation of the Children with Exceptionalities Act; R.S. 17:1941, et seq.*

5. Professionals in private practice who provide evaluations for educational use must meet the standards of and comply with the rules and regulations set by their respective statutory professional boards. Certification by the state Board of Elementary and Secondary Education is not required for these persons; however, Educational Assessment Teachers/Diagnosticians or Educational Consultants are required to be certified by the Department of Education, since licensing for independent practice does not exist.

a. Professionals employed by another state agency must meet the professional standards of that agency and be qualified through training to conduct evaluations.

b. The results of an evaluation conducted by these professionals may be used by an LEA in determining a student's eligibility for special educational services. It remains the LEA's responsibility to ensure that the student is evaluated and that his or her eligibility determination has been in accordance with the requirements of this handbook.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:896 (May 2009), effective July 1, 2009.

§109. Parental Participation

A. Participation by parents is crucial in all meetings in which decisions are being made regarding their child. Parents must be informed about the process used to assess their child's response to scientifically research-based interventions, appropriate strategies for improved achievement and the right to request an evaluation. Parents must be notified early enough to ensure the opportunity to participate in the meetings and discussions listed below. See Bulletin 1706 §322 for additional participation procedures:

1. school building level committee meetings when decisions are made regarding their child;

2. the evaluation team meeting to consider the results of the data and determine eligibility:

a. at the conclusion of the evaluation meeting where eligibility is determined, if the parents disagree with the consensus of the team, the LEA must afford the parents the right to challenge the evaluation report in accordance with procedural safeguards;

3. the initial individual education program (IEP) Team meeting to review evaluation results and determine special education and related services in the least restrictive environment;

4. the IEP Team meeting to discuss new concerns and to determine if a reevaluation is needed;

5. in the case of a reevaluation, to discuss the review of existing evaluation data to determine whether the student continues to have an exceptionality, and continues to need special education and related services.

B. Parental Consent for Initial Evaluations

1. The LEA proposing to conduct an initial evaluation to determine if a student qualifies as a student with an exceptionality shall, after providing notice as described in Chapter 5 of Bulletin 1706, obtain informed consent from the parent of the student before conducting the evaluation. Parents must be given a copy of their rights at the time of the request for parental consent.

a. Parental consent for initial evaluation shall not be construed as consent for initial provision of special education and related services.

b. The LEA shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is a student with an exceptionality.

2. For initial evaluations only, if the student is a ward of the state and is not residing with the student's parent, the LEA is not required to obtain informed consent from the parent for an initial evaluation to determine whether the student is a student with an exceptionality if:

a. despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the student;

b. the rights of the parents of the student have been terminated in accordance with state law; or

c. the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been

given by an individual appointed by the judge to represent the student.

3. If the parent of a student enrolled in a public school or seeking to be enrolled in a public school does not provide consent for initial evaluation under Paragraph B.1 of this Section, or the parent fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation of the student by utilizing the procedural safeguards in Chapter 5 of Bulletin 1706 (including the mediation procedures or due process procedures), if appropriate.

a. The LEA does not violate its obligation under §111 and §§302-308 of Bulletin 1706 if it declines to pursue the evaluation.

C. Parental Consent for Reevaluations

1. The LEA shall obtain informed parental consent prior to conducting any reevaluation of a student with an exceptionality.

2. If the parent refuses to consent to the reevaluation, the LEA may, but is not required to, pursue the reevaluation by using the consent override procedures described in Paragraph B.3 of this Section.

3. The LEA does not violate its obligation under §111 and §§302-308 of Bulletin 1706 if it declines to pursue the reevaluation.

4. The informed parental consent described in Paragraph C.1 of this Section need not be obtained if the LEA can demonstrate that:

a. it made reasonable efforts to obtain such consent, and

b. the student's parent has failed to respond.

D. Other Consent Requirements for Evaluations and Reevaluations

1. Parental consent is not required before:

a. reviewing existing data as part of an evaluation or a reevaluation; or

b. administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

2. If a parent of a student who is home schooled (in a home study program) or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to the request to provide consent, the LEA may not use the consent override procedures described in Paragraphs B.3 and C.2 of this Section:

a. the LEA is not required to consider the student eligible for services as defined in Bulletin 1706.

3. To meet the reasonable efforts requirement in Subparagraphs B.1.b, B.2.a, and C.4.a of this Section, the public agency shall document its attempts to obtain parental consent using the procedures in §322.D of Bulletin 1706.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:896 (May 2009), effective July 1, 2009.

Chapter 3. Interventions and Screenings

§301. Response to Intervention

A. The Response to Intervention (RTI) process is a three-tiered approach to providing services and interventions to struggling learners and/or students with challenging behaviors at increasing levels of intensity. Essential components of the process include three tiers of instruction and intervention, use of standard protocols and/or problem-solving methods, and an integrated data collection/assessment system to inform decisions at each tier of instruction/intervention. The process incorporates increasing intensities of instruction and/or intervention that are provided to students in direct proportion to their individual needs. Embedded in each tier is a set of unique support structures or activities that help teachers implement, with fidelity, research-based curricula, instructional practices, and interventions designed to improve student achievement. RTI is designed for use when making decisions in both general and special education, creating a well-integrated system of instruction and intervention guided by student outcome data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:897 (May 2009), effective July 1, 2009.

§303. School Building Level Committee

A. The School Building Level Committee (SBLC) is a general education, data driven, decision-making committee whose standing members consist of at least the principal/designee, a classroom teacher, and the referring teacher. In discussing an individual student's difficulties, the student's parent or guardian is an invited participant. The SBLC shall review and analyze all screening data, including RTI results, to determine the most beneficial option for the student. The committee's options include, but are not limited to one of the following actions.

1. Conduct no further action at this time.

2. Continue current intervention and progress monitoring through the RTI process.

3. Conduct additional interventions through the RTI process.

4. Refer the student to the appropriate committee to conduct a Section 504 evaluation.

5. Refer the student to pupil appraisal personnel for support services.

6. Refer the student to pupil appraisal personnel for an individual evaluation if an exceptionality is suspected.

B. Parents must be provided a report or summary by the SBLC on the status of the student's response to scientifically research-based interventions which would include repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction. This report or summary must be provided to parents at least once each grading period until a decision is reached. If the parents disagree with the SBLC actions or decision, the parents must be provided a copy of their rights,

which includes the right to request an evaluation. If it is the opinion of the SBLC that the student be referred for an initial evaluation, a pupil appraisal team member shall be present to review supporting documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:897 (May 2009), effective July 1, 2009.

§305. Screening Activities

A. Overview

1. An LEA shall identify a student, enrolled in an educational program operated by the LEA, as suspected of having a disability only after the student has participated in an RTI process that produces data sufficient for the SBLC to recommend that a comprehensive individual evaluation be conducted by pupil appraisal personnel. For a student suspected of having a communication disorder, follow the screening activities in §305.D.1-3. For a child not enrolled in school, screening activities are to be conducted by Pupil Appraisal personnel. Through the RTI process the SBLC shall coordinate and document results of all screening activities described below. RTI and screening activities for enrolled students (public and private) are conducted by general education personnel with assistance from other school personnel and pupil appraisal members, if necessary.

2. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

B. Sensory Screening

1. Hearing Screening

a. Hearing screening shall be conducted unless the following three conditions are true.

i. Normal screening results have been obtained within the past 24 months for enrolled students and within the past 12 months for non-enrolled students.

ii. No hearing problems are currently being exhibited by the student.

iii. There is no history of acute or chronic ear infections or persistent head colds indicated in the health screening.

b. The student is considered "at-risk" of having a hearing impairment when one of the following conditions exist:

i. failure to respond at 20db in one of 1000 Hz, 2000 Hz or 4000 Hz frequencies in at least one ear;

ii. failure to respond at 25db in two or more frequencies in at least one ear;

iii. middle ear pressure outside the range of -200 and +50 mm H_2O in either ear; or

iv. excessively stiff or flaccid tympanogram in either ear.

c. Students for whom specific audiometric test results cannot be obtained because of age or degree of involvement or for whom informal hearing test results do not rule out the possibility of a hearing loss should be considered "at risk." The extent of the student's hearing loss must be determined, using electrophysiological techniques when necessary.

2. Vision Screening

a. Vision screening shall be conducted unless the following three conditions are true.

i. Normal screening results have been achieved within the past 24 months for enrolled students and within the past 12 months for non-enrolled children.

ii. No vision problems are currently being exhibited by the student.

iii. There is no history of eye infections, either acute or chronic, indicated in the health screening.

b. A student's vision is considered "at risk" as dictated by the criteria in the manual of the instrument used for testing. Vision screening must include tests for the following three conditions:

i. acuity (near point and far point);

ii. color blindness; and

iii. muscle balance.

c. When the required techniques are unsuccessful because of the student's immaturity, physical impairment, or mental ability, adapted methods of testing shall be used to determine the extent of the loss.

3. Sensory Processing Screening

a. Sensory processing screening is conducted to determine if a student is "at risk" for sensory processing difficulties. (Refer to the Sensory Processing Screening Checklist in the Appendix for further guidance.) Sensory processing concerns may include the following:

i. visual symptoms;

ii. auditory symptoms;

iii. tactile symptoms;

iv. vestibular (balance) symptoms;

v. olfactory (smell) symptoms;

vi. gustatory (taste) symptoms;

vii. proprioceptive (movement) symptoms;

viii. motor planning difficulties; or

ix. attention/arousal difficulties.

C. Health Screening

1. Health screening is conducted to determine the health status of the student.

2. A student's health is considered "at risk" if through history, observation, or other procedures, health concerns are noted.

D. Speech and Language Screening

1. Speech and language screening is conducted by a speech-language pathologist unless the following four conditions are true as documented by a teacher-completed checklist of communication skills.

a. The student exhibits normal voice quality.

b. The student speaks with normal rate and fluency.

c. The student's articulation skills appear normal with respect to age and social/cultural factors.

d. The student's overall receptive and expressive language skills appear adequate with respect to age and social/cultural factors.

2. The tasks, items, or tests used in screening should include a sampling to determine the following pertinent skills or conditions:

a. auditory processing skills (e.g., reception, discrimination);

b. articulation;

c. receptive and expressive language;
d. voice;
e. fluency;
f. oral motor functioning; and
g. oral structure.

3. If the student's communication skills are "at risk," evidence-based interventions shall be conducted by a speech-language pathologist or other appropriate personnel with fidelity and for the length of time necessary to obtain sufficient data to determine their effectiveness. Informed parental consent must be obtained before conducting these interventions. In the case of a suspected voice impairment, there must also be an assessment conducted by an appropriate medical specialist prior to implementing the interventions.

E. Motor Screening

1. Motor screening is accomplished through the observation of the student's gross and fine motor skills by the teacher responsible for providing physical education to the student and, if necessary, in consultation with the teacher responsible for classroom-based activities. The evaluation coordinator shall ensure that motor screening is conducted by pupil appraisal personnel during the evaluation for students not enrolled in school.

2. A student's gross or fine motor skills are considered "at risk" if the screening results indicate concerns in the following areas:

a. lack of strength, endurance, flexibility;
b. difficulty with balance activities;
c. failure to show opposition of limbs when walking, sitting, or throwing;
d. lack of control with ball skills;
e. difficulty in crossing the vertical midline;
f. poor sense of body awareness; or
g. difficulty in demonstrating motor sequences.

F. Assistive Technology Screening

1. Assistive Technology screening is conducted through an observation of the student's skills and educational environment. (See Appendix for the *Louisiana Assistive Technology Screening Checklist* for further guidance.)

2. A student's functional capabilities should be considered "at risk" if the screening results indicate concerns in the following areas:

a. physical functioning/motor abilities;
b. fine motor skills;
c. communication functioning;
d. vision/hearing;
e. academic functioning;
f. recreation and leisure;
g. vocational functioning;
h. general health; or
i. self-help.

G. Social/Emotional/Behavioral Screening

1. Social/emotional/behavioral screening should include, at a minimum, a review of:

a. incident reports/discipline records;
b. teacher reports;
c. parent reports and information provided by the parent;
d. developmental profiles;
e. previous behavior intervention plans; and
f. anecdotal records.

2. If a review indicates current concerns in the above areas, the student's social/emotional/behavioral status is "at risk." Documented, evidence-based intervention(s) appropriate to the student's age and behavioral difficulties shall be conducted with fidelity for the length of time necessary to obtain sufficient data to determine their effectiveness. Interventions are required for students with a suspected emotional disturbance unless there is substantial documentation that the student is likely to injure him/her self or others.

H. Educational Screening

1. Educational screening is accomplished by conducting:

a. a review of the results of the student's educational history;
i. for a preschool-aged child not in school, a developmental screening shall be conducted by pupil appraisal personnel prior to or during the evaluation;
ii. for a preschool-aged child enrolled in school, a developmental screening shall be conducted by the student's teacher;
b. a review of the student's academic performance, including dyslexia screening results and results of applicable statewide and district-wide tests;
c. a summary of the teacher/parent communication regarding the student's specific difficulties or exceptional skills;
d. a review of the results of universal screening, conducted by the teacher or other staff member, which enables school personnel to measure the performance of students as compared to peers within their class, school, and/or district; and
e. a comprehensive and documented review of evidence-based intervention(s) conducted with fidelity and for the length of time necessary to obtain sufficient data to determine their effectiveness. Interventions should be appropriate to the student's age and academic skill deficits:
i. interventions are required for students suspected of having Autism, Developmental Delay, Emotional Disturbance, Mild Mental Disability, Orthopedic Impairment, Other Health Impairment, and Specific Learning Disability. Interventions are not required for a preschool-aged child, a student suspected of being gifted or talented, or a student suspected of having a severe or low incidence impairment.

I. Gifted and Talented Screening

1. Gifted. Based on universal screenings that monitor student progress in the core curriculum, students functioning at the highest levels should be considered for gifted screening (refer to Chapter 9 for further screening requirements).

2. Talented. Based on advanced skills demonstrated by the student in visual arts, music, or theatre, the student should be considered for talent screening (Refer to Chapter 9 for further screening requirements).

J. Other Considerations

1. The SBLC must provide data-based documentation that the student's lack of educational progress is not primarily due to:

a. lack of appropriate, explicit and systematic instruction in reading which includes the essential components of reading instruction: phonics, phonemic

awareness, fluency, comprehension, and vocabulary; (e.g., if more than 50 percent of the class falls below benchmark on universal screening, lack of appropriate instruction might be suspected);

b. lack of appropriate instruction in math (e.g., if more than 50 percent of the class falls below benchmark on universal screening, lack of appropriate instruction might be suspected);

c. limited English proficiency; (for students identified as English Language Learners, refer to *Louisiana Guidelines for Identification and Instruction of English Language Learners with Disabilities* for additional information);

d. environmental or economic disadvantage (e.g., if a majority of low income students in the class fall below benchmark on universal screening, environmental or economic disadvantage as a primary factor might be suspected); or

e. cultural factors (e.g., for students from culturally and linguistically diverse backgrounds, there is evidence that the school and classroom teacher have been sensitive toward the students' diverse learning needs).

2. When data indicate that the student is not responding to the intervention, the SBLC shall consider other options within the RTI process. The SBLC shall provide, at a minimum, evidence that a scientifically research-based intervention was implemented with fidelity, the student's progress was monitored at reasonable intervals, and the student's rate of progress relative to peers was not adequate.

3. For students who are found to be "at risk" in any of the screening areas listed above, but are not suspected of having an exceptionality, the SBLC shall conduct interventions or refer the student to the appropriate specialist to address the concern.

4. For students who are found to be "at risk" in any of the screening areas listed above and are suspected of having an exceptionality, the evaluation coordinator shall ensure that the screening areas determined to be "at risk" are addressed in the individual evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:898 (May 2009), effective July 1, 2009.

§307. Referral Process

A. A referral for an individual evaluation should be made when the provisions in Paragraphs 1, 2 and 3 of this Subsection have been met.

1. The SBLC provides documentation that the RTI process addressing academic and/or behavior concerns, or the speech or language intervention(s) addressing communication concerns have included:

a. scientifically research-based intervention(s) implemented with fidelity as evidenced by data sheets, computer-generated records, or other permanent products;

b. monitoring of the student's progress relative to peers, at reasonable intervals; and

c. graphed evidence that the student's rate of progress relative to peers was not adequate.

2. The SBLC provides data-based documentation that the student's lack of educational progress is not primarily due to the considerations described in §305.J above.

3. The SBLC suspects the student of having a disability.

B. An immediate referral may be made to pupil appraisal services for an individual evaluation of those students suspected of having low incidence impairments such as hearing impairment, visual impairment, deaf-blindness, traumatic brain injury, mental disability (moderate or severe), multiple disabilities, and some students with severe autism, orthopedic impairments and/or significant health issues; or based on substantial documentation by school building level personnel of any student suspected of being likely to injure him/her- self or others. Screening activities should be completed during the evaluation for these students.

C. All referrals for enrolled students to pupil appraisal for evaluation shall be made through the SBLC with the approval of the principal/principal designee. If it is the opinion of the SBLC that the student be referred for an initial evaluation, pupil appraisal staff shall be present to review the supporting documentation to ensure there are adequate data to suspect the student may have an exceptionality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:900 (May 2009), effective July 1, 2009.

Chapter 5. Evaluation Responsibilities

§501. Evaluation Coordination

A. Evaluation Coordinator

1. Upon identification of a student suspected of being exceptional, a qualified pupil appraisal staff member shall be designated as evaluation coordinator.

2. While this assignment is the responsibility of the individual designated by the LEA to direct the pupil appraisal system, it is recommended that the evaluation coordinator be selected on a case-by-case basis by and from the pupil appraisal personnel assigned to the school. The determination of the evaluation coordinator shall be based upon the student's specific problems and other factors such as the expertise, caseload, and other responsibilities of each pupil appraisal staff member. Evaluation coordinator is not a position; therefore, one individual shall not be routinely designated this responsibility.

3. The following pupil appraisal personnel certified by the Louisiana Department of Education may serve as evaluation coordinators in the LEA:

a. assessment teacher/ educational consultant/educational diagnostician;

b. certified school psychologist;

c. speech-language pathologist/speech and hearing therapist/ speech-hearing-language specialist;

d. qualified school social worker;

e. audiologist.

B. Responsibilities of the Evaluation Coordinator

1. The evaluation coordinator must conduct the following activities within 10 business days following receipt of referral by pupil appraisal.

a. Request informed parental consent to conduct an initial evaluation, if consent has not already been received.

b. The student's parents must be notified of the initial evaluation concerns and the types of assessments and procedures involved in the evaluation.

c. The parents must also be notified that there will be an opportunity to participate in the meeting at which identification and eligibility determinations will be made.

d. The student is referred to other appropriate agencies for screening/assessment/evaluation services, when warranted. The student may also be entitled to services other than those available through the educational system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:900 (May 2009), effective July 1, 2009.

§503. Selection of Participating Disciplines

A. Upon receipt of informed parental consent for the evaluation, the evaluation coordinator shall ensure that at least two appropriate and qualified personnel representing different disciplines participate in the individual evaluation (one of whom shall be the evaluation coordinator). The following additional considerations shall apply.

1. If a sensory impairment is suspected, statewide assessment resources that meet state standards should be considered.

2. If the student is determined to be "at risk" through sensory, motor, or health screening, and if a sensory or other physical/health impairment is suspected, an appropriate assessment must be conducted by a physician or other qualified examiner with specialized training and experience in the diagnosis and treatment of the particular condition.

3. If the student has a documented health or physical impairment; has a history of head or spinal cord injury, seizures, or diseases; needs assistance with activities of daily living due to health concerns; requires medications at school or home; requires health procedures and/or special diet; or has other health problems, the school nurse or other qualified personnel shall be a member of the evaluation team.

4. If the student is suspected of having a specific learning disability, the student's general education teacher (or if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age; or for a child of less than school age, an individual certified by the state Department of Education to teach a student of his or her age) must be a member of the multidisciplinary team. In no case shall the general education teacher replace the qualified pupil appraisal person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:901 (May 2009), effective July 1, 2009.

§505. Procedural Responsibilities

A. Throughout the initial evaluation of a student, the evaluation coordinator shall ensure that specific procedures are followed.

1. Each individual evaluation is based on a comprehensive compilation of information drawn from a variety of sources.

2. The evaluation is conducted in accordance with all requirements of this handbook, including timelines.

3. The student is evaluated in each area of suspected exceptionality.

4. Full and complete records collected or generated in connection with an individual evaluation are maintained in accordance with confidentiality requirements.

5. The results of any previously conducted specialist's evaluations are obtained through written parental authorization for the release of these records.

6. A meeting of the multidisciplinary evaluation team members, including the parent, is scheduled and conducted to determine whether the student is exceptional.

7. An integrated report describing the findings and recommendations of the evaluation process, along with the determination of eligibility, is prepared; and a copy is provided to the supervisor of special education or designee.

8. The evaluation findings and recommendations are interpreted for the student's teacher(s).

9. A copy of the integrated report, including any dissenting opinions, along with the determination of eligibility, recommendations, and an opportunity for an oral explanation of the findings was provided to the student's parents prior to the initial IEP Team meeting.

10. A pupil appraisal staff member who participated in the evaluation shall be designated to attend the initial IEP Team meeting to explain the recommendations and assist in the development of the IEP. If a member of the team cannot be in attendance, an individual who can interpret the instructional implications of the evaluation must attend.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:901 (May 2009), effective July 1, 2009.

§507. Evaluation Procedures

A. In conducting the evaluation, each LEA shall:

1. use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent that may assist in determining:

a. whether the student has an exceptionality; and

b. the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

2. not use any single measure or assessment as the sole criterion for determining whether a student has an exceptionality and for determining an appropriate educational program for the child; and

3. use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

B. Other evaluation procedures. Each LEA shall ensure that the provisions in Paragraphs 1 through 7 below have been met.

1. Assessments and other evaluation materials used to assess a student under these regulations:

a. are selected and administered so as not to be discriminatory on a racial or cultural basis;

b. are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

c. are used for the purposes for which the assessments or measures are valid and reliable;

d. are administered by trained and knowledgeable personnel; and

e. are administered in accordance with any instructions provided by the producer of the assessments.

2. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. In no event shall IQ scores be reported or recorded in any individual student's evaluation report or cumulative folder. Whenever it is necessary to conduct an individual intellectual assessment as a component of an individual evaluation, the examiner shall review all available information regarding the student.

3. Assessments are selected and administered to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

4. The student is assessed in all areas related to the suspected exceptionality including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

5. Assessments of students with exceptionalities who transfer from one public agency to another public agency in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

6. In evaluating each student with an exceptionality, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the exceptionality category in which the student has been classified.

7. Assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:901 (May 2009), effective July 1, 2009.

§509. Required Initial Individual Evaluation

A. A comprehensive initial evaluation must be conducted before the initial provision of special education and related services to a student. Either a parent of a student or a public agency may initiate a request for an initial evaluation to determine if the student has an exceptionality.

B. An initial individual evaluation shall be conducted when informed parental consent for the initial individual evaluation has been received by the LEA. If a request was made for an evaluation during the time period in which the student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner as defined in §511, Evaluation Timelines.

C. If the LEA suspects that the student is exceptional, an evaluation shall be conducted with parental consent. If the LEA does not suspect that the student is exceptional, then it may refuse to conduct an evaluation. The SBLC, through interventions, may attempt to resolve the student's difficulties. When an LEA refuses to initiate an evaluation upon parental request, the parents must be given a written explanation of the reason for the decision according to the requirements listed in Chapter 5 of Bulletin 1706 and provided a copy of their rights, which includes the right to a due process hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:902 (May 2009), effective July 1, 2009.

§511. Evaluation Timelines

A. The initial evaluation must be conducted within 60 business days of receiving parental consent for the evaluation with appropriate extensions as described below:

1. End of the Year Extension. If the LEA begins an evaluation and there are fewer than 60 business days remaining in the LEA's current school year, the LEA may take this type of extension. However, the number of days used between the parental signature and June 1 (the SER official beginning date for summer) will be subtracted from the 60 business days, and the timelines will begin again on September 1 (the SER official ending date for summer).

2. Parentally Approved Extension. If the LEA is making sufficient progress to ensure a prompt completion of the evaluation but needs extended time to assess the student in all areas of the suspected exceptionality, the parent and the LEA may agree to a specific time when the evaluation will be completed.

B. Extensions are not allowed during expedited evaluations for students subject to disciplinary measures as referenced in §534 of Bulletin 1706.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:902 (May 2009), effective July 1, 2009.

§513. Evaluation Components

A. All initial evaluations shall include the following documented components (refer to individual exceptionalities for additional evaluation components):

1. a description of each screening activity and a review of the screening results;

2. a review of cumulative records including test scores, discipline records, grade history, attendance records, statewide assessments, etc.;

3. a review of any pertinent reports supplied by the parent or an outside agency;

4. a review of the intervention(s) which includes data-based documentation that:

a. the interventions were scientifically research-based;

b. the interventions were implemented with fidelity as documented by data sheets, computer records or other permanent products;

c. progress monitoring was conducted at reasonable intervals; and

d. the student did not show adequate progress based on local or national norms;

5. a systematic student observation(s) in the environments in which the student is experiencing difficulties;

6. an interview with the student to obtain his/her perceptions of his/her academic, behavioral and social performance;

7. an interview with the student's core subject teacher(s) to obtain information regarding referral concerns and the student's academic performance, behavior, and peer interactions;

8. a family interview conducted by a school social worker or other qualified pupil appraisal staff member to determine the impact of developmental, educational, social/emotional, cultural, and/or health factors on the student's educational performance;

9. an interview with the referral source, if other than the parent or teacher;

10. an educational assessment conducted by an educational diagnostician or other qualified pupil appraisal staff member which includes descriptions of educational strategies, academic and environmental adjustments needed, and curricular modifications necessary to provide accessible instructional materials in order to enable the student to show progress in the general education curriculum;

11. a functional behavior assessment conducted or reviewed by a certified school psychologist, a qualified school social worker, or other appropriately trained personnel, when behavior is noted as a concern; and

12. a review and analysis of any discrepancies between test results or observations and the student's customary behaviors and daily activities, or of any discrepancies among evaluation results.

B. The final written report for initial evaluations must be a compilation of the data gathered during the individual evaluation process. The data collected by pupil appraisal personnel must be integrated and written in language that is clear to the IEP Team and other individuals who will use it.

1. The integrated written report of the initial evaluation of an identified student must contain the following components:

a. the reason(s) for referral;

b. any additional concerns raised by the parents, teachers, or other involved professionals;

c. a description of the evaluation procedures, including interventions, used to address each evaluation concern, the student's response(s) to the intervention(s) and an analysis of the results;

d. a description of the information used to decide that each of the following was not a determinant factor for the suspected disability:

i. lack of appropriate explicit and systematic instruction in reading which includes the essential components of reading instruction: phonics, phonemic awareness, fluency, comprehension, and vocabulary;

ii. lack of appropriate instruction in math;

iii. limited English proficiency;

iv. environmental or economic disadvantage; and

v. cultural factors;

e. a description of the student's present level(s) of functioning in relationship to the general education curriculum;

f. a description of the student's relative strengths and support needs;

g. a description of the educational needs of the student ranked in order of importance;

h. a description of the impairment or condition that enables the student to be classified as eligible for special education and related services;

i. information sufficient to permit a determination of the validity of the evaluation data for the total evaluation process to include the following:

i. compatibility of the student to the examiner(s);

ii. suitability of the evaluation environment;

iii. existence of any extraordinary conditions;

j. a description and explanation of any discrepancies noted during the evaluation process;

k. recommendations for determining the content of the student's IEP including types of services necessary to meet the educational needs of the student and to enable the student to be involved in and progress in the general education curriculum (or for a preschool student, to participate in appropriate activities);

l. a brief summary of the evaluation findings;

m. explanation of all extensions of the evaluation timelines including documentation of parental approval; when necessary;

n. names of assessment personnel participating in the evaluation;

o. signatures of assessment personnel whose conclusions are accurately reflected in the report:

i. if a participating appraisal person disagrees with the conclusion(s) in the integrated report, that person may submit a separate signed dissenting opinion stating the disagreement and giving supporting data and conclusion(s) prior to the IEP meeting; and

p. the documentation of the determination of eligibility including signatures of the evaluation team members and the parents.

C. During the conduct of the evaluation, the team may suspect that a student is non-exceptional based on selected components. The final written report shall be a compilation of all assessments and procedures conducted with supporting data and conclusions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:902 (May 2009), effective July 1, 2009.

§515. Determination of Eligibility

A. Special Rule for Eligibility Determination

1. A student shall not be determined to be a student with a disability if the determinant factor for that eligibility determination is:

a. lack of appropriate explicit and systematic instruction in reading, including the essential components of reading instruction: phonics, phonemic awareness, fluency, comprehension and vocabulary;

b. lack of appropriate instruction in math; or

c. limited English proficiency.

2. A student shall not be determined to be a student with an exceptionality if the student does not otherwise meet the eligibility criteria as a student with an exceptionality as defined in this handbook.

B. Upon completion of the administration of assessments and other evaluation components:

1. the evaluation team members and the parents of the student shall determine whether the student is a student with an exceptionality, and the educational needs of the student; and

2. the LEA shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. If a parent disagrees with the results of the evaluation report, the LEA shall provide to the parent a copy of the procedural safeguards, including the right to an Independent Educational Evaluation.

C. Procedures for Determining Eligibility and Educational Need

1. In interpreting evaluation data for the purpose of determining if a student is a student with an exceptionality as defined in this handbook, and the educational needs of the student, the evaluation team members shall:

a. draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

b. ensure that information obtained from all of these sources is documented and carefully considered.

2. If a determination is made that a student has an exceptionality and needs special education and related services, an IEP shall be developed for the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:903 (May 2009), effective July 1, 2009.

§517. Independent Educational Evaluation

A. The parents of a student with a disability or an exceptionality have a right to obtain an independent educational evaluation (IEE) of the student as described in Chapter 5 of Bulletin 1706.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:904 (May 2009), effective July 1, 2009.

Chapter 7. Disabilities

§701. Autism

A. Definition. *Autism* (Autism Spectrum Disorders) means a developmental disability significantly affecting verbal and nonverbal communication and social interaction; generally evident before age three that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance. A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria are satisfied.

1. There may be coexisting conditions/associated features that may include, but are not limited to cognitive delays, seizure activity, depression, anxiety, obsessive-compulsive disorders, Tourette Syndrome, fragile X syndrome, tuberous sclerosis, pica, allergies, self-injurious behaviors, sleeping and toileting problems, etc.

2. Asperger's Disorder, Pervasive Developmental Disorder—Not Otherwise Specified (PDD-NOS), Rett's Disorder, or Childhood Disintegrative Disorder may be considered for the classification if the criteria for autism are met.

B. Criteria for Eligibility. The multidisciplinary team may determine that the student displays autism if disturbances identified in all three of the categories below exist and adversely affect a student's educational performance. These disturbances may be characterized by delays, deviancies, arrests, and/or regressions in typical skill development, and/or precocious skill acquisition. While autism is behaviorally defined, manifestation of behavioral characteristics may vary along a continuum ranging from mild to severe.

1. Communication. A minimum of two of the following items must be documented:

a. disturbances in the development of spoken language;

b. disturbances in conceptual development (e.g., has difficulty with or does not understand time but may be able to tell time; does not understand WH-questions; has good oral reading fluency but poor comprehension; knows multiplication facts but cannot use them functionally; does not appear to understand directional concepts, but can read a map and find the way home; repeats multi-word utterances, but cannot process the semantic-syntactic structure, etc.);

c. marked impairment in the ability to attract another's attention, to initiate, or to sustain a socially appropriate conversation;

d. disturbances in shared joint attention (acts used to direct another's attention to an object, action, or person for the purpose of sharing the focus on an object, person or event);

e. stereotypical and/or repetitive use of vocalizations, verbalizations and/or idiosyncratic language (students with Asperger's syndrome may display these verbalizations at a higher level of complexity or sophistication);

f. echolalia with or without communicative intent (may be immediate, delayed, or mitigated);

g. marked impairment in the use and/or understanding of nonverbal (e.g., eye-to-eye gaze, gestures, body postures, facial expressions) and/or symbolic communication (e.g., signs, pictures, words, sentences, written language);

h. prosody variances including, but not limited to, unusual pitch, rate, volume and/or other intonational contours;

i. scarcity of symbolic play.

2. Relating to people, events, and/or objects: A minimum of four of the following items must be documented:

a. difficulty in developing interpersonal relationships appropriate for developmental level;

b. impairments in social and/or emotional reciprocity, or awareness of the existence of others and their feelings;

c. developmentally inappropriate or minimal spontaneous seeking to share enjoyment, achievements, and/or interests with others;

d. absent, arrested, or delayed capacity to use objects/tools functionally, and/or to assign them symbolic and/or thematic meaning;

e. difficulty generalizing and/or discerning inappropriate versus appropriate behavior across settings and situations;

f. lack of/or minimal varied spontaneous pretend/make-believe play and/or social imitative play;

g. difficulty comprehending other people's social/communicative intentions (e.g., does not understand jokes, sarcasm, irritation; social cues), interests, or perspectives;

h. impaired sense of behavioral consequences (e.g., using the same tone of voice and/or language whether talking to authority figures or peers, no fear of danger or injury to self or others).

3. Restricted, repetitive and/or stereotyped patterns of behaviors, interests, and/or activities: A minimum of two of the following items must be documented:

a. unusual patterns of interest and/or topics that are abnormal either in intensity or focus (e.g., knows all baseball statistics, TV programs; has collection of light bulbs);

b. marked distress over change and/or transitions (e.g., substitute teacher, moving from one activity to another);

c. unreasonable insistence on following specific rituals or routines (e.g., taking the same route to school, flushing all toilets before leaving a setting, turning on all lights upon returning home);

d. stereotyped and/or repetitive motor movements (e.g., hand flapping, finger flicking, hand washing, rocking, spinning);

e. persistent preoccupation with an object or parts of objects (e.g., taking magazine everywhere he/she goes, playing with a string, spinning wheels on toy car, interested only in church steeple rather than the church);

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a comprehensive assessment conducted by a certified school psychologist, licensed psychologist, physician or other qualified examiner trained or experienced in the evaluation of students with developmental disabilities;

2. systematic observations of the student in interaction with others such as parents, teachers, and peers across settings in the student's customary environments;

3. if the results of hearing screening are not definitive, the student shall be referred to an audiologist;

4. a speech and language assessment conducted by a speech/language pathologist trained and experienced in the evaluation of children with developmental disabilities. For non-verbal communicators, an augmentative/alternative communication assessment should be conducted to determine needs and modes of communication;

5. the educational assessment shall include the review and analysis of the student's response to scientifically research-based interventions documented by progress monitoring data, when appropriate;

6. an occupational therapy assessment to address sensory processing and motor difficulties. All observed symptoms should be clearly documented. At a minimum, sensory processing assessment should address the following:

a. visual symptoms;

b. auditory symptoms;

c. tactile symptoms;

d. vestibular (balance) symptoms;

e. olfactory (smell) and gustatory (taste) symptoms;

f. proprioceptive (movement) symptoms;

g. motor planning difficulties; and

h. attention/arousal difficulties;

7. other assessments (e.g., adaptive behavior) as determined to be appropriate and necessary by the evaluation coordinator and the multidisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:904 (May 2009), effective July 1, 2009.

§703. Deaf-Blindness

A. Definition. *Deaf-Blindness* is concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

1. If a student has only two disabilities and those disabilities are deafness and blindness, the student must be classified as having deaf-blindness. Each LEA shall notify state Deaf-Blind Census of all students who have both hearing and visual impairments.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1, 2, and 3 are required.

1. Vision Impairment—any of the following:

a. measured corrected visual acuity is 20/70 or less in the better eye, and/or a previous chronic condition has interfered, is interfering, or will interfere with the visual learning mode;

b. cortical blindness in the presence of normal ocular structure as verified in the report of an ophthalmologist, pediatrician, or pediatric neurologist;

c. field of vision that subtends an angle of 20 degrees or less in the better eye; or

d. other blindness resulting from a documented medical condition.

2. Deafness

a. Sensorineural hearing loss of 25 decibels (ANSI) or more across the speech frequencies in the better ear with amplification and/or a previous chronic condition that has existed which has interfered, is interfering, or will interfere with the auditory learning mode.

3. Educational Need

a. Educational determination that the student's combined vision and hearing losses are such that he/she cannot be served appropriately solely by the special education program for either visual impairments or hearing impairments.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. an assessment of the student's vision conducted by an ophthalmologist or optometrist. When the impairment results from a documented medical condition, it shall be verified in the report of an ophthalmologist, pediatrician, or pediatric neurologist. When the condition is progressive or unstable, the need for a yearly eye examination will be documented in the integrated report;

2. an assessment of the student's hearing conducted by an audiologist or otologist;

3. an orientation and mobility screening conducted to assess the student's ability to travel around in his or her environment. (There is a suggested screening checklist in the Appendix.) Based on the results of the screening, an assessment conducted by a qualified orientation and mobility instructor may be warranted;

4. the educational assessment conducted should verify that the student's combined vision and auditory losses are such that he/she cannot be served appropriately by a program for students with visual or hearing impairments;

5. the family interview must include an investigation of family history of Usher Syndrome or other contributing medical difficulties;

6. a speech and language assessment of receptive and expressive language to include the student's language level and communication skills conducted by a speech/ language pathologist. The examiner should be fluent in the student's primary mode of communication or should utilize the services of a certified interpreter/transliterator, when necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:905 (May 2009), effective July 1, 2009.

§705. Developmental Delay

A. Definition. *Developmental Delay* is a disability in which students/children, ages three through eight, are identified as experiencing developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development or adaptive development.

1. A student shall be classified categorically if it is determined through the evaluation process, that the student has the specific sensory impairment of blindness or deafness and needs special education and related services. A student who meets the criteria for other disabilities may be classified categorically. If delays in addition to speech or language are evident, the student should be classified as having Developmental Delay or one of the other categorical disabilities.

2. The use of the Developmental Delay category is optional to the local educational agencies. LEAs that choose not to use this category must classify categorically.

3. If a student has only two disabilities and those disabilities are deafness and blindness, the student must be classified as having deaf-blindness. Each LEA shall notify State Deaf-Blind Census of all students who have both hearing and visual impairments.

B. Criteria for Eligibility. The student/child must be between the ages of three through eight years, and functioning significantly below age expectancy (i.e., exhibiting a delay of 25 percent or more on criterion-based measures or achieving a standard score greater than or equal to 1.5 standard deviations below the mean on norm-based measures) in one or more of the following areas:

1. physical development, which includes:
   a. gross motor skills;
   b. fine motor skills;
   c. sensory (visual or hearing) abilities; and
   d. sensory-motor integration;

2. social, adaptive or emotional development, which includes:
   a. play (solitary, parallel, cooperative);
   b. peer interaction;
   c. adult interaction;
   d. environmental interaction; and
   e. expression of emotions;

3. cognitive or communication development, which includes:
   a language (receptive or expressive);
   b. concrete or abstract reasoning skills;
   c. perceptual discriminations;
   d. categorization and sequencing;
   e. task attention;
   f. memory; and
   g. essential developmental or academic skills, as appropriate.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. an examination conducted by a physician not only when the student appears to have a severe medical condition but also when deemed necessary by the evaluation coordinator. When the medical report indicates the student has a health or physical impairment requiring health technology, management or treatments including a special diet or medication, or needs assistance with activities of daily living due to health concerns, the school nurse or other qualified personnel will conduct a health assessment;

2. the educational assessment for school aged students shall include the review and analysis of the student's response to scientifically research-based interventions documented by progress monitoring data;

3. a functional/developmental assessment for preschool-aged children conducted by an educational diagnostician or other qualified pupil appraisal staff member who has appropriate training in the evaluation of early childhood disorders and/or development to determine not only levels of performance but to also include an analysis of the student's participation in appropriate activities;

4. a speech/language assessment conducted by a speech/language pathologist when a speech or language impairment is suspected;

5. an assessment conducted by an occupational therapist when sensory-motor integration difficulties are suspected.

E. Procedures for Reevaluation

1. When a triennial reevaluation must be conducted during the time period a student is classified as having developmental delays, the waiver process may be used when no other disability category is suspected and the student continues to have a disability and is still in need of special education and related services.

2. The reevaluation of students classified with Developmental Delay shall be conducted prior to the student's ninth birthday to determine whether to declassify or to classify the student categorically. The reevaluation shall include all initial evaluation procedures for the suspected exceptionality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:906 (May 2009), effective July 1, 2009.

§707. Emotional Disturbance

A. Definition. *Emotional Disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance: (Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.)

1. an inability to learn that cannot be explained by intellectual, sensory, or health factors;

2. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. inappropriate types of behavior or feelings under normal circumstances;

4. a general pervasive mood of unhappiness or depression; and/or

5. a tendency to develop physical symptoms or fears associated with personal or school problems.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1, 2, 3 and 4 shall all be met. The student exhibits behavioral or emotional responses so different from age appropriate, cultural, or ethnic norms that they adversely affect the student's educational performance which includes academic progress, social relationships, work adjustment personal adjustment, and/or behavior in the school setting. Such a disability is more than a temporary, expected response to stressful events in the environment; is consistently exhibited in two different settings, one of which must be the school setting; and persists despite individualized intervention within general education and other settings. Emotional disturbance can co-exist with other disabilities.

1. Functional Disability. There is evidence of severe, disruptive and/or incapacitating functional limitations of behavior characterized by at least one of the following:

a. the inability to exhibit appropriate behavior routinely under normal circumstances;

b. a tendency to develop physical symptoms or fears associated with personal or school problems;

c. the inability to learn or work that cannot be explained by intellectual, sensory, or health factors;

d. the inability to build or maintain satisfactory interpersonal relationships with peers and adults; or

e. a general pervasive mood of unhappiness or depression.

2. Duration. There is evidence of at least one of the following:

a. the impairment or pattern of inappropriate behavior(s) has persisted for at least one year;

b. there is substantial risk that the impairment or pattern of inappropriate behavior(s) will persist for an extended period; or

c. there is a pattern of inappropriate behaviors that are severe and of short duration.

3. Educational Performance. There is evidence that all of the following are true.

a. Educational performance must be significantly and adversely affected as a result of behaviors that meet the definition of emotional disturbance.

b. Behavioral patterns, consistent with the definition, exist after behavior intervention and/or counseling and educational assistance implemented through the RTI process which includes documented research-based interventions targeting specific behaviors of concern.

i. Documented evidence must show that scientifically research-based interventions implemented with fidelity did not significantly modify the problem behavior. The intervention(s) shall include operationally defined target behaviors, systematic measurement of the behaviors of concern, establishment of baseline, monitoring of the student’s response to the intervention following intervention implementation, or prior to with repeated measures during the intervention. Documentation shall include graphing/charting of the results of the intervention(s), information regarding the length of time for which each intervention was conducted, and any changes or adjustments made to an intervention. *Significantly modify* means that a change in behavior is demonstrated to such a degree that, with continuation of the intervention program by the general education teacher and/or other support personnel, the student could continue in the general education program.

4. The behaviors of concern are exhibited across at least two different settings (home, school, and community), one of which must be school.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a psycho-social assessment conducted by a social worker, school psychologist, or other qualified pupil appraisal staff member, which includes an interview with the student's parent(s), or care giver. If the assessment determines the student to be out-of-home, out-of-school or "at risk" of out-of-school, or out-of-home placement and in need of multi-agency services, the student must be considered for referral to any existing interagency case review process;

2. a review of the functional behavior assessment which includes a description of the intensity, duration and frequency of occurrence of target behaviors and a description of antecedent(s) and consequence(s) maintaining the behavior(s). The assessment should be conducted across settings with multiple informants and should include a determination of the function(s) of the behavior(s) of concern;

3. a review of the appropriateness and effectiveness of the documented intervention(s). If interventions were not conducted prior to the evaluation, intervention(s) must be implemented during the evaluation process. Suspension/expulsion cannot be used as an intervention;

4. a comprehensive psychological assessment conducted by a certified school psychologist or a licensed psychologist, or psychiatric assessment conducted by a psychiatrist. The assessment shall include, at a minimum, an

appraisal of the student's cognitive, emotional, and social functioning including self-concept;

5. the evaluation report shall include recommendations for the provision of counseling, school psychological, or school social work services as a related service. If these services are determined not to be necessary, written documentation of the justification for not providing the services shall be included in the evaluation report;

6. other assessment procedures determined to be necessary by the multidisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:907 (May 2009), effective July 1, 2009.

§709. Hearing Impairment

A. Definition. *Hearing Impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance. It includes *Deafness*, which is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification.

1. Deafness is a hearing loss with an unaided pure tone average of 70dB (ANSI) or more in the better ear at 500, 1000, and 2000 Hz. The hearing loss is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification.

2. Hard of Hearing includes the following.

a. *Permanent or Fluctuating Hearing Loss*—a hearing loss with an unaided pure tone average in the better ear at 500, 1000, and 2000 Hz between 25 and 70 dB (ANSI). The hearing loss is severe enough to be considered educationally significant, as it will to varying degrees impact the normal development of speech and language skills and/or interfere with learning new information through the auditory modality.

b. *Unilateral Hearing Loss*—a permanent hearing loss with an unaided pure tone average in the poorer ear at 500, 1000, and 2000 Hz of 40 dB (ANSI) or greater. The hearing in the better ear is within the normal range (pure tone average of 20 dB or better at 500, 1000, and 2000 Hz). The hearing loss in the poorer ear is of sufficient severity to be considered educationally significant because it may affect the person's ability to process linguistic information and/or localize sound, particularly in the presence of background noise.

c. *High Frequency Hearing Loss*—a bilateral hearing loss with an unaided pure tone average of 40 dB or greater at any two of the following frequencies (2000, 3000, 4000 or 6000 Hz). The hearing loss is educationally significant because it is of sufficient severity to impact the person's ability to process linguistic information, particularly in the presence of background noise.

3. If a student has only two disabilities and those disabilities are deafness and blindness, the student must be classified as having deaf-blindness. The LEA shall notify state Deaf-Blind Census of all students who have both hearing and visual impairments.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 and 2 must be met:

1. there must be audiological evidence that the student is either deaf or hard of hearing, consistent with the definition; and

2. there must be evidence that the hearing loss adversely affects the student's educational performance.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. the interview with the student must be conducted in the student's primary mode of communication;

2. an assessment of the student's hearing sensitivity, acuity, with and without amplification shall be conducted by a physician with specialized training or experience in the diagnosis and treatment of hearing impairments and/or a licensed audiologist;

3. the student, family and teacher interviews should include the following discussions:

a. the student's language and communication needs;

b. opportunities for direct communication with peers and professional personnel in the student's language and primary mode of communication;

c. academic functioning levels; and

d. the full range of needs, which include opportunities for direct instruction in the student's language and primary mode of communication;

4. the Statewide Assessment Center for Students with Hearing Impairments may be used as a resource to conduct the evaluation;

5. a speech and language assessment of receptive and expressive language to include the student's language level and communication skills conducted by a speech/language pathologist. The examiner should be fluent in the student's primary mode of communication or should utilize the services of a certified interpreter/transliterator, when necessary;

6. for students with deafness, a description of how the impairment is impacting the student's ability to process linguistic information shall be provided.

E. Reevaluation

1. If at the time of the triennial reevaluation, the student has not been considered for Usher Syndrome and it is judged that the student is "at risk" for the syndrome, the triennial reevaluation cannot be waived.

2. Students who are considered "at risk" for Usher Syndrome shall receive a comprehensive vision examination by an ophthalmologist or optometrist.

a. "At-risk" indicators are the following:

i. unable to walk by 13 months;

ii. difficulty seeing in low lighting situation;

iii. glare sensitivity;

iv. immediate family member(s) diagnosed with Usher Syndrome;

v. difficulty seeing people/objects in visual periphery;

vi. difficulty focusing on objects/written word; or

vii. balance problems.

b. Students identified through screening, as "at risk" shall be referred to an ophthalmologist for assessment to document the presence of any disease process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:908 (May 2009), effective July 1, 2009.

§711. Mental Disability

A. Definition. *Mental Disability* means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

1. In every case, determination of a mental disability shall be based on an assessment of a variety of factors including educational functioning, adaptive behavior, and past and current developmental functioning (e.g., indices of social, intellectual, adaptive, verbal, motor, language, emotional, and self-care development for age).

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 through 5 must all be met.

1. Documented evidence must show that evidence based intervention(s) implemented with fidelity did not significantly modify the areas of concern. The intervention(s) shall include operationally defined target behaviors, systematic measurement of the academic and/or social areas of concern, establishment of baseline, and monitoring of the student's response to the intervention. These results may not be available for students with low incidence impairments.

2. For all students meeting the classification of Mental Disability as defined in Subparagraphs a through c, the degree of impairment shall be specified.

a. The measured intelligence and adaptive behavior functioning of a student with a Mental Disability—Mildly Impaired generally falls between two and three standards deviations below the mean. The student's adaptive behavior functioning falls below age and cultural expectations and is generally commensurate with the assessed level of intellectual functioning.

b. The measured intelligence and adaptive behavior functioning of a student with a Mental Disability—Moderately Impaired generally falls between three and four standard deviations below the mean. The student's adaptive behavior functioning falls below age and cultural expectations and is generally commensurate with the assessed level of intellectual functioning.

c. The measured intelligence and adaptive behavior functioning of a student with a Mental Disability—Severely Impaired generally falls greater than four standard deviations below the mean. The student's adaptive behavior functioning falls below age and cultural expectations and is generally commensurate with the assessed level of intellectual functioning.

3. The learning problems are not due primarily to such factors as:

a. other disabling conditions;

b. lack of appropriate explicit and systematic instruction in reading which includes the essential components of reading instruction: phonics, phonemic awareness, fluency, comprehension, and vocabulary;

c. lack of appropriate instruction in math;

d. limited English proficiency;

e. lack of educational opportunity;

f. emotional stress in the home or school; or

g. environmental, or economic disadvantage.

4. The student's academic or pre-academic functioning levels are generally commensurate with the assessed level of intellectual ability.

5. The deficits occurred during the developmental period.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. the educational assessment should include informal and formal assessments, the review and analysis of assessment results and the student's response to scientifically research-based interventions documented by progress monitoring data;

2. an assessment of adaptive behavior including information provided by both parent(s) and teacher. When information is provided by only one informant, the reason must be explained in the report;

3. a psychological assessment conducted by a certified school psychologist, which includes the following procedures:

a. an appraisal of emotional or cultural/linguistic factors that may be causing or contributing to the student's problems;

b. a standardized nondiscriminatory individual assessment of intellectual functioning. The examiner shall review all available information regarding the student, the student's family, and the socio-cultural background of the student to determine whether the intellectual assessment results have been unduly influenced by such factors;

4. an assessment of language development and/or communication skills conducted by a speech/language pathologist or other qualified pupil appraisal staff member. For non-verbal communicators, an augmentative/alternative communication assessment should be conducted to determine needs and modes of communication;

5. other assessment procedures deemed necessary by the multidisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:909 (May 2009), effective July 1, 2009.

§713. Multiple Disabilities

A. Definition. *Multiple Disabilities* means concomitant impairments (such as mental disability-blindness, orthopedic impairment-deafness, autism-orthopedic impairment, or emotional disturbance-mental disability), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

1. If a student has the two disabilities of deafness and blindness, the student must be classified as having deaf-blindness and not developmental delay or multiple disabilities. The LEA shall notify State Deaf-Blind Census of all students who have both hearing and visual impairments.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 and 2 must both be met.

1. The full criteria for eligibility for each exceptionality described in this Handbook must be met. Each of these conditions must additionally be to a severe or moderate degree.

2. The individual cannot be educated in a special educational program specifically designed for one of the impairments with additional related services for the other condition.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. procedures for evaluation appropriate to each suspected disabling condition as described in this handbook must be followed;

2. the evaluation must indicate and the pupil appraisal examiners must certify that the disabling conditions are each moderate or severe;

3. the educational assessment shall describe how the severity of the student's needs leads to the classification of Multiple Disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:909 (May 2009), effective July 1, 2009.

§715. Orthopedic Impairment

A. Definition. *Orthopedic Impairment* means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.); and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 or 2, and 3 must be met:

1. muscular or neuromuscular disabilities that significantly limit the ability to move about, sit, or manipulate the materials required for learning; or

2. skeletal deformities or abnormalities that affect ambulation, posture, and body use necessary in schoolwork; and

3. impaired environmental functioning that significantly interferes with educational performance.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a report of a medical examination conducted within the previous 12 months from a physician qualified by training or experience to assess the student's orthopedic or neurological problems. The report must provide a description of the impairment, any medical implications for instruction or physical education, and must indicate adaptive equipment and support services necessary for the student to benefit from the general education curriculum, as appropriate. When the medical report indicates the student has a health or physical impairment requiring health technology, management, or treatments including a special diet or medication or that the student needs assistance with activities of daily living, the school nurse or other qualified personnel will conduct a health assessment;

2. an assessment of the need for adapted physical education shall be conducted;

3. when deemed necessary by the evaluation coordinator and the multidisciplinary team, an occupational therapy assessment or physical therapy assessment, or both shall be conducted;

4. the educational assessment shall include the review and analysis of the student's response to scientifically research-based interventions documented by progress monitoring data, when appropriate;

5. the family interview should clarify parental concerns about the student's educational needs and identify health care providers and/or community resources used in caring for the student's medical or physical needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:910 (May 2009), effective July 1, 2009.

§717. Other Health Impairment

A. Definition. *Other Health Impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems, and may include such conditions as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia and Tourette syndrome and adversely affects a student's educational performance.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 or 2, and 3 must be met. If the diagnosed impairment has behavioral implications that research has shown to respond to behavioral interventions, Criterion 4 must also be met:

1. the disability results in reduced efficiency in schoolwork because of temporary or chronic lack of strength, vitality, or alertness, and includes such conditions as those specified in the definition; or

2. a severe disability significantly limits one or more of the student's major life activities (that is, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working); and

3. the student exhibits impaired environmental functioning that adversely affects his or her educational performance;

4. documented evidence must show that scientifically research-based interventions implemented with fidelity did not significantly modify the problem behavior. *Significantly modify* means that a change in behavior is demonstrated to such a degree that, with continuation of the intervention program by the general education teacher and/or other support personnel, the student could continue in the general education program.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a report of a medical examination, conducted within the previous 12 months from a physician qualified by training or experience to assess the student's health problems, giving not only a description of the impairment but also any medical implications for instruction and physical education. When the medical report indicates the student has a health condition requiring health technology, management or treatments including a special diet or medication or that the student needs assistance with

activities of daily living, the school nurse or other qualified personnel will conduct a health assessment;

2. if the diagnosed impairment has behavioral implications that research has shown to respond to behavioral interventions, the following procedures shall be conducted:

a. a review of the functional behavior assessment which includes a description of the intensity, duration and frequency of occurrence of target behaviors, and a description of antecedent(s) and consequence(s) maintaining the behavior(s). The assessment should be conducted across settings with multiple informants and should include a determination of the function(s) of the behavior(s) of concern;

b. a review of documented evidence which shows that scientifically research-based interventions implemented with fidelity did not significantly modify the problem behavior. The intervention(s) shall include operationally defined target behaviors, systematic measurement of the behaviors of concern, establishment of baseline, monitoring of the student's response to the intervention following intervention implementation, or prior to with repeated measures during the intervention. Documentation shall include graphing/charting of the results of the intervention(s), information regarding the length of time for which each intervention was conducted, and any changes or adjustments made to an intervention;

c. a review of the appropriateness and effectiveness of the documented intervention(s), and the implementation of additional intervention(s), if deemed necessary. Suspension/expulsion cannot be used as an intervention;

3. the family interview should clarify parental concerns about the student's educational needs and identify health care providers and/or community resources used in caring for the student's medical or physical needs;

4. any additional assessments deemed necessary by the evaluation coordinator and the multidisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:910 (May 2009), effective July 1, 2009.

§719. Specific Learning Disability

A. Definition. *Specific Learning Disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1, 2, 3, and 4 must be met:

1. the learning problems are not primarily the result of:

a. visual, hearing, or motor disability;
b. mental disability;
c. emotional disturbance;
d. cultural factors;
e. environmental or economic disadvantage;
f. limited English proficiency;

2. there shall be a comprehensive and documented review of evidence-based intervention(s) conducted with fidelity and for the length of time necessary to obtain sufficient data to determine their effectiveness. Interventions shall be appropriate to the student's age and academic skill deficits and shall address the area(s) of concern presented by the SBLC. The RTI process shall provide sufficient data to determine if the student is making adequate progress in the general educational curriculum. The individual intervention(s) summary must include graphing of the results of the intervention(s), information regarding the length of time for which each intervention was conducted, and any changes or adjustments made to an intervention. If adequate progress is not evident or the interventions require such sustained and substantial effort to close the achievement gap with typical peers, further assessment using standardized achievement measures shall be conducted to determine if the child/youth exhibits a specific learning disability consistent with the definition. The intervention data shall demonstrate that the child/youth does not achieve adequately for his/her age or to meet state approved grade level standards in one or more of the following areas:

a. oral expression;
b. listening comprehension;
c. written expression;
d. basic reading skills;
e. reading fluency skills;
f. reading comprehension;
g. mathematics calculation; or
h. mathematics problem solving;

3. to ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the evaluation team must document the review of data that demonstrate that prior to, or as part of, the referral process:

a. the student was provided appropriate instruction in math within the general education classroom, delivered by qualified personnel; and/or

b. the student was provided explicit and systematic instruction in reading which includes the essential components of reading instruction: phonics, phonemic awareness, fluency, comprehension, and vocabulary within the general education classroom; and

c. the general education instruction was delivered by qualified personnel; and

d. data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, was provided to the student’s parents:

4. to support the findings in Paragraphs 1 through 3 above, evidence of a pattern of strengths and low achievement must be documented as follows:

a. area of low achievement addressed by the interventions shall be demonstrated by performance greater than one and one-half standard deviations below the mean in grades 1 and 2, or greater than two standard deviations below the mean in grades 3 through 12 using chronological age norms in one or more of the areas listed in Subparagraphs 2.a-h above; and

b. area of strength as demonstrated by performance no more than one-half standard deviation below the mean in grades 1 and 2 or no more than one standard deviation below the mean in grades 3 through 12 using chronological age norms in one or more of the areas listed in Subparagraphs 2.a-h above.

c. When the combination of the scientifically research-based intervention outcomes and standardized testing does not result in clearly established strengths and weaknesses, but a preponderance of all data collected supports the team's position that the student is a student with a specific learning disability, a full explanation and justification must be included in the evaluation report.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. the student's general education teacher must serve on the team to document the student's academic performance and behavior in the areas of difficulty and to provide documentation for any previous interventions. If the student does not have a general education teacher, a general education classroom teacher qualified to teach a student of his or her age must serve on the team;

2. the LEA must ensure that the student is observed in the learning environment which includes the regular classroom setting to document the student's academic performance and behavior in the areas of difficulty. The team may:

a. use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for evaluation; or

b. conduct an observation of the student's academic performance in a regular classroom after the parental consent has been obtained;

c. in the case of a student out of school, a team member shall observe the child in an environment appropriate for a child of that age;

3. the evaluation team shall review and analyze the student's response(s) to scientifically research-based intervention(s) documented by progress monitoring data;

4. based on the review and analysis in Subparagraph 3 above and the reason(s) for referral, a formal educational assessment shall be conducted by an educational diagnostician or other qualified personnel with training in formal educational assessment. This assessment shall document the pattern of strengths and areas of low achievement;

5. a psychological assessment shall be conducted by a certified school psychologist, when necessary, to rule out a mental disability;

6. a speech/language assessment shall be conducted by a speech/language pathologist when oral expression or listening comprehension is suspected to be an area of impairment. The results of the speech/language assessment may and should be used when considering strengths and areas of low achievement for this exceptionality;

7. when neurological or other health/medical problems are suspected, an assessment shall be conducted by a physician, neurologist, or neuropsychologist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:911 (May 2009), effective July 1, 2009.

§721. Speech or Language Impairment

A. Definition. *Speech or Language Impairment* means a communication disorder such as stuttering, impaired articulation, language impairment, or a voice impairment that adversely affects a student's educational performance. (Dialectal variations alone do not qualify a student to be classified as having speech or language impairment.)

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1, 2, 3 or 4, and 5 must be met for a student to be classified as having a Speech or Language Impairment.

1. Articulation—non-maturational speech disorder of one or more phonemes characterized by consistent addition, omission or incorrect production of speech sounds, and:

a. for a student in grade K or above, data from documented intervention(s) conducted by a speech-language pathologist or speech-language pathology assistant that indicates that it is unlikely based on the student's rate of learning, that the student will acquire correct use of targeted phoneme(s) within a reasonable period of time; or

2. Fluency—inappropriate rate and time patterning of speech at least 5 percent of the time, characterized by any of the following: sound and syllable repetitions, sound prolongations, audible or silent blocking, interjections, broken words, circumlocutions, or words produced with an excess of tension and accompanied by ancillary movements that are indicative of stress or struggle, and:

a. for a student in grade K or above, data from documented intervention(s) conducted by a speech-language pathologist or speech-language pathology assistant that indicates it is unlikely, based on rate of learning, that the student will attain normal fluency within a reasonable period of time;

b. a student exhibiting normal non-fluencies occurring during the developmental speech stage does not meet this criterion, or

3. Voice—any inappropriate consistent deviation in pitch, intensity, quality, or other basic phonatory or resonatory attribute, and:

a. for a student in grade K or above, data from documented intervention(s) conducted by a speech-language pathologist or speech-language pathology assistant that indicates it is unlikely, based on rate of learning, that the student will attain normal voice quality within a reasonable period of time. There must be an assessment conducted by the appropriate medical specialist prior to conducting intervention(s); or

4. Language—impaired receptive or expressive disorder of phonology, morphology, syntax, semantics, or pragmatics:

a. a student shall exhibit a deficit of at least 1.5 standard deviations below the mean based on chronological age;

b. for a student in grade K or above, data from intervention(s) conducted by a speech-language pathologist or other appropriate personnel that indicates that it is unlikely, based on rate of learning, that the student will acquire targeted language skills that significantly impact the student's educational performance within a reasonable period of time; and

5. there is documented evidence that the impairment significantly interferes with the student's educational performance or significantly interferes with the student's developmental functioning to a degree inappropriate for his or her cultural and social background or overall developmental level:

a. some language difficulties cannot be described as a difference from the norm either because specific norms are not available or because the individual's language is deviant in a way not described adequately by developmental norms. In such cases, language samples should be analyzed and the language behavior should be documented with deviations described in various settings. An overall picture of language behavior should be described. Students who are non-verbal communicators shall be described, using their augmentative and/or alternative communication needs or modes.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. a speech-language assessment conducted by a licensed speech-language pathologist, which shall include the following procedures:

a. the use of standardized test instruments and/or published normative data in speech-language pathology or child development;

b. formal or informal analysis of a communication sample;

c. additional information gathered from sources such as criterion-referenced materials, communication-related data collected by other professionals (including other pupil appraisal personnel and teachers), and an observation of communication skills;

d. an assessment of the structure and function of the oral peripheral mechanism;

e. an assessment of language processing, when appropriate;

f. assessment of augmentative/alternative communication needs when appropriate; and

g. the review and analysis of intervention data for students in grade K or above and when appropriate for children aged 3-5;

2. an educational assessment conducted to review academic skills and to determine whether the speech or language impairment significantly interferes with the student's educational performance. This assessment may be conducted by a qualified pupil appraisal staff member or the student's classroom teacher, when appropriate. The effect of the speech or language impairment on educational performance must be documented in the evaluation report, including an analysis of how the student's disability affects access to and progress in the general curriculum:

a. for a student suspected of having an articulation, fluency or voice disability, an educational assessment may be conducted by the classroom teacher;

b. for a student suspected of having a language disability, an educational assessment shall be conducted by an educational diagnostician or other qualified pupil appraisal member;

3. a review of the voice assessment conducted by an appropriate medical specialist in all cases in which there is a suspected voice impairment;

4. information from a parent conference or other communication with the parent(s) to determine whether developmental, health, or other factors may be causing, contributing to, or sustaining the speech or language problem;

5. medical, psychological, and additional educational assessments shall be requested by the evaluation coordinator, when appropriate to the evaluation of the suspected disability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:912 (May 2009), effective July 1, 2009.

§723. Traumatic Brain Injury

A. Definition. *Traumatic Brain Injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, or motor abilities; psychosocial behavior; physical functions; information processing and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 and 2 must be met for a student to be classified as having a Traumatic Brain Injury:

1. documented medical evidence of an external insult to the brain causing an impairment in accordance with the definition exists; and

2. the impaired functioning significantly affects educational performance.

C. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

D. Additional procedures for evaluation:

1. medical documentation that there has been an external insult to the brain, which causes an impairment to the cognitive, physical, behavioral or emotional functioning of the individual. A health assessment shall be conducted by a school nurse or other qualified personnel when the medical report indicates the student has an impairment requiring health technology, health management, or health treatments including a special diet or medication, or needs assistance with activities of daily living;

2. a psychological assessment conducted by a certified school psychologist to determine the status of cognitive, behavioral, and emotional functioning;

3. a speech/language evaluation conducted by a speech/language pathologist to determine whether there are speech and/or language difficulties;

4. any other assessment procedures deemed necessary by the multidisciplinary team.

E. Procedures for Reevaluation

1. Due to the implications of a traumatic brain injury, a triennial reevaluation should be conducted if there are notable changes in the school setting regarding cognition, language, memory, attention, reasoning, abstract thinking,

judgment, problem-solving, sensory, perceptual, or motor abilities, psychosocial behavior, physical functions, information processing, or speech. These changes could be noted by any member of the IEP Team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:913 (May 2009), effective July 1, 2009.

§725. Visual Impairment

A. Definition. *Visual Impairment* (including blindness) means an impairment in vision that even with corrections adversely affects a student's educational performance. The term includes both partial sight and blindness.

1. If a student has the two disabilities of deafness and blindness, the student must be classified as having deaf-blindness and not developmental delay or multiple disabilities. The LEA shall notify State Deaf-Blind Census of all students who have both visual and hearing impairments

B. Criteria for Eligibility. Evidence of the criterion listed in Paragraph 1 and criteria listed in either Paragraphs 2, 3, 4, or 5 must be met:

1. loss of vision which significantly interferes with the ability to perform academically and which requires the use of specialized textbooks, techniques, materials, or equipment; and

2. visual acuity in the better eye or eyes together with best possible correction of:

a. blindness—20/200 or less distance and/or near acuity; or

b. partial sight—20/70 or less distance and/or near acuity;

3. blindness due to a peripheral field so contracted that the widest diameter of such field subtends an angular distance no greater than 20 degrees and that it affects the student's ability to learn;

4. progressive loss of vision, which may in the future affect the student's ability to learn; or

5. other blindness resulting from a medically documented condition.

C. Additional Procedures for Screening

1. Orientation and mobility screening will be conducted to screen the student's ability to travel around in his or her environment. (There is a suggested screening checklist in the Appendix.)

D. Procedures for Evaluation. Conduct all procedures described under §513, Evaluation Components.

E. Additional procedures for evaluation:

1. an eye examination conducted by an ophthalmologist or optometrist. When the impairment results from an active disease process, it shall be verified in the report of an ophthalmologist. When this condition is progressive or unstable, the need for a yearly eye examination shall be documented in the integrated report;

2. the educational assessment shall include:

a. a functional vision assessment (an assessment of the degree to which the student utilizes vision to operate within the environment);

b. an assessment of the student's reading and writing skills, including the student's needs in appropriate reading and writing media (including an assessment of the student's future needs for instruction in Braille or the use of Braille). For the student who is a non-reader, learning medium assessment would involve systematic examination of how he/she obtains information (visually, tactually, and/or auditorally);

3. based upon the orientation and mobility screening results an assessment, if warranted, shall be conducted by a qualified orientation and mobility instructor for the purpose of identifying the student's ability to travel safely and efficiently in a variety of environments and situations with or without the use of special mobility devices and visual aids;

4. a family interview which addresses the following additional factors:

a. the needs of the family in understanding the student;

b. the community service agencies currently providing assistance to the family in relationship to the student;

c. the expectations of the parents for the student;

d. an appraisal of self-help and other functional skills exhibited at home;

5. when the data indicate a severe visual impairment, the evaluation coordinator should consider referring the student to the Statewide Assessment Center for Students with Visual Impairments for assistance in conducting specialized aspects of the evaluation.

F. Procedures for Reevaluation. If the visual impairment is progressive or unstable the triennial evaluation must be conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:914 (May 2009), effective July 1, 2009.

Chapter 9. Gifted and Talented

§901. Gifted

A. Definition. Gifted children and youth are students who demonstrate abilities that give evidence of high performance in academic and intellectual aptitude.

B. Procedures for Screening

1. Sensory screening shall be conducted whenever vision or hearing problems are suspected.

2. Each LEA shall develop and implement procedures for screening students suspected of being gifted. The screening criteria shall not exceed the criteria for eligibility.

3. At least two regular school staff members such as the principal/designee, teachers, counselors, pupil appraisal personnel, or other professional staff shall conduct a review of the screening information with the student's teacher. If the student meets the screening criteria, the student shall be evaluated. If the student does not meet the screening criteria, he/she should be exposed to activities that enhance skills and increase knowledge.

C. Criteria for Eligibility

1. Preschool and Kindergarten. Evidence of criterion listed in Subparagraph a or b must be met:

a. the student shall obtain a score at least three standard deviations above the mean on an individually administered test of intellectual abilities appropriately standardized on students of this age and administered by a certified school psychologist or licensed psychologist; or

b. the student shall obtain a combined score of at least 10 when scores are entered into the cells of the

Standard Matrix with at least 4 points earned on a test of intellectual abilities.

2. Grades 1-12. Evidence of criterion listed in Subparagraph a, b, or c must be met:

a. the student shall obtain a score of at least two standard deviations above the mean on an individually or group administered test of intellectual abilities appropriately standardized on students of this age and administered by a certified school psychologist or licensed psychologist; or

b. the student shall obtain a score of at least seven when scores are entered into the cells of the Standard Matrix, at least two points of which is earned on the test of intellectual abilities; or

c. the student shall obtain a score of at least six when scores are entered into the cells of the Standard Matrix, and a recommendation for classification as gifted is made by pupil appraisal personnel who conducted the evaluation of the student in accordance with the evaluation procedures.

D. Procedures for Evaluation. All tests and other procedures used to evaluate students referred for gifted assessments shall be standardized, non-discriminatory, and appropriate for the cultural background of the students being evaluated. Few, if any, standardized assessment instruments adequately control for the effect of such factors as environmental impoverishment, cultural differences, or the lack of opportunities to learn. It is imperative that such factors be closely attended to in any individual or group assessment of students suspected of being gifted, and given serious consideration by pupil appraisal and special education personnel when determining whether a student is gifted. Any significant discrepancies between formal test results and the student's customary behaviors and daily activities, or any discrepancies among test results should be examined closely during the evaluation and addressed in the evaluation report. The recommendation of the multidisciplinary team either to classify or not to classify a student as gifted must be based on a thorough evaluation of the student's abilities.

1. Preschool and Kindergarten. The individual evaluation shall include at a minimum the following procedures:

a. an individual assessment of intellectual abilities administered by a certified or licensed psychologist using an instrument or instruments appropriately standardized for students of this age;

b. an individual assessment of reading and mathematical skills using an achievement test standardized at the first grade level, conducted by an educational diagnostician or other qualified pupil appraisal member;

c. an interview with the student's parent(s) conducted by a school social worker or other qualified examiner;

d. an interview with the teacher(s) of enrolled students.

2. Grades 1 through 12. An individual evaluation shall include at a minimum the following procedures:

a. an assessment of intellectual abilities, individually or group administered, by a certified or licensed psychologist using nondiscriminatory assessment procedures;

b. additional assessments in the areas listed below, individually or group administered, by qualified pupil appraisal personnel. District-wide test scores and scores obtained from screening instruments shall not be used in the Standard Matrix as part of the individual evaluation:

i. total reading;

ii. total mathematics;

c. an interview with the student's parent(s) by a school social worker or other qualified examiner;

d. an interview with the student's teacher(s).

E. Standard Matrix

Points	1	2	3	4
	1.0 ≤ 1.49 SD	1.5 ≤ 1.99 SD	≥ 2.0 SD	≥ 2.5 SD (Preschool and K only)
Intellectual Abilities				
Achievement in Reading				
Achievement in Math				

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:914 (May 2009), effective July 1, 2009.

§903. Talented

A. Definition. *Talented* means possession of measurable abilities that give clear evidence of unique talent in visual or performing arts or both.

B. Procedures for Screening

1. A student is identified by his or her regular or special education teacher, as having artistic needs that are not being met in the regular class in which the student is enrolled.

2. The regular or special education teacher completes the appropriate screening instrument (Visual Arts, Music, or Theatre).

3. Each LEA shall develop and implement procedures for screening students suspected of being talented in visual arts, music, and/or theatre. At a minimum, the state approved talent screening form must be used.

4. Each item receiving a score of four or above on the rating scale must be documented with examples, or samples of the student's work, whichever is more appropriate.

5. The student must score in the range of 33-35 on the visual arts screenings instrument, or 33-35 on the music instrument or 48-50 on the theatre-screening instrument to warrant an evaluation.

6. If the student passes the screening criteria described above, the student shall be referred for a talented evaluation.

C. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 and 2 must be met for a student to be classified as Talented.

1. The student must meet local screening criteria.

2. Creative abilities in visual and/or performing arts grades K-12 must be demonstrated. Scores shall be reported exactly with no rounding allowed.

a. Music. For grades K - 6: Evidence of criteria listed in Clauses i or ii, plus iii and iv or v must be met. For

grades 7- 12: Evidence of criteria listed in Clauses iii and iv or vi must be met:

i. for grades K-3: the student must obtain a score of 35-40 on the state-approved music evaluation instruments;

ii. for grades 4-6: the student must obtain a score of 30-35 on the state-approved music evaluation instrument;

iii. the student must obtain a score of 18-20 on the music interview scale;

iv. for grades K-12: the student must obtain a score of 27-30 on the instrumental music audition scale, if performing prepared selections, or a score of 23-25, if performing improvisations;

v. for grades K-6: the student must obtain a score of 33-35 on the vocal music audition scale;

vi. for grades 7-12: the student must obtain a score of 47-50 on the vocal music audition scale.

b. Theatre. Evidence of criteria listed in Clauses i and ii, or i and iii must be met:

i. the student must obtain a score of 12-15 on the theatre interview scale;

ii. for grades K-6: the student must obtain a score of 42-45 on the theatre audition scale;

iii. for grades 7-12: the student must obtain a score of 47-50 on the theatre audition scale.

c. Visual Arts. Evidence of criteria listed in Clauses i and ii, or iii and iv must be met:

i. for grades K-6: the student must obtain a score of 12-15 on the *Art Recognition Test*;

ii. for grades K-6: the student must obtain a score of 26-30 on the *Narrative Drawing Test*;

iii. for grades 7-12: the student must obtain a score of 26-30 on the *Design Test*;

iv. for grades 7-12: the student must obtain a score of 42-45 on the *Drawing Test*.

3. When the separate evaluator scores are tallied, it is important to note that the scores, if not a whole number, shall not be rounded to determine eligibility.

4. State-approved art, music, and theatre screening instruments and evaluation instruments are located in the *Talent Evaluation Kit*.

D. Procedures for evaluation:

1. an assessment of performance conducted simultaneously, independently, and without discussion of results by at least two state-trained evaluators in the appropriate arts area, using state-approved procedures and instruments;

2. a designated pupil appraisal evaluation coordinator shall attend the entire performance in Subparagraph 1 above and integrate all evaluation results into a report that indicates whether the student is talented, consistent with the criteria for appropriate classification of talented;

3. if the evaluation is conducted at a facility other than the student's school and the student does not have transportation to the off-campus site, it is the LEA's responsibility to provide transportation for that student to the evaluation site;

4. the evaluation coordinator shall integrate all evaluation results into a report that indicates whether the student meets criteria for the appropriate classification of talented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:915 (May 2009), effective July 1, 2009.

Chapter 11. Reevaluation Information

§1101. Required Reevaluations

A. A reevaluation of each student with an exceptionality must be conducted when one of the following events occurs:

1. when the LEA determines that the educational or related services needs, including improved academic achievement and functional performance of the student, warrant a reevaluation;

2. when the student's teacher or parent requests a reevaluation;

3. when a significant change in placement is proposed, which means moving the student to a more restrictive environment where the student will be in the regular class less than 40 percent of the day or, for a child age four through five, in the regular early childhood program less than 40 percent of the time; or

4. when a student is no longer suspected of having an exceptionality. This includes students having the single exceptionality of speech and language impairment.

B. The reevaluation described in Subsection A above is not required before the termination of a student's eligibility for special education and related services due to graduation from high school with a regular high school diploma, or due to exceeding the age eligibility for FAPE under state law.

C. A reevaluation:

1. must occur at least once every three years, unless the parent and the LEA agree that a reevaluation is unnecessary:

a. a triennial evaluation may be necessary if there are not adequate data to determine whether any additions or modifications to the special education and related services are needed to enable the student to meet the measureable annual goals in the IEP and to participate, as appropriate, in the general education curriculum;

b. a triennial evaluation may be necessary for students with developmental delays, hearing impairments, traumatic brain injury, or visual impairments. Refer to the specific disabilities in Chapter 7 for further guidance;

c. for students whose only exceptionality is gifted or talented, the reevaluation may be accomplished through the IEP process at the time of the IEP review meeting. Informed parental consent for the reevaluation must be sent to parents prior to the IEP review meeting in which the reevaluation will be conducted. If no concerns are evident with the student's current program, no evaluation report is required. This discussion will be documented on the IEP form, and a copy of the IEP form will be forwarded to pupil appraisal personnel;

2. may not occur more than once a year, unless the parent and the LEA agree otherwise.

D. An LEA is not required to conduct a reevaluation of an exceptional student who transfers with a current evaluation into its jurisdiction from another jurisdiction in Louisiana. Should the receiving LEA question the accuracy or the appropriateness of the student's classification, a reevaluation may be initiated after an IEP has been

developed and the student is receiving special education and related services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:916 (May 2009), effective July 1, 2009.

§1103. Parental Consent for Reevaluations

NOTE: See §109.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:917 (May 2009), effective July 1, 2009.

§1105. Reevaluation Procedures

A. When a reevaluation is conducted, an appropriate evaluation coordinator will be assigned. The evaluation coordinator or other designated personnel will notify parents, teachers, related service personnel, an official designee of the LEA, and other appropriate personnel of the purpose of the upcoming reevaluation; and will ensure that procedures below are followed:

1. obtain informed parental consent (See Parental Consent);

2. review evaluations and information provided by the parents of the student;

3. review information provided by the student, when appropriate;

4. review educational history, including all previous evaluation reports;

5. review progress monitoring data provided by the teacher(s) and related service providers to determine the student's involvement and progress in the general education curriculum;

6. review or conduct a functional behavioral assessment, if behavior is a concern;

7. review data based on observations conducted by teachers and related service providers;

8. complete any reevaluation requirements for the specific disabilities noted in §1101.C.1.b; and

9. review transitional needs as part of all reevaluations occurring after the student's fifteenth birthday.

B. On the basis of this review and input from the student's parents, identify what additional data, if any, are needed to determine:

1. whether the student continues to have the same exceptionality and the educational needs of the student;

2. the present levels of academic achievement and related developmental needs of the student;

3. whether the student continues to need special education and related services; and

4. whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general education curriculum.

C. This review may be conducted without a meeting.

D. The LEA shall administer such assessments and other evaluation measures as may be needed to produce the data identified under Subsection A of this Section.

E. Based on the review described in Subsections A and B above, when it is determined that no additional data are needed to determine whether the student continues to be a student with an exceptionality and to determine the student's educational needs, the LEA shall notify the parent of:

1. this determination and the reasons for the determination; and

2. the right of the parents to request an assessment to determine whether the student continues to be a student with an exceptionality, and to determine the student's educational needs;

3. the LEA is not required to conduct the assessment described in Paragraph E.2 of this Section unless requested to do so by the student's parents;

4. this notification of the determination and the reasons for the determination provides documentation that a reevaluation occurred.

F. Based on the review described in Subsections A and B above, when it is determined that additional data are needed or when there are new concerns regarding the student's progress toward meeting the measurable annual goals, the procedures described below shall be followed.

1. When a different exceptionality is suspected, initial criteria and procedures for the suspected exceptionality shall be followed. Scientifically research-based interventions shall be conducted by the special education provider or teacher in collaboration with pupil appraisal personnel.

2. When additional data are needed, the evaluation coordinator shall ensure that all required procedures are followed.

G. To document the findings in Subsection F above, the reevaluation report shall include at a minimum the following procedures:

1. the reason for the need to conduct this reevaluation;

2. documentation of the procedures required in Paragraphs A.1 - 9;

3. if there were new concerns, documentation of scientifically research-based interventions and any additional data that addressed the concerns;

4. if a new exceptionality was suspected, documentation of additional assessments and a summary of findings;

5. documentation of a systematic observation in the environments in which the student is receiving services;

6. documentation of conclusions of the reevaluation including the exceptionality, impairment or condition, and the determinations required in Subsection B above;

7. documentation of reevaluation participants and an explanation of all extensions, including documentation of parental approval, when necessary;

8. documentation of the parents' participation in the determination decision of the new exceptionality, when appropriate;

9. signatures of the team whose conclusions are accurately reflected in the report:

a. if a participating team member disagrees with the conclusion(s) in the report, that person may submit a separate signed dissenting opinion stating the disagreement, giving supporting data and conclusion(s);

10. results of the reevaluation documented and disseminated to the supervisor of special education or designee, parent(s), and school.

H. Timeline Extensions

1. Parentally Approved Extension. If the LEA is making sufficient progress to ensure a prompt completion of

the reevaluation but needs extended time to assess the student in all areas of the exceptionality, the parent and the LEA may agree to a specific time when the evaluation will be completed.

2. Extensions may be taken on triennial reevaluation provided that the reevaluation is completed on or prior to the three year anniversary date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:917 (May 2009), effective July 1, 2009.

Chapter 13. Special Services

§1301. Overview

A. *Special services* as used in this chapter are included in the term *special education*, which means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. They include assistive technology when required as part of the student's special education; instruction in physical education (including special physical education, adapted physical education, movement education, and motor development); speech/language pathology services when the service is considered special education rather than a related service; travel training; and vocational education.

1. *At no cost* means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or to their parents as a part of the regular education program.

2. *Specially-designed instruction* means adapting, as appropriate, to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability; and ensuring access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the LEA that apply to all students.

B. Specific criteria for eligibility for adapted physical education and assistive technology are immediately following this overview. Eligibility criteria for other special services are based on written documentation of need. When specific criteria to determine eligibility for other special services become necessary, they will be added to the document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:918 (May 2009), effective July 1, 2009.

§1303. Adapted Physical Education

A. Definition. *Adapted Physical Education* is a direct instructional service for school aged students with disabilities who may not safely or successfully engage in unrestricted participation in the vigorous activities of the regular physical education program on a full-time basis. It is also a specially-designed program for children with disabilities aged three through five, who meet the criteria below.

B. Criteria for Eligibility

1. Children aged 3 through 5 years:

a. evidence that the student meets 69 percent or less of the state identified motor skills for the level appropriate to the student's chronological age using the LA Motor Assessment for Preschoolers (LAMAP):

i. students meeting 45 percent to 69 percent of the skills shall be identified as having motor deficits in the mild range;

ii. students meeting 20 percent to 44 percent of the skills shall be identified as having motor deficits in the moderate range;

iii. students meeting 19 percent or less of the skills shall be identified as having motor deficits in the severe range;

b. corroboration of the motor deficit and the need for adapted physical education provided by the evaluator based upon observation of the student.

2. Students aged 6 through 21 years:

a. evidence that the student meets 69 percent or less of the state-identified physical education competencies, using the *Competency Test for Adapted Physical Education (CTAPE)*, for the grade level appropriate to the student's chronological age:

i. students meeting 45 percent to 69 percent of the competencies shall be identified as having motor deficits in the mild range;

ii. students meeting 20 percent to 44 percent of the competencies shall be identified as having motor deficits in the moderate range;

iii. students meeting 19 percent or less of the competencies shall be identified as having motor deficits in the severe range;

b. corroboration of the motor deficit and the need for adapted physical education provided by the evaluator based upon observation of the student.

3. Students classified as having Autism, Emotional Disturbance, Traumatic Brain Injury, or Other Health Impairment:

a. documented evidence that the student is unable to participate in a regular physical education class as a result of autism, a serious emotional disorder, brain injury, or a chronic or acute health condition;

b. corroboration of the condition and the need for adapted physical education provided by the evaluator, based upon observation of the student.

C. Procedures for evaluation:

1. for students aged 3 through 5 years—an assessment of motor abilities using the LaMAP (Louisiana Motor Assessment for Preschoolers) conducted by a certified adapted physical education teacher;

2. for students aged 6 through 21—an assessment of grade/age level physical education competencies using the CTAPE conducted by a certified adapted physical education teacher;

3. for students with a disability of autism, emotional disturbance, traumatic brain injury or other health impairments—written documentation verifying a significantly reduced performance that prevents safe and

successful participation in a regular physical education class. For students with autism or emotional disturbance, the documentation must be provided by a certified school psychologist, licensed psychologist, or psychiatrist and an adapted physical education evaluator. For students with other health impairments or traumatic brain injury, the documentation must be provided by a physician and an adapted physical education evaluator;

4. observation of the student in both structured (e.g., one-on-one with the evaluator) and unstructured (e.g., free play, recreational) settings. These observations should focus on, but not be limited to, those motor deficits identified by the motor assessment instrument;

5. recommendations for specific types of activities and/or adaptations necessary to meet the physical education needs of the student should be included in the evaluation report;

6. the provision of services shall be determined at the IEP Team meeting, using the recommendations of the adapted physical education evaluator and the results of the motor assessment. The continuation of services shall be determined by the IEP Team at the annual IEP review using the recommendations of the adapted physical education teacher.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:918 (May 2009), effective July 1, 2009.

§1305. Assistive Technology

A. Definition. *Assistive technology services* means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. Included in these services are the following:

1. an evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

2. the purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for students with disabilities;

3. the selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

4. the coordinating and using of other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5 the training or technical assistance necessary for a student with a disability, or where appropriate, for the student’s family;

6. the training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or who are otherwise substantially involved in the major life functions of that student;

7. assistive technology device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, used to increase, maintain, or improve the functional capabilities of a student with a disability:

a. assistive technology encompasses a broad range of devices from very simple ("low technology") to very sophisticated ("high technology").

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b must be met:

a. the student must be classified and eligible for special educational services; and

b. there is documented evidence that assistive technology is required within the educational setting.

2. Each LEA shall ensure that assistive technology devices and/or assistive technology services are made available to a student with a disability, if required, as a part of the student's special education, related services, or supplementary aids and services. Consideration should be given for every student with a disability who is eligible for an individualized education program as to whether the student requires assistive technology devices and/or services to receive an appropriate education.

C. Procedures for Evaluation

1. The assistive technology evaluation shall be conducted by qualified professional(s) with the level of expertise necessary to address the specific areas of concern. These professionals may include, but are not limited to audiologists, occupational therapists, physical therapists, speech/language pathologists, teachers of the visually impaired, adapted physical education teachers, and assistive technology personnel:

a. an observation of the student interacting with parents, teachers or peers in the educational environment during daily activities. The utilization of observational tools such as interaction checklists, criterion-based instruments, task analysis, and needs assessment, etc., is recommended;

b. an interview with the primary care providers and classroom teacher(s) to determine what intervention strategies for assistive technology devices and services, if any, have already been attempted or provided and what the results were;

c. an assessment of the student's current mobility, seating, positioning, and neuromotor ability, if applicable, to determine selection techniques and the method(s) of access for assistive technology as well as to address further seating, positioning, and mobility needs;

d. the results of an assessment with a variety of assistive technology devices that would be appropriate for the student. Trials with assistive technology devices could include options for both low technology and high technology solutions. The student and family should be involved in this process to ensure the likelihood that the technology that is selected will be used.

2. Recommendations should also include personnel who will need training and technical assistance to work with the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:919 (May 2009), effective July 1, 2009.

Chapter 15. Related Services

§1501. Overview

A. *Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a student with an exceptionality to benefit from special educational services. Related services include speech/language pathology and audiological services, school psychological services, physical and

occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in students, counseling services including rehabilitation counseling, assistive technology devices and services, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

B. When the need for such services is indicated by the referral concerns during the evaluation process, the evaluation coordinator shall ensure that appropriate and qualified personnel participate in the evaluation process. The criteria for eligibility for school health services, occupational therapy, orientation and mobility services, physical therapy, school psychological, school social work and speech/language pathology services immediately follow this overview. Eligibility criteria for other related services are based on written documentation of need. When specific criteria to determine eligibility for other related serves are necessary, they will be added to the document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:919 (May 2009), effective July 1, 2009.

§1503. Occupational Therapy

A. Definition. *Occupational Therapy* includes the following services:

1. evaluating students with disabilities by performing and interpreting tests and measurements and/or clinical observations of neurophysiological, musculoskeletal, sensorimotor functions and daily living skills;

2. planning and implementing treatment strategies for students based on evaluation findings;

3. improving, developing, restoring or maintaining functions impaired or lost through illness, injury, or deprivation;

4. improving or maintaining ability to perform tasks for independent functioning when functions are impaired or lost; and

5. administering and supervising therapeutic management of students with disabilities, recommending equipment and providing training to parents and educational personnel.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b below must be met.

a. The student is classified and eligible for special education services. There is documented evidence that occupational therapy is required to assist the student to benefit from the special education services.

b. The student demonstrates a motor impairment in one of the following categories: Developmental, Motor Function, or Sensorimotor:

i. Developmental. Students (excluding those with neurophysiological impairments) who demonstrate a fine motor, visual motor, oral motor, or self help delay as follows:

(a). students with disabilities ages 3 year 0 months-5 years 6 months—students who demonstrate a fine motor, visual motor, oral motor, or self help delay greater than 1 standard deviation below functional abilities as measured by an appropriate assessment instrument. Some instruments yield a development age score instead of a standard score. In such cases, a student must demonstrate a delay of at least 6 months below functional abilities. *Functional abilities* are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and gross motor;

(b). students with disabilities ages 5 years 7 months-9 years 11 months—students who demonstrate a fine motor, visual motor, oral motor or self help delay greater than 1 standard deviation below functional abilities as measured by an appropriate assessment instrument. Some instruments yield a developmental age score instead of a standard score. In such cases, a student must demonstrate a delay of at least 12 months below functional abilities. *Functional abilities* are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and gross motor;

(c). students with disabilities ages 10 years 0 months-21 years—students who demonstrate a fine motor, visual motor, oral motor or self help delay greater than 1 standard deviation below functional abilities as measured by an appropriate assessment instrument. Some instruments yield a developmental age score instead of a standard score. In such cases, a student must demonstrate a delay of at least 18 months below functional abilities. *Functional abilities* are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and gross motor.

ii. Motor Function. According to clinical and/or behavioral observations (which may include, but are not limited to available current medical information, medical history and/or progress reports from previous therapeutic intervention), the student exhibits neurophysiological limitations or orthopedic limitations, that affect his or her physical functioning in the educational setting. These limitations might include abnormalities in the area(s) of fine motor, visual motor, oral motor, or self help skills. In addition to OT assessment, current student information must indicate one of the following abilities:

(a). an ability to improve motor functioning with occupational therapy intervention;

(b). an ability to maintain motor functioning with therapeutic intervention (if the student maintains motor functioning without therapeutic intervention, OT would not be required in the educational setting); or

(c). an ability to slow the rate of regression of motor functioning with therapeutic intervention (if the student has a progressive disorder).

iii. Sensorimotor. According to clinical behavior observation and/or an appropriate assessment instrument, the student exhibits an inability to integrate sensory stimulus effectively, affecting his or her capacity to perform functional activities within the educational setting. These activities might include abnormalities in the area of fine motor, visual motor, oral motor, self-help or sensory processing (sensory awareness, motor planning and organization of adaptive responses). In addition to OT assessment, current student information must indicate an ability to improve functional activity performance through OT intervention.

C. Procedures for Evaluation

1. The assessment shall be conducted by a licensed occupational therapist and shall include at a minimum the following procedures:

a. a review of available medical and educational information, environmental concerns, anecdotal records and observation of motor skills which document the specific concerns causing the referral;

b. an assessment of motor abilities.

2. For students ages 6 through 21, the assessment should be conducted in the educational environment.

3. The occupational therapist's assessment should be designed to answer the questions listed below.

a. Does this problem interfere with the student's ability to benefit from his or her educational program?

b. Is there a likely potential for change in the student's educational functioning if he/she receives therapeutic intervention?

4. The provision of services shall be determined at the IEP Team meeting, using the input of the occupational therapist and the results and recommendations of the therapy assessment. The continuation of services will be determined at the annual IEP review using input from the therapist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:920 (May 2009), effective July 1, 2009.

§1505. Orientation and Mobility

A. Definition. *Orientation and Mobility* means services provided to blind or visually impaired students by a university or agency trained and certified professional to enable those students to attain systematic orientation to and safe movement within their environment in school, home and community. These include teaching students appropriate skills:

1. spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

2. use of the long cane as a tool to supplement visual travel skills or as a tool to safely negotiate the environment for students with no available travel vision;

3. the understanding and use of one's remaining vision and distance low vision aids;

4. other concepts, techniques, and tools.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b must be met:

a. the student must be classified and eligible under federal or state law as an individual with a visual impairment; and

b. there is documented evidence that orientation and mobility services are required to enable the student to benefit from special education.

C. Procedures for Evaluation. The assessment shall be conducted by an orientation and mobility instructor recognized by the state Department of Education. The assessment shall include the following information:

1. an assessment of the student's ability to travel safely and efficiently in a variety of environments and situations with or without the use of special mobility devices and visual aids;

2. a listing of the student's observed strengths and weaknesses in the area of travel safety and mobility skills;

3. recommendations concerning the student's demonstrated need for formal orientation and mobility training within the specific areas. These recommendations should be addressed by the IEP Team in planning the student's educational program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:921 (May 2009), effective July 1, 2009.

§1507. Physical Therapy

A. Definition. *Physical Therapy* includes the following services:

1. evaluating students with disabilities by performing and interpreting tests and measurements and/or clinical observations of neurophysiological, musculoskeletal, cardiovascular, respiratory, and sensorimotor functions;

2. planning and implementing treatment strategies for students based on evaluation findings;

3. improving, maintaining and/or slowing the rate of regression of the motor functions of a student to enable him/her to function in his educational environment; and

4. administering and supervising therapeutic management of students with disabilities, recommending equipment and providing training to parents and educational personnel.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b below must be met.

a. The student is classified and eligible for a special education program. There is documented evidence that physical therapy is required to assist the student to benefit from special education.

b. The student demonstrates gross motor impairment in either the Developmental or Motor Function category.

2. Developmental—Students (excluding those with neurophysiological impairments) who demonstrate a gross motor delay are as follows:

a. students with disabilities ages 3 years 0 months-5 years 6 months. Students who demonstrate a gross motor delay of 6 months or more below level of functional abilities as measured by an appropriate assessment instrument. Functional abilities are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and fine motor.

b. Students with disabilities ages 5 years 7 months-9 years 11 months. Students who demonstrate a gross motor delay of 12 months or more below level of functional abilities as measured by an appropriate assessment instrument. Functional abilities are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and fine motor.

c. Students with disabilities ages 10 years 0 months-21 years. Students who demonstrate a gross motor delay of 18 months or more below level of functional

abilities as measured by an appropriate assessment instrument. Functional abilities are defined as the student's overall educational performance in the areas of cognition, communication, social, self help, and fine motor.

3. Motor Function. According to clinical and/or behavioral observations—which may include but are not limited to available current medical information, medical history and/or progress reports from previous therapeutic intervention--the student exhibits neurophysiological, orthopedic, cardiovascular, respiratory, or sensorimotor limitation that affect his or her gross motor functioning in the educational setting.

a. In addition to PT assessment, current student information must indicate one of the following:

i. an ability to improve motor functioning with physical therapy intervention;

ii. an ability to maintain motor functioning with therapeutic intervention (if the student maintains motor functioning without therapeutic intervention, PT would not be required in the educational setting);

iii. an ability to slow the rate of regression of motor function with therapeutic intervention (if the student has a progressive disorder).

C. Procedures for Evaluation

1. The assessment shall be conducted by a licensed physical therapist and shall include at a minimum the following procedures:

a. a review of available medical and educational information, environmental concerns, anecdotal records and observation of motor skills that document the specific concerns causing the referral:

b. an assessment of gross motor abilities:

i. for students' ages 6-21, the assessment should be conducted in the educational environment.

2. The physical therapy assessment shall be designed to answer the following questions.

a. Does this problem interfere with the student's ability to benefit from his or her educational program?

b. Is there a potential for change in the student's educational functioning if he/she receives therapeutic intervention?

3. The provision of services shall be determined at the IEP Team meeting using the input of the therapist and the results and recommendations of the therapy assessment. The continuation of services will be determined at the annual IEP review using input from the therapist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:921 (May 2009), effective July 1, 2009.

§1509. School Health Services and School Nurse Services

A. Definition. *School Health and School Nurse Services* are specially designed for a student who has a disability (defined under federal and state statutes), having a special health need, and who is unable to participate in his or her educational program without the use of such health services, which may include, among others, health treatments, technology, and/or management.

1. The school health services referred to in this Section are those determined through a health assessment during the evaluation process.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a, b, and c below must be met.

a. The student must be classified and eligible, under federal or state law, as an individual with a disability.

b. There is documented evidence that special health services are required within the educational setting to enable the student to benefit from the special education program.

c. A prescription from a physician or dentist licensed to practice in Louisiana or adjacent state prescribes the health treatment, technology, and/or health management that the student must have in order to function within the educational environment; or there is a documented need for a modification of his or her activities of daily living.

C. Procedures for Evaluation. When there is evidence of the need for health technology, treatment and/or management, the assessment of a student by a school nurse or other qualified personnel shall include at a minimum the following procedures:

1. an assessment of the student's health status conducted in the educational setting;

2. an analysis and interpretation of the special health service needs, health status, stability, complexity of the service, predictability of the service outcome, and risks that may be involved with improperly performed services;

3. the provision of services through the development of the Individualized Health Plan will be determined at the IEP Team meeting, using the input from the school nurse or other qualified personnel and the results and recommendations of the health assessment. The continuation of services will be determined at the annual IEP review using input from the school nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:922 (May 2009), effective July 1, 2009.

§1511. School Psychological Services

A. Definition. *School Psychological Services* include but are not limited to:

1. administering psychological and educational tests, and other assessment procedures;

2. interpreting assessment results;

3. obtaining, integrating, and interpreting information about student behavior and conditions relating to learning (which may also include assisting in the development of academic intervention strategies, progress monitoring, evaluating intervention and service delivery outcomes, conducting functional behavior assessments, and conducting program evaluations);

4. consulting with other staff members in planning school programs to meet the special educational needs of students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

5. planning and managing a program of psychological services, including psychological counseling for students and parents (which may also include implementing and/or monitoring interventions, conducting social skills training, anger management/conflict resolution training, study skills training, substance abuse prevention, crisis prevention and intervention, parent skills training, and coordinating services with other community agencies.); and

6. assisting in developing positive behavioral intervention strategies.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b below shall be met.

a. The student is classified and eligible for special education services.

b. There is documented, observable and measurable evidence that school psychological services are necessary for the student to benefit from special education.

C. Procedures for Evaluation

1. The assessment shall be conducted by a certified school psychologist and shall include at a minimum the following procedures:

a. a review, analysis and determination of the appropriateness of evidence documenting the specific referral concern(s);

b. a systematic observation in the setting(s) in which the concern is manifested; and

c. any additional procedures judged necessary to determine if the area of concern interferes with the student's ability to benefit from his or her educational program.

2. The assessment should be designed to provide recommendations for interventions, strategies and/or services necessary to improve the student's educational performance. Such recommendations should take into account the diverse activities involving direct and indirect service provision that comprise the delivery system described in Subsection A above. These activities complement one another and therefore are most accurately viewed as being integrated and coordinated rather than discrete services. The provision of services shall be determined at the IEP Team meeting, using the results and recommendations of the assessment. The continuation of services will be determined at the annual IEP review using input from the school psychologist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:922 (May 2009), effective July 1, 2009.

§1513. School Social Work Services

A. Definition. *Social Work Services* in schools include but are not limited to:

1. preparing a social or developmental history on a student with a disability;

2. providing group and individual counseling with the student and the family. (This may include linking them to community resources, helping them to actively participate in the student's educational process, and providing crisis intervention services in the event of a death, illness, or community trauma. The school social worker shall maintain adequate safeguards for the privacy and confidentiality of information, and maintain data that is relevant to planning management and evaluation of school social work services.);

3. working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school. (The school social worker will advocate for services to be provided in the context of multicultural understanding and competence, as well as work collaboratively as a part of an interdisciplinary team that will enhance the student's academic performance.);

4. mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program; and

5. assisting in developing positive behavioral intervention strategies to address behaviors of concern that will enhance the student's ability to benefit from his or her educational experience.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a and b below must be met.

a. The student is classified and eligible for special education services.

b. There is documented, observable and measurable evidence that school social work services are necessary for the student to benefit from special education.

C. Procedures for Evaluation

1. The assessment shall be conducted by a qualified school social worker and shall include the supporting documentation of the psycho-social stressors (see Appendix) being experienced by the student and/or his family and will include at a minimum the following procedures:

a. a review, analysis and determination of the appropriateness of evidence documenting the specific referral concern;

b. a family interview;

c. an interview with the student;

d. interview(s) with the students teacher(s); and

e. review of available mental health and/or health records.

2. The assessment should be designed to provide recommendations for interventions, strategies and/or services necessary to improve the student's educational performance. Such recommendations should take into account the diverse activities involving direct and indirect service provision that comprise the delivery system described in Subsection A above. These activities complement one another and therefore are most accurately viewed as being integrated and coordinated rather than discrete services. The provision of services shall be determined at the IEP Team meeting, using the results and recommendations of the assessment. The continuation of services will be determined at the annual IEP review using input from the school social worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:923 (May 2009), effective July 1, 2009.

§1515. Speech-Language Pathology Services

A. Definition. *Speech/Language Pathology Services* include:

1. identification of students with speech or language impairments;

2. diagnosis and appraisal of specific speech or language impairments;

3. referral for medical or other professional attention necessary for the habilitation of speech or language impairments, as appropriate;

4. provision of speech and language services for the habilitation of communication or prevention of communication impairments;

5. assessment and interventions for augmentative/alternative communication; and

6. counseling and guidance of parents, students, and teachers regarding speech and language impairments.

B. Criteria for Eligibility

1. Evidence of criteria listed in Subparagraphs a, b, and c below must be met.

a. The student is classified as a student having a disability other than Speech or Language Impairment.

b. The student meets the criteria for eligibility for Speech or Language Impairment.

c. There is documented evidence that speech/language pathology services are required to assist the student to benefit from the special education services.

2. Non-verbal students with disabilities who have augmentative/alternative communication needs may not be denied speech/language pathology services as a related service because of an inability to evaluate using traditional methods.

C. Procedures for Evaluation

1. The assessment shall be conducted by following the procedures for evaluation under Speech or Language Impairment.

2. The speech/language assessment shall be designed to answer the following questions.

a. Does this problem interfere with the student's ability to benefit from his or her educational program?

b. Is there a likely potential for change in the student's educational functioning if he/she receives therapeutic intervention?

3. The provision of services shall be determined at the IEP Team meeting using the input of the therapist and the results and recommendations of the speech/language assessment. The continuation of services shall be determined at the annual IEP review using input of the therapist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:923 (May 2009), effective July 1, 2009.

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Executive Director

0905#042

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Exemption of VOCs (LAC 33:III.2117)(AQ304ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.2117 (Log #AQ304ft).

This Rule is identical to federal regulations found in 72 FR 2193-2196, No. 11 (January 18, 2007), and 74 FR 3437-3441, No. 12 (January 21, 2009), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule adds the compounds propylene carbonate; dimethyl carbonate; and 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane to the list of compounds that are exempt from the control requirement of LAC 33:III.Chapter 21. These compounds are added on the basis that they make a negligible contribution to tropospheric ozone formation. In addition to the added compounds, several chemical names are added enhanced for clarity. This action is necessary to keep the state list of exempted compounds identical to the federal list of compounds that make a negligible contribution to tropospheric ozone formation. The basis and rationale for this Rule are to mirror the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2117. Exemptions

A. The compounds listed in the following table are exempt from the control requirements of this Chapter.

Exempt Compounds
Acetone
1-chloro-1,1-difluoroethane (HCFC-142b)
chlorodifluoromethane (HCFC-22)
1-chloro-1-fluoroethane (HCFC-151a)
chlorofluoromethane (HCFC-31)
chloropentafluoroethane (CFC-115)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
cyclic, branched, or linear completely fluorinated alkanes
cyclic, branched, or linear completely fluorinated ethers with no unsaturations
cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations
cyclic, branched, or linear completely methylated siloxanes
1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300)
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee)
dichlorodifluoromethane (CFC-12)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
1,1-difluoroethane (HFC-152a)
difluoromethane (HFC-32)
dimethyl carbonate
Ethane
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE–7500)
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200)
ethylfluoride (HFC-161)
1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-$C_3F_7OCH_3$, HFE–7000)
1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea)
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$)
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$)
1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
Methane

Exempt Compounds
methyl acetate
methylene chloride (dichloromethane)
methyl formate ($HCOOCH_3$)
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100)
parachlorobenzotrifluoride (PCBTF)
1,1,1,3,3- pentafluorobutane (HFC-365mfc)
pentafluoroethane (HFC-125)
1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)
1,1,2,2,3-pentafluoropropane (HFC-245ca)
1,1,2,3,3-pentafluoropropane (HFC-245ea)
perchloroethylene (tetrachloroethylene)
sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine
propylene carbonate
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,1,1-trifluoro-2,2-dichloroethane (HCFC-123)
1,1,1-trifluoroethane (HFC-143a)
trifluoromethane (HFC-23)

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 16:118 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:289 (March 1994), LR 21:681 (July 1995), LR 21:1330 (December 1995), repromulgated LR 22:14 (January 1996), amended LR 22:703 (August 1996), LR 23:1661 (December 1997), LR 24:22 (January 1998), LR 25:258 (February 1999), amended by the Office of Environmental Assessment, LR 31:1062 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 35:924 (May 2009).

Herman Robinson, CPM
Executive Counsel

0905#027

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Solid Waste Buffer Zones
(LAC 33:VII.508, 709, 717, and 719)(SW049)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Solid Waste regulations, LAC 33:VII.508, 709, 717, and 719 (Log #SW049).

The regulations covering buffer zone requirements for solid waste non-processing transfer stations and solid waste processing and disposal facilities are amended to clarify who must provide permission for a waiver of buffer zone requirements. In April 2008, Rule SW046 was promulgated in an attempt to clarify the applicability of a condition requiring adjoining landowners to sign an affidavit waiving the subject buffer zone requirements for various solid waste management facilities. However, the wording could be improperly interpreted to suggest that all landowners were required to sign for the reduction in buffer zone, including owners of land at which the regulatory buffer zone was met. This Rule clarifies this language. The basis and rationale for this Rule are to protect the rights of all landowners having an ownership interest in property where a proposed facility will not comply with regulatory buffer standards. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 1. Solid Waste Regulations

Chapter 5. Solid Waste Management System
Subchapter A. General Standards for Nonpermitted Facilities
§508. Standards Governing Non-Processing Transfer Stations for Solid Waste

A. - A.4. …

B. New facilities in which construction has commenced after June 20, 2007, shall comply with a buffer zone requirement of not less than 200 feet between the facility and the property line. Facilities transferring only nonputrescible waste shall comply with a buffer zone requirement of not less than 50 feet between the facility and the property line. A reduction in the buffer zone requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 200 feet (or 50 feet, if applicable) from the facility. The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. The affidavit(s) shall be maintained with the records of the facility. No storage of solid waste shall occur within a facility's buffer zone.

C. - M. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1034 (June 2007), amended LR 33:2142 (October 2007), LR 34:613 (April 2008), LR 35:925 (May 2009).

Chapter 7. Solid Waste Standards
Subchapter A. Landfills, Surface Impoundments, Landfarms
§709. Standards Governing Type I and II Solid Waste Disposal Facilities

A. - B.2.d. …

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 200 feet from the facility. The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the

administrative authority for areas of landfills that have been closed in accordance with these regulations and for existing facilities.

B.3.b. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1315 (October 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2490 (October 2005), LR 33:1045 (June 2007), LR 34:613 (April 2008), LR 35:925 (May 2009).

Subchapter B. Solid Waste Processors

§717. Standards Governing All Type I-A and II-A Solid Waste Processors

A. - B.2.d. …

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 200 feet from the facility. The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of processing facilities that have been closed in accordance with these regulations and for existing facilities.

B.3.b. - I.3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2526, 2610 (November 2000), repromulgated LR 27:704 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2494 (October 2005), LR 33:1061 (June 2007), LR 33:2148 (October 2007), LR 34:613 (April 2008), LR 35:926 (May 2009).

Subchapter C. Minor Processing and Disposal Facilities

§719. Standards Governing All Type III Processing and Disposal Facilities

A. - B.2.d. …

3. Buffer Zones

a. Buffer zones of not less than 50 feet shall be provided between the facility and the property line. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 50 feet from the facility. The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of woodwaste/construction/demolition-debris landfills that have been closed in accordance with these regulations and for existing facilities. Notwithstanding this Paragraph, Type III air curtain destructors and composting facilities that receive putrescible, residential, or commercial waste shall meet the buffer zone requirements in LAC 33:VII.717.B.3. In addition, air curtain destructors shall maintain at least a 1,000-foot buffer from any dwelling other than a dwelling or structure located on the property on which the burning is conducted (unless the appropriate notarized affidavit waivers are obtained).

B.3.b. - E.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1065 (June 2007), LR 33:2149 (October 2007), LR 34:613 (April 2008), LR 35:926 (May 2009).

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0905#028

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Standards for the Use or Disposal of
Sewage Sludge and Biosolids
(LAC 33:IX.7301, 7303, 7305, 7307,
7309, 7313, and 7395)(WQ076)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX. 7301, 7303, 7305, 7307, 7309, 7313, and 7395 (Log #WQ076).

This rule implements Act 56 of the 2008 Regular Session of the Louisiana Legislature, which transferred the registration program for haulers of domestic septage from the Department of Health and Hospitals to the Department of Environmental Quality effective July 1, 2009. These regulations supercede the regulations in LAC 51:XIII.901 on this subject. The transportation requirements contain standards for vehicles that are utilized for the transportation of sewage sludge. Once promulgated, the vehicle standards will become part of the Sewage Sludge and Biosolids Use or Disposal Permits. This rule includes transportation requirements to allow for the proper regulation of sewage sludge haulers and registration of domestic septage haulers, removes the Exceptional Quality option for closure of sanitary wastewater treatment facilities in order not to be in conflict with EPA treatment requirements for Exceptional Quality (EPA Class A) pathogen standards, removes unnecessary post-closure requirements for sewage sludge treatment facilities, changes or modifies nutrient sampling/reporting and labeling requirements carried over from the Solid Waste regulations allowing language to parallel EPA requirements, adds requirements to post certain

signs at all Class B land application sites as part of the site restrictions, and makes a major revision to the financial assurance requirements. Additionally, wording is rearranged and typographical errors corrected to provide for better readability and clarification of the regulations. The removal of the Exceptional Quality certification option for closure of facilities that treat sanitary wastewater or sewage sludge, as well as the other changes in this rule, will not take effect until the date of final promulgation of the rule. The basis and rationale for this rule are to provide for the proper regulation of sewage sludge and biosolids activities for better protection of human health and the environment. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
Subpart 3. Louisiana Sewage Sludge and Biosolids Program
Chapter 73. Standards for the Use or Disposal of Sewage Sludge and Biosolids
Subchapter A. Program Requirements
§7301. General Provisions

A. - A.1.b. …

i. general requirements and other requirements for bulk biosolids, general management practices and other management practices for bulk biosolids, pollutant limits, pathogen and vector attraction reduction requirements, and operational standards;

ii. sampling and monitoring requirements, recordkeeping and reporting requirements, specific exclusions, and prohibitions and restrictions regarding the use and disposal of sewage sludge and biosolids;

iii. the siting, operation, and financial assurance requirements for commercial preparers of sewage sludge or land appliers of biosolids; and

iv. requirements and standards for transporters and vehicles utilized for the transporting of sewage sludge.

1.c. - 2.b.iii. …

B. General Definitions. The following terms used in this Chapter shall have the meanings listed below, unless the context clearly indicates otherwise, or the term is specifically redefined in a particular Section.

* * *

Commercial Preparer of Sewage Sludge—any person who prepares sewage sludge for monetary profit or other financial consideration and either the person is not the generator of the sewage sludge or the sewage sludge was obtained from a facility or facilities not owned by or associated with the person.

* * *

Owner or Operator—the owner or operator of any facility or activity subject to these regulations.

* * *

Person—any individual, municipality, public or private corporation, partnership, firm, the United States Government and any agent or subdivision thereof, or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, the state of Louisiana, political subdivisions of the state, commissions, and interstate bodies.

* * *

Transporter of Sewage Sludge—a person who pumps or moves sewage sludge off-site by means of land-based vehicles, barges, ships, rails, pipelines, or other modes of transportation. For oxidation ponds/lagoons/surface impoundments, this includes the removal of the sewage sludge from the oxidation ponds/lagoons/surface impoundments to the levees surrounding the oxidation ponds/lagoons/surface impoundments.

* * *

C. Compliance Period

1. – 3.b.iii. …

D. Permits and Permitting Requirements

1. Except as exempted in Paragraph D.2 of this Section, no person shall prepare sewage sludge or biosolids, dispose of sewage sludge in a permitted landfill, apply biosolids to the land, or own or operate a sewage sludge incinerator without first obtaining a permit in accordance with the deadlines set forth in Subparagraphs D.1.a-c of this Section. The permit shall identify and regulate the specific use or disposal practice, the storage, the treatment, and the appropriate transportation requirements of sewage sludge described in the permit application.

a. - b.v. …

c. At least 180 days prior to the expiration of a permit issued under these regulations, the owner/operator of the facility or the land applier shall submit an application for permit issuance under this Chapter if the owner/operator or land applier intends to continue operations after that date.

1.d. - 3.b. …

4. Closure requirements for sanitary wastewater treatment facilities that were utilized for the preparation of sewage sludge or for sewage sludge disposal ponds/lagoons/surface impoundments that must comply with the requirements of Subparagraph C.3.b of this Section, are as follows.

a. The liquid portion must be removed in a manner that meets the requirements of LAC 33:IX.Chapters 23-71.

b. After removal of the liquid, the sewage sludge shall be used or disposed through one of the options in Clause D.4.b.i or ii of this Section as follows:

i. the submittal of a closure plan to the Office of Environmental Services for the total removal of the sewage sludge and subsequent disposal of the sewage sludge in a permitted landfill. Approval or disapproval of the closure plan shall be rendered by the Office of Environmental Services after receipt and review of the plan. The closure plan shall include the following:

(a). the name, mailing address, physical address, and contact person of the facility that is proposed for closure;

(b). an aerial photograph showing the location of the facility that is proposed for closure;

(c). the approximate amount of sewage sludge that will be removed and disposed at a permitted landfill;

(d). sampling and analysis for the following parameters:

(i). toxicity characteristics leaching procedure (TCLP);

(ii). liquid paint filter test; and

(iii). any other parameter required by the chosen permitted landfill;

(e). either a schematic drawing or an aerial photograph that indicates where the samples for the parameters in Subclause D.4.b.i.(d) of this Section will be taken in the facility;

(f). the laboratory methods to be utilized for the sampling and analysis of the parameters in Subclause D.4.b.i.(d) of this Section;

(g). the name of the laboratory where the samples for the parameters in Subclause D.4.b.i.(d) of this Section will be analyzed;

(h). the name, location, and contact person of the site where the sewage sludge will be disposed; and

(i). any other information the department may require; or

ii. obtaining approval for a permit for the land application of the sewage sludge as a Class B biosolid by submittal of a Sewage Sludge and Biosolids Use or Disposal Permit application to the Office of Environmental Services utilizing the application form that can be accessed on the department's website or by contacting the Office of Environmental Services.

c. Upon completion of the use or disposal option selected in either Clause D.4.b.i or ii of this Section, if the facility is a pond/lagoon/surface impoundment, the levees shall be broken and leveled and the pond/lagoon/surface impoundment shall be filled with soil that includes a minimum of at least 6 inches of topsoil to support vegetative growth.

D.5. – E.2. …

3. The person who prepares sewage sludge that is disposed in a landfill shall provide the following to the Office of Environmental Services on an annual basis on or before February 19 of each year, or at a frequency designated in the permit:

a. – b. …

F. Registration Requirements and Standards for Transporters of Sewage Sludge Who Are Not Required to Obtain a Permit Under LAC 33:IX.7301.D.1 and Standards for Vehicles Used in the Transport of Sewage Sludge

1. Registration Requirements

a. A transporter of sewage sludge and/or grease mixed with sewage sludge who is not required to obtain a permit under Paragraph D.1 of this Section shall not transport any sewage sludge and/or grease mixed with sewage sludge without first registering such activity with the Office of Environmental Services in writing and paying all associated fees.

b. Registration shall be through a form obtained from the Office of Environmental Services or through the department's website. All the information required by the form shall be provided. The method of payment of fees shall be in accordance with LAC 33:IX.1309.

c. The registration period shall be for one state fiscal year period of July 1 to June 30. All registrations shall expire on June 30 of each year. If a person wishes to continue the operation of transporting sewage sludge, he or she shall apply for re-registration to the Office of Environmental Services at least 60 days prior to June 30 of each year.

d. The fee for registration shall be an annual fee of $100.

e. The Office of Environmental Services shall be notified prior to any modification to the information submitted for registration, including, but not limited to, the following:

i. the removal and/or addition of information about the facility to which the sewage sludge is being transported; and

ii. the removal and/or addition of a vehicle that will be utilized for the transporting of sewage sludge.

2. Standards for All Transporters of Sewage Sludge

a. All transporters of sewage sludge and/or grease mixed with sewage sludge shall transport the sewage sludge and/or grease mixed with sewage sludge only to a facility permitted to receive sewage sludge or mixtures thereof, and shall maintain a daily log or record of activities containing the following information regarding the sewage sludge and/or grease mixed with sewage sludge:

i. the date the transported material was obtained, pumped, or removed;

ii. the origin or source of the material;

iii. the volume of material generated at each site;

iv. the transfer and/or disposal site; and

v. the total amount of material that was transported or disposed.

b. Standards Applicable to Vehicles Used to Transport Sewage Sludge

i. The bodies of vehicles transporting sewage sludge must be covered at all times, except during loading and unloading, in a manner that prevents rain from reaching the sewage sludge, inhibits access by disease vectors, prevents the sewage sludge from falling or blowing from the vehicle, minimizes escape of odors, and does not create a nuisance.

ii. The bodies of vehicles that are utilized to transport liquefied sewage sludge or a sewage sludge that is capable of producing a leachate shall be constructed and/or enclosed with an appropriate material that will completely prevent the leakage or spillage of the liquid.

iii. The exterior and interior of the body of a vehicle that is transporting sewage sludge shall be washed down, at a designated washdown area, as often as needed to ensure against accumulation of sewage sludge or biosolids, and for the prevention of odors and disease vector attraction.

iv. The vehicle washdown area shall be designed, constructed, and operated to prevent groundwater contamination and stormwater run-on and runoff.

v. All water and leachate generated at the designated washdown area shall be contained and discharged in accordance with all applicable state and federal regulations.

c. Standards for Sewage Sludge Pipelines and Containment Areas

i. Transfer points, pumping stations, and other facilities with a potential for spillage shall be located above grade, or in watertight compartments, and shall be in containment areas constructed to hold the maximum potential spill.

ii. Containment areas shall consist of a base and dikes constructed of concrete, compacted clay, or other impervious materials. All joints must be sealed.

d. Other Standards. The administrative authority may provide appropriate standards for transporters of sewage sludge that utilize modes of transportation not covered by Subparagraphs F.2.b and c of this Section.

e. These regulations do not relieve the transporter from the responsibility of complying with other applicable regulations and licensing requirements, including, but not limited to, those of the Louisiana Department of Transportation and Development, and with applicable ordinances governing types, sizes, and weights of vehicles used to transport sewage sludge on roads and streets that must be traveled during the transporting of the sewage sludge and with any other applicable requirements.

G. – I.2.k. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2366 (November 2007), repromulgated LR 34:1028 (June 2008), amended LR 35:927 (May 2009).

§7303. Land Application

A. - D.5.b. …

i. the information required in Clauses L.1.f.i-ix of this Section, and if the biosolids are compost, the information in Clauses L.1.g.i-vi of this Section; and

D.5.b.ii. - I.2. …

J. Recordkeeping

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that prepare sewage sludge shall keep a record of the following for a period of five years:

a. annual production of sewage sludge (i.e., dry tons or dry metric tons);

b. the sewage sludge management practice used;

c. sampling results for hazardous characteristics; and

d. sampling results for PCBs.

2. - 2.e.ii.(b).certification. …

K. Reporting

1. All *Class I sludge management facilities*, as defined in LAC 33:IX.7301.B, that prepare sewage sludge shall submit the information in Paragraph J.1 of this Section to the administrative authority on or before February 19 of each year.

K.2. - L.1.a. …

b. the laboratory analysis for percent dry solids, percent ammonia nitrogen, percent nitrate, percent nitrite, percent nitrogen, percent phosphorus, percent potassium, and percent organic matter and, if the sewage sludge or biosolids underwent or were subjected to any type of alkaline stabilization and/or alkaline treatment, the pH of the sewage sludge or biosolids;

c. – d. …

e. the vector attraction reduction requirement in LAC 33:IX.7309.D.2.a-e that will be utilized;

f. – f.ii. ...

iii. percent nitrogen;

iv. percent ammonia nitrogen;

v. percent phosphorus;

vi. percent potassium;

vii. pH;

viii. the concentration of PCBs in mg/kg of total solids (dry wt.); and

ix. application instructions and a statement that application of the biosolids to the land is prohibited except in accordance with the instructions on the label or information sheet; and

g. in addition to the label requirements in Clauses L.1.f.i-ix of this Section, an example of the label that must accompany all compost sold or given away either in bulk or in a bag or other container, having the following information:

i. soluble salt content;

ii. water holding capacity;

iii. bulk density (lbs/yd^3);

iv. particle size;

v. moisture content; and

vi. percent organic matter content.

2. - 4. …

5. For the term of the permit, the preparer of the biosolids shall conduct continued sampling at a frequency of monitoring indicated in Table 1 of LAC 33:IX.7303.L. The samples shall be analyzed for the parameters specified in Subparagraphs L.1.a-c of this Section, and for the pathogen and vector attraction reduction requirements in Subparagraphs L.1.d and e of this Section, as required by LAC 33:IX.7309.

Table 1 of LAC 33:IX.7303.L	
Frequency of Monitoring—Exceptional Quality Biosolids	
Amount of Biosolids[1] (metric tons per 365-day period)	**Frequency**
Greater than zero but less than 15,000	Once per quarter (four times per year)
Equal to or greater than 15,000	Once per month (12 times per year)
[1]The amount of biosolids sold or given away either in bulk or in a bag or other container.	

6. - 9.b.certification. …

10. The person who prepares Exceptional Quality biosolids shall forward the information required in Paragraph L.9 of this Section to the administrative authority as follows.

a. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.L of once per quarter (four times per year), the reporting periods and the report due dates shall be as specified in Table 2 of LAC 33:IX.7303.L.

Table 2 of LAC 33:IX.7303.L	
Reporting—Exceptional Quality Biosolids	
Monitoring Period[1] (Once per Quarter)	**Report Due Date**
January, February, March	August 28
April, May, June	
July, August, September	February 28
October, November, December	
[1]Separate reports must be submitted for each monitoring period.	

b. For facilities having a frequency of monitoring in Table 1 of LAC 33:IX.7303.L of once per month (12 times per year), the reporting periods and the report due dates shall be as specified in Table 3 of LAC 33:IX.7303.L.

Table 3 of LAC 33:IX.7303.L	
Reporting—Exceptional Quality Biosolids	
Monitoring Period[1] (Once per Month)	Report Due Date
January	May 28
February	
March	
April	August 28
May	
June	
July	November 28
August	
September	
October	February 28
November	
December	
[1]Separate reports must be submitted for each monitoring period.	

M. – N.3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2374 (November 2007), LR 35:929 (May 2009).

§7305. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge

A. – B.2.a.iv. …

b. Fire Protection and Medical Care. All facilities shall have access to required fire protection and medical care with access gates that are wide enough to allow easy access for emergency vehicles, or such services shall be provided internally.

3. Facility Surface Hydrology

3.a. – 5. …

6. Notification of Completion. Within 10 days of completion of the facility or completion of a facility modification, the owner of the facility shall submit to the administrative authority:

a. notification of completion; and

b. a site inspection request.

C. – C.1.a.i. …

ii. The facility operations and maintenance manual shall describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of the preparation process and, if applicable, the land application process. At a minimum, the manual shall address the following:

(a). preparation facility site and project description;

(b). regulatory interfaces;

(c). preparation process management plan;

(d). odor management plan;

(e). methods utilized for managing the biological conditions during the composting procedure (i.e., carbon/nitrogen ratio, moisture, O_2 levels, free air space), when composting is utilized as a preparation process;

(f). – (j). …

(k). monitoring, sampling, recordkeeping, and reporting procedures;

(l). – (m). …

(n). pollutant reduction plan (for land application of biosolids);

(o). pathogen treatment plan (for land application of biosolids);

(p). vector attraction reduction plan (for land application of biosolids);

(q). site application records (for land application of biosolids);

(r). description of how the land application management practices are met (for land application of biosolids);

(s). description of how the land application site and soil restrictions are met (for land application of biosolids);

(t). operator certification; and

(u). administration of the operations and maintenance manual.

a.iii. – b.vii.(b). …

viii. Receiving and Monitoring Sewage Sludge, Other Materials, Feedstock, or Supplements Used

(a). Any facility used to prepare sewage sludge shall be equipped with a device or method to determine quantity (by wet-weight tonnage), sources (whether the sewage sludge, other materials, feedstock, or supplements to be mixed with the sewage were generated in-state or out-of-state), and types of other materials, feedstock, or supplements. The facility shall also be equipped with a device or method to control entry of sewage sludge, other materials, feedstock, or supplements coming on-site and prevent entry of unrecorded or unauthorized deliverables (i.e., hazardous, industrial, unauthorized, or unpermitted solid waste).

(b). Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to, sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

(c). Any facility used to prepare sewage sludge shall be equipped with a central control and recordkeeping system for tabulating the information required in Subclause C.1.b.viii.(a) of this Section.

ix. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

2. Additional Operational Requirements for Composters

a. The composting procedure shall begin within 24 hours of receipt of the material to be prepared as a compost.

b. Adequate covers shall be provided for windrows during the curing stage to protect the compost from rainwater.

c. Covered areas shall be provided where feedstock is prepared.

d. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed of in an approved facility.

e. Composted sewage sludge shall be used, sold, or disposed of at a permitted disposal facility within 36 months of completion of the composting process.

f. The final composted product shall be stable and mature. In addition to meeting the applicable time and

temperature for pathogen and vector attraction reduction requirements, proof of the stability and maturity of the final composted product shall be provided by utilizing the applicable methods in the source referenced in LAC 33:IX.7301.I.2.j.

3. Facility Closure Requirements

a. - c.i. ...

ii. If contamination exists, in order to satisfy the closure requirements of this Section the permit holder must utilize the Risk Evaluation/Corrective Action Program (RECAP) standards in accordance with LAC 33:I.Chapter 13 to the fullest extent possible. Any residual contamination must meet the RECAP standards approved by the administrative authority, including any residual contamination in the underlying and surrounding soils and/or groundwater. Otherwise, the permit holder shall enter into a cooperative agreement with the administrative authority to perform corrective action (i.e., additional closure activities including site investigation, remedial investigation, a corrective action study, and/or remedial action).

d. Closure Inspection. After the closure requirements have been met, the permit holder shall file a request for a closure inspection with the Office of Environmental Services.

e. Release of Closure Funds. After the closure inspection and subsequent determination by the administrative authority that a facility has completed closure, the administrative authority shall release the closure fund to the permit holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:794 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2382 (November 2007), LR 35:930 (May 2009).

§7307. Financial Assurance Requirements for Commercial Preparers of Sewage Sludge and Commercial Land Appliers of Biosolids

A. Purpose and Applicability. The purpose of this Section is to establish the financial assurance (the word *security* may be used interchangeably with *assurance*) requirements for:

1. commercial preparers of sewage sludge for meeting the requirements applicable during operation and closure; and

2. commercial land appliers of biosolids during operation and closure.

B. This Section shall be applicable to the entities listed in Subsection A of this Section when the following actions are taken by the department:

1. issuance of a new permit;

2. renewal of an existing permit;

3. modification of an existing permit; and

4. transfer of an existing permit to a different permittee.

C. Financial assurance mechanisms and instruments shall be submitted as follows.

1. The permit holder must submit to the administrative authority for approval a financial assurance mechanism drafted in accordance with this Section to cover the cost estimate for the closure requirements in LAC 33:IX.7305.C.3. The financial assurance mechanism shall be submitted with the application under separate cover and be approved by the administrative authority as part of the permit issuance process. The financial assurance mechanism must be approved by the administrative authority prior to the permit holder's operating the facility.

2. All instruments used in this Section shall be submitted in the following manner.

a. The instrument shall be addressed to the Office of Environmental Services.

b. The original instrument shall be submitted.

c. The instrument shall be accompanied with a cover letter identifying the facility, agency interest number, and any other identifying information deemed necessary by the administrative authority.

D. Commercial preparers of sewage sludge and commercial land appliers of biosolids, hereinafter referred to in this Section as *affected persons*, have the following liability insurance responsibilities while their facilities are in operation.

1. All affected persons shall maintain liability insurance, or its equivalent, for sudden and accidental occurrences in the amount of $1 million per occurrence and $1 million annual aggregate, per site, exclusive of legal defense costs, for claims arising from injury to persons or property, owing to the operation of the site. Commercial preparers of sewage sludge and commercial land appliers of biosolids are exempt from these requirements if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial assurance may be established by any one or a combination of the following mechanisms.

a. Insurance. Evidence of liability insurance may consist of either a signed duplicate original of a liability endorsement in favor of the affected person, or a certificate of insurance. The wording of a liability endorsement shall be identical to the wording in LAC 33:IX.7395.Appendix A, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The wording of a certificate of insurance shall be identical to the wording in LAC 33:IX.7395.Appendix B, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. All liability endorsements and certificates of insurance must include:

i. a statement of coverage relative to environmental risks;

ii. a statement of all exclusions to the policy; and

iii. a certification by the insurer that the insurance afforded with respect to such sudden accidental occurrences is subject to all of the terms and conditions of the policy, provided, however, that any provisions of the policy inconsistent with Subclauses D.1.a.iii.(a)-(f) of this Section are amended to conform with said Subclauses:

(a). bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;

(b). the insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which

coverage is demonstrated as specified in Subparagraphs D.1.b-d of this Section;

(c). whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements;

(d). cancellation of the policy, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the Office of Environmental Services;

(e). any other termination of the policy will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the Office of Environmental Services; and

(f). the insurer is admitted, authorized, or eligible to conduct insurance business in the state of Louisiana.

b. Letter of Credit. An affected person may satisfy the requirements of this Subsection by obtaining an irrevocable letter of credit that conforms to all of the following requirements and submitting the letter to the administrative authority.

i. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

ii. An affected person who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund agreement shall be identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

iii. The letter of credit must be accompanied by a letter from the affected person referring to the letter of credit by number, name of issuing institution, and date, and providing the following information:

(a). the agency interest number;

(b). the site name, if applicable;

(c). the facility name;

(d). the facility permit number; and

(e). the amount of funds assured for liability coverage of the facility by the letter of credit.

iv. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the affected person and the administrative authority by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the affected person and the Office of Environmental Services receive the notice, as evidenced by the return receipts.

v. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395.Appendix C, except that the instructions in brackets are to be replaced with the relevant information (i.e., type of affected person), and the brackets deleted.

c. Financial Test

i. To meet this test, the affected person or parent corporation (corporate guarantor) of the affected person must submit to the Office of Environmental Services the documents required by Subparagraph E.2.h of this Section demonstrating that the requirements of Subparagraph E.2.h of this Section have been met. Use of the financial test may be disallowed on the basis of the accessibility of the assets of the affected person or parent corporation (corporate guarantor). If the affected person or parent corporation is using the financial test to demonstrate liability coverage and closure, only one letter from the chief financial officer is required.

ii. The assets of the parent corporation of the affected person shall not be used to determine whether the affected person satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as authorized in Subparagraph D.1.d of this Section.

iii. The wording of the financial test shall be as specified in Clause E.2.h.iv of this Section.

d. Corporate Guarantee

i. An affected person may meet the requirements of Paragraph D.1 of this Section for liability coverage by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must demonstrate to the administrative authority that the guarantor meets the requirements in this Subsection and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Clauses E.2.h.ii and iv of this Section. The terms of the corporate guarantee must be in an authentic act signed and sworn to by an authorized officer of the corporation before a notary public and must provide that:

(a). the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subparagraph E.2.h of this Section;

(b). the guarantor is the parent corporation of the affected person to be covered by the guarantee, and the guarantee extends to certain facilities;

(c). if the affected person fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences (or both as the case may be), arising from the operation of facilities covered by the corporate guarantee, or fails to pay an amount agreed to in settlement of the claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage;

(d). the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days, by certified mail, notice to the Office of Environmental Services and to the affected person, that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the affected person, and that within 120 days after the end of said fiscal year the guarantor shall establish such financial assurance, unless the affected person has done so;

(e). the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

(f). the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he or she is disallowed from continuing as a guarantor of closure, he or she shall establish alternate financial assurance as specified in this Subsection in the name of the affected person unless the affected person has done so;

(g). the guarantor agrees to remain bound under the guarantee notwithstanding any or all of the following: amendment or modification of the permit, or any other modification or alteration of an obligation of the affected person in accordance with these regulations;

(h). the guarantor agrees to remain bound under the guarantee for as long as the affected person must comply with the applicable financial assurance requirements of Paragraph E.2 of this Section for the facilities covered by the guarantee, except that the guarantor may cancel this guarantee by sending notice by certified mail to the administrative authority and the affected person. Such a cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the affected person, as evidenced by the return receipts;

(i). the guarantor agrees that if the affected person fails to provide alternate financial assurance, as specified in this Subsection, and obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the affected person;

(j). the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the affected person. The guarantor also expressly waives notice of amendments or modifications of the facility permit; and

(k). the wording of the corporate guarantee shall be as specified in Clause E.2.h.ix of this Section.

ii. A corporate guarantee may be used to satisfy the requirements of this Section only if the attorney general(s) or insurance commissioner(s) of the state in which the guarantor is incorporated, and the state in which the facility covered by the guarantee is located, has submitted a written statement to the Office of Environmental Services that a corporate guarantee is a legally valid and enforceable obligation in that state.

2. The use of a particular financial assurance mechanism is subject to the approval of the administrative authority.

3. Affected persons must submit evidence of financial assurance in accordance with this Section at least 60 days before the date on which sewage sludge, other materials, feedstock, or supplements are first received for processing.

E. Financial Assurance for Closure for Commercial Preparers of Sewage Sludge and Commercial Land Appliers of Biosolids

1. Commercial preparers of sewage sludge and commercial land appliers of biosolids, hereinafter referred to in this Section as *affected persons*, shall maintain financial assurance in the amount of $25,000 per site for closure if the amount of sewage sludge prepared or the amount of biosolids applied to the land is less than 15,000 metric tons per year. Evidence of this coverage shall be updated annually and provided to the Office of Environmental Services. This financial assurance may be established by any one or a combination of the methods in Subparagraph E.2.b of this Section. If these requirements cannot be met, an alternative financial assurance mechanism shall be submitted for review and approval by the administrative authority. Such an alternative financial assurance mechanism shall not result in a value of financial assurance that is less than the amount provided as a written cost estimate for closure of the facility in the permit application.

2. All affected persons not covered in Paragraph E.1 of this Section shall establish and maintain financial assurance for closure in accordance with LAC 33:IX.7305.C.3, and shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure in accordance with the following requirements.

a. The affected person must have a written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these regulations. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

i. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared, on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business*, or a re-estimation of the closure costs in accordance with Subparagraph E.2.a of this Section. The affected person must revise the cost estimate whenever a change in the closure plan increases or decreases the cost of the closure plan. The affected person must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.

ii. For trust funds, the first payment must be at least equal to the current closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure cost estimate and dividing the result by the number of years remaining in the pay-in period. The initial pay-in period is based on the estimated life of the facility.

b. Financial Assurance Instruments. The financial assurance instrument must be one or a combination of the following: a trust fund, a financial guarantee bond ensuring closure funding, a performance bond, a letter of credit, an insurance policy, or the financial test. The financial

assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria.

i. Except when a financial test, trust fund, or certificate of insurance is used as the financial assurance mechanism, a standby trust fund naming the administrative authority as beneficiary must be established at the time of the creation of the financial assurance mechanism into which the proceeds of such mechanism could be transferred should such funds be necessary for closure of the facility, and a signed copy must be furnished to the administrative authority with the mechanism.

ii. An affected person may use a financial assurance mechanism specified in this Section for more than one facility, if all such facilities are located within the state of Louisiana and are specifically identified in the mechanism.

iii. The amount covered by the financial assurance mechanisms must equal the total of the current closure cost estimate for each facility covered.

iv. When all closure requirements have been satisfactorily completed, the administrative authority shall execute an approval to terminate the financial assurance mechanisms.

c. Trust Funds. An affected person may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally-signed duplicate of the trust agreement to the Office of Environmental Services.

i. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

ii. Trusts must be accomplished in accordance with and subject to the laws of the state of Louisiana. The beneficiary of the trust shall be the administrative authority.

iii. Trust fund earnings may be used to offset required payments into the fund, to pay the fund trustee, or to pay other expenses of the funds, or may be reclaimed by the affected person upon approval of the administrative authority.

iv. The trust agreement must be accompanied by an affidavit certifying the authority of the individual signing the trust on behalf of the affected person.

v. The affected person may accelerate payments into the trust fund or deposit the full amount of the current closure cost estimate at the time the fund is established. The affected person must, however, maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Clause E.2.a.ii of this Section.

vi. If the affected person establishes a trust fund after having used one or more of the alternate instruments specified in this Section, the first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of Clause E.2.a.ii of this Section.

vii. After the pay-in period is completed, whenever the current cost estimate changes, the affected person must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the affected person, within 60 days after the change in the cost estimate, must either deposit an amount into the fund that will make its value at least equal to the amount of the closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

viii. After beginning final closure, an affected person or any other person authorized by the affected person to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and, if so, he or she will instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the affected person is no longer required to maintain financial assurance.

ix. The wording of the trust agreement shall be identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

d. Surety Bonds. An affected person may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

i. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.

ii. The affected person who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

iii. The bond must guarantee that the affected person will:

(a). fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility;

(b). fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued; or

(c). provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided,

within 90 days after receipt by both the affected person and the administrative authority of a notice of cancellation of the bond from the surety.

iv. The terms of the bond must provide that the surety will become liable on the bond obligation when the affected person fails to perform as guaranteed by the bond.

v. The penal sum of the bond must be at least equal to the current closure cost estimate.

vi. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the affected person, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Section to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

vii. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the affected person and to the Office of Environmental Services. Cancellation may not occur, however, before 120 days have elapsed, beginning on the date that both the affected person and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.

viii. The wording of the surety bond guaranteeing payment into a standby trust fund shall be identical to the wording in LAC 33:IX.7395.Appendix E, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

e. Performance Bonds. An affected person may satisfy the requirements of this Subsection by obtaining a surety bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

i. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, and be approved by the administrative authority.

ii. The affected person who uses a surety bond to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust agreement shall be identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

iii. The bond must guarantee that the affected person will:

(a). perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

(b). provide alternate financial assurance, as specified in this Section, and obtain the administrative authority's written approval of the assurance provided, within 90 days after the date both the affected person and the administrative authority receive notice of cancellation of the bond from the surety.

iv. The terms of the bond must provide that the surety will become liable on the bond obligation when the affected person fails to perform as guaranteed by the bond. Following a determination by the administrative authority that the affected person has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

v. The penal sum of the bond must be at least equal to the current closure cost estimate.

vi. Whenever the current closure cost estimate increases to an amount greater than the penal sum, the affected person, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Section. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate after written approval of the administrative authority.

vii. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the affected person and to the Office of Environmental Services. Cancellation may not occur before 120 days have elapsed, beginning on the date that both the affected person and the administrative authority have received the notice of cancellation, as evidenced by the return receipts.

viii. The wording of the performance bond shall be identical to the wording in LAC 33:IX.7395.Appendix F, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

f. Letter of Credit. An affected person may satisfy the requirements of this Subsection by obtaining an irrevocable standby letter of credit that conforms to the following requirements and submitting the letter to the Office of Environmental Services.

i. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

ii. The affected person who uses a letter of credit to satisfy the requirements of this Subsection must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund. The wording of the standby trust fund shall be identical to the wording in LAC 33:IX.7395.Appendix D, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The standby trust agreement shall be accompanied by a formal certification of acknowledgement, as in the example in LAC 33:IX.7395.Appendix D.

iii. The letter of credit must be accompanied by a letter from the affected person referring to the letter of credit by number, issuing institution, and date, and providing the following information:

(a). the agency interest number;

(b). the site name, if applicable;

(c). the facility name;

(d). the facility permit number; and

(e). the amount of funds assured for closure of the facility by the letter of credit.

iv. The letter of credit must be irrevocable and issued for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the affected person and the Office of Environmental Services by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the affected person and the administrative authority have received the notice, as evidenced by the return receipts.

v. The letter of credit must be issued in an amount at least equal to the current closure cost estimate.

vi. Whenever the current cost estimates increase to an amount greater than the amount of the credit, the affected person, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate upon written approval of the administrative authority.

vii. Following a determination by the administrative authority that the affected person has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the administrative authority may draw on the letter of credit.

viii. The wording of the letter of credit shall be identical to the wording in LAC 33:IX.7395.Appendix G, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

g. Insurance. An affected person may satisfy the requirements of this Subsection by obtaining insurance that conforms to the following requirements and submitting a certificate of such insurance to the Office of Environmental Services.

i. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess- or surplus-lines insurer in one or more states, and authorized to transact insurance business in the state of Louisiana.

ii. The insurance policy must be issued for a face amount at least equal to the current closure cost estimate.

iii. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

iv. The insurance policy must guarantee that funds will be available to close the facility. The policy must also guarantee that, once final closure begins, the insurer will be responsible for paying out funds up to an amount equal to the face amount of the policy, upon the direction of the administrative authority, to such party or parties as the administrative authority specifies.

v. After beginning final closure, an affected person or any other person authorized by the affected person to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving such bills, the administrative authority will determine whether the expenditures are in accordance with the closure plan or otherwise justified, and if so, he or she will instruct the insurer to make reimbursement in such amounts as the administrative authority specifies in writing.

vi. The affected person must maintain the policy in full force and effect until the administrative authority consents to termination of the policy by the affected person.

vii. Each policy must contain a provision allowing assignment of the policy to a successor of an affected person. Such assignment may be conditional upon consent of the insurer, provided consent is not unreasonably refused.

viii. The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the affected person and the Office of Environmental Services. Cancellation, termination, or failure to renew may not occur, however, before 120 days have elapsed, beginning on the date that both the administrative authority and the affected person have received the notice of cancellation, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur, and the policy will remain in full force and effect in the event that, on or before the date of expiration:

(a). the administrative authority deems the facility abandoned;

(b). the permit is terminated or revoked or a new permit is denied;

(c). closure is ordered;

(d). the affected person is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(e). the premium due is paid.

ix. Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the affected person, within 60 days after the increase, must either increase the face amount to at least equal to the current closure cost estimate and submit evidence of such increase to the Office of Environmental Services, or obtain other financial assurance as specified in this Subsection to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the administrative authority.

x. The wording of the certificate of insurance shall be identical to the wording in LAC 33:IX.7395.Appendix H, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted.

h. Financial Test. An affected person or a parent corporation of the affected person, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that a financial test as specified in this Subparagraph is met. The assets of the parent corporation of the affected person shall not be used to determine whether the affected person satisfies the financial test, unless the parent corporation has supplied a corporate guarantee as outlined in Subparagraph D.1.d and/or Clause E.2.h.ix of this Section.

i. To pass this test, the affected person or parent corporation of the affected person must meet either of the following criteria:

(a). the affected person or parent corporation of the affected person must have:

(i). tangible net worth of at least six times the sum of the current closure cost estimate to be demonstrated by this test and the amount of liability coverage to be demonstrated by this test;

(ii). tangible net worth of at least $10 million; and

(iii). assets in the United States amounting to either at least 90 percent of its total assets, or at least six times the sum of the current closure cost estimate, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test; or

(b). the affected person or parent corporation of the affected person must have:

(i). a current rating for its most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

(ii). tangible net worth of at least $10 million; and

(iii). assets in the United States amounting to either 90 percent of its total assets or at least six times the sum of the current closure cost estimate, to be demonstrated by this test, and the amount of liability coverage to be demonstrated by this test.

ii. To demonstrate that this test is met, the affected person or parent corporation of the affected person must submit the following three items to the Office of Environmental Services:

(a). a letter signed by the chief financial officer of the affected person or parent corporation demonstrating and certifying the criteria in Clause E.2.h.i of this Section and including the information required by Clause E.2.h.iv of this Section. If the financial test is provided to demonstrate both assurance for closure and liability coverage, a single letter to cover both forms of financial assurance is required;

(b). a copy of the report of the independent certified public accountant (CPA) on the financial statements of the affected person or parent corporation of the affected person for the latest completed fiscal year; and

(c). a special report from the independent CPA to the affected person or parent corporation of the affected person stating that:

(i). the CPA has computed the data specified by the chief financial officer as having been derived from the independently audited, year-end financial statements with the amounts for the latest fiscal year in such financial statements; and

(ii). in connection with that procedure, no matters came to his attention that caused him to believe that the specified data should be adjusted.

iii. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the parent corporation (corporate guarantor) or affected person. The affected person or parent corporation must provide evidence of insurance for the entire amount of required liability coverage, as specified in this Section, within 30 days after notification of disallowance.

iv. The affected person or parent corporation (if a corporate guarantor) of the affected person shall provide to the Office of Environmental Services a letter from the chief financial officer, the wording of which shall be identical to the wording in LAC 33:IX.7395.Appendix I, except that the instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The letter shall certify the following information:

(a). a list of facilities, whether in the state of Louisiana or not, owned or operated by the affected person of the facility, for which financial assurance for liability coverage is demonstrated through the use of financial tests, including the amount of liability coverage;

(b). a list of facilities, whether in the state of Louisiana or not, owned or operated by the affected person, for which financial assurance for the closure is demonstrated through the use of a financial test or self-insurance by the affected person, including the cost estimates for the closure of each facility;

(c). a list of the facilities, whether in the state of Louisiana or not, owned or operated by any subsidiaries of the parent corporation for which financial assurance for closure is demonstrated through the financial test or through use of self-insurance, including the current cost estimate for the closure for each facility and the amount of annual aggregate liability coverage for each facility; and

(d). a list of facilities, whether in the state of Louisiana or not, for which financial assurance for closure is not demonstrated through the financial test, self-insurance, or other substantially equivalent state instruments, including the estimated cost of closure of such facilities.

v. For the purposes of this Subsection the phrase *tangible net worth* shall mean the tangible assets that remain after liabilities have been deducted; such assets would not include intangibles such as good will and rights to patents or royalties.

vi. The phrase *current closure cost estimate*, as used in Clause E.2.h.i of this Section, includes the cost estimate required to be shown in Division E.2.h.i.(a).(i) of this Section.

vii. After initial submission of the items specified in Clause E.2.h.ii of this Section, the affected person or parent corporation of the affected person must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This

information must include all three items specified in Clause E.2.h.ii of this Section.

viii. The administrative authority may, on the basis of a reasonable belief that the affected person or parent corporation of the affected person may no longer meet the requirements of this Subparagraph, require reports of financial condition at any time in addition to those specified in Clause E.2.h.ii of this Section. If the administrative authority finds, on the basis of such reports or other information, that the affected person or parent corporation of affected person no longer meets the requirements of Clause E.2.h.ii of this Section, the affected person or parent corporation of the affected person must provide alternate financial assurance as specified in this Subsection within 30 days after notification of such a finding.

ix. An affected person may meet the requirements of this Subparagraph for closure by obtaining a written guarantee, hereafter referred to as a *corporate guarantee*. The guarantor must be the parent corporation of the affected person. The guarantor must meet the requirements and submit all information required for affected persons in Clauses E.2.h.i-viii of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Clauses E.2.h.ii and iv of this Section. The wording of the corporate guarantee must be identical to the wording in LAC 33:IX.7395.Appendix J, except that instructions in brackets are to be replaced with the relevant information, and the brackets deleted. The terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized officer of the corporation before a notary public and must provide that:

(a). the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Clauses E.2.h.ii and iv of this Section;

(b). the guarantor is the parent corporation of the affected person of the facilities to be covered by the guarantee, and the guarantee extends to certain facilities;

(c). *closure plans*, as used in the guarantee, refers to the plans maintained as required by the state of Louisiana regulations for the closure of facilities, as identified in the guarantee;

(d). for value received from the affected person, the guarantor guarantees to the Office of Environmental Services that the affected person will perform closure of the facility or facilities listed in the guarantee, in accordance with the closure plan and other permit or regulatory requirements whenever required to do so. In the event that the affected person fails to perform as specified in the closure plan, the guarantor shall do so or establish a trust fund as specified in Subparagraph E.2.c of this Section, in the name of the affected person, in the amount of the current closure cost estimate or as specified in Clause E.2.b.ii of this Section;

(e). the guarantor agrees that if, at the end of any fiscal year before termination of the guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days after the end of the fiscal year, by certified mail, notice to the Office of Environmental Services and to the affected person that he intends to provide alternative financial assurance as specified in this Subsection, in the name of the affected person, and that within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the affected person has done so;

(f). the guarantor agrees to notify the Office of Environmental Services by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding;

(g). the guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that the guarantor is disallowed from continuing as a guarantor of closure, the guarantor will establish alternate financial assurance as specified in this Subsection in the name of the affected person, unless the affected person has done so;

(h). the guarantor agrees to remain bound under the guarantee, notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, extension or reduction of the time of performance of closure, or any other modification or alteration of an obligation of the affected person in accordance with these regulations;

(i). the guarantor agrees to remain bound under the guarantee for as long as the affected person must comply with the applicable financial assurance requirements of this Subsection for the facilities covered by the corporate guarantee, except that the guarantor may cancel this guarantee by sending notice by certified mail to the Office of Environmental Services and the affected person. The cancellation will become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the affected person, as evidenced by the return receipts;

(j). the guarantor agrees that if the affected person fails to provide alternative financial assurance as specified in this Subsection, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the affected person; and

(k). the guarantor expressly waives notice of acceptance of the guarantee by the administrative authority or by the affected person. The guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit.

i. Local Government Financial Test. An affected person that is a local government and that satisfies the requirements of Clauses E.2.i.i-iii of this Section may demonstrate financial assurance up to the amount specified in Clause E.2.i.iv of this Section.

i. Financial Component

(a). The affected person must satisfy the following conditions, as applicable:

(i). if the affected person has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, he must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by

Standard and Poor's, on all such general obligation bonds; or

(ii). the affected person must have a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05 and a ratio of annual debt service to total expenditures less than or equal to 0.20 based on the affected person's most recent audited annual financial statement.

(b). The affected person must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have the financial statements audited by an independent certified public accountant (or appropriate state agency).

(c). A local government is not eligible to assure its obligations under this Subparagraph if it:

(i). is currently in default on any outstanding general obligation bonds;

(ii). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(iii). operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

(iv). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Subclause E.2.i.i.(b) of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

(d). The following terms used in this Paragraph are defined as follows.

(i). *Deficit*—total annual revenues minus total annual expenditures.

(ii). *Total Revenues*—revenues from all taxes and fees, but not including the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(iii). *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

(iv). *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(v). *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

ii. Public Notice Component. The local government affected person must place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later. Disclosure must include the nature and source of closure requirements, the reported liability at the balance sheet date, the estimated total closure cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. For closure costs, conformance with *Governmental Accounting Standards Board Statement 18* assures compliance with this public notice component.

iii. Recordkeeping and Reporting Requirements

(a). The local government affected person must place the following items in the facility's operating record:

(i). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Clause E.2.i.iv of this Section. It must provide evidence that the local government meets the conditions of Subclauses E.2.i.i.(a)-(c) of this Section, and certify that the local government meets the conditions of Subclauses E.2.i.i.(a)-(c) and Clauses E.2.i.ii and iv of this Section;

(ii). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years, and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor, who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(iii). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed-upon procedures engagement relative to the financial ratios required by Division E.2.i.i.(a).(i) of this Section, if applicable, and the requirements of Subclause E.2.i.i.(b) and Divisions E.2.i.i.(c).(i)-(iv) of this Section. The report by the certified public accountant or state agency should state the procedures performed and the findings of the certified public accountant or state agency; and

(iv). a copy of the comprehensive annual financial report (CAFR) used to comply with Clause E.2.i.ii of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

(b). The items required in Subclause E.2.i.iii.(a) of this Section must be placed in the facility operating record, in the case of closure, either before the effective date of this Section or prior to the initial receipt of sewage sludge, other feedstock, or supplements at the facility, whichever is later.

(c). After the initial placement of the items in the facility's operating record, the local government affected person must update the information and place the updated information in the operating record within 180 days following the close of the affected person's fiscal year.

(d). The local government affected person is no longer required to meet the requirements of Subclause E 2.i.iii.(c) of this Section when:

(i). the affected person substitutes alternate financial assurance, as specified in this Section; or

(ii). the affected person is released from the requirement of maintaining financial assurance in accordance with this Section.

(e). A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government affected person no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the affected person's fiscal year, obtain alternative financial

assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the Office of Environmental Services that the affected person no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(f). The administrative authority, based on a reasonable belief that the local government affected person may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the affected person no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

iv. Calculation of Costs to be Assured. The portion of the closure and corrective action costs that a local government affected person can assure under Subparagraph E.2.i of this Section is determined as follows:

(a). if the local government affected person does not assure other environmental obligations through a financial test, it may assure closure and corrective action costs that equal up to 43 percent of the local government's total annual revenue; or

(b). if the local government assures other environmental obligations through a financial test, including those associated with underground injection control (UIC) facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, or hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, or any applicable corresponding state program, it must add those costs to the closure and corrective action costs it seeks to assure under this Subparagraph, and the total that may be assured must not exceed 43 percent of the local government's total annual revenue; and

(c). the affected person must obtain an alternate financial assurance instrument for those costs that exceed the limits set in this Clause.

j. Local Government Guarantee. An affected person may demonstrate financial assurance for closure, as required by this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Subparagraph E.2.i of this Section, and must comply with the terms of a written guarantee.

i. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later, in the case of closure. The guarantee must provide that:

(a). if the affected person fails to perform closure of a facility covered by the guarantee, the guarantor will:

(i). perform closure, or pay a third party to perform closure; or

(ii). establish a fully funded trust fund as specified in Subparagraph E.2.c of this Section in the name of the affected person; and

(b). the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the affected person and to the Office of Environmental Services. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the affected person and the administrative authority, as evidenced by the return receipts. If a guarantee is canceled, the affected person must, within 90 days following receipt of the cancellation notice by the affected person and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Office of Environmental Services. If the affected person fails to provide alternate financial assurance within the 90-day period, then the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services.

ii. Recordkeeping and Reporting

(a). The affected person must place a certified copy of the guarantee, along with the items required under Clause E.2.i.iii of this Section, into the facility's operating record before the initial receipt of sewage sludge, other material, feedstock, or supplements or before the effective date of this Section, whichever is later.

(b). The affected person is no longer required to maintain the items specified in Subclause E.2.j.ii.(a) of this Section when:

(i). the affected person substitutes alternate financial assurance as specified in this Section; or

(ii). the affected person is released from the requirement of maintaining financial assurance in accordance with this Section.

(c). If a local government guarantor no longer meets the requirements of Subparagraph E.2.i of this Section, the affected person must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the Office of Environmental Services. If the affected person fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

k. Use of Multiple Instruments. An affected person may demonstrate financial assurance for closure and corrective action, as required by this Section, by establishing more than one financial mechanism per facility, except that instruments guaranteeing performance, rather than payment, may not be combined with other instruments. The instruments must be as specified in Subparagraphs E.2.c-h of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure and/or corrective action may be provided by a combination of instruments, rather than a single mechanism.

l. Discounting. The administrative authority may allow discounting of closure cost estimates in this Subsection up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

i. the administrative authority determines that cost estimates are complete and accurate and the affected person has submitted a statement from a registered professional engineer to the Office of Environmental Services so stating;

ii. the state finds the facility in compliance with applicable and appropriate permit conditions;

iii. the administrative authority determines that the closure date is certain and the affected person certifies that there are no foreseeable factors that will change the estimate of site life; and

iv. discounted cost estimates are adjusted annually to reflect inflation and years of remaining life.

F. Incapacity of Affected Persons, Guarantors, or Financial Institutions

1. All affected persons subject to this Section must notify the Office of Environmental Services by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the affected person as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in Subparagraph D.1.d or Clause E.2.h.ix of this Section must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee set forth in LAC 33:IX.7395. Appendix J.

2. An affected person who fulfills the requirements of Subsection D or E of this Section by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The affected person must establish other financial assurance or liability coverage within 60 days after such an event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 33:2386 (November 2007), LR 35:931 (May 2009).

§7309. Pathogens and Vector Attraction Reduction

A. - C.1.f.i. …

ii. The density of enteric viruses in the biosolids shall be less than 1 Plaque-forming Unit per 4 grams of total solids (dry weight basis) at the time the biosolids are used or disposed, at the time the biosolids are prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality biosolids* as defined in LAC 33:IX.7301.B.

f.iii. - g.i. …

ii. Sewage sludge that is used or disposed shall be treated in one of the Processes to Further Reduce Pathogens described in LAC 33:IX.7399.B.

1.h. - 2.b.ii. …

c. Class B Biosolids—Alternative 2. Biosolids that are used or disposed shall be treated in one of the Processes to Significantly Reduce Pathogens described in LAC 33:IX.7399.A.

d. - e.viii. …

ix. Signs shall be posted at all entrances to the Class B biosolids land application site, having at the minimum the following content:

(a). the name of the land application site or facility;

(b). wording that indicates that the area is a biosolids land application site; and

(c). emergency contact telephone numbers.

D. - D.2.g.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2395 (November 2007), LR 35:941 (May 2009).

§7313. Standard Conditions Applicable to All Sewage Sludge and Biosolids Use or Disposal Permits

A. - B.3.b. …

C. Monitoring and Reports

1. Inspection and Entry. The conditions set forth in LAC 33:IX.2701.I for inspection and entry shall apply to all permits issued in accordance with these regulations.

C.2. - D.8.c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1)(c) and (B)(3)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:2406 (November 2007), amended LR 35:941 (May 2009).

Subchapter B. Appendices

§7395. Financial Assurances Documents—Appendices A, B, C, D, E, F, G, H, I, and J

NOTE: Within this Section, *affected person* means a commercial preparer of sewage sludge or a commercial land applier of biosolids, as applicable.

A. Appendix A—Liability Endorsement

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

LIABILITY ENDORSEMENT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
Dear Sir:

(A). This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with [name of the insured, which must be the affected person or the operator. (Note: The operator will provide the liability-insurance documentation only when the affected person is a public governing body and the public governing body is not the operator.)] The insured's obligation to demonstrate financial assurance is required in accordance with *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A. The coverage applies at [list site identification number, site name, facility name, facility permit number, and facility address] for sudden and accidental occurrences. The limits of liability are per occurrence, and annual aggregate, per site, exclusive of legal-defense costs.

(B). The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with Subclauses (1)-(5), below, are hereby amended to conform with Subclauses (1)-(5), below:

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in LAC 33:IX.7307.D.1.b-d.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to the administrative authority a signed duplicate original of the policy and all endorsements.

(4). Cancellation of this endorsement, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of this endorsement will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). Attached is the endorsement which forms part of the policy [policy number] issued by [name of insurer], herein called the insurer, of [address of the insurer] to [name of the insured] of [address of the insured], this [date]. The effective date of said policy is [date].

(D). I hereby certify that the wording of this endorsement is identical to the wording specified in LAC 33:IX.7395.Appendix A, effective on the date first written above and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the State of Louisiana.

[Signature of authorized representative of insurer]
[Typed name of authorized representative of insurer]
[Title of authorized representative of insurer]
[Address of authorized representative of insurer]

B. Appendix B—Certificate of Insurance

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]
CERTIFICATE OF LIABILITY INSURANCE

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
Dear Sir:

(A). [Name of insurer], the "insurer," of [address of insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured, which must be the affected person or the facility], the "insured," of [address of insured] in connection with the insured's obligation to demonstrate financial assurance under *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A. The coverage applies at [list agency interest number(s), site name(s), facility name(s), facility permit number(s), and site address(es)] for sudden and accidental occurrences. The limits of liability are each occurrence and annual aggregate, per site, exclusive of legal-defense costs. The coverage is provided under policy number [policy number], issued on [date]. The effective date of said policy is [date].

(B). The insurer further certifies the following with respect to the insurance described in Paragraph (A):

(1). Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

(2). The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated, as specified in LAC 33:IX.7307.D.1.b – d.

(3). Whenever requested by the administrative authority, the insurer agrees to furnish to him a signed duplicate original of the policy and all endorsements.

(4). Cancellation of the insurance, whether by the insurer or the insured, will be effective only upon written notice and upon lapse of 60 days after a copy of such written notice is received by the administrative authority.

(5). Any other termination of the insurance will be effective only upon written notice and upon lapse of 30 days after a copy of such written notice is received by the administrative authority.

(C). I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:IX.7395.Appendix B, as such regulations were constituted on the date first written above, and that the insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and is admitted, authorized, or eligible to conduct insurance business in the State of Louisiana.

[Signature of authorized representative of insurer]
[Typed name of authorized representative of insurer]
[Title of authorized representative of insurer]
[Address of authorized representative of insurer]

C. Appendix C—Letter of Credit

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]
IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No.[number] at the request and for the account of [affected person's name and address] for its [list site identification number(s), site name(s), facility name(s), and facility permit number(s)] at [location(s)], Louisiana, in favor of any governmental body, person, or other entity for any sum or sums up to the aggregate amount of U.S. dollars [amount] upon presentation of:

(A). A final judgment issued by a competent court of law in favor of a governmental body, person, or other entity and against [affected person's name] for sudden and accidental occurrences for claims arising out of injury to persons or property due to operations by the affected person at [site location(s)] as set forth in the *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.A.

(B). A sight draft bearing reference to the Letter of Credit No. [number] drawn by the governmental body, person, or other entity, in whose favor the judgment has been rendered as evidenced by documentary requirement in Paragraph (A).

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of affected person] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of affected person] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of affected person] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the Uniform Customs and Practice for Documentary Letters of Credit (1983), International Chamber of Commerce Publication No. 400, shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:IX.7395.Appendix C, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]
[date]

D. Appendix D—Trust Agreement

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]
TRUST AGREEMENT/STANDBY TRUST AGREEMENT

This Trust Agreement (the "Agreement") is entered into as of [date] by and between [name of affected person], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the State of Louisiana, has established certain regulations applicable to the Grantor, requiring that an affected person shall provide assurance that funds will be available when needed for closure of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected [the Trustee] to be the trustee under this Agreement, and [the Trustee] is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

SECTION 1. DEFINITIONS

As used in this Agreement:

(a). The term "Grantor" means the affected person who enters into this Agreement and any successors or assigns of the Grantor.

(b). The term "Trustee" means the Trustee who enters into this Agreement and any successor trustee.

(c). The term "Secretary" means the Secretary of the Louisiana Department of Environmental Quality.

(d). The term "Administrative Authority" means the Secretary or a person designated by him to act therefor.

SECTION 2. IDENTIFICATION OF FACILITIES AND COST ESTIMATES

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A. [On Schedule A, list the agency interest number, site name, facility name, facility permit number, and the annual aggregate amount of liability coverage or current closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.]

SECTION 3. ESTABLISHMENT OF FUND

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party shall have access to the Fund, except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank except for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

SECTION 4. PAYMENT FOR CLOSURE OR LIABILITY COVERAGE

The Trustee shall make payments from the Fund as the administrative authority shall direct, in writing, to provide for the payment of the costs of [liability claims or closure care] of the facility covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the administrative authority from the Fund for [liability claims or closure] expenditures in such amounts as the administrative authority shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the administrative authority specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

SECTION 5. PAYMENTS COMPRISED BY THE FUND

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

SECTION 6. TRUSTEE MANAGEMENT

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of like character and with like aims, except that:

(a). Securities or other obligations of the Grantor, or any owner of the [facility or facilities] or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government.

(b). The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c). The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

SECTION 7. COMMINGLING AND INVESTMENT

The Trustee is expressly authorized, at its discretion:

(a). To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b). To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, or underwritten, or one to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares at its discretion.

SECTION 8. EXPRESS POWERS OF TRUSTEE

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a). To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b). To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c). To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d). To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e). To compromise or otherwise adjust all claims in favor of, or against, the Fund.

SECTION 9. TAXES AND EXPENSES

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and other proper charges and disbursements of the Trustee, shall be paid from the Fund.

SECTION 10. ANNUAL VALUATION

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee, within 90 days after the statement has been furnished to the Grantor and the administrative authority, shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

SECTION 11. ADVICE OF COUNSEL

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

SECTION 12. TRUSTEE COMPENSATION

The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

SECTION 13. SUCCESSOR TRUSTEE

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall, in writing, specify to the Grantor, the administrative authority, and the present Trustee by certified mail, 10 days

before such change becomes effective, the date on which it assumes administration of the trust. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

SECTION 14. INSTRUCTIONS TO THE TRUSTEE

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by the persons designated in the attached Exhibit A or such other persons as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the administrative authority to the Trustee shall be in writing and signed by the administrative authority. The Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or termination of the authority of any person to act on behalf of the Grantor or administrative authority hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or administrative authority, except as provided for herein.

SECTION 15. NOTICE OF NONPAYMENT

The Trustee shall notify the Grantor and the administrative authority, by certified mail, within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended by an instrument, in writing, executed by the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist.

SECTION 17. IRREVOCABILITY AND TERMINATION

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the administrative authority, or by the Trustee and the administrative authority, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

SECTION 18. IMMUNITY AND INDEMNIFICATION

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any direction by the Grantor or the administrative authority issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all reasonable expenses incurred in its defense in the event that the Grantor fails to provide such defense.

SECTION 19. CHOICE OF LAW

This Agreement shall be administered, construed, and enforced according to the laws of the State of Louisiana.

SECTION 20. INTERPRETATION

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized [and their corporate seals to be hereunto affixed] and attested to as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7395.Appendix D, on the date first written above.

WITNESSES:	**GRANTOR:**
_____	_____
_____	**By:** _____
	Its: _____
	[Seal]

TRUSTEE:

_____

By: _____

Its: _____

[Seal]

THUS DONE AND PASSED in my office in _____, on the _____ day of _____, 20_____, in the presence of _____ and _____, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

_____

Notary Public

(The following is an example of the certification of acknowledgement that must accompany the trust agreement.)

STATE OF LOUISIANA

PARISH OF _____

BE IT KNOWN, that on this _____ day of _____, 20_____, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the _____, a corporation, for the consideration, uses, and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the _____ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of _____ and _____, competent witnesses, who have hereunto subscribed their name as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

_____

_____

_____

NOTARY PUBLIC

E. Appendix E—Surety Bond

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]

FINANCIAL GUARANTEE BOND

Date bond was executed:_____

Effective date:_____

Principal: [legal name and business address of affected person]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:_____

Surety: [name and business address]

[agency interest number, site name, facility name, facility permit number, and current closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically Section 2074(B)(4), to have a permit in order to own or operate the [insert type of permitted operation] identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required by the *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.E.2.d.ii, when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to close is issued by the administrative authority or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:IX.7307.D or E and obtain written approval from the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety,

THEN, this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification or amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.E.2.d.vi and the conditions of the permit so that it guarantees a new closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the State of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7395.Appendix E, effective on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETIES
[Name and Address]
State of incorporation: _____
Liability limit: $_____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[This information must be provided for each cosurety]
Bond Premium: $_____

F. Appendix F—Performance Bond

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]
PERFORMANCE BOND

Date bond was executed:_____

Effective date:_____

Principal: [legal name and business address of affected person]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:_____

Surety: [name(s) and business address(es)]

[agency interest number, site name, facility name, facility permit number, facility address, and closure amount(s) for each facility guaranteed by this bond]

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons by These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and specifically Section 2074(B)(4), to have a permit in order to own or operate the [insert type of permitted operation] identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure, as a condition of the permit; and

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.E and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of the LAC 33:IX.7305.C.3, or of its permit for the facility for which this bond guarantees performance of closure, the Surety shall either perform closure in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.7307.E.2.e.iii.(b), and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permit, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority. Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.7307.E.2.d.vi and the conditions of the permit so that it guarantees a new closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the State of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:IX.7395.Appendix F, effective on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY
[Name and address]
State of incorporation: _____
Liability limit: $_____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $_____

G. Appendix G—Letter of Credit

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]
IRREVOCABLE LETTER OF CREDIT

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in favor of the Department of Environmental Quality of the State of Louisiana at the request and for the account of [affected person's name and address] for the closure fund for its [list agency interest number, site name, facility name, facility permit number] at [location], Louisiana, for any sum or sums up to the aggregate amount of U.S. dollars $_____ upon presentation of:

(i). A sight draft, bearing reference to the Letter of Credit No. _____ drawn by the administrative authority, together with;

(ii). A statement, signed by the administrative authority, declaring that the amount of the draft is payable into the standby trust fund pursuant to the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [date] and on each successive expiration date thereafter, unless, at least 120 days before the then-current expiration date, we notify both the administrative authority and [name of affected person] by certified mail that we have decided not to extend this Letter of Credit beyond the then-current expiration date. In the event that we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of affected person], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of affected person] in accordance with the administrative authority's instructions.

Except to the extent otherwise expressly agreed to, the [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"] , shall apply to this Letter of Credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7395.Appendix G, effective on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution(s)]
[date]

H. Appendix H—Certificate of Insurance

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]
CERTIFICATE OF INSURANCE FOR CLOSURE

Name and Address of Insurer: _____
(hereinafter called the "Insurer")
Name and Address of Insured: _____
(hereinafter called the "Insured")
(Note: Insured must be the affected person.)

Facilities covered: [list the agency interest number(s), site name(s), facility name(s), facility permit number(s), address(es), and amount(s) of insurance for closure] (These amounts for all facilities must total the face amount shown below.)

Face Amount: _____
Policy Number: _____
Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure for the facilities identified above. The Insurer further warrants that such policy conforms in all respects to the requirements of LAC 33:IX.7307.D.1.a or E.2.g, as applicable, and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the Insurer is admitted, authorized, or eligible to conduct insurance business in the State of Louisiana and that the wording of this certificate is identical to the wording specified in LAC 33:IX.7395.Appendix H, effective on the date shown immediately below.

[Authorized signature of Insurer]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:_____
[Date]

I. Appendix I—Letter from the Chief Financial Officer

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]
LETTER FROM THE CHIEF FINANCIAL OFFICER
(LIABILITY COVERAGE AND/OR CLOSURE)

Secretary
Louisiana Department of Environmental Quality
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Office of Environmental Services
Dear Sir:

I am the chief financial officer of [name and address of firm, which may be either the affected person or parent corporation of the affected person]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "liability coverage" and/or "closure," as applicable] as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.[insert "7307.D.1.c," "7307.E.2.h," or "7307.D.1.c and E.2.h"].

[Fill out the following four paragraphs regarding facilities and associated liability coverage, and closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the agency interest number, site name, facility name, and facility permit number.]

(A). The firm identified above is the [insert "affected person" or "parent corporation of the affected person"], whether in the State of Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.7307.D.1.c. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "affected person" or "parent corporation of the affected person"], whether in the State of Louisiana or not, for which financial assurance for closure is demonstrated through a financial test similar to that specified in LAC 33:IX.7307.E.2.h or other forms of self-insurance. The current closure cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.7307.D.1.d," "LAC 33:IX.7307.E.2.h.ix," or "LAC 33:IX.7307.D.1.d and E.2.h.ix"], [insert "liability coverage," and/or "closure,"] whether in the State of Louisiana or not, of which [insert the name of the affected person] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following facilities, whether in the State of Louisiana or not, for which financial assurance for liability coverage and/or closure is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.7307.D and/or E. The current closure cost estimates not covered by such financial assurance are shown for each facility:

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently-audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements.]

PART A. LIABILITY COVERAGE FOR ACCIDENTAL OCCURRENCES

[Fill in Alternative I if the criteria of LAC 33:IX.7307.E.2.h.i.(a) are used.]

Alternative I		
1. Amount of annual aggregate liability coverage to be demonstrated	$_____	
*2. Current assets	$_____	
*3. Current liabilities	$_____	
*4. Tangible net worth	$_____	
*5. If less than 90 percent of assets are located in the U.S., give total U.S. assets	$_____	
	YES	NO
6. Is line 4 at least $10 million?	___	___
7. Is line 4 at least 6 times line 1?	___	___
*8. Are at least 90 percent of assets located in the U.S.? If not, complete line 9.	___	___
9. Is line 4 at least 6 times line 1?	___	___

[Fill in Alternative II if the criteria of LAC 33:IX.7307.E.2.h.i.(b) are used.]

Alternative II		
1. Amount of annual aggregate liability coverage to be demonstrated	$_____	
2. Current bond rating of most recent issuance of this firm and name of rating service	_____	
3. Date of issuance of bond	_____	
4. Date of maturity of bond	_____	
*5. Tangible net worth	$_____	
*6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____	
	YES	NO
7. Is line 5 at least $10 million?	___	___
8. Is line 5 at least 6 times line 1?	___	___
*9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10.	___	___
10. Is line 6 at least 6 times line 1?	___	___

[Fill in Part B if you are using the financial test to demonstrate assurance only for closure.]

PART B. CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.7307.E.2.h.i.(a) are used.]

Alternative I		
1. Sum of current closure estimates (total all cost estimates shown above)	$_____	
*2. Tangible net worth	$_____	
*3. Net worth	$_____	
*4. Current Assets	$_____	
*5. Current liabilities	$_____	
*6. The sum of net income plus depreciation, depletion, and amortization	$_____	
*7. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.)	$_____	
	YES	NO
8. Is line 2 at least $10 million?	___	___
9. Is line 2 at least 6 times line 1?	___	___
*10. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 11.	___	___
11. Is line 7 at least 6 times line 1?	___	___

[Fill in Alternative II if the criteria of LAC 33:IX.7307.E.2.h.i.(b) are used.]

Alternative II		
1. Sum of current closure cost estimates (total of all cost estimates shown above)	$_____	
2. Current bond rating of most recent issuance of this firm and name of rating service	_____	
3. Date of issuance of bond	_____	
4. Date of maturity of bond	_____	
*5. Tangible net worth (If any portion of the closure cost estimate is included in "total liabilities" on your firm's financial statement, you may add the amount of that portion to this line.)	$_____	
*6. Total assets in U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.)	$_____	
	YES	NO
7. Is line 5 at least $10 million?	____	____
8. Is line 5 at least 6 times line 1?	____	____
9. Are at least 90 percent of the firm's assets located in the U.S.? If not, complete line 10.	____	____
10. Is line 6 at least 6 times line 1?	____	____

[Fill in Part C if you are using the financial test to demonstrate assurance for liability coverage and/or closure.]

PART C. LIABILITY COVERAGE AND/OR CLOSURE

[Fill in Alternative I if the criteria of LAC 33:IX.7307.E.2.h.i.(a) are used.]

Alternative I		
1. Sum of current closure cost estimates (total of all cost estimates listed above)	$_____	
2. Amount of annual aggregate liability coverage to be demonstrated	$_____	
3. Sum of lines 1 and 2	$_____	
*4. Total liabilities (If any portion of your closure cost estimates is included in your "total liabilities" in your firm's financial statements, you may deduct that portion from this line and add that amount to lines 5 and 6.)	$_____	
* 5. Tangible net worth	$_____	
* 6. Net worth	$_____	
* 7. Current assets	$_____	
* 8. Current liabilities	$_____	
* 9. The sum of net income plus depreciation, depletion, and amortization	$_____	
*10. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____	
	YES	NO
11. Is line 5 at least $10 million?	_____	_____
12. Is line 5 at least 6 times line 3?	_____	_____
*13. Are at least 90 percent of assets located in the U.S.? If not, complete line 14.	_____	_____
14. Is line 10 at least 6 times line 3?	_____	_____

[Fill in Alternative II if the criteria of LAC 33:IX.7307.E.2.h.i.(b) are used.]

Alternative II		
1. Sum of current closure cost estimates (total of all cost estimates listed above)	$_____	
2. Amount of annual aggregate liability coverage to be demonstrated	$_____	
3. Sum of lines 1 and 2	$_____	
4. Current bond rating of most recent issuance of this firm and name of rating service	_____	
5. Date of issuance of bond	_____	
6. Date of maturity of bond	_____	
*7. Tangible net worth (If any portion of the closure cost estimates is included in the "total liabilities" in your firm's financial statements, you may add that portion to this line.)	$_____	
*8. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.)	$_____	
	YES	NO
9. Is line 7 at least $10 million?	____	____
10. Is line 7 at least 6 times line 3?	____	____
*11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12.	____	____
12. Is line 8 at least 6 times line 3?	____	____

[The following is to be completed by all firms providing the financial test]

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:IX.7395.Appendix I.

[Signature of chief financial officer for the firm]
[Typed name of chief financial officer]
[Title]
[Date]

J. Appendix J—Corporate Guarantee

[Insert, as applicable: "COMMERCIAL PREPARER OF SEWAGE SLUDGE" or "COMMERCIAL LAND APPLIER OF BIOSOLIDS"]
CORPORATE GUARANTEE FOR LIABILITY COVERAGE AND/OR CLOSURE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the affected person] of [business address].

Recitals

(A). The guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.7307.D.1.d and/or E.2.h.ix.

(B). [Subsidiary] is the affected person covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage and/or closure and the amount of annual aggregate liability coverage and/or closure costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure.]

(C). "Closure plans" as used below refers to the plans maintained as required by LAC 33:IX.7305.C.3, for the closure of the facility identified in Paragraph (B) above.

(D). For value received from the affected person, guarantor guarantees to the Louisiana Department of Environmental Quality that in the event that the affected person fails to perform closure of the above facility in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or shall establish a trust fund as specified in LAC 33:IX.7307.E.2.c, as applicable, in the name of the affected person in the amount of the current closure estimates as specified in LAC 33:IX.7307.E.2.

[Fill in Paragraph (E) below if the guarantee is for liability coverage.]

(E). For value received from the affected person, guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by sudden and accidental occurrences arising from operations of the facility covered by this guarantee that in the event that the affected person fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by sudden and accidental occurrences arising from the operation of the above-named facility, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the coverage limits identified above.

(F). The guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, the guarantor shall send within 90 days, by certified mail, notice to the administrative authority, and to the affected person, that he intends to provide alternative financial assurance as specified in [insert "LAC 33:IX.7307.D" and/or "LAC 33:IX.7307.E"], as applicable, in the name of the affected person. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless the affected person has done so.

(G). The guarantor agrees to notify the administrative authority, by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(H). The guarantor agrees that within 30 days after being notified by the administrative authority of a determination that the guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of [insert "liability coverage" and/or "closure"] he shall establish alternate financial assurance as specified in [insert "LAC 33:IX.7307.D" and/or "LAC 33:IX.7307.E"], as applicable, in the name of the affected person unless the affected person has done so.

(I). The guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: [if the guarantee is for closure, insert "amendment or modification of the closure plan, the extension or reduction of the time of performance of closure, or"] any other modification or alteration of an obligation of the affected person pursuant to LAC 33:IX.7305.C.3.

(J). The guarantor agrees to remain bound under this guarantee for as long as the affected person must comply with the applicable financial assurance requirements of [insert "LAC 33:IX.7307.D" and/or "LAC 33:IX.7307.E"] for the above-listed facility, except that the guarantor may cancel this guarantee by sending notice by certified mail, to the administrative authority and to the affected person, such cancellation to become effective no earlier than 90 days after receipt of such notice by both the administrative authority and the affected person, as evidenced by the return receipts.

(K). The guarantor agrees that if the affected person fails to provide alternative financial assurance as specified in [insert "LAC 33:IX.7307.D" and/or "LAC 33:IX.7307.E"], as applicable, and obtain written approval of such assurance from the administrative authority within 60 days after a notice of cancellation by the guarantor is received by the administrative authority from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the affected person.

(L). The guarantor expressly waives notice of acceptance of this guarantee by the administrative authority or by the affected person. Guarantor expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 33:IX.7395.Appendix J, effective on the date first above written.

Effective date:_____
[Name of Guarantor]
[Authorized signature for guarantor]
[Typed name and title of person signing]
Thus sworn and signed before me this [date].

_____
Notary Public

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(1)(c), (B)(3), and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 33:2409 (November 2007), LR 35:941 (May 2009).

Herman Robinson, CPM
Executive Counsel

0905#029

RULE

Firefighters Retirement System

Processing Claims for Survivor Benefits—Determining Whether a Member Was Killed in the Line of Duty (LAC 58:XIII.101)

Pursuant to the provisions of Section 1 of Act No. 496 of the 2008 Regular Legislative Session, which originated as House Bill No. 704 thereof and in accordance with the provisions of the Administrative Procedures Act, the board of trustees of the Firefighters' Retirement System has adopted a Rule in terms and substance as described herein below. The basis of this Rule arises from a need to establish procedures for the governing board of the agency to follow when determining whether or not an active contributing member's death occurred in the line of duty. The rationale for the Rule is based on the duty of the board to consider applications for benefits submitted by the surviving spouses of such members. The enabling statute authorizes benefits to be granted to the surviving spouse upon the death of an active contributing member, provided the death occurred in the line of duty. However, there is no established procedure set forth in the statutes for the governing board of the agency to use when determining whether or not a death occurred in the line of duty.

Title 58
RETIREMENT
Part XIII. Firefighters' Retirement System
Chapter 1. General Provisions
§101. Survivor Benefits; Procedures to Use When Determining Whether Member's Death Occurred in the Line of Duty

A. Pursuant to the provisions of R.S. 11:2256(B)(1)(a)(i), the surviving spouse of any active contributing member of the system who is killed in the line of duty, is authorized to be paid, on a monthly basis, an annual benefit equal to two-thirds of the deceased member's average final compensation.

B. Pursuant to the provisions of R.S. 11:2256(B)(1)(a)(ii), the board of trustees must promulgate rules to provide a procedure for determining whether a member was killed in the line of duty. Thereafter, the board must use its discretion in applying the procedure. The application of the procedure must be in compliance with the fiduciary duty of such trustees as such duty is set forth in Title 11 of the Revised Statutes of 1950, as amended.

C. The procedure used for determining whether or not a member's death occurred in the line of duty shall be as follows: The board of trustees shall direct its staff to conduct a study of the facts and circumstances leading up to and being the cause of the member's death. The staff shall conduct that study and report its findings either verbally or in a written report, or both, to the board of trustees in an open public meeting wherein the subject matter of the surviving spouse's benefits are placed before the board for discussion and action. Such report shall be furnished to the board within 30 days of the conclusion of the study, unless the application for benefits and case file is not otherwise complete and ready for board consideration. Any motion that is made to approve survivor benefits of a member killed in the line of duty shall contain a summary recitation of the facts and circumstances leading up to and being the cause of the member's death. The board of trustees shall apply these procedures in a manner consistent with its fiduciary duty. The foregoing procedure shall be used in all similar cases and shall be known as the "Boler Act Rule".

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2256(B)(1)(a)(ii) and the Administrative Procedures Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Firefighters Retirement System, LR 35:949 (May 2009).

Steven S. Stockstill,
FRS Executive Director

0905#033

RULE

Office of the Governor
Board of Architectural Examiners

Architects Selection Board—Vacancies (LAC 46:I.2117)

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 ("LSBAE") amended LAC 46:I, Chapter 21, §2117. The previous Rule set forth a procedure for filling a vacancy on the Architects Selection Board ("LASB") which occurs concerning any person elected to that board. However, the LSBAE had no rule concerning any vacancy on the LASB that may occur if no one submitted a nomination for election to the LASB at all, or if the nominee withdrew his or her nomination before being elected or appointed. The amended Rule will allow the LSBAE to fill such vacancies. In addition, if only one qualified architect seeks nomination to the LASB so that his or her nomination is unopposed, the amended Rule will allow the executive director of the LSBAE to notify that architect of his or her appointment to the LASB without any further LSBAE action. The amendment has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part I. Architects
Chapter 21. Vacancies
§2117. Vacancies

A. Any vacancy occurring with respect to any person elected shall be filled in the following manner:

1. the executive director shall give notice of the vacancy to any person who has previously requested such notice in writing; and

2. the executive director shall also publish in the official journal of the state an advertisement which will appear for a period of not less than 10 calendar days:

a. the advertisement in the official journal of the state need not appear more than three times during the 10 day period;

b. the executive director may publish other such advertisements in his or her discretion;

c. the advertisements shall:

i. identify the district in which a vacancy has occurred; and

ii. state that any resident architect in that district holding a current Louisiana license desiring nomination:

(a). must furnish a nomination signed by not less than 10 resident architects holding a current Louisiana license by certified mail to the board office;

(b). that a sample of the nomination may be obtained upon request from the board office, the deadline for filing the nomination; and

(c). any other information the board may consider necessary.

3. The deadline for filing a nomination to fill a vacancy shall be at least 10 calendar days subsequent to the expiration of the last advertisement appearing in the official journal of the state.

4. The board shall appoint one of the nominees to fill the vacancy, which appointee shall serve the unexpired term. If only one qualified architect submits a nomination to fill the vacancy, the executive director shall send a letter to that architect advising of his or her appointment to the Architects Selection Board, and no further board action shall be necessary to confer such appointment.

B. If the deadline for submission of nominations has passed and (i) the board has not received a nomination from a qualified architect for election to a district that will become vacant on September 15 or (ii) no architect has been nominated or elected to fill a vacancy on the Architects Selection Board that will occur on September 15 for some other reason, the board shall fill the upcoming vacancy by the procedures described in the preceding paragraph.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:576 (April 2003), amended LR 35:949 (May 2009).

Mary "Teeny" Simmons
Executive Director

0905#001

RULE

Office of the Governor
Division of Administration
Racing Commission

Permitted Medication (LAC 35:I.1507 and 1509)

The Louisiana State Racing Commission amended LAC 35:I.1507 "Permitted Medication" to promote the health and well being of race horses, to guard the integrity of the sport, and to adjust to changes in nation-wide standards in the realm of equine veterinary practices, health, and medication.

Title 35
HORSE RACING
Part I. General Provisions
Chapter 15. Permitted Medication
§1507. Bleeder Medication

A. No bleeder medication may be administered to a horse in training for a race during any race meeting except upon compliance with the following.

1. Only a licensed veterinarian may prescribe, dispense and administer bleeder medication.

2. No horse entered to race may be administered bleeder medication within four hours of post-time of the race in which the horse is to run.

B. A horse shall be considered a known bleeder when:

1. it is observed bleeding by a commission veterinarian during and/or after a race or workout;

2. an endoscopic examination authorized by the commission veterinarian or state steward, conducted within one hour of a race or workout, reveals blood in the trachea and/or upper respiratory tract of the horse examined;

3. a statement from a commission or association veterinarian of any other racing jurisdiction, confirming that a specific horse is a known bleeder is received by the commission or stewards having jurisdiction of the race meeting where such horse may be eligible to race.

C. A horse may be removed from the bleeder list only upon the direction of a commission veterinarian, who shall certify in writing to the stewards the recommendation for removal.

D. The commission veterinarian at each race meeting shall maintain a current list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the commission veterinarian.

E. A bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to run during the following periods of time:

1. first time, for 14 days;

2. second time, within a 365 day period, for 30 days;

3. third time, within 365 day period, for 180 days;

4. fourth time, within a 365 day period, lifetime suspension;

5. should a horse which is on the bleeder list race three times within 365 days without bleeding, it shall be considered a first-time bleeder when next it is observed bleeding by a commission veterinarian or an endoscopic examination, conducted within one hour of a race, reveals blood in the trachea and/or upper respiratory tract;

6. for the purposes of this rule the period of ineligibility on the first day bleeding was observed;

7. the voluntary administration of bleeder medication without evidence of an external bleeding incident does not subject a horse to the above periods of ineligibility.

F. The licensed veterinarian prescribing, dispensing, and administering bleeder medication must furnish a written report to the commission veterinarian at least one hour prior to post-time for the first race of the day on forms supplied by the commission. Furnishing of such written report timely shall be the responsibility of the prescribing, dispensing, and/or administering veterinarian. The following information shall be provided, under oath, on a form provided by the commission:

1. the name of the horse, racetrack name, the date and time the permitted bleeder medication was administered to the entered horse;

2. the dosage amount of bleeder medication administered to the entered horse; and

3. the printed name and signature of the licensed veterinarian who administered the bleeder medication.

G. Approved bleeder medication may be voluntarily administered intravenously to a horse, which is entered to compete in a race subject to compliance with the following conditions:

1. the trainer and/or attending veterinarian determine it is in a horse's best interests to race with bleeder medication, and they make written request upon the commission veterinarian, using the prescribed form, that the horse to be placed on the voluntary bleeder medication list;

2. the request is actually received by the commission veterinarian or his/her designee by the time of entry;

3. the horse race with bleeder medication and remain on the voluntary bleeder medication list unless and until the trainer and attending veterinarian make a joint, written request on a form provided by the commission to the commission veterinarian to remove the horse from the list;

4. once removed from the voluntary bleeder medication list, a horse may not be voluntarily placed back on the list for a period of 60 days unless the commission veterinarian determines on recommendation and concurrence of the attending veterinarian that it jeopardizes the welfare of the horse. Once a horse is voluntarily removed from the list twice within a 365-day period, the horse may not be voluntarily placed back on the list for bleeder medication for a period of 90 days.

H. In order to insure that the use of bleeder medication is reported accurately, the commission shall have the right to perform or have performed testing of blood or urine of any horse eligible to race at a meeting, whenever it is deemed necessary by it or its stewards. The veterinarian administering the approved bleeder medication shall surrender the syringe used to administer such medication for testing upon request of the commission veterinarian, a steward or either of their designated representatives.

I. Post race analysis of fursoemide must show detectable concentrations of the drug in serum, plasma or urine sample that is indicative of appropriate administration.

1. Specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. Specific gravity shall not be below 1.010. If the specific gravity of the urine is below 1.010 or a urine sample is unavailable for testing, quanitation of furosemide shall be performed in serum or plasma.

2. Quantitation of furosemide in serum or plasma may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:174 (May 1980), amended LR 9:547 (August 1983), amended by the Department of Economic Development, Racing Commission LR 15:7 (January 1989), LR 22:12 (January 1996), LR 23:950 (August 1997), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 35:950 (May 2009).

§1509. Definitions

A. As used in this rule:

Bleeder Medication—drugs or medications which are permitted by the commission and are recognized by the veterinary profession for the treatment of exercise-induced hemorrhage.

Permitted Medication—Furosemide, by single intravenous injection not less than 150 mg and not exceed 500 mg:

a. approved adjunct, bleeder medications: Ethacrynic Acid, Bumetanide, Estrogen, Ergonovine, Amino Caproic Acid, Carbazochrome.

Veterinarian—a person who is licensed to practice veterinary medicine in Louisiana, and who is licensed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:174 (May 1980), amended LR 9:548 (August 1983), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 35:951 (May 2009).

Charles A. Gardiner III
Executive Director

0905#021

RULE

Office of the Governor
Division of Administration
Office of Community Development

Community Water Enrichment Fund
(LAC 4:VII.Chapter 24)

Under authority of House Bill 926 (Act 513) of the 2008 Regular Legislative Session, and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Division of Administration, Office of Community Development adopted LAC 4:VII.Chapter 24.

The Rule will serve as guidelines for units of local government to apply for grants from the Office of Community Development for potable water projects. The Rule address the following areas of purpose, application process, payments and reimbursements, and programmatic assurances.

Title 4
ADMINISTRATION
Part VII. Governor's Office
Chapter 24. Community Water Enrichment Fund

§2401. Purpose

A. The Community Water Enrichment Fund (CWEF) provides financial assistance to local units of government in rural areas. The CWEF program will be administered by the Office of Community Development (OCD).

B. All municipalities and parishes within the State of Louisiana are eligible to apply for assistance except the following HUD (Housing and Urban Development) entitlement cities: Alexandria, Baton Rouge, Bossier City, Kenner, Lafayette, Lake Charles, Monroe, New Orleans and Shreveport.

C. Local Government classifications are defined as: Villages (pop. 1-999), Towns (pop. 1,000-4,999), Cities (pop. 5,000-35,000) and Parish governments.

D. OCD shall develop an application procedure satisfying the purposes and intentions of the CWEF.

E. The Office of Community Development applies the following guidelines to any project or activity funded.

1. At the beginning of each fiscal year, the Director of OCD/CWEF shall determine the equal funding level for all eligible parishes based on the total amount budgeted as aid to local governments for CWEF grants.

2. Applications will only be accepted for the following eligible activities: rehabilitation, improvement, and new construction projects for community potable water systems. Reasonable engineering costs (if associated with construction) are allowed.

3. The purchase of generators will not be allowed under this program.

4. Funds from this program cannot be used to pay consulting fees charged to a unit of government for the preparation of the application, for administrative costs by agents of the project sponsor or any third party. Also, funds cannot be used to pay for previously incurred debt, improvements to private property, overtime for government employees, administration, engineering-only or planning-only projects. CWEF funds are not intended for salary-only projects or ongoing salaried positions.

5. Parish governments may request funding for projects that serve a parish-wide area or an unincorporated area within the parish.

6. Applicants may not exceed stated funding levels as outlined in the CWEF application guidelines for any fiscal year, except in those circumstances where other eligible applicants within each parish agree by resolution to allow funding levels to be exceeded.

7. Two-year contracts shall be issued for CWEF grants by OCD. Contract extensions and changes to the project must be requested in writing by the grantee and approved in writing by the Director of OCD/CWEF.

AUTHORITY NOTE: Promulgated in accordance with Act 513 of the 2008 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 35:951 (May 2009).

§2403. Application Process

A. CWEF applications are available from the Office of Community Development to all municipalities and parishes that request them. All requests for information may be submitted via mail to the Office of Community Development, P.O. Box 94095, Baton Rouge, LA 70804-9095.

B. Applications will be rated by OCD staff and award amounts will be based upon predetermined internal rating criteria.

C. All applicants must be authorized by law to perform governmental functions, and must be subject to state audit requirements.

D. The most recent available population figures are used to determine the eligibility for funding of municipalities based on appropriations by the legislature (the funding is outlined in OCD application guidelines for CWEF funds).

E. There will be a level of funding set aside for applications that are determined to be of an emergency nature. Any unused emergency funds will be reallocated through the regular program.

AUTHORITY NOTE: Promulgated in accordance with Act 513 of the 2008 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 35:952 (May 2009).

§2405. Payments and Reimbursement

A. Grant recipients are required to maintain an audit trail verifying that all funds received under this program were used to fulfill the stated purpose identified in the approved application.

B. Payment shall be made to the grantee upon production of invoices and approval of the grantee's request for payment by OCD, according to the contract.

C. Use of grant funds for any project other than that described in the contract will be grounds for OCD to terminate the contract and revoke the funds for the project.

D. All invoices related to the project are the responsibility of the grantee, and must be submitted to and approved by OCD before the funds will be released to the grantee. The grantee remains responsible for payments to its vendors.

AUTHORITY NOTE: Promulgated in accordance with Act 513 of the 2008 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 35:952 (May 2009).

§2407. Programmatic Assurances

A. The grantee will hold harmless the state of Louisiana, Division of Administration, Office of the Governor, and Office of Community Development as a term and condition of the contract.

B. OCD will de-obligate funds from any unexpended amount; whether by failure to start a project in the agreed upon timeframe in the contract or by unexpended funds in an officially closed project, or from revoked grant awards. All de-obligated funds will be reallocated through the regular program.

C. Failure of the grantee to abide by any article of the local agency assurances section of the grant application or the contract, including state audit procedures, federal and state laws, state ethics rules and policy guidelines of OCD, shall result in revocation of the grant award and the grantee will be required to repay the project funds to OCD.

D. No grantee will be allowed more than two open CWEF grants.

E. The grantee will assure that it will comply with R.S. 24:513 (State Audit Law), and state of Louisiana public bidding procedures, as well as comply with all other relevant federal and state laws, executive orders, and/or regulations. Failure to comply with any part of this contract will result in termination of this grant and will require that all funds paid be returned to the Office of Community Development.

AUTHORITY NOTE: Promulgated in accordance with Act 513 of the 2008 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 35:952 (May 2009).

Carol Newton
Director

0905#003

RULE

Department of Health and Hospitals
Board of Chiropractic Examiners

Chiropractic Professional Conduct and
Due Process Procedures for Ethics Violations
(LAC 46:XXVII.301, 306, 307, 308, 310, 318, 320 and 501)

The Board of Chiropractic Examiners, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and relative to its authority to adopt, amend or repeal rules provided by R.S. 37:2804, amended Chapters 3 and 5 of LAC 46:XXVII.

The Board of Chiropractic Examiners has made the following revisions to Chapters 3 and 5 of LAC 46: 46:XXVII to repeal LAC 46:XXVII.301, Use of Steel Balls, because this technique is a type of meridian therapy. Meridian therapy to treat the functional integrity of the spine is within the scope of chiropractic in Louisiana; to repeal LAC 46:XXVII.306, Itemized Patient Billing, due to changes in patient billing; to amend LAC 46:XXVII.307, Advertising Practices, for clarification purposes and due to increased electronic advertising; to repeal and amend various Sections of LAC 46:XXVII.308, Disclosures in Advertising, in part, to include internet advertising; to amend various Sections of LAC 46:XXVII.310, Accident and Disaster Solicitation, to regulate and enforce telephone solicitation and solicitation of accident or disaster victims; to repeal LAC 46:XXVII.318, Specialty Register, in order to simplify the criteria and/or guidelines for specialties due to the limiting nature of the list of specialties; to promulgate LAC 46:XXVII.320, Specialty Advertising, to regulate and enforce specialty advertising, as well as to simplify the criteria and/or guidelines for specialties; to amend LAC 46:XXVII.501, for clarification purposes, changing "Ethical Standards of Chiropractors" to "ethical standards of chiropractors."

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXVII. Chiropractors
Chapter 3. Professional Conduct

§301. Use of Steel Balls

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2801.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Chiropractic Examiners, LR 2:51 (February 1976), repealed by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 35:953 (May 2009).

§306. Itemized Patient Billing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2803.E.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 15:963 (November 1989), amended LR 17:968 (October 1991), repealed LR 35:953 (May 2009).

§307. Advertising Practices

A. - B. ...

C. Testimonials may be used if the word "ADVERTISEMENT" in capital letters of larger type size than the largest text of the testimonial appears directly above the testimonial. The doctor is responsible for any false, deceptive or misleading statements in the testimonial.

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

b. Repealed.

c. that additional services or goods which are subject to a charge shall not be rendered until such charges are disclosed in writing to the patient;

2. Repealed.

3. ...

E.1. Repealed.

2. ...

F. Any advertisement that mentions automobile liability insurance shall state that "policy limitations apply" and must be in bold print. Any electronic advertisements must state that "policy limitations apply."

G. - H. ...

I. Cash or in-kind payments for patient referrals is prohibited.

J. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2816.F.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 2:51 (February 1976), amended LR 5:174 (July 1979), LR 13:343 (June 1987), amended by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 15:963 (November 1989), LR 17:968 (October 1991), LR 22:191 (March 1996), LR 35:953 (May 2009).

§308. Disclosures in Advertising

A. - A.1.…

2. Repealed.

B. ...

* * *

C. "Advertising" or "advertisement" as used in this Section shall include, but not be limited to, any communication to the public including communication by means of newspaper, magazines, circulars, direct mail, directories, radio, television, billboards and "Internet advertising." The disclosures required to be given by this Section shall be made clearly, conspicuously, and in meaningful sequence. In the case of written advertisement, the terms "limited eligibility" and "personal liability" shall be in all capital letters and shall be printed more conspicuously than other terminology required by this Section and shall in no event be printed in less than the equivalent of 10-point type, 0.075 inch computer type or elite size. In the case of television advertising, the required disclosure shall be made by both audio and visual transmission. All such disclosures shall be made in the English language.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2816.F.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 15:963 (November 1989), amended LR 35:953 (May 2009).

§310. Accident and Disaster Solicitation

A. On the outside of each solicitation letter in 10-point bold type at the bottom left hand corner of the envelope, there will be printed in red, capital letters, THIS IS AN ADVERTISEMENT.

B. On the body of each solicitation letter, in the same type size as the letter, shall be contained the following paragraph in red lettering.

> NOTICE: THIS IS AN ADVERTISEMENT. Your name and address and information relative to the accident in which you were involved were acquired from police documents. You are under no obligation to respond to this letter. Recipients of this advertisement should understand the importance of employing a health care provider and inquiry into the doctor's qualifications and experience is recommended.

C. - F. ...

G. Telemarketing, telephonic solicitation, digital communication by phone or communication by licensees and/or chiropractic facilities and their employees, or agents, by contract or otherwise, to victims of accidents or disaster shall be considered unethical if carried out within 30 days of the accident or disaster, and subject the licensee and/or chiropractic facility to action pursuant to R.S. 37:2804.

H. Telemarketing, telephonic solicitation, digital communication by phone or communication transcripts shall be regulated by the board and such transcripts shall be submitted to the board 60 days prior to use. The board shall reject or accept the transcript within 60 days of receipt by the board office. If the transcript is rejected, the board shall give the reasons for its rejection. No solicitation under this section may be used until approved by the board.

I. The telemarketing, telephonic solicitation, digital communication by phone or communication transcripts, taped and/or digital recordings of the solicitation shall be maintained for a period of three years following their utilization. A log of the contact information and date of contact must be maintained for a period of three years, following the telemarketing encounter. Transcripts and logs shall be made available to the board upon request within 10 business days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2816.F.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 20:433 (April 1994), amended LR 35:954 (May 2009).

§318. Specialty Register

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2801.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 18:1378 (December 1992), amended LR 22:192 (March 1996), repealed LR 35:954 (May 2009).

§320. Specialty Advertising

A. The use of the terms or form of these terms, "specialize in" or "specialist," or the use of the letters indicating a decree or specialization on stationary, letterhead, business cards or other such publication is considered advertising for the purposes of this Section. Generally recognized academic credentials such as B.A., B.S., M.S., J.D., M.D., Ph.D., etc., are exempted from this Rule when awarded by a college or university fully accredited by an association recognized by the Department of Health, Education and Welfare.

B. Only those licensees holding the final certification in postgraduate training and certification programs may hold themselves out to the public as possessing special knowledge skills or training. A licensee who utilizes any advertisement, which states that a licensee has special training or skills or is certified in a specialty that does not comply with Subparagraphs B.1.a-d, is engaged in deceptive and misleading advertising practices.

1. Specialty training must meet the following criteria. The course of study must:

a. be conducted under the auspices of and taught by the postgraduate faculty of the chiropractic college fully accredited by the Council on Chiropractic Education;

b. consist of a minimum of 300 hours;

c. require completion of the certification examination given by a board independent of the entity which taught the course; and

d. meet such other criteria as the board deems appropriate.

2. The National Board of Chiropractic Examiners does not engage in specialty testing. The use of the designation, "Diplomate of the National Board of Chiropractic Examiners," or any derivative thereof, may give the false impression of certification or credentials beyond that required of all chiropractic licenses and is considered deceptive and misleading by the Board of Chiropractic Examiners.

C. The use of the terms or form of these terms, "certified in" or "certified by," or the use of the letters indicating a degree or certification on stationery, letterhead, business cards or other such publication is considered advertising for the purpose of this Section.

D. Only those licensees holding the final certification in postgraduate training and certification programs may hold themselves out to the public as possessing special knowledge, skills or training. A licensee who utilizes any advertisement, which states that a licensee has special training or skills or is certified in a specialty that does not comply with Subparagraphs D.1.a.-d., is engaged in deceptive and misleading advertising practices.

1. Certified training must meet the following criteria. The course of study must:

a. be conducted under the auspices of and taught by the postgraduate faculty of the chiropractic college fully accredited by the Council on Chiropractic Education;

b. consist of a minimum of 100 hours;

c. require completion of the certification examination given by a board independent of the entity which taught the course; and

d. meet such other criteria as the board deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2801 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Chiropractic Examiners, LR 35:954 (May 2009).

Chapter 5. Due Process Procedures for Ethics Violations

Subchapter A. Applicability

§501. Unethical Conduct

A. Unethical conduct shall be determined on the basis of the provisions of the rules and regulations of the Board of Chiropractic Examiners, ethical standards of chiropractors, and other provisions included in R.S. 37:2801-2827, specifically, if a chiropractor:

1. - 6. ...

7. has willfully or negligently violated the ethical standards of chiropractors subscribed to by the Board of Chiropractic Examiners; or

8. has willfully or negligently violated any of the provisions of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2816.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Chiropractic Examiners, LR 10:327 (April 1984), amended LR 13:344 (June 1987), LR 35:955 (May 2009).

Patricia A. Oliver
Executive Director

0905#051

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services—Small Rural Hospitals
Reimbursement Methodology
(LAC 50:V.1125 and 1127)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:V.1125 and 1127 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 V. Hospital Services
Subpart 1. Inpatient Hospitals

Chapter 11. Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§1125. Small Rural Hospitals

A. Effective for dates of service on or after July 1, 2008, the prospective per diem rate paid to small rural hospitals for inpatient acute care services shall be the median cost amount plus 10 percent.

1. The per diem rate calculation shall be based on each hospital's year-end cost report period ending in calendar year 2006. If the cost reporting period is not a full period (12 months), the latest filed full period cost report shall be used.

B. The Medicaid cost per inpatient day for each small rural hospital shall be inflated from their applicable cost reporting period to the midpoint of the implementation year (December 31, 2008) by the Medicare market basket inflation factor for PPS hospitals, then arrayed from high to low to determine the median inpatient acute cost per day for all small rural hospitals.

C. The median cost and rates shall be rebased at least every other year using the latest filed full period cost reports as filed in accordance with Medicare timely filing guidelines.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:955 (May 2009).

§1127. Inpatient Psychiatric Hospital Services

A. Effective for dates of service on or after July 1, 2008, the prospective per diem rate paid to small rural hospitals for psychiatric services rendered in distinct part psychiatric units shall be the median cost amount per inpatient day plus 10 percent.

1. The per diem rate calculation shall be based on each hospital's year-end cost report period ending in calendar year 2006. If the cost reporting period is not a full period (12 months), the latest filed full period cost report shall be used.

B. The Medicaid cost per inpatient psychiatric day for each small rural hospital shall be inflated from their applicable cost reporting period to the midpoint of the implementation year (December 31, 2008) by the Medicare market basket inflation factor for PPS hospitals, then arrayed from high to low to determine the median inpatient acute cost per day for all small rural hospitals.

C. The median cost and rates shall be rebased at least every other year using the latest filed full period cost reports as filed in accordance with Medicare timely filing guidelines.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:955 (May 2009).

Alan Levine
Secretary

0905#091

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Outpatient Hospital Services
Small Rural Hospitals and State-Owned Hospitals
Reimbursement Methodology
(LAC 50:V.Chapters 51-61)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:V.Chapters 51-61 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 V. Hospital Services
Subpart 5. Outpatient Hospitals

Chapter 51. General Provisions (Reserved)

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5311. Small Rural Hospitals

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for outpatient hospital surgery services shall be as follows.

1. Small rural hospitals shall receive an interim payment for claims which shall be the Medicaid fee schedule payment on file for each service as of July 1, 2008.

2. A quarterly interim cost settlement payment shall be made to each small rural hospital to estimate a payment of 110 percent of allowable cost for fee schedule services.

a. The interim cost settlement payment shall be calculated by subtracting the actual quarterly payments for the applicable dates of services from 110 percent of the allowable costs of the quarterly claims. The cost to charge ratio from the latest filed cost report shall be applied to quarterly charges for the outpatient claims paid by fee schedule and multiplied by 110 percent of the allowable costs as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:956 (May 2009).

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5511. Small Rural Hospitals

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for outpatient hospital clinic services shall be as follows.

1. Small rural hospitals shall receive an interim payment for claims which shall be the Medicaid fee schedule payment on file for each service as of July 1, 2008.

2. A quarterly interim cost settlement payment shall be made to each small rural hospital to estimate a payment of 110 percent of allowable cost for fee schedule services.

a. The interim cost settlement payment shall be calculated by subtracting the actual quarterly payments for the applicable dates of services from 110 percent of the allowable costs of the quarterly claims. The cost to charge ratio from the latest filed cost report shall be applied to quarterly charges for the outpatient claims paid by fee schedule and multiplied by 110 percent of the allowable costs as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:956 (May 2009).

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5711. Small Rural Hospitals

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for outpatient clinical diagnostic laboratory services shall be a fee schedule amount equal to the Medicare Fee Schedule amount on file as of July 1, 2008.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:956 (May 2009).

§5715. State-Owned Hospitals

A. For dates of service on or after July 1, 2008, state-owned hospitals shall be reimbursed for outpatient clinical laboratory services at 100 per cent of the current Medicare Clinical Laboratory Fee Schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:956 (May 2009).

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5911. Small Rural Hospitals

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for rehabilitation services shall be as follows.

1. Small rural hospitals shall receive an interim payment for claims which shall be the Medicaid fee schedule payment on file for each service as of July 1, 2008.

2. A quarterly interim cost settlement payment shall be made to each small rural hospital to estimate a payment of 110 percent of allowable cost for fee schedule services.

a. The interim cost settlement payment shall be calculated by subtracting the actual quarterly payments for the applicable dates of services from 110 percent of the allowable costs of the quarterly claims. The cost to charge ratio from the latest filed cost report shall be applied to quarterly charges for the outpatient claims paid by fee schedule and multiplied by 110 percent of the allowable costs as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:956 (May 2009).

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6113. Small Rural Hospitals

A. Effective for dates of service on or after July 1, 2008, the reimbursement amount paid to small rural hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees shall be as follows.

1. Small rural hospitals shall receive an interim payment for claims which shall be 110 percent of each hospital's cost to charge ratio as calculated from the latest filed cost report.

2. Final reimbursement shall be 110 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:956 (May 2009).

§6127. State-Owned Hospitals

A. Cost Based Services. The reimbursement methodology for state-owned outpatient hospital services are determined by a hospital cost to charge ratio based on each state hospital's latest filed cost report. These cost-to-charge ratio calculations will be reviewed on an ongoing basis as cost reports are filed and will be adjusted as necessary. Final reimbursement shall be the allowable cost as determined from the Medicare/Medicaid cost report for each state hospital.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:957 (May 2009).

Alan Levine
Secretary

0905#092

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Rural Health Clinics—Reimbursement Methodology
(LAC 50:XI.16705)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:XI.16705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XI. Clinic Services
Subpart 15. Rural Health Clinics
Chapter 167. Reimbursement Methodology
§16705. Hospital-Based Rural Health Clinics

A. Effective for dates of service on or after July 1, 2008, the reimbursement methodology for services rendered by a rural health clinic that was licensed as part of a small rural hospital as of July 1, 2007 shall be as follows.

1. Hospital-based rural health clinics shall be reimbursed in the aggregate at 110 percent of reasonable costs.

2. The interim payment for claims shall be the Medicaid Benefits Improvement and Protection Act of 2000 (BIPA) Prospective Payment System (PPS) per visit rate currently in effect for each provider. Final reimbursement shall be the greater of BIPA PPS payments or the alternative payment methodology of 110 percent of allowable costs as calculated through the cost settlement process.

3. The payment received under this methodology will be compared each year to the BIPA PPS rate to assure the clinic that their payment under this alternative payment methodology is at least equal to the BIPA PPS rate. If the payment calculation at 110 percent of allowable cost is less than the BIPA PPS payments, the clinic will be paid the difference.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:957 (May 2009).

Alan Levine
Secretary

0905#093

RULE

Department of Insurance
Office of the Commissioner

Regulation 97—Vehicle Tracking Systems
(LAC 37:XIII.Chapter 133)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Department of Insurance (LDOI) has promulgated Regulation 97. Adoption of this regulation is authorized by Acts 2008, No. 132 of the Regular Session of the Louisiana Legislature.

Act 132 permits an insurer to offer a rate reduction for motor vehicles equipped with a vehicle tracking system which assists in the recovery of stolen vehicles and directs the Commissioner of Insurance to promulgate rules and regulations defining vehicle tracking systems.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and through the authority granted under R.S. 22:1 et seq., and R.S. 22:1457(E) the Commissioner of Insurance has adopted Regulation 97 to implement the provisions of Acts 2008, No. 132 of the Regular Session of the Louisiana Legislature, which authorizes insurers to offer a rate reduction for motor vehicles equipped with a vehicle tracking system which assists in the recovery of stolen vehicles and directs the commissioner to promulgate rules and regulations defining vehicle tracking systems.

Title 37
INSURANCE
PART XIII. Regulations
Chapter 133. Regulation Number 97—Vehicle Tracking Systems
§13301. Purpose

A. The purpose of Regulation 97 is to implement the provisions of Acts 2008, No. 132 of the Regular Session of the Louisiana Legislature which mandates that the Department of Insurance promulgate rules and regulations giving further definition of vehicle tracking systems as they relate to motor vehicle liability and physical damage insurance rate reductions for motor vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:957 (May 2009).

§13303. Applicability and Scope

A. Regulation 97 shall apply to rate filings applied for by an insurer and approved by the commissioner on motor vehicle liability and physical damage insurance for coverage of any motor vehicle equipped with a vehicle tracking system which aids in the recovery of stolen vehicles.

B. The definition of a vehicle tracking system provided herein shall give interpretation and guidance to insurers

offering rate reductions as authorized by the commissioner pursuant to R.S. 22:1457(E).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1457 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:957 (May 2009).

§13305. Authority

A. Regulation 97 is promulgated by the commissioner pursuant to the authority granted under the Louisiana Insurance Code, R.S. 22:1 et seq., particularly R.S. 22:11, and specifically R.S. 22:1457(E).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1457 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:958 (May 2009).

§13307. Definitions

A. For the purposes of Regulation 97 these terms shall have the meaning ascribed herein unless the context clearly indicates otherwise.

Commissioner—Commissioner of Insurance.

Insurer—any authorized insurance company which possesses a certificate of authority issued by the Commissioner to write motor vehicle liability and physical damage insurance business in the state of Louisiana.

Vehicle Tracking System—an electronic device, unit or system installed in a motor vehicle that is accessible after that motor vehicle is stolen. When accessed, the electronic device, unit or system shall be capable of transmitting information regarding the location of the stolen motor vehicle to applicable and appropriate law enforcement officials or private entities to assist in the recovery of the stolen motor vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1457 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:958 (May 2009).

§13309. Rate Reduction for Vehicle Tracking System

A. Upon application by an insurer, an actuarially justified rate reduction for the installation of a vehicle tracking system shall be approved by the commissioner, in accordance with law. The rate reduction filed by the insurer shall apply to either motor vehicle liability coverage or physical damage insurance coverage, or both coverages, as approved by the commissioner, and shall reduce the insurance premium of any motor vehicle when the motor vehicle is equipped with a vehicle tracking system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:958 (May 2009).

§13311. Effective Date

A. Regulation 97 shall become effective upon final publication in the Louisiana Register and shall apply to acts or practices committed on or after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:958 (May 2009).

§13313. Severability

A. If any Section or provision of Regulation 97 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 97 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of Regulation 97 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:958 (May 2009).

James J. Donelon
Commissioner

0905#036

RULE

Department of Public Safety and Corrections
Corrections Services

Drug-Free Workplace (LAC 22:I.207)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has amended the contents of Section 207, Drug-Free Workplace.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part I. Corrections

Chapter 2. Personnel

§207. Drug-Free Workplace

A. Purpose. To provide a comprehensive program of substance abuse education and to establish guidelines for employee drug and alcohol testing.

B. Applicability. Deputy Secretary, Chief of Operations, Undersecretary, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole and Director of Prison Enterprises. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its contents to all concerned.

C. Policy. Substance abuse is a major contributor to criminal activity and is particularly detrimental to the department's mission to provide for the safety of employees and the public. Employees who engage in substance abuse may not be able to perform the essential functions of their positions and may be less likely to enforce policies and procedures effectively to control or to prevent illicit drug and alcohol use by other employees and offenders. Therefore, it is the secretary's policy to promote increased employee awareness of substance abuse and to achieve and maintain a workplace free of drugs and alcohol.

D. Definitions

CAP-FUDT-Certified Laboratory—a laboratory certified for forensic urine testing by the College of American Pathologists.

Collection Site—a designated place for the employee to provide a urine specimen to be analyzed for the presence of drugs.

Custodian of Records—a staff person responsible for the direct accountability of drug test results.

Drug Testing—for the purpose of this regulation, drug testing programs shall be comprised of two testing components:

a. preliminary analysis (using the testing instrument available on the current contract issued by the Procurement and Contractual Review Division and approved by the secretary); and

b. formal testing. The application of formal testing may be contingent upon the results of the preliminary analysis. Alcohol testing consists only of administering the approved test and replicating any positive results.

Employee—any individual employed by or appointed to a position with Corrections Services (including student workers and temporary appointments and, for the purpose of this regulation, employees of Allen Correctional Center and Winn Correctional Center) or by an outside agency or provider who works in an institution or division or any individual under contract with Corrections Services who works in an institution or division. (This does not necessarily confer *employment* status on independent contractors or employees of outside agencies, but serves to define a class of people who are subject to participation in the Drug-Free Workplace Program.)

Formal Testing—a second analytical procedure following a positive result on a preliminary analysis to identify the presence of a specific drug which is independent of the preliminary analysis using a different technique and/or chemical principle. Formal testing is conducted by a CAP-FUDT or SAMSHA-certified laboratory.

Medical Review Officer (MRO)—a licensed physician designated by the unit head who is responsible for receiving positive preliminary analysis results. The MRO must possess knowledge of substance abuse disorders and appropriate medical training to determine and evaluate an individual's positive result together with his medical history and other relevant biomedical information.

Offender—anyone in the physical custody of the Department of Public Safety and Corrections or under the supervision of the Division of Probation and Parole.

Preliminary Analysis—an immunoassay screen to detect the presence of drugs or metabolites using approved drug testing instruments. (See Paragraph H.1 for additional information). The results of the preliminary analysis are to be used solely to indicate the need for additional formal testing, except for those who are being tested for pre-employment purposes. In this case, when the preliminary analysis is positive, it shall be sufficient cause to either remove the prospective employee from consideration for employment or appointment or be cause for conducting formal testing. If formal testing is conducted and the result is positive, this shall be cause for the prospective employee's elimination from consideration for employment or appointment.

Safety/Security Sensitive Position—any job which directly or indirectly affects the safety and security of others. For the purpose of this regulation, safety/security sensitive positions are those which involve direct contact with offenders and those having access to confidential information relative to the care, confinement or supervision of offenders. All positions within the department are considered to be safety/security sensitive positions, including those that may require or authorize access to a prison or an offender, those with duties that may require or authorize carrying a firearm, those that may require instructing or supervising any person to operate or maintain, or that may require or authorize operating or maintaining, any heavy equipment or machinery and those that may require or authorize the operation of maintenance of a public vehicle, or the supervision of such an employee or those with duties that require them to access the records of offenders or employees of the department.

SAMSHA-Certified Laboratory—a laboratory certified for forensic drug testing by the Substance Abuse and Mental Health Services Administration.

SAMSHA Guidelines—the mandatory guidelines for federal workplace drug testing programs as published in the Federal Register on April 11, 1988 (53 FR 11970, revised on June 9, 1994 (59 FR 29908), further revised on September 30, 1997 (62 FR 51118) and any further revised guidelines issued by SAMSHA.

E. General. Each unit head is responsible for implementation of a substance abuse education program that requires compliance with this regulation. Each employee is responsible for refraining from illegal use, possession, sale or manufacture of controlled substances and from reporting to work or working while under the influence of alcohol, illegal drugs or impaired by prescription drugs.

F. Type of Testing

1. Pre-Employment. Drug testing shall be conducted prior to employment. (See Paragraph D. Definitions—*Preliminary Analysis*, for additional information.)

2. Reasonable Suspicion/Probable Cause. Reasonable suspicion/probable cause screening and subsequent testing, as appropriate, may be based on:

a. observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug or alcohol or when the odor of alcohol, marijuana smoke or other substance is present;

b. abnormal conduct or erratic behavior;

c. arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking (the term *trafficking* shall also mean *distribution*);

d. information provided by reliable and credible sources or independently corroborated;

e. newly discovered evidence that the employee tampered with a previous drug or alcohol test;

f. credible allegation or confirmation of involvement in a significant violation of policy in which judgment may have been impaired.

3. Post Accident. An employee shall be subject to drug testing following an accident that occurs during the course and scope of their employment that:

a. involves circumstances leading to a reasonable suspicion of the employee's drug use;

b. results in a fatality; or

c. results or causes the release of hazardous waste as defined in R.S. 30:2173(2) or hazardous materials as defined in R.S. 32:1502(5);

d. an employee who is involved in an accident that results in bodily injury or property damage may be subject to drug testing.

4. Rehabilitative. Staff testing positive without a legitimate explanation and whose employment is not terminated shall be subject to participation in a rehabilitation program. As a condition for returning to work after

participating in such a program, the employee must agree to follow-up testing on a random basis for up to 48 months. (Additionally, medical professionals who are participating in a rehabilitation program, substance abuse aftercare program or who have a documented substance abuse history must agree to periodic drug/alcohol testing throughout the course of their employment.)

5. Random. All employees who occupy safety/security sensitive positions (as defined in this regulation) shall be subject to random drug testing. On a monthly basis, a list of employee numbers representing at least 5 percent of a unit's employees shall be selected at random by a computer-generated selection process. This list shall be provided to each institution, the Division of Probation and Parole, Division of Prison Enterprises and Headquarters.

a. The Office of Information Services shall generate the list of employee numbers at the prescribed interval and ensure that the lists are distributed directly to each unit head. (Alternatively, if a unit has a drug-testing services contract with a CAP-FUDT or SAMSHA-certified laboratory, the production of this list may be included as part of those services.)

b. Unit heads shall establish a policy for matching the employee numbers to employee names, notification of selected employees, recording of test results and other appropriate procedures as needed.

c. All tests shall be conducted during the selected employees' work hours; no employee shall be called in on his day/night off specifically for the purpose of a random drug test.

d. The conduct of this program shall be in accordance with Subsection H of this regulation.

e. Promotion. Drug testing shall be conducted prior to promotion.

G. Substances to be Tested. In accordance with R.S. 49:1005, drug testing may be performed for any of the following classes of drugs: marijuana; opiates; cocaine; amphetamines; and phencyclidine in the random testing or preliminary testing process. This does not preclude testing for any other illegal drugs (e.g., methamphetamines,) alcohol, or abused prescription medication if there is reasonable suspicion or probable cause.

H. Conduct of the Drug Testing Program

1. Preliminary Analysis

a. The testing instrument available on the current contract issued by the Procurement and Contractual Review Division and approved by the secretary shall be utilized as a preliminary analysis to determine the need for further testing, but may not be used as the basis for any disciplinary action or other adverse action. The collection process shall be done on-site by unit staff who have received the appropriate training. (Formal testing may be utilized initially in lieu of preliminary analysis when the unit head or designee determines that this is the most efficient method.)

b. When the test produces a positive result, the MRO shall be notified. The MRO shall obtain a list of medication used by the employee at the time of the test and shall give the employee the opportunity to provide a medical history and/or discuss the test results.

c. Upon review and evaluation of all available information, the MRO shall determine the need for formal testing.

d. If formal testing is deemed necessary by the MRO, the employee shall be escorted to a collection site by a unit staff person.

e. Pursuant to Paragraph D.9 of this regulation, it is not mandatory that the MRO review the results of a pre-employment preliminary analysis which results in a positive finding.

2. Formal Testing

a. Formal testing shall be conducted by a CAP-FUDT or SAMSHA-certified laboratory and shall be performed in compliance with SAMSHA guidelines.

b. All urine specimens for drug testing shall be collected, stored and transported in strict accordance with SAMSHA guidelines. The cut off limits for drug testing shall also be in accordance with SAMSHA guidelines with the exception of initial testing for marijuana. The initial cut off level for marijuana shall be no less than 50 nanograms/ML and no more than 100 nanograms/ML as specified by the testing entity.

c. In the event of a positive result on a formal drug test, the laboratory's staff shall provide a copy of the results to the employee and to the unit head.

I. Conduct of the Alcohol Testing Program

1. Pursuant to Department Regulation No. A-02-001 "Employee Manual" Employee Rules and Disciplinary Procedures Rule #11, employees are prohibited from reporting for or being on duty under the influence of alcohol or other intoxicants (or when the odor or effect is noticeable.) Towards this end, employees may be required to submit to alcohol testing while on duty under circumstances defined in Subsection F.

2. A portable breathalyzer or other instrument and approved by the secretary shall be used to determine a violation of this regulation. In the event of a positive reading on the portable breathalyzer, a second test shall be conducted.

3. The alcohol test can be administered only by those persons specifically authorized by the unit head and who have been trained in the use of the testing instrument(s).

J. Training Required. A minimum of one hour of training per year on the effects and consequences of controlled substance abuse on personal health and safety at the workplace and indicators of substance use or abuse is required for all full time employees.

K. Record Keeping and Reporting Requirements

1. The custodian of records designated by each unit head shall maintain a record of each employee who has submitted to a drug or alcohol test, the date of such test, the name of the person performing the test, the number of tests performed and a summary of the results of each type of test.

2. All test results shall be retained for a minimum of three years after the employee resigns, retires or is dismissed from employment.

3. Pursuant to R.S. 49:1012, all information, interviews, reports, statements, memoranda and/or test results received through the unit's drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery or disclosed in any public hearing or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant.

All such confidential information shall be maintained in a secure manner.

4. A monthly report of drug testing activities shall be compiled for submission in the Department Regulation No. C-05-001 report. The report shall reflect the categories of testing conducted, the number of tests conducted by category, number of positives, percentage of positives, number of negatives and type of drug tested.

5. By November 1 of each year, each unit's business office shall submit a report to the headquarters human resources office detailing the number of employees affected by the drug testing program, the categories of testing conducted, the associated costs of testing and the effectiveness of the program. In conjunction with the undersecretary's office, the headquarters human resources office shall compile the department's annual drug testing report for submission to the Division of Administration by February 1, 2009 and annually thereafter by December 1.

L. Violation of This Regulation. The disciplinary penalties and guidelines contained in Department Regulation No. A-02-001 "Employee Manual" shall be utilized in the administration of this regulation. Refusal to submit to the random or preliminary testing may result in disciplinary action. Formal testing with positive results may be cause for initiation of disciplinary action.

1. When confirmed positive formal test results do not result in termination, referral to the Employee Assistance Program (see Department Regulation No. A-02-014 for additional information) or other individual or agency equipped to coordinate accessibility to substance abuse education or counseling is appropriate and may be made.

2. As all employees are designated as holding safety/security sensitive positions, any time there is a reasonable suspicion that an employee is impaired due to the use of drugs (prescribed or other) or alcohol consumption, the employee shall be immediately removed from the employee's work station and taken to a secure location (away from any possible contact with offenders) for preliminary or formal testing.

3. If any employee tests positive for drugs or alcohol during either the random, preliminary or final testing, the employee will be placed on appropriate leave status and escorted off the premises. If impaired, assistance shall be provided to ensure the employee is transported to a safe location. The employee shall not be allowed to return to work until the condition is resolved or no earlier than the next scheduled work day if the unit head or designee so approves the return to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:522 (March 1999), amended LR 26:1308 (June 2000), LR 35:958 (May 2009).

James M. Le Blanc
Secretary

0905#037

RULE

Department of Social Services
Office of Community Services

Daycare Services (LAC 67:V.2301)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Community Services (OCS), has amended the LAC 67:V.Chapter 23, Daycare, Family Services, Day Care, Section 2301. This action is necessary in order to comply with LAC changes previously made by the Office of Family Support (OFS) that disqualifies some providers from receiving payment. The OFS provides OCS with the majority of funds utilized to support the agency's Daycare Services Program. The OCS also bases agreements with day care providers on the agreements already established by the OFS Child Care Assistance Program. Thus, a provider disqualified by OFS would also be disqualified for providing services to a client of OCS.

Title 67
SOCIAL SERVICES
Part V. Community Services
Subpart 4. Family Services
Chapter 23. Daycare
§2301. Daycare Services

A. - C. ...

D. Daycare providers that have been disqualified from receiving payment or terminated from participation in the OFS Child Care Assistance Program shall be disqualified from receiving payment for or providing services to any client of the OCS until the provider qualification status is resolved with the OFS and the provider is no longer disqualified or terminated.

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 Community Services, LR 11:689 (July 1985), amended LR 18:868 (August 1992), LR 25:2443 (December 1999), LR 31:101 (January 2005), LR 33:1685 (August 2007), LR 35:961 (May 2009).

Kristy H. Nichols
Interim Secretary

0905#074

RULE

Department of Social Services
Office of Family Support

Licensing Class "A" Regulations for Day Care Centers Caring for Sick Children (LAC 67:III.7388, 7389, 7390, 7391, 7392, 7393, 7395, and 7399)

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, amended the LAC 67:III.Chapter 73,

Subchapter C License Class A Regulations for Day Centers Caring for Sick Children, and added Appendix A: Child and Adult Care Food Program.

Subchapter C License Class A Regulations for Day Centers Caring for Sick Children has been amended to correct Section numbers that are referenced incorrectly. Appendix A: Child and Adult Care Food Program has been added to the Louisiana Administrative Code, Title 67, Subpart 21, Chapter 73. This Appendix is referenced throughout Chapter 73, but was inadvertently excluded from the *Louisiana Administrative Code*.

This amendment is pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF).

Title 67
SOCIAL SERVICES
Part III. Family Support
Subpart 21. Child Care Licensing
Chapter 73. Day Care Licensing
Subchapter C. Licensing Class "A" Regulations for Day Care Centers Caring for Sick Children

§7388. Standards

A. ...

B. In addition to §7303 regarding application for licensure, any existing facility approved as a day care center that wishes to utilize the facility for sick child care, must submit another application and fee for licensure as a sick day care center. Facilities and/or rooms designated for use by and for sick children shall not be used by children or staff from any other day care component. Children and staff who begin their day in a sick child care center shall remain throughout the day and shall not be permitted to return to any other part of the child care center or transfer to any other child care center.

C. Facilities receiving approval as a sick child care center that are also approved as a day care center will be issued one license designating licensure for both components. The licensee shall ensure that the day care center for sick children is maintained physically separate and apart from the other day care center components. A center licensed for both day care and sick day care must be relicensed for each component. A center licensed for both day care and sick day care may have a license revoked for either or both of the above components according to §7303.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:1130 (October 1994), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2779 (December 2007), amended LR 35:962 (May 2009).

§7389. Personnel

A. - B. ...

C. In addition to §7309, there shall be a currently licensed nurse practitioner or registered nurse on the premises on the sick day care center at all times. The registered nurse must have documented experience in pediatrics or child care experience and be knowledgeable in communicable diseases and child care licensing requirements.

D. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:1131 (October 1994), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2779 (December 2007), amended LR 35:962 (May 2009).

§7390. Training

A. In addition to §7312 regarding staff training and development, all facilities licensed as a sick child care center shall conduct and document 20 hours of orientation training by the registered nurse for each staff member upon employment or within 30 days of employment to include training in each of the following subjects:

A.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:1131 (October 1994), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2780 (December 2007), amended LR 35:962 (May 2009).

§7391. Staffing

A. Section 7315 regarding staff/child ratio will not apply to sick child care centers. Facilities approved as a sick child care center shall maintain a staff/child ratio no less than the following.

Child's Age	Staff/Child Ratio	Maximum Group Size* Per Room
0-12 month(s)	1:3	3
13-24 months	1:3	6
25-59 months	1:5	10
5-7 years	1:8	8
8-12 years	1:10	10

*NOTE: These numbers may vary according to the specific disease or illness. Final approval will be required by the health department or physician consultant.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:1131 (October 1994), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2780 (December 2007), amended LR 35:962 (May 2009).

§7392. Plant Equipment

A.1. In addition to §7323.A regarding indoor space, a center providing day care for sick children as a component of a licensed center for well children shall use rooms/areas and facilities which are physically separated by floor to ceiling walls from other components of the center. The center shall ensure that all entrances/exits, fixtures, furniture, equipment and supplies designated for use in the care of sick children and for use by the children shall not be shared with or used by any other component of the center.

A.2. - C. ...

D. For licensing Class A centers caring for sick children only, §7323.B should be omitted and the following inserted.

> A program for sick day care children shall not be required to have 75 square feet of outdoor space for each child. The program should instead develop a written plan to ensure some opportunities for safe outdoor activities in accordance with §7306.B.

E. For licensing Class A centers caring for sick children only, in addition to §7325.A regarding available working telephone, the capability of having a three-way conversation on the telephone is required. This regulation allows for the timely and accurate communication between the parent, the child's pediatrician or the physician consultant, and the registered nurse from the sick child care center. Communication with parents and children's physicians should be handled by the registered nurse, licensed practical nurse or management staff only.

F. For licensing Class A centers caring for sick children only, in addition to §7325 regarding furnishings and equipment, a toilet and handwashing sink shall be present in each child care room. All rooms used for diapered children must have a diaper changing area placed adjacent to the handwashing sink.

G. For licensing Class A centers caring for sick children only, §7325.L and M regarding individual and appropriate sleeping arrangements is amended to omit any reference to use of mats.

H. For licensing Class A centers caring for sick children only, §7325.R regarding spacing is amended to require 3 feet of space between cribs or cots when in use.

I. - J. ...

K. For licensing Class A centers caring for sick children only, in addition to §7305.D regarding sanitary requirements, the following shall be included:

1. - 3. ...

L. For licensing Class A centers caring for sick children only, in addition to §7327.I regarding safety requirements, the sick child care center shall have several different sizes of oral airways on hand in case of emergencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:1132 (October 1994), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2780 (December 2007), amended LR 35:962 (May 2009).

§7393. Admission Policies and Procedures

A. In addition to §7306.A regarding admission of children to the day care center, the sick child care facility shall develop a written procedure prior to initiating services, to obtain necessary medical information to meet health standards, (e.g., immunizations, inclusion/exclusion) and to implement the program. This includes the background diagnostic information, health and social history. Information shall be sought on all therapies and treatments being provided to the child along with the expected length and frequency of expected services. The sick child care program shall include a procedure for conducting physica1 assessments on all children entering the facility. The program shall also institute a policy on the management of children with communicable diseases. These policies must be in compliance with all sick day care center regulations.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:1132 (October 1994), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2781 (December 2007), amended LR 35:963 (May 2009).

§7395. Care of Children

A. For licensing Class A centers caring for sick children only, in addition to §7311.A.4, no staff member with infectious skin lesions which cannot be covered shall be responsible for food handling.

B. ...

C. For licensing Class A centers caring for sick children only, §7321 is amended as follows.

> The administration of prescription medicines at the sick child day care center shall be limited to those prescribed by a licensed physician for the individual child in the original container labeled by a pharmacist. Over the counter drugs may be administered with written permission of the parent or guardian in conformity with the policies and procedures established by the physician consultant or the child's physician. All medication (prescription or over the counter) shall be in the original container.

D. The sick child care facility shall not accept or retain any child for care who displays any of the following signs, symptoms or illnesses:

1. - 12. ...

13. contagious stage of measles, chicken pox, or mumps unless sick child care facility is expressly set up to handle these children according to §7323.A.4. The child with one of these diseases must be able to enter the facility by a separate entrance/exit from the rest of the children;

14. ...

> NOTE: Children with such conditions as specified above may be accepted for sick child care when the evaluation and health assessment conducted by the nurse practitioner or physician consultant results in the determination that the child is not seriously sick.

E. - F.3. ...

G. A sick child shall be temporarily isolated if the center determines that the condition of the child becomes worse warranting notification of the parent.

H. §7321.L is amended for sick child care to read as follows.

> The parent or legal guardian shall be notified immediately of any significant change in a child's behavior or signs of illness. This information and the subsequent notification of parent by phone shall be recorded in writing and filed in the child's record.

I. For licensing Class A centers caring for sick children only, §7306.B regarding daily program should be deleted. The following should be inserted.

I.1. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:1133 (October 1994), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2782 (December 2007), amended LR 35:963 (May 2009).

§7399. Appendix A: Child and Adult Care Food Program

A. The Child Care Food Program of the United States Department of Agriculture is administered locally by state and regional agencies. Interested parties shall apply through the appropriate administering agency in their area. For further information and appropriate referral contact: Child Care and Summer Programs Division, Food and Nutrition Service, United State Department of Agriculture, 3101 Park Center Drive, Room 416, Alexandria, VA 22302, or your State Office.

B. Each meal served shall contain, as a minimum, the indicated food components:

1. a breakfast shall contain:

a. a serving of fluid milk as a beverage or on cereal, or used in part for each purpose;

b. a serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods;

c. a serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of whole-grain or enriched or fortified cereal; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni; or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods;

2. both lunch and supper shall contain:

a. a serving of fluid milk as a beverage;

b. a serving of lean meat, poultry or fish; or cheese; or an egg; or cooked dry beans or peas; or peanut butter; or an equivalent quantity of any combination of these foods. These foods shall be served in a main dish, or in a main dish and one other menu item, to meet this requirement. Cooked dry beans or dry peas may be used as the meat alternate or as part of the vegetable/fruit component but not as both food components in the same meal:

i. nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as a meat alternate due to their low protein content. Nut or seed meals or flours may be used as an ingredient in a bread/bread alternate, but shall not be use as meat alternate. As noted, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirements. Therefore, nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement;

c. a serving of two or more vegetables or fruits, or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement;

d. a serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of whole-grain or enriched pasta or noodle products such as macaroni; or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

2. Supplemental food (snacks) shall be served between other meal types and contain two of the following four components:

a. a serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;

b. a serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall not be used as a meat alternate due to their low protein content. Nut or seed meals or flours shall not be use as meat alternate;

c. a serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

d. a serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni; or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

C. Infant Meal Pattern. Foods within the infant meal pattern shall be of texture and consistency appropriate for the particular age group being served. The total amount of food authorized in the meal patterns set forth below shall be provided to the infant but may be served during a span of time consistent with the infant's eating habits, on a gradual basis with the intent of ensuring their nutritional well-being and in accordance with the parent's desires. The infant meal shall contain, at a minimum, each of the following components in the amounts indicated for the appropriate age group.

1. Birth through 3 months:

a. breakfast—4-6 fluid ounces of iron-fortified infant formula;

b. lunch or supper—4-6 fluid ounces of iron-fortified infant formula;

c. supplemental food—4-6 fluid ounces of iron-fortified infant formula.

2. 4 months through 7 months:

a. breakfast—4-8 fluid ounces of iron-fortified infant formula and 0-3 tablespoons of iron fortified dry infant cereal (optional);

b. lunch or supper—4-8 fluid ounces of iron-fortified infant formula and 0-3 tablespoons of iron fortified dry infant cereal (optional); and 0-3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional);

c. supplementary food—4-6 fluid ounces of iron-fortified infant formula.

3. 8 months through 11 months:

a. breakfast—6-8 fluid ounces of iron-fortified infant formula, or 6-8 ounces of whole fluid milk; 2-4 tablespoons of iron-fortified dry infant cereal; and 1-4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both;

b. lunch or supper—6-8 fluid ounces of iron-fortified infant formula, or 6-8 ounces of whole fluid milk; 2-4 tablespoons of iron fortified dry infant cereal and/or 1-4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas, or 1/2-2 ounces (weight) of cheese or 1-4 ounces (weight/volume) of cottage cheese of appropriate consistency; and 1-4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both; and

c. supplementary food—2-4 fluid ounces of iron-fortified infant formula, whole fluid milk or full strength fruit juice, 0-1/2 slice of crusty bread (optional) or 0-2 cracker-type products (optional) made from whole grain or enriched meal or flour that are suitable for an infant for use as a finger food.

D. Meal Patterns for Children Age 1 through 12. When children over age one participate, the total amount of food authorized in the meal patterns set forth in the following charts shall be provided.

Minimum Amount of Food Components to be Served as Breakfast	Food Components	Ages 1 and 2	Ages 3 to 5	Ages 6 to 12
Milk	Milk, Fluid	1/2 cup	3/4 cup	1 cup
Vegetables and Fruit	Vegetable(s) and/or fruit(s), or	1/4 cup	1/2 cup	1/2 cup
	Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	1/4 cup	1/2 cup	1/2 cup
Bread and Bread Alternates*	Bread, or	1/2 slice	1/2 slice	1 slice
	Cornbread, biscuits, rolls, muffins, etc., or	1/2 serving	1/2 serving	1 serving
	Cold dry cereal, or	1/4 cup or 1/2 ounce	1/3 cup or 1/2 ounce	3/4 cup or 1 ounce
	Cooked cereal, or	1/4 cup	1/4 cup	1/2 cup
	Cooked pasta or noodle products, or	1/4 cup	1/4 cup	1/2 cup
	Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternates	1/4 cup	1/4 cup	1/2 cup

*Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour.

Minimum Amount of Food Components to be Served as Lunch or Supper	Food Components	Ages 1 and 2	Ages 3 to 5	Ages 6 to 12
Milk	Milk, Fluid	1/2 cup	3/4 cup	1 cup
Vegetables and Fruit*	Vegetable(s) and/or fruit(s)	1/4 cup total	1/2 cup total	3/4 cup total
Bread and Bread Alternates**	Bread	1/2 slice	1/2 slice	1 slice
	Cornbread, biscuits, rolls, muffins, etc., or	1/2 serving	1/2 serving	1 serving
	Cooked pasta or noodle products, or	1/4 cup	1/4 cup	1/2 cup
	Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternates.	1/4 cup	1/4 cup	1/2 cup
Meat and Meat Alternates***	Lean meat or poultry or fish, or	1 ounce	1 1/2 ounces	2 ounces
	Cheese, or	1 ounce	1 1/2 ounces	2 ounces
	Eggs, or	1 egg	1 egg	1 egg
	Cooked dry beans or peas, or	1/4 cup	3/8 cup	1/2 cup
	Peanut butter or soynut butter or other nut or seed butters, or	2 tbsp.	3 tbsp.	4 tbsp.
	Peanuts or nuts and/or seeds,* or	1/2 ounce = 50%	3/4 ounce =50%	1 ounce =50%
	An equivalent quantity of any combination of the above meat/meat alternate.			

*Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than 1/2 of this requirement.
**Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour.
***This portion can meet only 1/2 of the total serving of the meat/meat alternate requirements for lunch or supper. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For determining combinations, 1 ounce of nuts or seeds are equal to 1 ounce of cooked lean meat, poultry, or fish.
Caution: Children under 6 are at the highest risk of choking. USDA recommends that any nuts and/or seeds to be served to them in a prepared food and be ground or finely chopped.

Minimum Amount of Components to be Served as Supplemental (Snack) Food

Select two of the following four but juice shall not be served with milk only.

	Food Components	Ages 1 and 2	Ages 3 to 5	Ages 6 to 12
Milk	Milk, Fluid	1/2 cup	1/2 cup	1 cup
Vegetables and Fruit	Vegetable(s) and/or fruit(s) (two or more), or	1/2 cup	1/2 cup	3/4 cup
	Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	1/2 cup	1/2 cup	3/4 cup
Bread and Bread Alternates*	Bread	1/2 slice	1/2 slice	1 slice
	Cornbread, biscuits, rolls, muffins, etc., or	1/2 serving	1/2 serving	1 serving
	Cold dry cereal, or	1/4 cup or 1/3 ounce	1/3 cup or 1/2 ounce	3/4 cup or 1 ounce
	Cooked cereal, or	1/4 cup	1/4 cup	1/2 cup
	Cooked pasta or noodle product, or	1/4 cup	1/4 cup	1/2 cup
	Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternates.	1/4 cup	1/4 cup	1/2 cup

	Food Components	Ages 1 and 2	Ages 3 to 5	Ages 6 to 12
Meat and Meat Alternates**	Lean meat or poultry or fish, or	1/2 ounce	1/2 ounce	1 ounce
	Cheese, or	1/2 ounce	1/2 ounce	1 ounce
	Eggs, or	1/2 egg	1/2 egg	1 egg
	Cooked dry beans or peas, or	1/8 cup	1/8 cup	1/4 cup
	Peanut butter or soynut butter or other nut or seed butters, or	1 tbsp.	1 tbsp.	2 tbsp.
	Peanuts or nuts and/or seeds,* or	1/2 ounce	1/2 ounce	1 ounce
	Yogurt, plain, or sweetened and flavored, or	2 ounces or 1/4 cup	2 ounces or 1/4 cup	4 ounces or 1/2 cup
	An equivalent quantity of any combination of meat/meat alternate			

*Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour.

**Yogurt may be used as a meat/meat alternative in the snack only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 35:963 (May 2009).

Kristy H. Nichols
Secretary

0905#076

RULE

Department of Social Services
Office of Family Support

TANF—Legal Access and Visitation (LAC 67:III.5567)

The Department of Social Services, Office of Family Support, adopted the LAC 67:III.Chapter 55, Temporary Assistance for Needy Families (TANF) Initiatives, §5567 which provides for the Legal Access and Visitation Initiative.

The Legal Access and Visitation Initiative will further the goals and intentions of the Temporary Assistance for Needy Families (TANF) Block Grant to Louisiana by providing legal services to non-custodial parents to obtain regular visitation arrangements with their children and other related services. Currently, the Department of Social Services receives an Access and Visitation Grant from the Federal Administration for Children and Families, Office of Child Support Enforcement. In order to provide adequate services to the citizens in nine parishes, funding will be provided through this new Initiative. This Rule was effective January 1, 2009, by a Declaration of Emergency published in the January 2009 issue of the *Louisiana Register*.

Title 67
SOCIAL SERVICES
Part III. Office of Family Support
Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives
Chapter 55. TANF Initiatives
§5567. Legal Access and Visitation

A. Effective January 1, 2009, the Office of Family Support will implement the TANF Initiative, Legal Access and Visitation.

B. Services provided include legal services that may include: mediation, development of parenting plans, court ordered visitation, or other services to obtain regular visitation arrangements with the children. Referrals that assist non-custodial parents to overcome social, financial and emotional barriers that hinder access to their children will also be provided.

C. These services meet the TANF goal to encourage the formation of and maintenance of two-parent families by improving the parent's ability to act in the best interest of their children, providing the children continuous and quality access to both parents, improving the well-being of the children, and encouraging healthy relationships, youth development, and responsible fatherhood.

D. Eligibility for services is limited to non-custodial parents of minor children who have active child support cases under Title IV-D of the Social Security Act.

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

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 19, 2008 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 35:966 (May 2009).

Kristy H. Nichols
Secretary

0906#077

RULE

Department of Social Services
Office of the Secretary

Substance Abuse Testing (LAC 67:I.Chapter 1)

The Department of Social Services, Office of the Secretary, has amended LAC 67:I.Chapter 1, Substance Abuse Testing.

Pursuant to R.S. 49:1001 et seq., and Executive Order BJ 08-69, the department amended several Sections of Chapter 1 to remove references to specific Executive Orders so that future Rule promulgation will not be necessary with a change in administration. Additionally, the department removed language addressing policy or describing processes and procedures specific to the Department of Social Services (DSS) and updated the job title of a safety-sensitive position in DSS.

Title 67
SOCIAL SERVICES
Part I. Office of the Secretary
Subpart 1. General Administration
Chapter 1. Substance Abuse Testing
§101. Introduction and Purpose

A. ...

B. The state of Louisiana has a long-standing commitment to working toward an alcohol-free, drug-free workplace. In order to curb the use of illegal drugs by employees of the state of Louisiana, the Louisiana legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S 49:1001 et seq.; and Executive Orders KBB 2005-08, KBB 2005-11 and BJ 2008-69

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1145 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:114 (January 2006), LR 35:967 (May 2009).

§107. DSS Drug-Free Workplace Policy

A. It shall be the policy of DSS to maintain a drug-free workplace and a workforce free of substance abuse. Employees are prohibited from reporting for work, performing work, or otherwise being on any duty status for DSS with the presence in their bodies of alcohol, illegal drugs, controlled substances, or designer (synthetic) drugs at or above the initial testing levels and confirmatory testing levels as established in the contract between the state of Louisiana and the official provider of drug testing services. Employees are further prohibited from illegal use, possession, dispensation, distribution, manufacture, or sale of controlled substances, designer (synthetic) drugs, and illegal drugs at the work site and while on official state business, on duty or on call for duty.

B. To assure maintenance of a drug-free workforce, it shall be the policy of DSS to implement a program of drug testing in accordance with R.S. 49:1001 et seq., and all other applicable federal and state laws, and executive orders, as set forth below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.; and Executive Orders KBB 2005-08, KBB 2005-11 and BJ 2008-69

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:114 (January 2006), LR 35:967 (May 2009).

§109. Conditions Requiring Drug Tests

A. DSS shall require alcohol/drug testing under the following conditions.

1. - 3. ...

4. Pre-Employment. Each prospective employee shall be required to submit to drug screening at the time and place designated by the appointing authority or designee following a conditional job offer contingent upon a negative drug-testing result. A prospective employee who tests positive for the presence of drugs in the initial screening or who fails to cooperate in the testing shall be eliminated from consideration for employment. Employees transferring to DSS from other state agencies without a break in service are exempt from pre-employment testing.

5. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:114 (January 2006), LR 35:967 (May 2009).

§111. Procedure

A. - B. ...

C. Testing services shall be performed by a provider chosen by the Office of State Purchasing, Division of Administration, pursuant to applicable bid laws. At a minimum, the testing service shall assure the following:

1. - 5. ...

6. All initial positives reported by the laboratory must be confirmed by gas/chromatography/mass spectrometry.

7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:115 (January 2006), LR 35:967 (May 2009).

§115. Responsibilities

A. - B. ...

C. All supervisory personnel are responsible for assuring that each employee under their supervision is aware of and understands this policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:115 (January 2006), LR 35:967 (May 2009).

§117. Violation of the Policy

A. Positive Test Result. All initial screening tests with positive results must be confirmed by a second more accurate test with the results reviewed by a medical review officer. Any breath test resulting in 0.08 alcohol concentration will be considered an initial positive result. In these cases, the confirmation test will be performed within 30 minutes, but not less than 15 minutes, of completion of the screening test. Urine samples will be tested using the split sample method, with the confirmation test performed on the second half of the sample in the event of an initial positive result. Any employee reported with a confirmed positive test shall either be suspended with pay pending investigation or shall have the safety/security sensitive duties removed from his/her position pending preparation and approval of disciplinary action up to and including dismissal. At a minimum the following actions will be taken in the instance of a first confirmed positive test.

A.1. - E. ...

F. Failure to comply with provision of the policy, including but not limited to, the following, will be grounds for disciplinary action:

1. an employee is subject to disciplinary action up to and including dismissal should a criminal drug statute conviction result from the unlawful manufacture,

distribution, possession, or use of a controlled substance in the workplace;

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:115 (January 2006), LR 35:967 (May 2009).

§119. Attachment A—Safety-Sensitive and Security-Sensitive Positions within DSS

A. A candidate for one of the following positions will be required to pass a drug test before being placed in such a position, whether through appointment or promotion and employees who occupy these positions will be subject to random alcohol/drug testing.

Louisiana Rehabilitation Services	Administrative Specialist A (Position 060871) Client Services Worker Rehabilitation Aide
Office of Family Support	Social Services Analyst 1 & 2 (All positions in Support Enforcement) Social Services Analyst Supervisor (All positions in Support Enforcement) Support Enforcement District Manager 1 & 2 Support Enforcement Regional Administrator
Office of Community Services	Administrative Coordinator 3 (Positions in Field Services - Parish and Regional Offices) Administrator Coordinator 2 (Positions in Field Services - Parish and Regional Offices) Child Welfare Services Assistant Trainee Child Welfare Services Assistant Child Welfare Counselor/Adoption Child Welfare Specialist 1 Child Welfare Specialist 2 Child Welfare Specialist 3 Child Welfare Specialist 4 Child Welfare Specialist Trainee Social Service Counselor 1 Social Service Counselor 2
Office of the Secretary/Office of Management and Finance	Accountant 3 (178446) Administrative Coordinator 1 (002112, 002913) Administrative Coordinator 2 (001979) Auditor Supervisor (124684) Licensing Specialist 1 - DSS Licensing Specialist 2 -.DSS

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1148 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 32:116 (January 2006), LR 35:968 (May 2009).

§121. Attachment B—Procedures for Scheduling Drug Testing

A. On a yearly basis a percentage of all DSS employees in safety-sensitive or security-sensitive positions will be randomly drug-tested. One-twelfth of that number will be scheduled each month.

1. A computerized system will randomly select a designated number of employees.

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1148 (June 1999), amended LR 35:968 (May 2009).

Kristy H. Nichols
Secretary

0905#073

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Spanish Lake State Game and Fishing Preserve—Duties, Responsibilities, and Regulations (LAC 76:III.329)

The Wildlife and Fisheries Commission hereby amends the following Rule on the Spanish Lake State Game and Fish Preserve located between New Iberia and Lafayette in Iberia and St. Martin Parish, Louisiana.

Title 76
WILDLIFE AND FISHERIES
Part III. State Game and Fish Preserves and Sanctuaries
Chapter 1. Responsibilities, Duties, and Regulations
§329. Spanish Lake State Game and Fishing Preserve

A. General

1. Parking is restricted to designated parking areas.

2. ATVs (three wheelers and four wheelers) and motorbikes are prohibited on the levee.

3. Discharge of any firearms on the levees is prohibited.

4. Overnight camping is prohibited, except by special permit issued by Spanish Lake Game and Fishing Preserve Commission for supervised groups only.

5. The possession or use of commercial nets, including hoop nets, trammel nets, gill nets and fish seines, is prohibited, except by special permit issued by the Louisiana Department of Wildlife and Fisheries.

6. No trapping of furbearing animals, except by special permit issued by the Louisiana Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:721, et seq., R.S. 56:801 and R.S. 36:610.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 23:872 (July 1997), amended LR 30:1734 (August 2004), LR 35:968 (May 2009).

Patrick C. Morrow
Chairman

0905#055

Notices of Intent

NOTICE OF INTENT

Department of Civil Service
Civil Service Commission

Layoffs

The State Civil Service Commission will hold a public hearing at 9 a.m. on Wednesday, June 3, 2009 to consider changes to Chapters 1, 5, and 17 of the Civil Service Rules as described in detail below. The proposed effective date of the rules is June 3, 2009. The hearing will be in the Louisiana Purchase Room of the Claiborne Building, 1201 North Third Street, Baton Rouge, LA. Comments regarding Chapter 5 should be directed to the attention of Glenn Balentine at glenn.balentine@la.gov. All other comments should be directed to the attention of Judy McGimsey at judy.mcgimsey@la.gov. If any accommodations are needed, please notify the Department at (225) 342-8272 prior to the meeting.

Summary Explanation

In recent months state agencies have begun to prepare for the likelihood of significant reductions in force resulting from declining state revenues and the national economic downturn. The Department of State Civil Service has received feedback from state human resources personnel and agency heads regarding the unsatisfactory final results of the current layoff rules, especially with regard to "bumping." The Department has also received requests from legislators asking that we review our rules and consider what changes we could make to minimize the adverse effects to agencies and services that are likely to result from the implementation of layoffs under the current rules. These rule changes are the means by which we propose to effect a more efficient layoff process.

Key features of new rules:

- Performance ratings must be considered in determining who gets laid off.
- Employees with poor or needs improvement ratings may be laid off first.
- Employees will no longer bump into occupied positions. Employees whose positions are affected by the layoff may be relocated based on performance, skills and business needs of the agency rather than strictly on the basis of seniority.
- Employees who are adversely affected by a layoff may be placed on preferred reemployment list. The length of time an employee can remain on this list will be reduced from 2 years to 1.
- A new layoff avoidance option has been added that would allow, under certain circumstances, an incentive payment to be made to employees who are currently eligible to retire to encourage them to do so.
- Processes required when an agency reorganizes to more effectively and efficiently provide services have been simplified.

Chapter 17 as it is currently written will be repealed in its entirety and replaced as detailed below. The current rules may be viewed on our website at www.civilservice.la.gov.

Explanation:

Rules 17.1 through 17.4 have been rewritten to consolidate and clarify information regarding uniform application, plan approval, exceptions, and appeal rights that is dispersed throughout the current rules.

17.1 Uniform Application

These rules shall apply uniformly to all employees in the affected organizational unit, as defined by Rule 1.21.1. This includes employees on leave for any reason and those who are hired while the measures are in effect.

17.2 A written plan for either a layoff or layoff avoidance measure shall be submitted to the Director for approval in accordance with these rules prior to the effective date of implementation of the plan. The appointing authority shall certify that the agency does not have sufficient funds to continue current operations without implementation of a layoff or layoff avoidance measure. The Director may:

(a) Approve the plan

(b) Disapprove the plan

(c) Refer the plan directly to the Commission for consideration at its next regularly scheduled meeting.

17.3 For rational business reasons, the appointing authority may request exceptions to these rules. Justification for exceptions must be in writing as a part of the Layoff or Layoff Avoidance Plan.

(a) The Director or the Commission may approve exceptions to Layoff Avoidance Measures.

(b) The Commission may approve exceptions to the Layoff Rules for rational business reasons. The Director may grant interim approval to exceptions to the Layoff Rules subject to ratification by the Commission at its next regularly scheduled meeting.

17.4 Permanent employees who are negatively impacted by the application of these rules have the right to file an appeal to the Civil Service Commission in accordance with Chapter 13.

Layoff Avoidance Measures

Explanation:

Rules 17.5, 17.6, 17.7, 17.8 and 17.10 describe existing layoff avoidance measures, and have mostly minor wording changes and some numbering changes. Rule 17.6 specifically clarifies that merit increases may not be given at all, or may be reduced as a layoff avoidance measure. Rule 17.9 is a new layoff avoidance option that may encourage employees who are eligible to retire to do so during times of financial shortfall.

17.5 Required Notice to Employees

(a) The appointing authority shall, as soon as it is determined that a layoff avoidance measure is necessary, make a reasonable attempt to notify all employees who could be affected.

(b) Once a layoff avoidance plan is approved by the Director or Commission, it shall be made generally available to the employees who are affected.

17.6 Merit Increases

When an appointing authority determines that it is necessary not to grant or to reduce merit increases in order to avoid or reduce layoffs, his request is subject to the following:

(a) The request shall include the reasons for this action, the names and jobs of those employees to be excluded, if any, and reasons for their exclusion, the proposed effective dates and periods of time involved, the organizational unit, and the geographic area(s) affected.

(b) The duration of this measure shall not exceed one period of 12 consecutive months.

(c) Employees whose merit increases are affected by this measure shall retain their eligibility for such increases for a three year period. Such eligibility shall be lost if during that period the employee receives an official rating of "poor" or "needs improvement."

17.7 Reduction in Work Hours

When an appointing authority determines it is necessary to reduce the work hours of employees in order to avoid or reduce layoffs, his request is subject to the following:

(a) The request shall include the reasons for the reduction, the names and job titles of any employees to be excluded and reasons for the exclusion, the number of work hours reduced for each employee, the proposed effective dates and periods of time involved, the organizational unit, and the geographic area(s) affected.

(b) Such reductions shall not exceed one period of 12 consecutive months.

(c) The number of work hours reduced for an employee shall not exceed 16 hours per biweekly payroll period.

(d) An affected employee shall be subject to the same leave and overtime rule provisions as apply to employees on regular, part time status. Any hours worked over the employee's reduced workweek shall be compensated with compensatory leave earned at the hour-for-hour rate. Hours which exceed a 40 hour workweek shall be compensated in the manner required by the Fair Labor Standards Act.

17.8 Furlough Without Pay

When an appointing authority determines that it is necessary to furlough employees without pay to avoid or reduce layoffs, his request is subject to the following:

(a) The request shall include the reasons for the furlough, the names and jobs of those employees to be excluded, if any, and reasons for their exclusion, the total work hours or days for each employee, the dates and period of time involved, the organizational unit, and the geographic area(s) affected. The Appointing Authority shall also specify if employees will be recalled from furlough at the same time. If employees will be recalled at different times, the recall schedule must be specified and justified.

(b) An employee shall not be furloughed for more than a total of 240 work hours in any consecutive twelve month period without approval of the Commission.

(c) With the approval of the Commission, an employee may be furloughed up to a total of 450 work hours in a consecutive twelve month period.

(d) When the Commission or Director determines that extraordinary circumstances exist, they may approve an extension of furlough beyond 450 hours. If any employees are recalled during this extended furlough period, the employee with the most state service for a given job title shall be recalled first, unless the position requires specific licensure or certification, or an exception has been granted under Rule 17.3.

17.9 To avoid or reduce layoffs, an appointing authority may request authority to offer employees who are eligible to retire, an incentive to do so in the form of a one-time, lump-sum payment. The request shall be subject to the following:

(a) No employee may receive a payment that exceeds 50% of the savings realized by the agency in the fiscal year as a result of that employee's retirement.

(b) No such payment shall be made prior to the effective date of the employee's separation.

17.10 Required Annual Leave During Closures

This measure does not require submission of a plan or prior approval of the Director or Commission. A department or agency may require employees to use up to a maximum of ten (10) days of annual leave per calendar year, when the efficiency of operations dictate a temporary closure. Employees who have less than two hundred-forty (240) hours of annual leave may be required to take annual leave under this provision. Employees who have exhausted all annual leave shall be placed on leave without pay, for no more than ten (10) days per calendar year.

Layoffs

Explanation:

Parts of the rules in this Section have been completely revised, while others remained basically unchanged except for the rule number. Explanations are provided prior to the rules that contain substantive changes.

17.11 Layoff of Probational Employees Only

(a) Layoffs that involve only probational employees do not require the approval of the Director; however, the appointing authority shall provide written notice to the Director of such layoffs prior to the effective date.

(b) Affected probational employees shall be given notice of their layoff prior to the effective date of the layoff.

17.12 Layoffs Involving Permanent Employees

This rule applies to layoffs of permanent employees and layoff plans that affect a combination of permanent and probational employees.

(a) As soon as it is determined that a layoff will be necessary, the appointing authority shall make a reasonable attempt to notify all employees who may be affected.

(b) A written plan shall be submitted to the Director for consideration at least two calendar weeks prior to the effective date of the layoff.

(c) Employees who may be laid off or moved to a vacant position as the result of a layoff shall be notified in writing. The Director or Commission shall not approve any plan until at least five (5) calendar days after notification of the last affected employee.

(d) Once a layoff plan is approved by the Director or Commission, it shall be made available to the employees who may be affected.

(e) Employees who are eligible to move to vacant positions created by the layoff process shall be notified of

their offers. There shall be at least five (5) calendar days between the last such notice and the effective date of layoff.

17.13 Effect of Allocation Changes on Layoff

A layoff shall not be affected by any changes in allocations for affected positions after the layoff plan is received at Civil Service, regardless of the effective date of the allocation.

Explanation:

The requirements for the layoff plan have been updated to reflect changes that are described in detail in later rules in this Chapter.

17.14 Requirements for the Written Layoff Plan

The layoff plan shall include, but not necessarily be limited to, the following items:

1. The affected organizational unit.
2. Reasons why the layoff is being proposed.
3. Any budgetary measures which may have been taken to avoid a layoff.
4. Proposed effective date of the layoff.
5. The definition of commuting area used for this layoff. (refer to Rule 1.9.01)
6. Impact of movement on employee pay, if applicable. (refer to Rule 17.16)
7. For the abolished positions, list:
   a. The parishes where the positions are domiciled
   b. Affected job titles
   c. Career field for each affected job title
   d. Number of positions for each affected job title
8. If any affected employees are in Career Field 9999, propose an appropriate expansion of their career field, with justification. If no expansion is proposed, explain why.
9. List the Parish, Career Field, Name, Job Title, and adjusted service date for employees who will be laid off.
10. List the Parish, Career Field, Name, Job Title, and adjusted service date for employees who will be moved to vacancies created as the result of the layoff, and the job title which will be offered to each employee.
11. Exemptions made, if any, under Rule 17.15(e) and reasons for these exemptions.
12. Exceptions requested, if any, under Rule 17.3 and reasons for these exceptions.
13. Names and pay of employees occupying unclassified positions authorized under Rule 4.1(d)1 or 4.1(d)2 in the affected organizational unit, and how these positions will be affected by the layoff.
14. Contracts either currently in effect or anticipated that may be causative or related to the layoff.

Explanation:

Current layoff rules require that positions be targeted for abolishment, and the incumbents of those positions be granted rights to any position at or below their current pay level (within the affected organizational unit, commuting area and career field) even if it is occupied, as long as that incumbent has more state service and meets the Civil Service qualifications for the job. If such a position is occupied, that begins a chain reaction and makes it impossible for the agency to know exactly what the organization will look like until after the layoff process is complete. Employees with poor or needs improvement ratings cannot bump employees with meets requirements or better ratings. The proposed Rule 17.15 requires that employees with poor or needs improvement ratings be laid off first, unless the appointing authority wishes to request an exception for extenuating circumstances. It then establishes the concept of the employee with the least state service being the first to be laid off, unless a rational business reason, (e.g., outstanding performance, necessary skill set) exists for exempting an employee from the layoff.

17.15 Determining the Employees Who Will Be Laid Off or Relocated

(a) Employees who received a "poor" or "needs improvement" on their last official Performance Planning and Review rating shall be laid off first.

(b) Based on the budget and organizational priorities, the appointing authority will determine which positions are to be abolished.

(c) A number of employees within the career fields, organizational unit and commuting area of positions to be abolished, and sufficient to fulfill budgetary and organizational requirements, shall be laid off on the basis of the least years of service as determined by adjusted service date.

(d) Employees in positions targeted for abolishment shall move into vacant positions in accordance with Rule 17.18.

(e) The agency may exempt from layoff a number of employees, the total of which shall not exceed 20% of the number of employees laid off. These exemptions must be made for rational business reasons and may include employees who have exceptional performance, or who possess particular qualifications or competencies needed to effectively fulfill the requirements of the position. Exemptions and their reasons shall be stated in the layoff plan.

(f) Employees with Veteran's preference as referred to in Rule 22.7 and whose performance ratings and length of service are at least equal to those of other affected employees shall be given preference.

Explanation:

Rule 17.16 allows agencies more flexibility than the current rules in setting pay for employees who move to lower level positions as part of the layoff plan.

17.16 Pay Upon Relocation

Pay may be reduced upon movement to lower jobs. Pay reductions shall be uniform in their percentage for all affected employees. If the uniform pay reduction results in an employee's rate of pay falling above the maximum of the pay range, the appointing authority may then choose one of the following options for all employees similarly situated:

1. Pay may be reduced to the range maximum.

   or

2. Pay may be red-circled in accordance with Chapter 6 of these Rules.

Explanation:

The concept of domicile as used in Rule 17.17 remains unchanged. The language of the rule is changed to replace the current concept of "displacement" with the new concept of "relocation."

17.17 Domicile for Relocation Purposes

(a) The domicile for movement for an employee shall be the parish in which he reports to work.

(b) Employees whose official domicile is "statewide" shall, for the purpose of relocation offers, be considered domiciled in the parish in which they officially reside.

(c) Employees who live and work outside of Louisiana shall, for the purpose of relocation offers, be considered domiciled in the parish in which they have an official residence. If they have none, their domicile shall be at their department's central headquarters.

(d) Agencies may request a different domicile assignment in situations not addressed in the rule through the exception procedure in Rule 17.3.

Explanation:

Rule 17.18 redefines the provisions under which a senior employee, whose position has been targeted for abolishment, can move to a vacancy or vacancy created as the result of a layoff. The major change in this rule allows the appointing authority, for rational business reasons, to assign such employees to the remaining positions based on performance and the business needs of the agency, rather than strictly on the basis of seniority. It further allows all affected parties to plan, in advance, what the revised organizational and staffing structure will look like following the layoff.

17.18 Relocation Provisions

(a) Rights to relocate to a vacant position created as the result of a layoff shall be granted only to permanent employees whose most recent official performance rating is "Meets Requirements" or higher.

(b) A permanent employee, who accepted a new probational appointment without a break in service for a trial period may, at the option of the appointing authority, be considered as having permanent status for the purpose of layoff.

(c) For purposes of this rule, an employee with a rating of "Unrated" shall be considered as having a rating of "Meets Requirements" for that rating period.

(d) Employees in positions that are targeted for abolishment shall move into vacant positions or positions that become vacant as the result of the layoff within the affected organizational unit.

(e) An employee shall not have the right to move:

1. into a job with a higher pay range;

2. into a job for which he does not meet the Civil Service qualification requirements;

3. outside of his organizational unit (as defined in Rule 1.21.1 and the approved Layoff Plan) except under the provisions of part (k) of this section;

4. outside of his career field (as defined in Rule 1.5.2), unless the career field has been expanded in the Layoff Plan or under the provisions of part (k) of this section;

5. outside of his commuting area (defined in rule 1.9.01) except under the provisions of part (k) of this section.

(f) The Director of Civil Service may, on his own initiative, expand career fields.

(g) Employees who move into another position shall retain permanent status.

(h) If the position offered is in a Career Progression Group, it shall be offered at the highest level for which the employee meets the Civil Service qualification requirements, as long as it is not higher than his current job.

(i) Available positions shall be offered to affected employees based on the needs of the agency as determined by the appointing authority. These needs shall be determined based on rational business reasons.

(j) If the employee declines an offer within his organizational unit, career field, and commuting area, he shall be laid off and shall not be eligible for the Department Preferred Reemployment List.

(k) The appointing authority may offer vacant positions outside of the organizational unit, career field or commuting area to an affected employee after the requirements of 17.18(a-j) have been met. If the employee declines such an offer, he shall be laid off and shall remain eligible for the Department Preferred Reemployment List.

(l) The agency may end job and/or restricted appointments of employees who occupy temporary positions and may use the position(s) to rehire, without a break in service, a permanent employee who was laid off. The rehired employee may be rehired in job or restricted appointment status and shall be placed on the Department Preferred Reemployment List for permanent appointments.

Explanation:

Rule 17.19 (b) now provides an option for the agency to set an employee's adjusted service date to the date of their most recent hire, IF the employee fails to supply the information needed by the agency to verify otherwise.

17.19 Responsibilities of Employees Affected in a Layoff

The responsibilities of employees affected in a layoff are listed below. This rule applies to active employees and includes employees who are on leave for any reason, on detail to special duty and on temporary interdepartmental assignment.

(a) The employee shall read or otherwise make himself aware of agency distributed information concerning the layoff.

(b) The employee shall supply all information required by the agency to determine adjusted state service date in the format and by the deadline set by the agency. Failure to do so will result in the employee's adjusted service date being set at the date of their most recent hire.

(c) If the employee is absent from work, he shall provide to the personnel specified by his agency, correct and current information as required by the agency on how he may be reached at all times.

(d) The employee shall respond to a relocation offer in a manner determined by the agency. Failure to do so shall be considered a declination of the offer.

(e) For purposes of meeting the job qualifications of the relocation offer, an employee must have a grade from Civil Service only in the instance of an employee moving from a sub-professional level job to a professional level job. The employee must have the grade before the effective date of the layoff to be eligible for that position. The grade need not be active; it may be expired; however, it must be a grade for the test currently in use and must be verifiable.

(f) Once an employee accepts or declines a relocation offer, the decision is final.

17.20 Freeze on Appointments to Layoff–Affected Jobs

(a) Beginning the date the Director approves the layoff plan, no appointments shall be made in the affected department to job titles abolished in the layoff or to equivalent or lower jobs in those career fields and commuting areas except that jobs offers made prior to this

approval date may be honored. The freeze on appointments shall end upon the establishment of the Department Preferred Reemployment List.

(b) Exceptions to the freeze that do not require the Director's approval include:

1. Reinstatement of an employee as the result of an appeal decision.

2. Internal demotion.

3. Restoration of a former employee returning from military duty in accordance with Rule 23.15.

4. Restricted appointments, job appointments, details to special duty, and use of temporary staffing service employees.

5. Other exceptions to the freeze may be approved in accordance with Rule 17.3.

17.21 Special Provisions for Veterans in Layoffs

A veteran who has been restored to duty under the provisions of Rule 23.15 and who thereafter is affected by a layoff shall be granted prior service credit for the period of time served as a member of the armed forces of the United States on which the restoration was based.

Post Layoff

Explanation:

This Section of the rules remains essentially unchanged except for one provision. The revised rule reduces the amount of time an employee's name stays on the Department Preferred Reemployment List from two years to one. Other changes are simply for clarification and necessary numbering changes.

17.22 Reporting Requirement Following Layoff

The appointing authority shall report all personnel actions taken relative to the layoff to the Director within 15 calendar days from the effective date of the layoff. The report shall include information for each affected employee as required in the HR Handbook.

17.23 Department Preferred Reemployment List

(a) The Department Preferred Reemployment List is a list of names of permanent employees who have been laid off, moved to a vacancy created as the result of a layoff or demoted in lieu of layoff in accordance with Rule 5.6.1(e)6. Employees on such a list shall be given preferential hiring rights for their department or agency, subject to the exceptions stated in this rule or approved as part of the Layoff Plan under Rule 17.3.

(b) Only employees who have relocation rights according to Rule 17.18, and who have been laid off or moved to a vacancy created as the result of a layoff shall be eligible for this list. Eligibility shall be limited to:

1. The agency or department where the layoff actions occurred.

2. The employee's parish of domicile at the time of layoff and any other parishes he may list for availability.

3. The same job title the employee held at the time of the layoff action and equivalent or lower level jobs for which the employee qualifies in his career field. An employee who is moved as the result of a layoff shall be eligible only for jobs down to, but not including, those in the pay range to which he moved.

(a) Employees not eligible for this list include:

1. Those who moved to a lateral position.

2. Employees who declined a movement offer within their organizational unit, commuting area and career field.

3. Those whose most recent official performance rating at the time of layoff was "Needs Improvement" or "Poor."

4. Non-permanent employees.

5. Those who have retired from state service.

(d) Employees shall be ranked in the order of length of state service they had at the time of the layoff. The employee with the most state service for a given job and parish shall be given the first offer. Those tied shall be considered as having the same ranking. Ties shall be decided by the appointing authority using any non-discriminatory method he chooses.

(e) An employee's name will be removed for the applicable list(s) when:

1. He is offered reemployment from the Department Preferred Reemployment List to a permanent position. His name shall then be removed for that job as well as for all other equivalent or lower jobs, but shall remain on the list for higher jobs for which he is eligible.

2. He declines or fails to respond to an offer. He shall then be removed for that job, equivalent jobs, and all lower jobs.

3. He attains permanent classified status in any position in any department. His name shall then be removed from all such lists for equivalent and lower jobs.

4. Those who were dismissed or resigned to avoid dismissal after the layoff action. Exceptions may be made for employees who are reinstated.

5. It is removed by the Director when he determines that a person is not qualified, is not available, or upon investigation, is not found suitable for appointment to the position.

6. His name has been on the list for one (1) year from the effective date of the layoff.

(f) If the job held by the employee prior to the layoff undergoes a change in the minimum qualification requirements or title or pay range (including one that is changed upward) after the layoff, at the request of the employee, he may have his name placed on the list for the newly revised job title and equivalent and lower level jobs in his career field. He shall not be required to meet the new qualifications if sufficient evidence is presented to the Director to show, as determined by the Director that he is returning to a job having essentially the same duties he was performing when affected by the layoff, unless the lacking qualification is one required by law or under a recognized accreditation program.

17.24 Exceptions to Hiring from the List

If there is a department preferred reemployment list, the employee who is first on the list shall be hired first, subject to exceptions approved under Rule 17.3 and/or when the position is filled by: 1) reinstatement; 2) internal demotion; 3) restoration of an employee returning from military service under Rule 23.15.

17.25 Temporary Appointments From the List

New restricted or job appointments shall be offered to the first person on the list. If the person accepts or declines such a temporary appointment, his name shall remain on the list for permanent appointments.

17.26 Movement of Employees Following Layoff

For rational business reasons, after a layoff, an appointing authority may move an employee from one position to another position for which he qualifies in the same pay grade

as long as such movement does not circumvent the Department Preferred Reemployment List.

Revisions to Existing Definitions Related to Chapter 17 Rule Change Proposals

Current Rule 1.19

'Layoff' means the separation of an employee from a position because of a lack of work or a lack of funds or the abolition of a position.

Proposed Revision:

1.19. 'Layoff' means the separation of an employee from state service because of a lack of work or lack of funds.

Explanation:

The revised definition of 'layoff' distinguishes between the separation of an employee from a position and the separation of an employee from state service. This change is pertinent to the new definition of 'business reorganization' noted under the discussion of Chapter 5 rule changes.

Additions to Chapter 5

Classification Plan

Explanation:

The current rules provide that employees who are affected by a non-budgetary restructuring are addressed in the same way as those who lose their jobs due to budget shortfalls, through the layoff process. This new rule creates a separate process for moving employees in reorganizations when changes are not due to budget shortfalls. If restructuring results in an employee's salary range being reduced, the new rule provides for use of reallocation down, including due process notification, red circle of the employee's salary rate, and inclusion on a department preferred reemployment list for a period of one year. If the actions involve changes in the duties of only one, or perhaps a small number of employees rather than a significant reorganization, the Director may choose whether the actions should be implemented as business reorganization (reallocation down), layoff or demotion in lieu of layoff.

5.6.1 Effect of Business Reorganization on Encumbered Positions

(a) When an appointing authority determines it is necessary to restructure an organization to more effectively or efficiently carry out its mission, he shall submit a plan to the Director outlining his rational business reason for the proposed change and the impact of the change on the incumbents of the affected positions. This rule shall not apply if the restructuring proposes a reduction of the number of employees in the organization. Such reductions in force shall be conducted in accordance with Chapter 17, Layoffs and Layoff Avoidance Measures.

(b) Position allocations that change as a result of the business reorganization may be effected through reallocation (up, down, or laterally), job correction or the creation of a new position as determined by the Director. Occupied positions shall be reallocated down only in accordance with parts (d), (e) and (f) of these rules.

(c) The business reorganization plan shall be submitted to the Director prior to the proposed effective date. The plan shall include, but not necessarily be limited to, the following documents:

1. Proposal outlining the rational business reasons resulting in the reallocation(s) down.
2. Positions Descriptions (SF-3s) for all positions in the affected organizational unit.
3. Current and proposed organizational charts.
4. Copies of notices to employees issued in accordance with Rule 5.6.1(d).

(d) When an appointing authority proposes to lower the allocation of a position occupied by a permanent employee, the Director's approval is required. The employee shall be given written notice of: 1) the proposed action; 2) the proposed effective date of the action; 3) the business reason for the action; and 4) their opportunity to respond. This notice must be given at least fifteen (15) calendar days prior to the Director’s approval of the plan.

(e) Approval of Business Reorganization Plans Involving Reallocations Down

The Director may:

1. Approve the plan.
2. Disapprove the plan.
3. Grant interim approval of the plan pending ratification of the Commission at its next regularly scheduled meeting.
4. Refer the plan directly to the Commission for consideration at its next regularly scheduled meeting.
5. Require the agency to implement the reorganization in accordance with Chapter 17 of these rules.
6. Require the agency to implement a demotion in lieu of layoff as defined in Rule 1.11.1.

(f) Pay of employees negatively affected by reallocation down or demotion in lieu of layoff shall be red-circled in accordance with Chapter 6 of these rules.

(g) Employees whose positions are moved into a lower job classification as a result of the business reorganization shall be eligible to be placed on a Department Preferred Reemployment List (DPRL). Employees on such a list shall be given preferential hiring rights for their department or agency for the job which they occupied prior to the implementation of the business reorganization. Employees shall be ranked in order of length of state service. The employee with the most state service for a given job and parish shall be given the first offer.

1. Eligibility shall be limited to:

a) The agency or department where the reorganization occurred.

b) The employee's parish of domicile at the time of reorganization and any other parishes he may list for availability.

c) The same job title the employee held prior to the implementation of the reorganization and equivalent or lower level jobs for which the employee qualifies in his career field. An employee whose position is allocated down shall only be eligible for jobs down to, but not including, those in the pay range to which he has been placed.

d) Employees whose most recent official performance rating at the time of the reorganization was "meets requirements" or better.

e) Permanent employees.

2. An employee shall be removed from applicable list(s) when:

a) He is offered a permanent position from the DPRL. His name shall be removed for that job as well as other equivalent or lower jobs, but he shall remain on the list for higher jobs for which he is eligible.

b) He declines or fails to respond to an offer. His name shall then be removed for that job, equivalent jobs, and all lower jobs.

c) He is dismissed or resigns to avoid dismissal following the reorganization.

d) The Director determines that a person is not qualified, not available, or upon investigation, not found suitable for appointment to the position.

e) His name has been on the list for (1) year following the effective date of the reorganization.

3. Exceptions to Hiring from the List

If there is a department preferred reemployment list, the employee who is first on the list shall be hired first for positions in his career field except when a position is filled by:

a) Internal demotion

b) Restoration of an employee returning from military service in accordance with Rule 23.15

4. If the job held by the employee immediately prior to the implementation of the reorganization undergoes a change in the minimum qualification requirements or the title or pay range is changed (including one that is changed upward) after the reorganization, at the request of the employee, he may have his name placed on the list for the newly revised job title and equivalent and lower level jobs in his career field. He shall not be required to meet the new qualifications if sufficient evidence is presented to the Director to show, as determined by the Director that he is returning to a job having essentially the same duties he was performing when affected by the reorganization, unless the lacking qualification is one required by law or under a recognized accreditation program.

(h) For rational business reasons, the Director or Commission may make exceptions to these rules.

(i) Permanent employees whose allocation has been moved to a lower classification have the right to file an appeal to the Civil Service Commission in accordance with Chapter 13 of these Rules.

Revisions to Existing Definitions and New Definitions Related to Chapter 5 Rule Change Proposals

Revisions:

Current Rule 1.32

'Reallocation' means a change in the allocation of a position from one job to another wherein the duties of the position have undergone a change

Proposed Change:

1.32. 'Reallocation' means a change in the allocation of a position from one job to another.

Explanation:

The allocation of a position may change without a change in duties. The criteria used to make allocation decisions may have changed or updated comparisons to other positions (precedence) may indicate a reallocation is necessary.

New Definitions:

1.5.11. 'Business Reorganization' is the strategic effort of an appointing authority to structure or redesign the resources of an organizational unit to more efficiently and effectively achieve its mission. For purposes of these rules, business reorganization shall not result in a reduction of the total number of employees in the organizational unit upon implementation.

Explanation:

This new definition distinguishes business reorganization from layoff and creates the paradigm for a simplified restructuring process when needed.

1.11.1 'Demotion in lieu of layoff' describes the movement of an employee to a new position, created with a lower maximum pay range, as the result of a drastic change in duties of an occupied position. Employees demoted in lieu of layoff are eligible for the Department Preferred Reemployment List for a period of one year.

Explanation:

This concept provides an alternative to moving employees who have sustained significant duty changes, through no fault of their own, into a job with a lower maximum pay range when neither reallocation due to business reorganization or layoff are appropriate.

Miscellaneous Rule Changes Resulting From Proposed Changes to Chapter 1, 5 and 17

Current Rule 1.15.1

'Employee Affected by a Layoff' means one who has experienced one of the consequences of a layoff such as separation, displacement, demotion, reassignment, or change in duty station.

Proposed Change:

1.15.1 "Employee Affected by a Layoff" means one who has experienced separation or relocation as a consequence of a layoff.

Explanation:

The change to the definition of layoff and addition of definitions of business reorganization and demotion in lieu of layoff create the need for change in the existing language of this rule.

Current 1.19.1:

'Layoff Avoidance Measures' means actions taken by an appointing authority and approved by the Director and/or the Commission to help prevent a layoff. These include: withholding of merit increases, reductions in work hours and furloughs. Another measure, one not needing Civil Service approval, is the required use of leave during agency closures as stated in Rule 17.1(b).

Proposed Change:

1.19.1 'Layoff Avoidance Measures' mean actions taken by an appointing authority and approved by the Director and/or the Commission to help prevent a layoff. These include: not granting merit increases, reductions in work hours, furloughs and retirement incentives. Another measure, one not needing Civil Service approval, is the required use of leave during agency closures as stated in Rule 17.10.

Explanation:

Adds the option of retirement incentives outlined in Rule 17.9 and updates other rule reference.

Current Rule 1.39.2

'State Service' for the purposes of layoff and layoff avoidance measures, means the total length of Classified State Service in the equivalent full-time years, months and days as an employee of a state agency or agencies subject to the following: (b)

4. Any military service that interrupts Classified employment, including military service consisting of active duty in the armed forces of the United States for not more

than six years of voluntary service or an indefinite period of involuntary service, subject to the provisions of Rule 17.21.

…

7. Periods of time that the layoff avoidance measures stated in Rule 17 1(a) are in effect for full-time employees shall count as full-time employment.

Proposed Change:

1.39.2 …(b)

4. Any military service that interrupts Classified employment, including military service consisting of active duty in the armed forces of the United States for not more than six years of voluntary service or an indefinite period of involuntary service, subject to the provisions of Rule 17.17

…

7. Periods of time that the layoff avoidance measures stated in Chapter 17 Rules are in effect for full-time employees shall count as full-time employment.

Explanation:

Updates reference to other Chapter 17 Rules.

Current Rule 5.6 Status of Incumbent When Position is Reallocated

If the duties which caused the reallocation are retuned or removed, the incumbent shall be entitled to remain in the position. Subject to the provisions of Rule 17.9(c), if the position is declared a new position, the former shall be deemed abolished and the incumbent shall be removed therefrom by layoff.

Proposed Change:

(c) If the duties which caused the reallocation are returned or removed, the incumbent shall be entitled to remain in the position. In accordance with Rule 5.6.1(e)6, if the position is declared a new position, the former shall be deemed abolished and the incumbent may be relocated by demotion in lieu of layoff as defined in Rule 1.11.1.

Explanation:

Removes obsolete reference to Rule 17.9(c) and adds new references to Rule 5.6.1(e)6 and 1.11.1.

Current Rule 6.4 Rates of Pay in the Pay Plan Plus Base Supplement

(b) Subject to the provisions of Rules 6.11, 6.15, 6.16 and 17.11(a) and (b)2, each employee shall be paid at a rate within the range for the grade to which his position is allocated, or at a rate within the base supplement approved for his position in accordance with the provisions of Rule 6.16(f).

Proposed Change:

(b) Subject to the provisions of Rules 6.11, 6.15, and 6.16 each employee shall be paid at a rate within the range for the grade to which his position is allocated, or at a rate within the base supplement approved for his position in accordance with the provisions of Rule 6.16(f).

Explanation:

Removes obsolete reference to Rule 17.11.

Current Rule 6.10 Rate of Pay Upon Demotion.

Subject to the provisions of Civil Service Rule 6.15 and 17.11(a) and (b) 2, when…

Proposed Change:

Subject to the provisions of Civil Service Rule 6.15 and 5.6.1(e) and (f), when…

Explanation:

Removes obsolete reference to Rule 17.11 and allows pay upon demotion in lieu of layoff to be set in the same manner as that of an employee involved in a business reorganization.

Current Rule 6.15 Red Circle Rates

(g) When an employee is subject to a demotion in a layoff, including a layoff as provided for in Rule 17.9(c), and the layoff was not absolutely required because of budgetary cuts, except that then pay upon demotion in such a layoff for an employee whose current pay rate within the base supplement exceeds the range or the range plus authorized base supplement for the position to which he is to demote shall be set no higher than his current salary and at the higher of the following:

1. The range maximum (this is a red circle rate) of the positions from which he is to demote, or

2. Within the range maximum plus base supplement (this is not a red circle rate) authorized for the position to which he is to demote.

Proposed Change:

Repeal.

Explanation:

When proposed changes to Chapters 5 and 17 are implemented, this rule will become obsolete.

Current Rule 9.1 Probationary Period.

(a)3. Non-competitive re-employments based on prior service, except as provided in Rules 17.25(a) and 9.3.

Proposed Change:

(a)3. Non-competitive re-employments based on prior service, except as provided in Rules 17.23(a) and 9.3.

Explanation:

Updates rule number reference for new Rule 17.23.

Current Rule 11.9 Enforced Annual Leave

(b) 3) if the leave is required during closures in accordance with Rule 17.1(b) as a layoff avoidance measure.

Proposed Change:

(b) 3) if the leave is required during closures in accordance with Rule 17.10 as a layoff avoidance measure.

Explanation:

Updates rule number reference for new Rule 17.10.

Current Rule 12.6 Non-disciplinary Removals

(b) When an employee is removed under this Rule, the adverse consequences of Rules 6.5(c); 22.4(d); 23.16(a)4; 23.13(b); 11.18(b) and 17.25(e)4 shall not apply.

Proposed Change:

(b) When an employee is removed under this Rule, the adverse consequences of Rules 6.5(c); 22.4(d); 23.16(a)4; 23.13(b); 11.18(b) and 17.23(e)4 shall not apply.

Explanation:

Updates rule number reference for new Rule 17.23.

Current Rule 23.5 Job Appointment

(a) An appointing authority may use a job appointment to fill a position for a period not to exceed three years. For rational business reasons, an appointing authority may request a longer term job appointment. The Commission may approve such requests or delegate approval authority to the Director. An appointing authority may terminate a job appointment at any time. This rule is subject to Rules 17.16(b)4 and 17.26 concerning layoff related actions.

Proposed Change:

a) An appointing authority may use a job appointment to fill a position for a period not to exceed three

years. For rational business reasons, an appointing authority may request a longer term job appointment. The Commission may approve such requests or delegate approval authority to the Director. An appointing authority may terminate a job appointment at any time. This rule is subject to Rules 17.20(b)4 and 17.25 concerning layoff related actions.

Explanation:

Updates rule number references for new Rules 17.20 and 17.25.

Current Rule 23.6 Restricted Appointment

(c) This rule is subject to Rules 17.16(b)4 and 17.26 concerning layoff related actions.

Proposed Change:

(c) This rule is subject to Rules 17.20(b)4 and 17.25 concerning layoff related actions.

Explanation:

Updates rule number references for new Rules 17.20 and 17.25.

Current Rule 23.12 Detail to Special Duty

(b) No detail shall exceed one year without the Director's prior approval. Written justification for all details for more than one month shall be kept by the agency. Justification shall be submitted with all details requiring the Director's approval. This rule is subject to Rules 17.16(b) 4 and 17.26 concerning layoff related details.

Proposed Change:

(b) No detail shall exceed one year without the Director's prior approval. Written justification for all details for more than one month shall be kept by the agency. Justification shall be submitted with all details requiring the Director's approval. This rule is subject to Rules 17.20(b) 4 and 17.25 concerning layoff related details.

Explanation:

Updates rule number references for new Rules 17.20 and 17.25.

Current Rule 24.2 Status of Non-classified Employees Whose Positions are Declared to be in the State Classified Service or are Acquired by a State Agency

(a) 6. Subject to Rule 17.14, when an agency acquires employees under this Rule and a layoff results, it shall neither exempt the acquired employees from a layoff, nor shall the acquisition of these employees prevent the appointment of classified employees from a Department Preferred Reemployment List.

Proposed Change:

(a) 6. Subject to Rule 17.3 and 17.15(e), when an agency acquires employees under this Rule and a layoff results, it shall neither exempt the acquired employees from a layoff, nor shall the acquisition of these employees prevent the appointment of classified employees from a Department Preferred Reemployment List.

Explanation:

Updates rule references to new Rules 17.3 and 17.15(e) relative to exceptions and exemptions.

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a state function.

Anne S. Soileau
Director

0905#065

NOTICE OF INTENT

Department of Civil Service
Civil Service Commission

Performance Planning and Review

The State Civil Service Commission will hold a public hearing at 9:00 a.m. on Wednesday, June 3, 2009 to consider changes to Chapters 1, 5, and 17 of the Civil Service Rules as described in detail below. The proposed effective date of the rules is June 3, 2009. The hearing will be in the Louisiana Purchase Room of the Claiborne Building, 1201 North Third Street, Baton Rouge, LA. Comments should be directed to the attention of Ashley Gautreaux at ashley.gautreaux@la.gov. If any accommodations are needed, please notify the department at (225) 342-8272 prior to the meeting.

Summary Explanation

The Department of Civil Service proposes that the rules related to Performance Planning and Review (PPR) be enhanced to require that rating supervisors who do not properly administer the PPR program will not be eligible for a merit increase. For more than 10 years now, the Civil Service Commission has been cultivating a performance management system for state classified employees. The goal of that system is to ensure communication among supervisors and employees and to continuously improve state agency operations. Annual evaluation of the system indicates that agencies have generally achieved very high levels of compliance in the procedural application of the system's objectives. For the past 3 years, PPR rating compliance rates have been approximately 95% for all classified employees. Therefore, the Commission is considering placing additional significance on the administration of the system.

The current Chapter 10 is available on the Civil Service website at www.civilservice.la.gov. Presented here are a revision and an addition to the current rule. Explanations of the changes proposed are provided.

Proposed for Adoption

Chapter 10

Performance Planning and Review

Explanation:

The current Civil Service Rule requires that an appointing authority designate a rating supervisor for each classified employee. The proposed Rule maintains this requirement and adds the additional requirement that such a supervisor shall not be eligible to receive a merit increase if he does not properly administer the PPR program for his designated employees in accordance with the Civil Service rules and agency policies.

Current Rule:

10.2 Rating Supervisor

The Appointing Authority shall designate a Rating Supervisor for each employee. Generally, the Rating Supervisor should be the person who, in the Appointing Authority's judgment, is in the best position to observe and document the employee's performance. Failure to designate a Rating Supervisor or to rate or conduct a planning session shall be a violation of these Rules.

Proposed Rule:

10.2 Rating Supervisor

(a) The Appointing Authority shall designate a Rating Supervisor for each employee. Generally, the Rating Supervisor should be the person who, in the Appointing Authority's judgment, is in the best position to observe and document the employee's performance. Failure to designate a Rating Supervisor shall be a violation of these Rules.

(b) The Rating Supervisor shall be responsible for administering the performance planning and review system for his designated employees in accordance with these Rules and agency policy. Failure of the Rating Supervisor to administer the performance management system in accordance with these Rules shall result in his not being eligible for a merit increase for that year.

Explanation:

The additional Rule 10.11.1 establishes 2 limited exceptions to the limit on merit eligibility for supervisors who fail to rate their employees. The Civil Service Commission recognizes that there may be times when it is impractical or impossible to render ratings for certain employees. The recognized exceptions are outlined in this rule and give the appointing authority the discretion to grant merit increases to rating supervisors who do not render ratings to absent employees or to employees who transfer into an agency in close proximity to their rating date.

New Rule:

10.11.1 Effects of Failure to Rate Employees

A Rating Supervisor who does not rate the employees he has been designated to review shall not be eligible for a merit increase for that year. However, an appointing authority may grant a merit increase for a Rating Supervisor who fails to rate an employee if, and only if, one of the following circumstances applies:

1) The employee was absent for an extended period of time (usually more than 9 months) during the rating period which effectively makes it impossible to evaluate his performance.

2) The employee has transferred into the department from another state department within 90 days of the anniversary or rating date.

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.
2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.
3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.
4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.
5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.
6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a state function.

Anne S. Soileau
Director

0905#064

NOTICE OF INTENT

Department of Civil Service
Civil Service Commission

Suspension of Merit Increase

The State Civil Service Commission will hold a public hearing on Wednesday, June 3, 2009 to consider the following Civil Service Rule proposal related to merit increases for classified state employees. The hearing will begin at 9 a.m. and will be held in the Claiborne Building, 1201 North Third Street, Baton Rouge, Louisiana. The Commission will consider action on these proposed Rule changes in accordance with Article X, Section 10 of the Constitution of the State of Louisiana.

Summary Explanation

The State Civil Service Commission and the state classified service were established in the Louisiana constitution to ensure that our citizens receive efficient and effective services from their state government. One of the goals of the classified system is to promote sound and prudent use of the tax dollars paid to state employees to deliver those services. Today, our state and our nation are suffering extraordinary financial difficulties. Our state government is facing an unprecedented budget crisis in fiscal year 2009/2010. These difficult and challenging times call for fiscal prudence and shared sacrifice among all of us who serve our fellow citizens.

The looming budget shortfalls may require the reduction of some state services and possible layoffs of the employees who provide those services. If salary increases are granted to state employees during fiscal year 2009/2010 the result may increase the need to conduct layoffs. Reductions in expenditures may help mitigate such layoffs.

Therefore, in an effort to preserve services to our citizens and the jobs of the classified employees who serve them, the State Civil Service Commission proposes to suspend the authority to award merit increases for one year, beginning July 1, 2009. By taking this action, the Commission seeks to ensure that the sacrifice necessitated by our state's current financial crisis is borne equally by all classified state employees.

During this year, the Commission directs the Department of State Civil Service to develop a plan to revise the current compensation system to place even greater emphasis on pay for performance.

Further, the Commission charges all appointing authorities, managers and supervisors in state government to exert even greater efforts to utilize the Performance Planning and Review system to measure employee effectiveness and thereby ensure greater accountability to our citizens for responsible management and delivery of effective service.

The Commission urges all appointed and elected state officials to join them in this effort to preserve state services to our citizens by exercising their authority to suspend the awarding of any salary increases to unclassified state employees during the 2009/2010 fiscal year.

If the state's financial crisis abates and it becomes evident that this financial sacrifice is no longer warranted, the Commission may consider repealing the proposed Rule.

Proposed Rule Suspending Merit Increases

Rule 6.14.1

All provisions of Rule 6.14 shall be suspended for the period from July 1, 2009 through June 30, 2010, with these exceptions: the calculation of an employees anniversary date will remain the same; and that a former employee who is reemployed following certification from a department preferred reemployment list within a year of the layoff date shall retain the anniversary date earned under 6.14(b). During this period of suspension, no appointing authority may grant a merit increase to any employee nor may any employee gain eligibility for a merit increase.

Explanation

Due to the financial crisis currently facing our state, the State Civil Service Commission has determined that the authority it has previously granted to appointing authorities to award merit increases to classified employees shall be suspended for a period of one year. During this period of suspension, no classified employee will be eligible for a merit increase. This means that no classified employee may receive a merit increase from July 1, 2009 to June 30, 2010. Furthermore, after June 30, 2010, no employee will be eligible for a merit increase based on any performance evaluation he or she received from July 1, 2009 to June 30, 2010.

NOTE: Performance Planning and Review requirements remain unchanged by this action. Appointing authorities must continue to comply with all Civil Service Rules regarding performance planning and review of classified employees.

Jean Jones
Deputy Director

0905#066

NOTICE OF INTENT

Board of Elementary and Secondary Education

BESE Organization (LAC 28:I.501, 503, and 703)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to the Louisiana Administrative Code, Title 28, Part I: §501.Standing and Executive Committees, §503.Advisory Councils, and §703.Regular and Special Meeting Schedules. BESE is clarifying language and modifying council structure to assist the board in the exercise of its powers and responsibilities as defined in the constitution and by law.

Louisiana Administrative Code, Title 28, Part I, Section 501.C.2 contains examples of issues to be considered by the Legal/Due Process Committee. BESE is changing the examples of issues to be considered by the Legal/Due Process Committee.

Louisiana Administrative Code, Title 28, Part I, Section 503.C.5 contains the name and membership of the Parish Superintendents Advisory Council. The council will become the Superintendents Advisory Council and the membership may include city, parish and other local public school superintendents as council members.

Louisiana Administrative Code, Title 28, Part I, Section 703.A.-F describes regular and special meetings of BESE. Language is being amended to clarify BESE policy regarding regular and special meetings. BESE will hold six regularly scheduled meetings and two general session informational meetings annually. The board will also continue to meet in special meetings called as necessary. The new meeting schedule will not result in any foreseeable savings or expenditure increases.

Title 28
EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 5. Organization

§501. Standing and Executive Committees

A. - C.1. …

2. Legal/Due Process Committee. The following are examples of issues that will be considered by the Legal/Due Process Committee:

a. adjudication of teaching certificates; and

b. charter revocation hearings.

3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:415 (March 2008), amended LR 35:223 (February 2009), LR 35:

§503. Advisory Councils

A. - C.4. …

5. Superintendents' Advisory Council

a. Authority: per BESE policy.

b. Membership: 22 members as follows:

i. 22 members, two city, parish, or other local public school superintendents recommended by each of the eight elected board members, within his/her district, if possible. The three at-large members should each appoint two city, parish, or other local public school superintendents from BESE Districts 3-8, with no more than one appointment per BESE district. It is recommended that the composition reflect all sizes of systems and be equitable in the regions represented, to the extent possible;

ii. the president of the Louisiana Association of School Superintendents (LASS) shall serve as chair of the council. In the event the president of LASS is not an appointed member of the council, the membership shall expand to 23 members during the term of service of that individual;

iii. attendance. Members who cannot attend a meeting may appoint another superintendent from his/her BESE district to represent him/her, and the proxy shall have the same voting privileges;

iv. expenses. Members shall not receive reimbursement for travel expenses from the board.

c. Referrals/Responsibilities

i. Consider all matters referred by the board.

ii. Recommendations from the Superintendents' Advisory Council shall go to the appropriate board committee. The department shall provide responses to the various recommendations.

C.6. - F.7. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(A)(15), R.S. 17:24.4, R.S. 17:11, 34 CFR 300.650-652, and R.S. 17:1954.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:416 (March 2008); amended LR 35:

§703. Regular and Special Meeting Schedules

A. The board meets in regular session six times annually. The board and committee meeting schedules for the upcoming calendar year are approved in October of each year.

B. Regular Board Meetings. The president of the board shall call regular board meetings at least four times a year to fall within calendar quarters. Generally, regular meetings of the board shall convene on the third Thursday of the month. A simple majority of board members may agree to meet on another day.

C. - D. …

E. Regular Committee Meetings. The chair of each standing or executive committee of the board shall conduct regular committee meetings at such times as scheduled for consideration of items referred by the board to the committee.

F. Special Committee Meetings. Special meetings of a standing or executive committee may be held upon call of the committee chair, and the chair shall call a special meeting whenever requested to do so by a majority of the total named members of the committee.

G. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3(E), R.S. 17:6(A)(10), and Article VIII, Section 5(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:420 (March 2008); amended LR 35:

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 effect the functioning of the family? No.

4. Will the proposed Rule effect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments via the U.S. mail until 4:30 p.m., July 9, 2009, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: BESE Organization

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Louisiana Administrative Code, Title 28, Part I, Section 501.C.2. contains examples of issues to be considered by the Legal/Due Process Committee. BESE is changing the examples of issues to be considered by the Legal/Due Process Committee.

Louisiana Administrative Code, Title 28, Part I, Section 503.C.5. contains the name and membership of the Parish Superintendents Advisory Council. The council will become the Superintendents Advisory Council and the membership may include city, parish and other local public school superintendents as council members.

Louisiana Administrative Code, Title 28, Part I, Section 703.A.-F. describes regular and special meetings of BESE. Language is being amended to clarify BESE policy regarding regular and special meetings. BESE will hold six regularly scheduled meetings and two general session informational meetings annually. The Board will also continue to meet in special meetings called as necessary. The new meeting schedule will not result in any foreseeable savings or expenditure increases.

This action will have no effect other than $164.00 for advertising in the Louisiana Register.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This action will have no effect on revenue collections of state and local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Amy B Westbrook
Executive Director
0905#048

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Curriculum and Instruction
(LAC 28:CXV.2373, 2381, and 2382)

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—Louisiana Handbook for School Administrators*: §2373.Agricultural Education, §2381. Health Occupations, and §2382.Law, Public Safety, Corrections, and Security. LAC 28:CXV.2373 is amended to clarify verbiage in reference to Agriscience III and IV Laboratory not being offered and to clarify prerequisites for taking Cooperative Agriscience Education I. LAC 28:CXV.2381 is amended and §2382 is adopted to develop additional course offerings to address the needs of the local school systems. The action is being proposed to increase curriculum offerings to students. This will enable students to exit high school with an industry based certification and qualified to join the workforce.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction
§2373. Agricultural Education

A. …

B. Cooperative Agriscience Education I is offered to students who have completed Agriscience I and who are enrolled or have completed another Agriscience course. Cooperative Agriscience Education II is offered to students who have completed Cooperative Agriscience Education I.

C. Semester courses are designed to be offered in the place of, or in addition to, Agriscience III.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1298 (June 2005), amended LR 33:277 (February 2007), LR 33:2050 (October 2007), LR 34:2386 (November 2008), LR 35:

§2381. Health Occupations

A. Health Occupations course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
AHEC of a Summer Career Exploration	9-12	1/2
Allied Health Services I	10-12	1-2
Allied Health Services II	10-12	1-2
Cooperative Health Occupations	11-12	3
Dental Assistant I	10-12	1-2
Dental Assistant II	11-12	2-3
Emergency Medical Technician— Basic	10-12	2
First Responder	9-12	1/2-2
Health Occupations Elective I, II	9-12	1/2-3
Health Science I	11-12	1-2
Health Science II	12	1-2
Introduction to Emergency Medical Technology	10-12	2
Introduction to Health Occupations	9-12	1
Introduction to Pharmacy Assistant	10-12	1
Medical Assistant I	10-12	1-2
Medical Assistant II	11-12	1-2
Medical Assistant III	12	1-2
Medical Terminology	9-12	1
Nurse Assistant	10-12	2-3
Patient Care Technician	12	3
Pharmacy Technician	12	1-2
Sports Medicine I	10-12	1/2
Sports Medicine II	11-12	1/2
Sports Medicine III	11-12	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 33:1615 (August 2007), LR 33:2051 (October 2007), LR 35:

§2382. Law, Public Safety, Corrections, and Security

A. The Law and Public Safety Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Criminal Justice Elective I, II	9-12	1/2-3

AUTHORITY NOTE: Promulgated in accordance with R.S 17:7 and R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., July 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Curriculum and Instruction

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The implementation of this proposed rule requires no known additional costs to state governmental units except for an estimated $168 for printing the amendment of Bulletin 741 in the *Louisiana Register*. It is unknown at this time if there are any costs to local governmental units. The amendments could be the basis for the LEAs updating course offerings or other counseling brochures. LEAs choosing to offer the new courses may need to purchase items such as new textbooks, instructional materials, or equipment. Each LEA will make its determination.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will provide students opportunities to increase in knowledge and skill development, giving them the tools necessary to prepare them for careers. This in turn will improve the number of professionals to enter the workforce. Students will be able to exit high school with an industry-based certification.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

More students will begin their careers in this state, opening opportunities for employment, thus improving the economy.

Beth Scioneaux
Deputy Superintendent
0905#045

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—General Powers of Local Educational Governing Authorities (LAC 28:CXV.303)

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—*Louisiana Handbook for School Administrators*: §303, General Powers of Local Educational Governing Authorities. This revision in policy is a direct result of the passage of Senate Bill No. 548, Act 466, which took place in the Louisiana Legislative Session of 2008. This change in Bulletin 741 will require local school systems to conduct exit interviews for all teachers leaving their employ. The current bulletin does not address personnel exit interviews.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 3. Operation and Administration
§303. General Powers of Local Educational Governing Authorities

A. - K. …

L. Each city, parish, or other local public school board shall conduct exit interviews for teachers who leave their employ and annually report this information to BESE. The local school board shall use the forms and reporting system developed by BESE for this purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:53; R.S. 17:81; 17:81.2 17:81.4-8; R.S. 17:100.2; R.S. 17:104; R.S. 17:151.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1257 (June 2005), amended LR 35:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., July 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—General Powers of Local Educational Governing Authorities

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This revision in policy is a direct result of the passage of Senate Bill No. 548, Act 466 which took place in the Louisiana Legislative Session of 2008. This change in Bulletin 741 will require local school systems to conduct exit interviews for all teachers leaving their employ. 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.

Beth Scioneaux
Deputy Superintendent
0905#043

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—High School Graduation Requirements (LAC 28:CXV.2319)

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—Louisiana Handbook for School Administrators*: §2319.High School Graduation Requirements. This proposed amendment to §2319.E.3 specifies which courses will substitute for the fourth required unit of science, the fourth required unit of social studies, and the required unit of art in the Louisiana Core 4 curriculum. The proposed amendment to §2319.H.1.d provides students the opportunity to complete requirements for the senior project to sit for the IBC exam, post graduation as an alternative to the required industry-based certification in student's area of concentration from BESE-approved industry-based certifications in order to obtain a career/technical endorsement to the standard diploma. It is imperative to give students every opportunity to fulfill the requirements to become eligible for a career/technical endorsement to the standard diploma giving them the tools necessary to become successful in the workplace.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction
§2319. High School Graduation Requirements

A. - D. …

E. Minimum Course Requirements for High School Graduation

1. - 2. …

3. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following.

English	**4 units**
Shall be English I, II, III, and English IV	
Mathematics	**3 units**
Algebra I (1 unit) or Algebra I-Pt. 2 Geometry Algebra II	
The remaining unit shall come from the following: Financial Mathematics, Math Essentials, Advanced Math—Pre-Calculus, Advanced Math—Functions and Statistics, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally-initiated elective approved by BESE as a math substitute	
Science	**4 units**
Shall be the following: 1 unit of Biology 1 unit of Chemistry 2 units from the following courses: Physical Science, Integrated Science, Physics I, Physics of Technology I, Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, Anatomy and Physiology, or a locally initiated elective approved by BESE as a science substitute. • Students may not take both Integrated Science and Physical Science • Agriscience I is a prerequisite for Agriscience II and is an elective course A student completing a Career and Technical Area of Concentration may substitute one of the following BESE/Board of Regents approved IBC-related course from within the student's Area of Concentration for the fourth required science unit: Advanced Nutrition and Foods Food Services II Allied Health Services II Dental Assistant II Emergency Medical Technician-Basic (EMT-B) Health Science II Medical Assistant II Sports Medicine III Advanced Electricity/Electronics Process Technician II ABC Electrical II Computer Service Technology II Horticulture II Networking Basics Routers and Routing Basics Switching Basics and Intermediate Routing WAN Technologies Animal Science Biotechnology in Agriscience Environmental Studies in Agriscience Equine Science	

Forestry Horticulture Small Animal Care/Management Veterinary Assistant Oracle Academy Course: DB Programming with PL/SQL	
Social Studies	**4 units**
Shall be the following 1/2 unit of Civics or AP American Government 1/2 unit of Free Enterprise 1 unit of American History 1 unit from the following: World History, World Geography, Western Civilization, or AP European History 1 unit from the following: World History, World Geography, Western Civilization, AP European History, Law Studies, Psychology, Sociology, Civics (second semester—1/2 credit) or African American Studies. A student completing a Career and Technical Area of Concentration may substitute one of the following BESE/Board of Regents approved IBC-related course from within the student's Area of Concentration for the fourth required social studies unit: Advanced Child Development Early Childhood Education II Family and Consumer Sciences II ProStart II T & I Cooperative Education (TICE) Cooperative Agriculture Education Administrative Support Occupations Business Communication Cooperative Office Education Entrepreneurship - Business Lodging Management II Advertising and Sales Promotion Cooperative Marketing Education I Entrepreneurship – Marketing Marketing Management Marketing Research Principles of Marketing II Retail Marketing Tourism Marketing CTE Internship General Cooperative Education II STAR II	
Health Education	**1/2 unit**
Physical Education	**1 1/2 units**
Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students. A maximum of four units of Physical Education may be used toward graduation. NOTE: The substitution of JROTC is permissible.	
Foreign Language	**2 units**
Shall be two units in the same foreign language or two Speech courses	
Arts	**1 unit**
One unit Fine Arts Survey or one unit of Art (§2333), Dance (§2337), Music (§2355), Theatre Arts (§2333), or Applied Arts. A student completing a Career and Technical Area of Concentration may substitute one of the following BESE/Board of Regents approved IBC-related course from within the student's area of concentration for the required applied arts unit: Advanced Clothing and Textiles ABC Carpentry II TE ABC Electrical II TE ABC Welding Technology II Advanced Metal Technology Advanced Technical Drafting Architectural Drafting ABC Carpentry II – T&I ABC Welding Technology II – T&I Cabinetmaking II Commercial Art II Cosmetology II Culinary Occupations II Custom Sewing II Graphic Arts II Photography II Television Production II	

Upholstery II Welding II ABC Carpentry In Agriscience ABC Electricity in Agriscience ABC Welding Technology Agriscience Agriscience Construction Technology Agriscience Power Equipment Floristry Landscape Design and Construction Introduction to Business Computer Applications Accounting II Business Computer Applications Computer Multimedia Presentations Desktop Publishing Keyboarding Applications Telecommunications Web Design I and II Word Processing Digital Media II	
Electives	**3 units**
TOTAL	**24 units**

F. - H.1.c.ii. …

d. Students shall complete a minimum of 90 work hours of work-based learning experience related to the student's area of concentration (as defined in the *LDE Diploma Endorsement Guidebook*) or senior project related to student's area of concentration with 20 hours of related work-based learning and mentoring and complete one of the following requirements:

i. industry-based certification in student's area of concentration from the list of industry-based certifications approved by BESE or completion of all course work required to sit for the IBC exam, post graduation; or

ii. three college hours in a career/technical area that articulate to a postsecondary institution, either by actually obtaining the credits and/or being waived from having to take such hours in student's area of concentration.

H. 1. e. - J. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24.4, R. S. 17:183.2, and R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., July 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—High School Graduation Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed amendments specify which Career and Technical (CTE) courses will substitute for the applied art unit, the fourth required science unit, and the fourth required social studies unit in accordance with the Louisiana Core 4 policy. Additionally, the amendments give the student another alternative in meeting the requirements of the senior project—to complete all course work required to sit for the IBC exam, post graduation. There should be no implementation costs except for an estimated $336 for printing the amendments in the *Louisiana State Register*.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs to directly affected persons or nongovernmental groups. Students will be benefited by having additional choices to fulfill the requirements for high school graduation, assisting them in entering the workforce, which will improve the economy.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Employers could have a larger, trained, and qualified pool from which to select employees.

Beth Scioneaux	H. Gordon Monk
Deputy Superintendent	Legislative Fiscal Officer
0905#044	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Requirements for Teachers
(LAC 28:CXV.3103)

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—Louisiana Handbook for School Administrators*: §3103, Requirements for Teachers. This proposed amendment will expand the CTTIE teacher certification for instructors in Technology Education, Law and Public Safety, and Patient Care Technician. This certification will allow qualified instructors, who have served in business/industry, to become instructors for the courses listed above, which will prepare secondary students to further their education in two-year technical and four-year university programs, thereby meeting a great demand for a qualified workforce.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 31. Career and Technical Education (CTE)
§3103. Requirements for Teachers

A. The CTE teacher shall hold a valid Louisiana teaching certificate or valid Career and Technical Trade and Industrial Education (CTTIE) Certificate that entitles the holder to teach in the career area of the actual teaching assignment. Certification is required to teach:

1. all law and public safety courses;
2. engineering design I and II;
3. process technician I and II;
4. Project Lead the Way; and
5. patient care technician.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 422.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1309 (June 2005), amended LR 35:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., July 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Requirements for Teachers

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Presently, the CTTIE teacher certification program qualifies individuals with business and industry experience to teach in specified Career and Technical Education fields. This will expand that list to include CTTIE teacher certification for instructors in Technology Education, Law and Public Safety, and Patient Care Technician. There should be no implementation costs (savings) to state or local governmental units except for an estimated cost of $168 for printing the amendments in the *Louisiana State Register*.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The LEAs will be benefited by providing them additional choices to fulfill teacher certification requirements by qualifying individuals with business and industry experience to teach in various Career and Technical Education fields.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Employers could have a larger, trained, and qualified pool from which to select employees.

Beth Scioneaux	H. Gordon Monk
Deputy Superintendent	Legislative Fiscal Officer
0905#046	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1794—State Textbook Adoption Policy and Procedure Manual—Waivers (LAC 28:XXXIII.513)

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 amendments to *Bulletin 1794—State Textbook Adoption Policy and Procedure Manual*: §513. Waivers. This action represents a desire to reduce administrative action required by the State Board.

Title 28
EDUCATION
Part XXXIII. Bulletin 1794—State Textbook Adoption Policy and Procedure Manual
Chapter 5. Local School System Responsibilities
§513. Waivers

A. - A.1. …

B. Special Waiver to Exceed 10 Percent of Textbook Allotment on Non-Adopted State Textbooks and Materials of Instruction

1. A local school system, with the approval of its local school board or chartering authority, may petition in writing the state Department of Education for permission to spend in excess of the 10 percent allowance for non-adopted state textbooks.

2. Requests shall be accepted from March through May 31. Textbook orders may not be processed until waivers have been approved. The last month for action on such waivers shall be June. Any extenuating circumstances shall be handled on an individual basis.

C. - D.1. …

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1444 (August 1999), repromulgated LR 26:1000 (May 2000), amended LR 35:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., July 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Amy B. Westbrook, Ph.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 1794—State Textbook Adoption Policy and Procedure Manual—Waivers

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The changes to the policy reassigns the administrative task of approving textbook waivers requesting expenditure of state funds on materials that are not state-approved as a role of the State Board of Elementary and Secondary Education to the role of the appropriate office within the Department of Education. There will be no increase in costs for local governmental units. The estimated cost to the Department of Education for this rule change is $135 (for printing and postage).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule change should have no significant effect on state or local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no measurable, anticipated cost or economic benefit to any person or non-governmental group.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment.

Beth Scioneaux	H. Gordon Monk
Deputy Superintendent	Legislative Fiscal Officer
0905#047	Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission
Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 1303, and 1903)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking will modify the definition of "qualified summer session" beginning with the 2010-2011 award year to allow students to use their TOPS award to attend a summer session if they have at least 60 hours of college credit and request payment for the summer session from their remaining TOPS eligibility. Students will lose one semester of TOPS eligibility for each summer session paid by TOPS. Summer hours may not be used to comply with the TOPS requirement to earn at least 24 hours each academic year. Grades earned during a summer session will be included in computing the student's cumulative grade point average.

This rulemaking changes the Leveraging Educational Assistance Partnership (LEAP) initial eligibility requirements to require a student pass the General Educational Development (GED) test with at least a minimum average score of 450. The GED is a nationwide test developed by the American Council on Education. The GED grading scale has been changed to 200 to 800 and the minimum average passing score has been raised from 45 to 450.

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

* * *

Qualified Summer Session—those summer sessions (includes terms and semesters conducted during the summer) for which the student's institution certifies that:

a. - e. …

f. beginning with the summer of 2010, prior to the beginning of the summer session, the student:

i. has at least 60 academic college credit hours;

ii. has enrolled as a full time student for the summer session; and

iii. has signed a form provided by LOSFA:

(a). requesting payment for the summer session from the student's remaining TOPS eligibility;

(b). stating the student understands that the use of the TOPS award for the summer session reduces the student's TOPS eligibility by one semester or term;

(c). stating the student understands that the hours earned cannot be used to meet the TOPS requirement to earn at least 24 hours each academic year; and

(d) stating the student understands that the grades earned during the summer session will be included in the student's cumulative grade point average.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:

Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

§1303. Establishing Eligibility

A. - 3. …

4. have a high school diploma with at least a 2.00 cumulative grade point average, or a minimum average score of 450 on the General Educational Development (GED) test, or an ACT composite score of at least 20, or a post-secondary grade point average of at least 2.00 from the most recent term; and

A.5. - 12. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1459 (August 1999), repromulgated LR 27:1861 (November 2001), amended LR 28:448 (March 2002), LR 35:

Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

§1903. Responsibilities of Post-Secondary Institutions

A. - F. …

G. Certification of Qualified Summer Session

1. Each student requesting payment must sign a form provided by LOSFA:

i. requesting payment for the summer session from the student's remaining TOPS eligibility;

ii.. stating the student understands that the use of the TOPS award for the summer session reduces the student's TOPS eligibility by one semester or term;

iii. stating the student understands that the hours earned cannot be used to meet the TOPS requirement to earn at least 24 hours each academic year; and

iv. stating the student understands that the grades earned during the summer session will be included in the student's cumulative grade point average.

2. The institution's submission of a payment request for tuition for a student's enrollment in a summer session will constitute certification of: the student's eligibility for tuition payment for the summer session; receipt from the student of a signed a written acknowledgment and consent that each payment will consume one semester of eligibility; and the student's enrollment in the summer session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, 17:3041.10-3041.15, 17:3041.21-3041.26 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007), LR 35:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG09107NI)

Interested persons may submit written comments on the proposed changes (SG09107NI) until 4:30 p.m., June 10, 2009, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed changes modify the Scholarship and Grant Program Rules to give students the option to use a term of TOPS eligibility to take courses during a Summer Session. Except for the nominal cost of rulemaking, there should be no additional cost to the program. Depending on the number of students who take advantage of this option, there could be a nominal reduction in costs to the program as students expend a term of eligibility for a lower cost summer term instead of using it for a higher cost Fall, Winter or Spring Term.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed changes.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed change gives students more flexibility to earn a postsecondary degree. Many of these students attend an in-state school to further their education and remain in Louisiana upon completion of their education. This will provide Louisiana employers a better-educated workforce and may also attract out-of-state employers to Louisiana thus providing additional better paying jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed change gives students more flexibility to earn a postsecondary degree. Any increase in the number of students completing their post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

Melanie Amrhein	H. Gordon Monk
Executive Director	Legislative Fiscal Officer
0905#026	Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Interstitial Monitoring Requirement for Emergency Power Generator UST Systems (LAC 33:XI.101 and 303)(UT016)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Underground Storage Tanks regulations, LAC 33:XI.101 and 303 (Log #UT016).

This rule requires underground storage tank (UST) owners and/or operators that install emergency power generator UST systems to conduct interstitial monitoring on all underground storage tanks and associated pressurized piping installed after the effective date of this regulation. The rule also corrects two typographical errors in the regulations. The 2005 Federal Underground Storage Tank Compliance Act, which amends Section 9003 of Subtitle I of the Solid Waste Disposal Act, mandates states authorized to administer the Underground Storage Tank Program to take certain actions to reduce the incidence of leaking USTs. One such action is to require that USTs installed in the state have secondary containment and interstitial monitoring for emergency power generator UST systems. This action must be implemented in order to maintain federal funding and federal delegation of the UST program, and will further enhance the state's effort to maintain protection of human health and the environment. Prior rulemaking promulgated the secondary containment requirement for all emergency generator tank systems installed after December 20, 2008, but the interstitial monitoring requirement was inadvertently left out of that regulation. The basis and rationale for this rule are to comply with the federal guidelines required by the 2005 Underground Storage Tank Compliance Act. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding

environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tanks
Chapter 1. Program Applicability and Definitions
§101. Applicability

A. – C.2.a.v. …

b. LAC 33:XI.701-705 does not apply to any UST system that stores fuel solely for use by emergency power generator UST systems installed prior to [insert date of promulgation]. Emergency power generator UST systems installed or replaced on or after [insert date of promulgation], are subject to all requirements of LAC 33:XI, including the interstitial monitoring release detection requirements of LAC 33:XI.701-705.

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 29:1467 (August 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:

Chapter 3. Registration Requirements, Standards, and Fee Schedule
§303. Standards for UST Systems

A. – D.2.f. …

i. any of the accepted piping designs listed in Subparagraphs D.2.a-e of this Section shall be fabricated with double-walled or jacketed construction in accordance with Subsection A of this Section, shall be capable of containing a release from the inner wall of the piping, and shall be designed with release detection in accordance with LAC 33:XI.701.B.4; or

ii. …

g. if 25 percent or more of the piping to any one UST is replaced after December 20, 2008, it shall comply with Clause D.2.f.i or ii of this Section. If a new motor fuel dispenser is installed at an existing UST facility and new piping is added to the UST system to connect the new dispenser to the existing system, then the new piping shall comply with Clause D.2.f.i or ii of this Section. Suction piping that meets the requirements of LAC 33:XI.703.B.2.b.i-v and suction piping that manifolds two or more tanks together are not required to meet the secondary containment requirements outlined in this Paragraph.

D.3. – E.6.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 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), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2171 (October 2007), LR 34:2116 (October 2008), LR 35:

This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on June 25, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by UT016. Such comments must be received no later than July 2, 2009, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3398 or by e-mail to donald.trahan@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 UT016. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

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; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Interstitial Monitoring Requirement for Emergency Power Generator UST Systems

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

State and local government agencies that have underground storage tanks (USTs) will incur extra costs when they install new emergency generator UST systems or replace piping on existing emergency generator UST systems. The cost of an installation will increase by approximately 5 percent due to the cost of installing an interstitial monitoring system for the tanks and any associated pressurized piping. Interstitial monitoring for piping will only be required on pressurized piping systems, as suction systems are exempt from this requirement. Government agencies may avoid incurring the extra costs, should they choose to do so, by installing aboveground storage tanks for their emergency generators.

Interstitial monitoring requirements will allow for detection of releases from emergency generator USTs, resulting in less environmental contamination and fewer and lower claims to the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) managed by the department.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governmental units will not change as a result of this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Only underground storage tank owners and operators that install new emergency power generator USTs, or replace piping on existing emergency generator UST systems, will be directly affected by the proposed rule. There will be an approximate 5 percent increase in the cost of installing an emergency generator UST system due to the addition of an interstitial monitoring system for emergency generator tanks and piping over installing them without interstitial monitoring systems. The approximate average cost for installing a typical one-tank emergency generator system is approximately $30,000 to $50,000, but this could increase to up to $100,000 depending on the number of tanks, size of tanks, and the complexity of the emergency generator system. Interstitial monitoring will result in a reduction of undetected releases that require remediation, therefore ultimately offsetting the cost of the requirement in whole or in part. A decrease of third party law suits resulting from offsite migration may result from the requirement for interstitial monitoring, due to the detection of releases.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition or employment from the proposed rule.

Herman Robinson, CPM	H. Gordon Monk
Executive Counsel	Legislative Fiscal Officer
0905#069	Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Louisiana Water Pollution Control Fee System Regulation
(LAC 33:IX.1309, 1311, 1313,
1315, 1317, and 1319)(WQ070)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.1309, 1311, 1313, 1315, 1317, and 1319 (Log #WQ070).

This rule changes the name of the annual fee rating worksheets for the water program fees, and updates the complexity designation tables (alphabetical and numerical) to conform with OSHA's updates to the SIC codes. The name of the Municipal Facility Fee Rating Worksheet is being changed to reflect its use for all treatment works treating domestic sewage. The Industrial Facility Fee Rating Worksheet will be utilized for all non-treatment works treating domestic sewage. There is no change in the definitions or facility status of the terms "municipal" or "industrial" as related to fees charged. The complexity designation tables are amended to conform with OSHA's updated SIC codes. The basis and rationale for this rule are to provide for clarity in the utilization of fee rating worksheets for LPDES permitted facilities and for updates of SIC codes as necessary. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
Subpart 1. Water Pollution Control
Chapter 13. Louisiana Water Pollution Control Fee System Regulation

§1309. Fee System

A. – K. …

L. Facility Complexity Designation

1. The facility complexity designation shall be based on the SIC code as established in the tables in LAC 33:IX.1319.

2. …

3. When it is demonstrated that factors associated with processes and waste generation are fundamentally different from those considered in assignment of a complexity designation, the administrative authority, on a case-by-case basis, may assign a minor facility a different complexity designation than that indicated in LAC 33:IX.1319. In making such a reassignment the administrative authority shall consider:

L.3.a. - N.Table. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:626 (September 1988), LR 18:731 (July 1992), LR 21:798 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of Water Resources, LR 24:326 (February 1998), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2052 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:

§1311. Instructions for Completing Treatment Works Treating Domestic Sewage Annual Fee Rating Worksheet

A. - C.4. …

D. Potential Public Health Points

1. Determine if the receiving water is used for a municipal water supply.

2. Review the complexity designation assigned in LAC 33:IX.1311.A. If groups I or II were assigned, check the first complexity designation blank, record 0 points in the public health points blank and go to the next instruction.

3. If a higher complexity designation (III, IV, V, or VI) was assigned, then a determination if the receiving water is used as a drinking water supply source must be made. To qualify for points under this criterion, either the receiving water to which wastewater is discharged or a water body to which the receiving water is tributary must be used as a drinking water supply source within 50 miles downstream.

4. Check the appropriate complexity designation blank and record associated points in the public health points blank.

E. Major/Minor Facility Designation

1. Determine if the facility has been designated a major facility by the administrative authority. If the answer

is YES, then check the appropriate blank and assign 25 points. If the answer is NO, then proceed to the next part.

2. Determine if the permitted effluent limitations assigned were based on water quality factors in the receiving water. Check the appropriate answer and assign the points required.

F. Total Rating Points. Sum the rating points assigned to each of the six sections and record the total in the total rating points blank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:627 (September 1988), LR 18:732 (July 1992), LR 24:327 (February 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2549 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 35:

§1313. Treatment Works Treating Domestic Sewage Annual Fee Rating Worksheet

Invoice No._____
ANNUAL FEE RATING WORKSHEET
PERMIT NO._____

1. – 3.C. …

4. POTENTIAL PUBLIC HEALTH IMPACTS

Is the receiving water to which the wastewater is discharged or a water body to which it is a tributary used as a drinking water supply source within 50 miles downstream?

_____No (0 points)
_____Yes, then …

Complexity Designation	
_____I, II	(0 points)
_____III	(5 points)
_____IV	(10 points)
_____V	(20 points)
_____VI	(30 points)

POTENTIAL PUBLIC HEALTH IMPACT POINTS_____

5. MAJOR/MINOR FACILITY DESIGNATION

Has your facility been designated a major facility by the administrative authority?

_____Yes, then Points = 25
_____No, then

Were effluent limitations assigned to the discharge based on water quality factors in the receiving stream?

_____No, then Points = 0
_____Yes, then Points = 5

TOTAL MAJOR/MINOR POINTS _____
TOTAL RATING POINTS ASSIGNED _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:628 (September 1988) LR 18:732 (July 1992), amended by the Office of the Secretary, Legal Affairs Division LR 35:

§1315. Instructions for Completing Industrial Facility (all non-Treatment Works Treating Domestic Sewage) Annual Fee Rating Worksheet

A. – G. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 18:733 (July 1992), amended LR 24:327 (February 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2550 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 35:

§1317. Industrial Facility (all non-Treatment Works Treating Domestic Sewage) Annual Fee Rating Worksheet

Invoice No._____
ANNUAL FEE RATING WORKSHEET
PERMIT NO._____

1. – 6. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 18:734 (July 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 35:

§1319. SIC Code Complexity Tables

Table 1. Numerical Listing Complexity Groups for SIC Codes

SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
1011	Iron Ores	Ore Mining and Dressing	Iron Ore	IV
1021	Copper Ores	Ore Mining and Dressing	Base and Precious Metals	V
1031	Lead and Zinc Ores	Ore Mining and Dressing	Base and Precious Metals	V
1041	Gold Ores	Ore Mining and Dressing	Base and Precious Metals	V
1044	Silver Ores	Ore Mining and Dressing	Base and Precious Metals	V
1061	Ferroalloy Ores, Except Vanadium	Ore Mining and Dressing	Ferroalloy	V
1094	Uranium-Radium-Vanadium Ores	Ore Mining and Dressing	Uranium	VI
1099	Miscellaneous Metal Ores NEC	Ore Mining and Dressing	Aluminum	IV
1099	Mercury Ores	Ore Mining and Dressing	Mercury	V
1099	Miscellaneous Metal Ores NEC	Ore Mining and Dressing	Metal Ore, NEC	V
1221	Bituminous Coal and Lignite	Coal Mining	Acid or Ferruginous Mines	IV
1221	Bituminous Coal and Lignite	Coal Mining	Alkaline Mines	IV
1221	Bituminous Coal and Lignite	Coal Mining	Coal Preparation Plants	IV
1221	Bituminous Coal and Lignite	Coal Mining	Regrade/Revegetation	III
1231	Anthracite Mining	Coal Mining	Acid or Ferruginous Mines	IV
1231	Anthracite Mining	Coal Mining	Alkaline Mines	IV
1231	Anthracite Mining	Coal Mining	Anthracite Segment of Acid Mine Subcategory	III
1231	Anthracite Mining	Coal Mining	Coal Preparation Plants	IV
1231	Anthracite Mining	Coal Mining	Regrade/Revegetation	III
1311	Oil and Gas Extraction	Crude Petroleum and Natural Gas	Exploration and Production, Except Storm Water Only	III
1321	Natural Gas Liquids	Recovering/Fractioning	Natural Gas	II

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
1389	Oil and Gas Field Services	Miscellaneous	Reserve Pit Treaters	IV
1389	Oil and Gas Field Services	Miscellaneous	Oilfield Waste Disposal	V
1389	Oil and Gas Field Services	Miscellaneous	Treatment of Oilfield Waste	IV
1389	Oil and Gas Field Services	Miscellaneous	External Cleaning of Equipment	II
1389	Oil and Gas Field Services	Miscellaneous	Internal Cleaning of Equipment	III
1440	Mining of Nonmetallic Minerals	Sand and Gravel	All	II
1475	Phosphate Rock	Phosphate Mining	Phosphate Mining	IV
1479	Chemical and Fertilizer Mineral Mining NEC	Rock Salt	All	III
1479	Chemical and Fertilizer Mineral Mining NEC	Sulfur	All	V
2000	Food and Kindred Products	Processing Food and Beverages	All	II
2211	Broad Woven Fabric Mills, Cotton	Textile Mills	Greige Mills	II
2211	Broad Woven Fabric Mills, Cotton	Textile Mills	Woven Fabric Finishing	V
2221	Broad Woven Fabric Mills, Man-Made Fiber and Silk	Textile Mills	Greige Mills	II
2231	Broad Woven Fabric Mills, Wool	Textile Mills	Greige Mills	II
2231	Broad Woven Fabric Mills, Wool	Textile Mills	Wool Finishing	V
2241	Narrow Fabrics and Other Smallwares Mills	Textile Mills	Greige Mills	II
2241	Narrow Fabrics and Other Smallwares Mills	Textile Mills	Woven Fabric Finishing	V
2251	Women's Full Length and Knee Length Hosiery	Textile Mills	Hosiery	V
2252	Hosiery, Except Women's Full Length and Knee Length	Textile Mills	Hosiery	V
2253	Knit Outerwear Mills	Textile Mills	Greige Mills	II
2253	Knit Outerwear Mills	Textile Mills	Knit Fabric Finishing	V
2254	Knit Underwear Mills	Textile Mills	Knit Fabric Finishing	V
2255	Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2256	Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2257	Circular Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2258	Lace and Warp Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2259	Knitting Mills, NEC	Textile Mills	Knit Fabric Finishing	V
2261	Finishers of Broad Woven Fabrics of Cotton	Textile Mills	Woven Fabric Finishing	V
2262	Finishers of Broad Woven Fabrics/Man-Made Fiber	Textile Mills	Woven Fabric Finishing	V
2269	Finishers of Textiles, NEC	Textile Mills	Woven Fabric Finishing	V
2273	Carpets and Rugs	Textile Mills	Carpet Finishing	V
2273	Carpets and Rugs	Textile Mills	Greige Mills	II
2281	Yarn Spinning Mills	Textile Mills	Greige Mills	II
2281	Yarn Spinning Mills	Textile Mills	Stock and Yarn Dyeing	V
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	Textile Mills	Greige Mills	II
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	Textile Mills	Stock and Yarn Dyeing	V
2284	Thread Mills	Textile Mills	Stock and Yarn Dyeing	V
2293	Textile Goods NEC	Textile Mills	Padding and Upholstery	II
2294	Textile Goods NEC	Textile Mills	Processed Textile Wastes	II
2297	Nonwoven Fabrics	Textile Mills	Nonwoven Manufacturing	V
2299	Textile Goods NEC	Textile Mills	Wool Scouring and Felt Manufacturing	V
2300	Apparel and Other Finished Products/From Fabrics	Textile Mills	Apparel	II
2410	Logging Camps and Logging Contractors	Timber Products Processing	All	II
2421	Sawmills and Planing Mills, General	Timber Products Processing	Sawmills and Planing Mills	II
2426	Hardwood Dimension and Flooring Mills	Timber Products Processing	Hardwood Dimension and Flooring Mills	II
2429	Special Product Sawmills, NEC	Timber Products Processing	Special Products Sawmills, NEC	II
2431	Millwork	Timber Products Processing	Millwork	II
2434	Wood Kitchen Cabinets	Timber Products Processing	Wood Kitchen Cabinets	II
2435	Hardwood Veneer and Plywood	Timber Products Processing	Plywood	IV
2435	Hardwood Veneer and Plywood	Timber Products Processing	Veneer	II
2436	Softwood Veneer and Plywood	Timber Products Processing	Plywood	IV
2436	Softwood Veneer and Plywood	Timber Products Processing	Veneer	II
2439	Structural Wood Members, NEC	Timber Products Processing	Millwork, Veneer, Plywood and Structural Wood Members	II
2440	Wood Containers	Timber Products Processing	All	II

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2450	Wooden Buildings and Mobile Homes	Timber Products Processing	All	II
2491	Wood Preserving	Timber Products Processing	Wood Preserving─Steam	IV
2491	Wood Preserving	Timber Products Processing	Wood Preserving─Boulton	IV
2491	Wood Preserving	Timber Products Processing	Wood Preserving─Inorganic	II
2493	Reconstituted Wood Products	Timber Products Processing	Particleboard	II
2493	Wood Products NEC	Timber Products Processing	Hardboard─Dry Process	II
2493	Wood Products NEC	Timber Products Processing	Wet Process Hardboard (Two Subcategories)	IV
2493	Wood Products NEC	Timber Products Processing	Wood Products, NEC	II
2500	Furniture and Fixtures	Household and Office Furniture	All	II
2611	Pulp Mills	Pulp, Paper and Paperboard	All	III
2621	Paper Mills	Pulp, Paper and Paperboard	All	III
2621	Building Paper and Buildingboard Mills	Pulp, Paper and Paperboard	Waste Paper─Construction	III
2621	Building Paper and Buildingboard Mills	Pulp, Paper and Paperboard	Waste Paper─Board	III
2631	Paperboard Mills	Pulp, Paper and Paperboard	All	III
2640	Converted Paper and Paperboard Products	Pulp, Paper and Paperboard	All, Except Containers and Boxes	II
2650	Paperboard Containers and Boxes	Pulp, Paper and Paperboard	All	II
2661	Building Paper and Buildingboard Mills	Timber Products Processing	Barking	II
2679	Building Paper and Buildingboard Mills	Timber Products Processing	Insulation Board (Two Subcategories)	IV
2700	Printing, Publishing and Allied Industries	Printing and Publishing	All	II
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Chlorine	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Diaphragm Cell	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Mercury Cell	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Potassium Carbonate	IV
2812	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Bicarbonate	II
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Sodium Carbonate	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Carbon Dioxide	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Carbon Monoxide	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Hydrogen	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Gases, Industrial Compressed Liquid/Solid	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Nitrous Oxide	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Oxygen and Nitrogen	II
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Barium Sulfate	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Byrytes Pigments	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Chloride Process	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Chrome Pigments	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Colors	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Black	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Magnetic	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Yellow	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Lead Dioxide, Brown ($Pb0_2$)	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Lead Oxide, Red (Pb_30_4)	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Ochers	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Satin White Pigment	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Siennas	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Sulfate Process	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Titanium Dioxide	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Ultramarine Pigment	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Umbers	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	White Lead Pigment ($Pb(OH)_2$+$PbCO)_3$	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Whiting	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Fluoride	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Hydroxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Alums	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonia Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Hydroxide	II

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity
No.	SIC Title	Major Industry	Industrial Subcategory	Designation
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Molybdate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Perchlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Thiosulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Barium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Barium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Beryllium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Bleaching Powder	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Borax	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Boric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Boron Compounds (Not Produced at Mines)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Borosilicate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Brine	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Bromine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Carbide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Compounds (Inorganic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Hypochlorite	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cerium Salts	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chlorosulfuric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromic Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt 60 (Radioactive)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Iodide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cuprous Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ferric Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ferrous Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Fissionable Materials Production	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Fluorine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Heavy Water	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrated Alumina Silicate Powder	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrochloric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrofluoric Acid	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Cyanide	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Peroxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Sulfide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrophosphites	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Indium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Inorganic Acids (Except HNO_2 or H_2PO_4)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Iodides	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Iodine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Isotopes Radioactive	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Arsenate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Monoxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Silicate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lithium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lithium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Luminous Compounds (Radium)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Magnesium Compounds (Inorganic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Manganese Dioxide (Powder Synthetic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Manganese Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Mercury Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Mercury Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Ammonium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Carbonate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Fluoroborate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nitric Acid (Strong)	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nitric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nuclear Fuel Reactor Cases, Inorganic	IV

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nuclear Fuel Scrap Reprocessing	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Oleum (Fuming Sulfuric Acid)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Oxidation Catalyst from Porcelain	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Percloric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Peroxides, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potash Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potash Magnesia	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Aluminum Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Bromide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Chlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Compounds Inorganic (Except KOH-K_2CO_3)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Dichromate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Hypochlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Iodide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Metal	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Nitrate and Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Permanganate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Radium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Radium Luminous Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Rare Earth Metal Salts	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Reagent Grade Chemicals (Inorganic: Refined From Technical Grades)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Salts of Rare Earth Metals	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silica Amorphous	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silica Gel	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Bromide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Carbonate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Iodide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Soda Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Antimoniate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Bisulfite	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Chlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Compounds, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Dichromate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Fluoride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Hydrosulfite	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Hydrosulfide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Metal	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Silicate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Silicofluoride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Sulfite	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Thiosulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Stannic and Stannous Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Stannic Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Strontium Carbonate (Precipitated and Oxide)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Strontium Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfides and Sulfites	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfocyanides	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur (Recovered or Refined, Including From Sour Natural Gas)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Dioxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Hexafluoride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfuric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Thiocyanates, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Tin Compounds, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Uranium Slug, Radioactive	IV

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Uranium Recovery from Phosphoric Acid Production	VI
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Sulfide	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Defluorinated Rock	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Defluorinated Acid	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Elemental Phosphorus	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Phosphorus Derived Chemicals	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Phosphates	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Sodium Phosphates	IV
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Gum and Wood Chemicals	Rosin Based Derivatives	III
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Plastics and Synthetics	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	VI
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Plastics and Synthetics	Melamine Crystals	III
2822	Synthetic Rubber (Vulcanizable Elastomers)	Rubber	All	V
2823	Cellulosic Man-Made Fibers	Plastics and Synthetics	Cellulosic Man-Made Fibers	VI
2824	Synthetic Organic Fibers, Except Cellulosic	Plastics and Synthetics	Synthetic Organic Fibers, Except Cellulosic	VI
2833	Medicinal Chemicals and Botanical Products	Pharmaceutical Manufacturing	All	VI
2834	Pharmaceutical Preparations	Pharmaceutical Manufacturing	Mising and Formulation (Pharmaceutical Preparations)	VI
2836	Biological Products	Pharmaceutical Manufacturing	Extraction (Biological Products)	VI
2841	Soaps and Other Detergents, Except Specialty Cleaners	Soaps and Detergents	All	III
2842	Specialty Cleaning, Polishing and Sanitary Preperation	Soaps and Detergents	All	III
2843	Surface Active Agents, Finishing Agents, Etc.	Soaps and Detergents	All	III
2844	Perfumes, Cosmetics and Other Toilet Preparations	Soaps and Detergents	Manufacturing of Liquid Soaps	III
2851	Paints/Varnishes/Lacquers/Enamels and Allied Products	Paint and Ink	Caustic or Water Washed Paint	II
2851	Paints/Varnishes/Lacquers/Enamels and Allied Products	Paint and Ink	Solvent Wash Paint	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Char and Charcoal Briquettes	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Essential Oil	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Gum Rosin	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Rosin Based Derivatives	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Sulfate Turpentine	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Tall Oil	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Wood Rosin	IV
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	Organic Chemicals	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	VI
2869	Industrial Organic Chemicals NEC	Organic Chemicals	Industrial Organic Chemicals, NEC	VI
2869	Industrial Organic Chemicals NEC	Organic Chemicals	Ethanol by Fermentation, Food Additives	III
2873	Nitrogenous Fertilizers	Agricultural Chemicals	All	VI
2874	Phosphatic Fertilizers	Agricultural Chemicals	Phosphatic Fertilizing Materials Including Phosphoric Acid	VI
2875	Fertilizers, Mixing Only	Agricultural Chemicals	All	II
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Amides	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Formulation and Packaging of Agricultural Chemicals	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Halogenated Organics	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Heterocyclic Nitrogens	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Metallo Organic	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Miscellaneous	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Organophosphorus	VI
2891	Adhesives and Sealants	Adhesives and Sealants	Adhesives and Sealants	V

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2892	Explosives	Explosives (Commercial Sector)	All	IV
2892	Explosives	Explosives (Military Sector)	All	IV
2893	Printing Ink	Paint and Ink	Caustic or Water Washed Ink	V
2893	Printing Ink	Paint and Ink	Solvent Wash Ink	II
2895	Carbon Black	Carbon Black	Channel Process	II
2895	Carbon Black	Carbon Black	Furnace Process	III
2895	Carbon Black	Carbon Black	Lamp Process	II
2895	Carbon Black	Carbon Black	Thermal Process	II
2899	Chemicals and Chemical Preparations, NEC	Chemicals	Miscellaneous Chemicals	I-VI* *Shall be determined on a case-by-case basis.
2911	Petroleum Refining	Petroleum Refining	Petroleum Refining	V
2950	Paving and Roofing Materials	Products of Petroleum and Coal	All Except 2951	III
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Rerefining of Oils or Greases	IV
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Waste Oil Reclamation	IV
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Crude Oil Reclamation	III
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	All Lubricating Oils, Blended	III
2999	Petroleum and Coal Products, NEC	Miscellaneous Products of Petroleum and Coal	All	V
3011	Tires and Inner Tubes	Rubber	Tire and Inner Tube Production	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Large-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Medium-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Small-Sized General Molded, Extruded and Fabricated Rubber Plants	III
3069	Fabricated Rubber Products, NEC	Rubber	Large-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3069	Fabricated Rubber Products, NEC	Rubber	Latex Foam	III
3069	Fabricated Rubber Products, NEC	Rubber	Latex-Dipped, Latex-Extruded and Latex Molded Goods	III
3069	Fabricated Rubber Products, NEC	Rubber	Medium-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3069	Fabricated Rubber Products, NEC	Rubber	Small-Sized General Molded, Extruded and Fabricated Rubber Plants	III
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Miscellaneous Plastics Products	V
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Plastics Processing Without Contact Process Water	II
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Solution Casting	III
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Water Slurry Preforming Processes	III
3111	Leather Tanning and Finishing	Leather Tanning and Finishing	All	V
3131	Boot and Shoe Cut Stock and Findings	Leather Tanning and Finishing	Boot and Shoe Cut Stock and Findings	II
3142	House Slippers	Leather Tanning and Finishing	House Slippers	II
3143	Men's Footwear, Except Athletic	Leather Tanning and Finishing	Men's Footwear, Except Athletic	II
3144	Women's Footwear, Except Athletic	Leather Tanning and Finishing	Women's Footwear, Except Athletic	II
3149	Footwear, Except Rubber NEC	Leather Tanning and Finishing	Footwear, Except Rubber, NEC	II
3151	Leather Goods and Mittens	Leather Tanning and Finishing	Leather Gloves and Mittens	II
3161	Luggage	Leather Tanning and Finishing	Luggage	II
3171	Women's Handbags and Purses	Leather Tanning and Finishing	Women's Handbags and Purses	II
3172	Personal Leather Goods, Except Women's Handbags	Leather Tanning and Finishing	Personal Leather Goods Except Women's Handbags	II
3199	Leather Goods NEC	Leather Tanning and Finishing	Leather Goods, NEC	II
3200	Stone, Clay, Shell, Glass and Concrete Products	Stone, Clay, Shell, Glass, and Concrete Products	All Except Abrasive, Asbestos, Etc. in 3290	II
3290	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products	Abrasives, Asbestos, Mineral Wool, Etc.	All Except 3295	IV
3295	Stone, Clay, Glass and Concrete Products	Minerals, Earths, Grinding	Barite	II

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Basic Oxygen Furnace (Wet Air Pollution Control Methods)	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Basic Oxygen Furnace; Semi-Wet Air Pollution Control Methods	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Beehive Coke	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Blast Furnace (Ferromanganese)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Blast Furnace (Iron)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Byproduct Coke	V
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Cold Rolling	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Combination Acid Pickling (Batch and Continuous)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Continuous Alkaline Cleaning	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Continuous Casting and Pressure Slab Molding	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Electric Arc Furnace (Wet Air Pollution Control Methods)	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Electric Arc Furnace; Semi-Wet Air Pollution Control Methods	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Coatings—Galvanizing	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Coatings—Terne	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming—Flat	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming—Primary	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming—Section	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Open Hearth Furnace	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pickling—Hydrochloric Acid—Batch and Continuous	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pickling—Sulfuric Acid—Batch and Continuous	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pipe and Tube	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Scale Removal (Kolene and Hydride)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Sintering	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Vacuum Degassing	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Wire Pickling and Coating	III
3313	Electrometallurgical Products	Iron and Steel	Continuous Casting and Pressure Slab Molding	III
3313	Electrometallurgical Products	Iron and Steel	Electric Arc Furnace (Wet Air Pollution Control Methods)	III
3313	Electrometallurgical Products	Iron and Steel	Electric Arc Furnace: Semi-Wet Air Pollution Control Methods	II
3313	Electrometallurgical Products	Iron and Steel	Vacuum Degassing	III
3315	Steel Wire Drawing and Steel Nails and Spikes	Iron and Steel	Hot Forming—Section	III
3316	Cold Rolled Steel Sheet	Iron and Steel	Cold Rolling	III
3317	Steel Pipe and Tubes	Iron and Steel	Pipe and Tube	III
3321	Gray Iron Foundries	Foundry	Iron and Steel	III
3322	Malleable Iron Foundries	Foundry	Iron and Steel	III
3324	Steel Investment Foundries	Foundry	Iron and Steel	III
3325	Steel Foundries, NEC	Foundry	Iron and Steel	III
3331	Primary Smelting and Refining of Copper	Nonferrous Metals	Primary Copper	VI
3334	Primary Production of Aluminum	Nonferrous Metals	Primary Aluminum	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Bauxite	V

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Indium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Antimony	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Arsenic	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Barium	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Beryllium	IV
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Bismuth	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Boron	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cadmium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Calcium	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cesium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cobalt	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Columbium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Gallium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Germanium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Gold	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Hafnium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Lead	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Lithium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Magnesium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Mercury	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Molybdenum	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Nickel	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Platinum Group	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rare Earths	V

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rhenium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rubidium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Selenium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Silver	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tantalum	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tellurium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tin	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Titanium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tungsten	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Uranium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Zinc	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Zirconium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Rhenium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Aluminum	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Babbitt	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Beryllium	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Boron	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Cobalt	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Columbian	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Copper	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Lead	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Magnesium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Mercury	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Nickel	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Plutonium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Precious Metals	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Silver	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tantalum	III

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tin	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Titanium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tungsten	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Uranium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Zinc	V
3351	Rolling, Drawing and Extruding of Copper	Copper Forming	All	III
3353	Aluminum Sheet, Plate and Foil	Aluminum Forming	All	V
3354	Aluminum Extruded Products	Aluminum Forming	All	V
3355	Aluminum Rolling and Drawing NEC	Aluminum Forming	All	V
3356	Rolling, Drawing and Extraction of Other Nonferrous Metals	Primary Metals Forming	All, Except Copper and Aluminum	IV
3357	Drawing and Insulating of Nonferrous Wire	Aluminum Forming	All	V
3363	Aluminum Foundries (Casting)	Foundry	Aluminum Casting	III
3366	Copper Foundries	Foundry	Copper Casting	III
3369	Nonferrous Foundries (Castings) NEC	Foundry	All	III
3398	Metal Heat Treating	Aluminum Forming	Heat Treating	V
3410	Metal Cans and Shipping Containers	Fabricated Metal Products	All	V
3420	Cutlery, Hand Tools and General Hardware	Fabricated Metal Products	All	II
3431	Enameled Iron and Metal Sanitary Ware	Fabricated Metal Products	Iron	III
3433	Heating Equipment Except Electric and Warm Air Furnaces	Fabricated Metal Products	All	II
3440	Fabricated Structural Metal Products	Fabricated Metal Products	All	II
3450	Screw Machine Products	Fabricated Metal Products	All, Including Bolts, Nuts, Screws, Rivets and Washers	II
3463	Nonferrous Forgings	Aluminum Forming	Forging	III
3463	Nonferrous Forgings	Copper Forming	Forging	III
3469	Metal Stampings	Fabricated Metal Products	All	II
3471	Electroplating, Plating, Polishing, Anodizing	Aluminum Forming	All	III
3479	Coating, Engraving and Allied Services	Coil Coating	All	III
3479	Coating, Engraving and Allied Services	Electroplating	Job Shops	III
3479	Coating, Engraving and Allied Services	Iron and Steel	Hot Coatings─Galvanizing	III
3490	Miscellaneous Fabricated Metal Products	Fabricated Metal Products	All Except 3497	II
3497	Metal Foil and Leaf	Coal Coating	Aluminum and Aluminized Steel	III
3500	Machinery	Engines and Farm Equipment	All	II
3600	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3612	Power, Distribution and Specialty Transformers	Electronic Production, Battery Manufacturing, Etc.	All	III
3613	Switchgear and Switchboard Apparatus	Electronic Production, Battery Manufacturing, Etc.	Switchgear	III
3621	Motors and Generators	Electronic Production, Battery Manufacturing, Etc.	Motors, Generators and Alternators	III
3624	Carbon and Graphite Products	Electronic Production, Battery Manufacturing, Etc.	All	III
3629	Electrical Industrial Apparatus, NEC	Electronic Production, Battery Manufacturing, Etc.	Capacitors	III
3631	Household Cooking Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3632	Household Refrigerators and Home and Farm Freezers	Electronic Production, Battery Manufacturing, Etc.	All	III
3633	Household Laundry Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3639	Household Appliances, NEC	Electronic Production, Battery Manufacturing, Etc.	All	III
3641	Electric Lamps	Electronic Production, Battery Manufacturing, Etc.	Electric Lamps	III
3644	Non-Current-Carrying Wiring Devices	Electronic Production, Battery Manufacturing, Etc.	Insulating Devices	III
3671	Electron Tubes	Electronic Production, Battery Manufacturing, Etc.	All	III
3672	Printed Circuit Boards	Electronic Production, Battery Manufacturing, Etc.	All	III
3674	Semiconductors and Related Devices	Electronic Production, Battery Manufacturing, Etc.	Semiconductors	III
3675	Electronic Capacitors	Electronic Production, Battery Manufacturing, Etc.	Capacitors	III
3677	Electronic Coils, Transformers and Other Inductors	Electronic Production, Battery Manufacturing, Etc.	All	III
3679	Electronic Components, NEC	Electronic Production, Battery Manufacturing, Etc.	All	III
3691	Storage Batteries	Electronic Production, Battery Manufacturing, Etc.	All	III
3692	Primary Batteries, Dry and Wet	Electronic Production, Battery Manufacturing, Etc.	All	III
3693	Radiographic X-Ray, Fluoroscopic X-Ray, Etc.	Electronic Production, Battery Manufacturing, Etc.	Electric and Electronic Components	III
3694	Electrical Equipment For Internal Combustion Engines	Electronic Production, Battery Manufacturing, Etc.	Motors, Generators and Alternators	III
3699	Electrical Machinery, Equipment and Supplies, NEC	Electronic Production, Battery Manufacturing, Etc.	Electric and Electronic Components	III
3710	Motor Vehicles and Motor Vehicle Equipment	Transportation Equipment	All	III
3731	Ship Building and Repairing	Transportation Equipment	Ship Building and Repairing	I – IV* *Shall be determined on a case-by-case basis.
3732	Boat Building and Repairing, Pleasure Craft	Transportation Equipment	All	II
3743	Railroad Equipment	Transportation Equipment	All	IV
3751	Motorcycles, Bicycles and Parts	Transportation Equipment	All	II
3764	Guided Missiles and Space Vehicle Propulsion Units	Transportation Equipment	All	V
3790	Miscellaneous Transportation Equipment	Transportation Equipment	All, Including Travel Trailers, Campers, Tanks, ATV	III
3800	Measuring, Analyzing and Controlling Instruments	Instrument Manufacturing	All Except 3844, 3845, and 3861	II
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus	Instrument Manufacturing	All	III
3845	Electromedical and Electrotherapeutic Apparatus	Instrument Manufacturing	All	III
3861	Photographic Equipment and Supplies	Instrument Manufacturing	All	III
3900	Miscellaneous Manufacturing Industries	Toys, Musical Instruments, Caskets	All Except 3911	II
3911	Jewelry, Precious Metal	Miscellaneous Manufacturing Industries	All	III
4013	Railroad Transportation	Railroads	Switching and Terminal Establishments	III
4200	Motor Freight Transportation and Warehousing	Trucking, Courier Services, and Warehousing	All	II
4491	Water Transportation	Barge Cleaning	Petroleum and Chemical Products	III
4491	Water Transportation	Barge Cleaning	Grain Products	II
4491	Water Transportation	Bulk Terminals	Coal and Coke Terminals	II
4499	Water Transportation NEC	Transportation Services	All	II
4612	Pipelines, Except Natural Gas	Crude Petroleum Pipelines	Crude Oil with Storage	II
4613	Pipelines, Except Natural Gas	Refined Petroleum Pipelines	Refined Oil with Storage	II
4911	Electric Services	Steam Electric	Cooling Tower Blowdown (Fossil Fuel Plants)	IV

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
4911	Electric Services	Steam Electric	Nuclear Plants	V
4911	Electric Services	Steam Electric	Once-Through Cooling Water (Fossil Fuel Plants)	III
4922	Natural Gas Transmission	Transmission and Storage	Natural Gas, Compressors only	II
4931	Electric and Other Services Combined	Steam Electric	Cooling Tower Blowdown (Fossil Fuel Plants)	IV
4931	Electric and Other Services Combined	Steam Electric	Nuclear Plants	V
4931	Electric and Other Services Combined	Steam Electric	Once-Through Cooling Water (Fossil Fuel Plants)	III
4952	Sanitary Services	Sewerage Systems	Sewerage Systems	I
4953	Sanitary Services	Refuse Systems	Construction and Demolition Debris Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Municipal Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Commercial Municipal Waste Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Private Nonhazardous Industrial Waste Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Commercial Nonhazardous Industrial Waste Landfills and Landfarms	IV
4953	Sanitary Services	Refuse Systems	Hazardous Waste Disposal	VI
5093	Miscellaneous Durable Goods	Scrap and Waste Materials	Waste Oil Only	(Refer to SIC 2992)
5169	Chemicals and Allied Products NEC	Chemical Storage	Chemical Bulk Storage and Distribution	II
5171	Petroleum and Petroleum Products	Petroleum Bulk Stations and Terminals	Petroleum Bulk Stations and Terminals	II
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	Distribution of Petroleum and Petroleum Products	All	II
5191	Miscellaneous Nondurable Goods	Farm Supplies	Pesticides, Insecticides and Fertilizers	IV
7211	Power Laundries, Family and Commercial	Auto and Other Laundries	Power Laundries	II
7213	Linen Supply	Auto and Other Laundries	Linen Supply	III
7214	Diaper Service	Auto and Other Laundries	Diaper Service	II
7215	Coin-Operated Laundries and Dry Cleaning	Auto and Other Laundries	Coin-Operated Laundries	I
7216	Dry Cleaning Plants, Except Rug Cleaning	Auto and Other Laundries	All Dry Cleaning Except Coin Operated Laundries	II
7217	Carpet and Upholstery Cleaning	Auto and Other Laundries	Carpet and Upholstery Cleaning	II
7218	Industrial Launderers	Auto and Other Laundries	Industrial Laundry	III
7218	Industrial Launderers	Auto and Other Laundries	External Cleaning of Equipment	II
7218	Industrial Launderers	Auto and Other Laundries	Internal Cleaning of Equipment	III
7542	Car Washes	Auto and Other Laundries	Car Wash	I
7542	Car Washes	Auto and Other Laundries	All Exterior Cleaning of Equipment (Trucks, Trailers, Etc.), Except Car Washes	II
7699	Repair Shops and Related Services NEC	Repair Services	All Except Tank Truck Cleaning	II
7699	Repair Shops and Related Services NEC	Repair Services	Internal Tank Truck Cleaning	III
8071	Medical Laboratories	Medical Laboratories	All	III
8072	Dental Laboratories	Dental Laboratories	All	III
8731	Commercial Physical and Biological Research	Commercial Physical and Biological Research	Only Chemical and Industrial Laboratories	III
8734	Testing Laboratories	Analytical Laboratories	All	III

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3290	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products	Abrasives, Asbestos, Mineral Wool, Etc.	All Except 3295	IV
2891	Adhesives and Sealants	Adhesives and Sealants	Adhesives and Sealants	V
2873	Nitrogenous Fertilizers	Agricultural Chemicals	All	VI
2874	Phosphatic Fertilizers	Agricultural Chemicals	Phosphatic Fertilizing Materials Including Phosphoric Acid	VI
3353	Aluminum Sheet, Plate and Foil	Aluminum Forming	All	V
3354	Aluminum Extruded Products	Aluminum Forming	All	V
3355	Aluminum Rolling and Drawing NEC	Aluminum Forming	All	V

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3357	Drawing and Insulating of Nonferrous Wire	Aluminum Forming	All	V
3398	Metal Heat Treating	Aluminum Forming	Heat Treating	V
3463	Nonferrous Forgings	Aluminum Forming	Forging	III
3471	Electroplating, Plating, Polishing, Anodizing	Aluminum Forming	All	III
8734	Testing Laboratories	Analytical Laboratories	All	III
7211	Power Laundries, Family and Commercial	Auto and Other Laundries	Power Laundries	II
7213	Linen Supply	Auto and Other Laundries	Linen Supply	III
7214	Diaper Service	Auto and Other Laundries	Diaper Service	II
7215	Coin-Operated Laundries and Dry Cleaning	Auto and Other Laundries	Coin-Operated Laundries	I
7216	Dry Cleaning Plants, Except Rug Cleaning	Auto and Other Laundries	All Dry Cleaning Except Coin Operated Laundries	II
7217	Carpet and Upholstery Cleaning	Auto and Other Laundries	Carpet and Upholstery Cleaning	II
7218	Industrial Launderers	Auto and Other Laundries	Industrial Laundry	III
7218	Industrial Launderers	Auto and Other Laundries	External Cleaning of Equipment	II
7218	Industrial Launderers	Auto and Other Laundries	Internal Cleaning of Equipment	III
7542	Car Washes	Auto and Other Laundries	Car Wash	I
7542	Car Washes	Auto and Other Laundries	All Exterior Cleaning of Equipment (Trucks, Trailers, Etc.), Except Car Washes	II
4491	Water Transportation	Barge Cleaning	Petroleum and Chemical Products	III
4491	Water Transportation	Barge Cleaning	Grain Products	II
4491	Water Transportation	Bulk Terminals	Coal and Coke Terminals	II
2895	Carbon Black	Carbon Black	Channel Process	II
2895	Carbon Black	Carbon Black	Furnace Process	III
2895	Carbon Black	Carbon Black	Lamp Process	II
2895	Carbon Black	Carbon Black	Thermal Process	II
5169	Chemicals and Allied Products NEC	Chemical Storage	Chemical Bulk Storage and Distribution	II
2899	Chemicals and Chemical Preparations, NEC	Chemicals	Miscellaneous Chemicals	I-VI* *Shall be determined on a case-by-case basis.
3497	Metal Foil and Leaf	Coal Coating	Aluminum and Aluminized Steel	III
1221	Bituminous Coal and Lignite	Coal Mining	Acid or Ferruginous Mines	IV
1221	Bituminous Coal and Lignite	Coal Mining	Alkaline Mines	IV
1221	Bituminous Coal and Lignite	Coal Mining	Coal Preparation Plants	IV
1221	Bituminous Coal and Lignite	Coal Mining	Regrade/Revegetation	III
1231	Anthracite Mining	Coal Mining	Acid or Ferruginous Mines	IV
1231	Anthracite Mining	Coal Mining	Alkaline Mines	IV
1231	Anthracite Mining	Coal Mining	Anthracite Segment of Acid Mine Subcategory	III
1231	Anthracite Mining	Coal Mining	Coal Preparation Plants	IV
1231	Anthracite Mining	Coal Mining	Regrade/Revegetation	III
3479	Coating, Engraving and Allied Services	Coil Coating	All	III
8731	Commercial Physical and Biological Research	Commercial Physical and Biological Research	Only Chemical and Industrial Laboratories	III
3351	Rolling, Drawing and Extruding of Copper	Copper Forming	All	III
3463	Nonferrous Forgings	Copper Forming	Forging	III
4612	Pipelines, Except Natural Gas	Crude Petroleum Pipelines	Crude Oil with Storage	II
1311	Oil and Gas Extraction	Crude Petroleum and Natural Gas	Exploration and Production, Except Storm Water Only	III
8072	Dental Laboratories	Dental Laboratories	All	III
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	Distribution of Petroleum and Petroleum Products	All	II
3600	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3612	Power, Distribution and Specialty Transformers	Electronic Production, Battery Manufacturing, Etc.	All	III
3613	Switchgear and Switchboard Apparatus	Electronic Production, Battery Manufacturing, Etc.	Switchgear	III
3621	Motors and Generators	Electronic Production, Battery Manufacturing, Etc.	Motors, Generators and Alternators	III

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3624	Carbon and Graphite Products	Electronic Production, Battery Manufacturing, Etc.	All	III
3629	Electrical Industrial Apparatus, NEC	Electronic Production, Battery Manufacturing, Etc.	Capacitors	III
3631	Household Cooking Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3632	Household Refrigerators and Home and Farm Freezers	Electronic Production, Battery Manufacturing, Etc.	All	III
3633	Household Laundry Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3639	Household Appliances, NEC	Electronic Production, Battery Manufacturing, Etc.	All	III
3641	Electric Lamps	Electronic Production, Battery Manufacturing, Etc.	Electric Lamps	III
3671	Electron Tubes	Electronic Production, Battery Manufacturing, Etc.	All	III
3672	Printed Circuit Boards	Electronic Production, Battery Manufacturing, Etc.	All	III
3674	Semiconductors and Related Devices	Electronic Production, Battery Manufacturing, Etc.	Semiconductors	III
3675	Electronic Capacitors	Electronic Production, Battery Manufacturing, Etc.	Capacitors	III
3677	Electronic Coils, Transformers and Other Inductors	Electronic Production, Battery Manufacturing, Etc.	All	III
3679	Electronic Components, NEC	Electronic Production, Battery Manufacturing, Etc.	All	III
3691	Storage Batteries	Electronic Production, Battery Manufacturing, Etc.	All	III
3692	Primary Batteries, Dry and Wet	Electronic Production, Battery Manufacturing, Etc.	All	III
3693	Radiographic X-Ray, Fluoroscopic X-Ray, Etc.	Electronic Production, Battery Manufacturing, Etc.	Electric and Electronic Components	III
3694	Electrical Equipment For Internal Combustion Engines	Electronic Production, Battery Manufacturing, Etc.	Motors, Generators and Alternators	III
3699	Electrical Machinery, Equipment and Supplies, NEC	Electronic Production, Battery Manufacturing, Etc.	Electric and Electronic Components	III
3500	Machinery Engines and Farm	Equipment	All	II
2892	Explosives	Explosives (Commercial Sector)	All	IV
2892	Explosives	Explosives (Military Sector)	All	IV
3410	Metal Cans and Shipping Containers	Fabricated Metal Products	All	V
3420	Cutlery, Hand Tools and General Hardware	Fabricated Metal Products	All	II
3431	Enameled Iron and Metal Sanitary Ware	Fabricated Metal Products	Iron	III
3433	Heating Equipment Except Electric and Warm Air Furnaces	Fabricated Metal Products	All	II
3440	Fabricated Structural Metal Products	Fabricated Metal Products	All	II
3450	Screw Machine Products	Fabricated Metal Products	All, Including Bolts, Nuts, Screws, Rivets and Washers	II
3469	Metal Stampings	Fabricated Metal Products	All	II
3490	Miscellaneous Fabricated Metal Products	Fabricated Metal Products	All Except 3497	II
5191	Miscellaneous Nondurable Goods	Farm Supplies	Pesticides, Insecticides and Fertilizers	IV
3321	Gray Iron Foundries	Foundry	Iron and Steel	III
3322	Malleable Iron Foundries	Foundry	Iron and Steel	III
3324	Steel Investment Foundries	Foundry	Iron and Steel	III
3325	Steel Foundries, NEC	Foundry	Iron and Steel	III
3363	Aluminum Foundries (Casting)	Foundry	Aluminum Casting	III
3366	Copper Foundries	Foundry	Copper Casting	III
3369	Nonferrous Foundries (Castings) NEC	Foundry	All	III
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Gum and Wood Chemicals	Rosin Based Derivatives	III
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Char and Charcoal Briquettes	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Essential Oil	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Gum Rosin	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Rosin Based Derivatives	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Sulfate Turpentine	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Tall Oil	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Wood Rosin	IV
2500	Furniture and Fixtures	Household and Office Furniture	All	II

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Chlorine	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Diaphragm Cell	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Mercury Cell	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Potassium Carbonate	IV
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Sodium Carbonate	IV
2812	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Bicarbonate	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Carbon Dioxide	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Carbon Monoxide	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Gases, Industrial Compressed Liquid/Solid	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Hydrogen	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Nitrous Oxide	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Oxygen and Nitrogen	II
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Barium Sulfate	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Byrytes Pigments	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Chloride Process	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Chrome Pigments	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Colors	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Black	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Magnetic	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Yellow	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Lead Dioxide, Brown ($Pb0_2$)	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Lead Oxide, Red (Pb_30_4)	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Ochers	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Satin White Pigment	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Siennas	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Sulfate Process	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Titanium Dioxide	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Ultramarine Pigment	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Umbers	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	White Lead Pigment ($Pb(OH)_2$+$PbCO)_3$	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Whiting	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Fluoride	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Hydroxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Alums	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonia Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Hydroxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Molybdate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Perchlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Thiosulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Barium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Barium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Beryllium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Bleaching Powder	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Borax	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Boric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Boron Compounds (Not Produced at Mines)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Borosilicate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Brine	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Bromine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Carbide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Compounds (Inorganic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Hypochlorite	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cerium Salts	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chlorosulfuric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromic Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt 60 (Radioactive)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt Chloride	IV

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Iodide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cuprous Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ferric Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ferrous Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Fissionable Materials Production	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Fluorine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Heavy Water	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrated Alumina Silicate Powder	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrochloric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrofluoric Acid	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Cyanide	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Peroxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Sulfide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrophosphites	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Indium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Inorganic Acids (Except HNO_2 or H_2PO_4)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Iodides	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Iodine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Isotopes Radioactive	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Arsenate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Monoxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Silicate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lithium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lithium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Luminous Compounds (Radium)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Magnesium Compounds (Inorganic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Manganese Dioxide (Powder Synthetic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Manganese Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Mercury Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Mercury Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Ammonium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Carbonate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Fluoroborate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nitric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nitric Acid (Strong)	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nuclear Fuel Reactor Cases, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nuclear Fuel Scrap Reprocessing	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Oleum (Fuming Sulfuric Acid)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Oxidation Catalyst from Porcelain	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Percloric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Peroxides, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potash Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potash Magnesia	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Aluminum Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Bromide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Chlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Compounds Inorganic (Except KOH-K_2CO_3)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Dichromate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Hypochlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Iodide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Metal	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Nitrate and Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Permanganate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Radium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Radium Luminous Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Rare Earth Metal Salts	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Reagent Grade Chemicals (Inorganic: Refined From Technical Grades)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Salts of Rare Earth Metals	IV

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silica Amorphous	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silica Gel	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Bromide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Carbonate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Iodide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Soda Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Antimoniate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Bisulfite	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Chlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Compounds, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Dichromate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Fluoride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Hydrosulfide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Hydrosulfite	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Metal	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Silicate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Silicofluoride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Sulfite	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Thiosulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Stannic and Stannous Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Stannic Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Strontium Carbonate (Precipitated and Oxide)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Strontium Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfides and Sulfites	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfocyanides	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur (Recovered or Refined, Including From Sour Natural Gas)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Dioxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Hexafluoride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfuric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Thiocyanates, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Tin Compounds, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Uranium Slug, Radioactive	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Uranium Recovery from Phosphoric Acid Production	VI
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Sulfide	IV
3800	Measuring, Analyzing and Controlling Instruments	Instrument Manufacturing	All Except 3844, 3845, and 3861	II
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus	Instrument Manufacturing	All	III
3845	Electromedical and Electrotherapeutic Apparatus	Instrument Manufacturing	All	III
3861	Photographic Equipment and Supplies	Instrument Manufacturing	All	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Basic Oxygen Furnace (Wet Air Pollution Control Methods)	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Basic Oxygen Furnace; Semi-Wet Air Pollution Control Methods	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Beehive Coke	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Blast Furnace (Ferromanganese)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Blast Furnace (Iron)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Byproduct Coke	V
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Cold Rolling	III

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Combination Acid Pickling (Batch and Continuous)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Continuous Alkaline Cleaning	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Continuous Casting and Pressure Slab Molding	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Electric Arc Furnace (Wet Air Pollution Control Methods)	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Electric Arc Furnace; Semi-Wet Air Pollution Control Methods	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Coatings─Galvanizing	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Coatings─Terne	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming─Flat	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming─Primary	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming─Section	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Open Hearth Furnace	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pickling—Hydrochloric Acid—Batch and Continuous	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pickling—Sulfuric Acid—Batch and Continuous	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pipe and Tube	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Scale Removal (Kolene and Hydride)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Sintering	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Vacuum Degassing	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Wire Pickling and Coating	III
3313	Electrometallurgical Products	Iron and Steel	Continuous Casting and Pressure Slab Molding	III
3313	Electrometallurgical Products	Iron and Steel	Electric Arc Furnace (Wet Air Pollution Control Methods)	III
3313	Electrometallurgical Products	Iron and Steel	Electric Arc Furnace: Semi-Wet Air Pollution Control Methods	II
3313	Electrometallurgical Products	Iron and Steel	Vacuum Degassing	III
3315	Steel Wire Drawing and Steel Nails and Spikes	Iron and Steel	Hot Forming─Section	III
3316	Cold Rolled Steel Sheet	Iron and Steel	Cold Rolling	III
3317	Steel Pipe and Tubes	Iron and Steel	Pipe and Tube	III
3479	Coating, Engraving and Allied Services	Iron and Steel	Hot Coatings─Galvanizing	III
3111	Leather Tanning and Finishing	Leather Tanning and Finishing	All	V
3131	Boot and Shoe Cut Stock and Findings	Leather Tanning and Finishing	Boot and Shoe Cut Stock and Findings	II
3142	House Slippers	Leather Tanning and Finishing	House Slippers	II
3143	Men's Footwear, Except Athletic	Leather Tanning and Finishing	Men's Footwear, Except Athletic	II
3144	Women's Footwear, Except Athletic	Leather Tanning and Finishing	Women's Footwear, Except Athletic	II
3149	Footwear, Except Rubber NEC	Leather Tanning and Finishing	Footwear, Except Rubber, NEC	II
3151	Leather Goods and Mittens	Leather Tanning and Finishing	Leather Gloves and Mittens	II
3161	Luggage	Leather Tanning and Finishing	Luggage	II
3171	Women's Handbags and Purses	Leather Tanning and Finishing	Women's Handbags and Purses	II
3172	Personal Leather Goods, Except Women's Handbags	Leather Tanning and Finishing	Personal Leather Goods Except Women's Handbags	II
3199	Leather Goods NEC	Leather Tanning and Finishing	Leather Goods, NEC	II
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Rerefining of Oils or Greases	IV
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Waste Oil Reclamation	IV
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Crude Oil Reclamation	III
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	All Lubricating Oils, Blended	III
8071	Medical Laboratories	Medical Laboratories	All	III

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3295	Stone, Clay, Glass and Concrete Products	Minerals, Earths, Grinding	Barite	II
1389	Oil and Gas Field Services	Miscellaneous	Reserve Pit Treaters	IV
1389	Oil and Gas Field Services	Miscellaneous	Oilfield Waste Disposal	V
1389	Oil and Gas Field Services	Miscellaneous	Treatment of Oilfield Waste	IV
1389	Oil and Gas Field Services	Miscellaneous	External Cleaning of Equipment	II
1389	Oil and Gas Field Services	Miscellaneous	Internal Cleaning of Equipment	III
3911	Jewelry, Precious Metal	Miscellaneous Manufacturing Industries	All	III
2999	Petroleum and Coal Products, NEC	Miscellaneous Products of Petroleum and Coal	All	V
3331	Primary Smelting and Refining of Copper	Nonferrous Metals	Primary Copper	VI
3334	Primary Production of Aluminum	Nonferrous Metals	Primary Aluminum	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Bauxite	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Indium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Antimony	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Arsenic	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Barium	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Beryllium	IV
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Bismuth	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Boron	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cadmium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Calcium	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cesium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cobalt	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Columbium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Gallium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Germanium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Gold	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Hafnium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Lead	VI

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SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Lithium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Magnesium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Mercury	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Molybdenum	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Nickel	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Platinum Group	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rare Earths	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rhenium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rubidium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Selenium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Silver	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tantalum	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tellurium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tin	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Titanium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tungsten	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Uranium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Zinc	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Zirconium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Rhenium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Aluminum	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Babbitt	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Beryllium	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Boron	V

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Cobalt	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Columbian	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Copper	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Lead	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Magnesium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Mercury	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Nickel	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Plutonium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Precious Metals	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Silver	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tantalum	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tin	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Titanium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tungsten	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Uranium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Zinc	V
1011	Iron Ores	Ore Mining and Dressing	Iron Ore	IV
1021	Copper Ores	Ore Mining and Dressing	Base and Precious Metals	V
1031	Lead and Zinc Ores	Ore Mining and Dressing	Base and Precious Metals	V
1041	Gold Ores	Ore Mining and Dressing	Base and Precious Metals	V
1044	Silver Ores	Ore Mining and Dressing	Base and Precious Metals	V
1061	Ferroalloy Ores, Except Vanadium	Ore Mining and Dressing	Ferroalloy	V
1094	Uranium-Radium-Vanadium Ores	Ore Mining and Dressing	Uranium	VI
1099	Mercury Ores	Ore Mining and Dressing	Mercury	V
1099	Miscellaneous Metal Ores NEC	Ore Mining and Dressing	Aluminum	IV
1099	Miscellaneous Metal Ores NEC	Ore Mining and Dressing	Metal Ore, NEC	V
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	Organic Chemicals	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	VI
2869	Industrial Organic Chemicals NEC	Organic Chemicals	Industrial Organic Chemicals, NEC	VI
2869	Industrial Organic Chemicals NEC	Organic Chemicals	Ethanol by Fermentation, Food Additives	III
2851	Paints/Varnishes/Lacquers/Enamels and Allied Products	Paint and Ink	Caustic or Water Washed Paint	V
2851	Paints/Varnishes/Lacquers/Enamels and Allied Products	Paint and Ink	Solvent Wash Paint	II
2893	Printing Ink	Paint and Ink	Caustic or Water Washed Ink	V
2893	Printing Ink	Paint and Ink	Solvent Wash Ink	II
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Amides	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Formulation and Packaging of Agricultural Chemicals	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Halogenated Organics	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Heterocyclic Nitrogens	VI

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Metallo Organic	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Miscellaneous	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Organophosphorus	VI
5171	Petroleum and Petroleum Products	Petroleum Bulk Stations and Terminals	Petroleum Bulk Stations and Terminals	II
2911	Petroleum Refining	Petroleum Refining	Petroleum Refining	V
2833	Medicinal Chemicals and Botanical Products	Pharmaceutical Manufacturing	All	VI
2834	Pharmaceutical Preparations	Pharmaceutical Manufacturing	Mising and Formulation (Pharmaceutical Preparations)	VI
2836	Biological Products	Pharmaceutical Manufacturing	Extraction (Biological Products)	VI
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Defluorinated Rock	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Defluorinated Acid	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Elemental Phosphorus	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Phosphorus Derived Chemicals	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Phosphates	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Sodium Phosphates	IV
1475	Phosphate Rock	Phosphate Mining	Phosphate Mining	IV
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Plastics and Synthetics	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	VI
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Plastics and Synthetics	Melamine Crystals	III
2823	Cellulosic Man-Made Fibers	Plastics and Synthetics	Cellulosic Man-Made Fibers	VI
2824	Synthetic Organic Fibers, Except Cellulosic	Plastics and Synthetics	Synthetic Organic Fibers, Except Cellulosic	VI
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Plastics Processing Without Contact Process Water	II
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Solution Casting	III
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Miscellaneous Plastics Products	V
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Water Slurry Preforming Processes	III
3356	Rolling, Drawing and Extraction of Other Nonferrous Metals	Primary Metals Forming	All, Except Copper and Aluminum	IV
2700	Printing, Publishing and Allied Industries	Printing and Publishing	All	II
2000	Food and Kindred Products	Processing Food and Beverages	All	II
2950	Paving and Roofing Materials	Products of Petroleum and Coal	All except 2951	III
2611	Pulp Mills	Pulp, Paper and Paperboard	All	III
2621	Building Paper and Buildingboard Mills	Pulp, Paper and Paperboard	Waste Paper—Construction	III
2621	Building Paper and Buildingboard Mills	Pulp, Paper and Paperboard	Waste Paper—Board	III
2621	Paper Mills	Pulp, Paper and Paperboard	All	III
2631	Paperboard Mills	Pulp, Paper and Paperboard	All	III
2640	Converted Paper and Paperboard Products	Pulp, Paper and Paperboard	All, Except Containers and Boxes	II
2650	Paperboard Containers and Boxes	Pulp, Paper and Paperboard	All	II
4013	Railroad Transportation	Railroads	Switching and Terminal Establishments	III
1321	Natural Gas Liquids	Recovering/Fractioning	Natural Gas	II
4613	Pipelines, Except Natural Gas	Refined Petroleum Pipelines	Refined Oil with Storage	II
4953	Sanitary Services	Refuse Systems	Construction and Demolition Debris Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Municipal Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Commercial Municipal Waste Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Private Nonhazardous Industrial Waste Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Commercial Nonhazardous Industrial Waste Landfills and Landfarms	IV
4953	Sanitary Services	Refuse Systems	Hazardous Waste Disposal	VI
7699	Repair Shops and Related Services NEC	Repair Services	All Except Tank Truck Cleaning	II
7699	Repair Shops and Related Services NEC	Repair Services	Internal Tank Truck Cleaning	III
1479	Chemical and Fertilizer Mineral Mining NEC	Rock Salt	All	III

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2822	Synthetic Rubber (Vulcanizable Elastomers)	Rubber	All	V
3011	Tires and Inner Tubes	Rubber	Tire and Inner Tube Production	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Large-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Medium-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Small-Sized General Molded, Extruded and Fabricated Rubber Plants	III
3069	Fabricated Rubber Products, NEC	Rubber	Large-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3069	Fabricated Rubber Products, NEC	Rubber	Latex Foam	III
3069	Fabricated Rubber Products, NEC	Rubber	Latex-Dipped, Latex-Extruded and Latex Molded Goods	III
3069	Fabricated Rubber Products, NEC	Rubber	Medium-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3069	Fabricated Rubber Products, NEC	Rubber	Small-Sized General Molded, Extruded and Fabricated Rubber Plants	III
1440	Mining of Nonmetallic Minerals	Sand and Gravel	All	II
5093	Miscellaneous Durable Goods	Scrap and Waste Materials	Waste Oil Only	(Refer to SIC 2992)
4952	Sanitary Services	Sewerage Systems	Sewerage Systems	I
2841	Soaps and Other Detergents, Except Specialty Cleaners	Soaps and Detergents	All	III
2842	Specialty Cleaning, Polishing and Sanitary Preparation	Soaps and Detergents	All	III
2843	Surface Active Agents, Finishing Agents, Etc.	Soaps and Detergents	All	III
2844	Perfumes, Cosmetics and Other Toilet Preparations	Soaps and Detergents	Manufacturing of Liquid Soaps	III
4911	Electric Services	Steam Electric	Cooling Tower Blowdown (Fossil Fuel Plants)	IV
4911	Electric Services	Steam Electric	Nuclear Plants	V
4911	Electric Services	Steam Electric	Once-Through Cooling Water (Fossil Fuel Plants)	III
4931	Electric and Other Services Combined	Steam Electric	Cooling Tower Blowdown (Fossil Fuel Plants)	IV
4931	Electric and Other Services Combined	Steam Electric	Nuclear Plants	V
4931	Electric and Other Services Combined	Steam Electric	Once-Through Cooling Water (Fossil Fuel Plants)	III
3200	Stone, Clay, Shell, Glass and Concrete Products	Stone, Clay, Shell, Glass, and Concrete Products	All Except Abrasive, Asbestos, Etc. in 3290	II
1479	Chemical and Fertilizer Mineral Mining NEC	Sulfur	All	V
2211	Broad Woven Fabric Mills, Cotton	Textile Mills	Greige Mills	II
2211	Broad Woven Fabric Mills, Cotton	Textile Mills	Woven Fabric Finishing	V
2221	Broad Woven Fabric Mills, Man-Made Fiber and Silk	Textile Mills	Greige Mills	II
2231	Broad Woven Fabric Mills, Wool	Textile Mills	Greige Mills	II
2231	Broad Woven Fabric Mills, Wool	Textile Mills	Wool Finishing	V
2241	Narrow Fabrics and Other Smallwares Mills	Textile Mills	Greige Mills	II
2241	Narrow Fabrics and Other Smallwares Mills	Textile Mills	Woven Fabric Finishing	V
2251	Women's Full Length and Knee Length Hosiery	Textile Mills	Hosiery	V
2252	Hosiery, Except Women's Full Length and Knee Length	Textile Mills	Hosiery	V
2253	Knit Outerwear Mills	Textile Mills	Greige Mills	II
2253	Knit Outerwear Mills	Textile Mills	Knit Fabric Finishing	V
2254	Knit Underwear Mills	Textile Mills	Knit Fabric Finishing	V
2255	Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2256	Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2257	Circular Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2258	Lace and Warp Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2259	Knitting Mills, NEC	Textile Mills	Knit Fabric Finishing	V
2261	Finishers of Broad Woven Fabrics of Cotton	Textile Mills	Woven Fabric Finishing	V
2262	Finishers of Broad Woven Fabrics/Man-Made Fiber	Textile Mills	Woven Fabric Finishing	V

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2269	Finishers of Textiles, NEC	Textile Mills	Woven Fabric Finishing	V
2273	Carpets and Rugs	Textile Mills	Carpet Finishing	V
2273	Carpets and Rugs	Textile Mills	Greige Mills	II
2281	Yarn Spinning Mills	Textile Mills	Greige Mills	II
2281	Yarn Spinning Mills	Textile Mills	Stock and Yarn Dyeing	V
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	Textile Mills	Greige Mills	II
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	Textile Mills	Stock and Yarn Dyeing	V
2284	Thread Mills	Textile Mills	Stock and Yarn Dyeing	V
2293	Textile Goods NEC	Textile Mills	Padding and Upholstery	II
2294	Textile Goods NEC	Textile Mills	Processed Textile Wastes	II
2297	Nonwoven Fabrics	Textile Mills	Nonwoven Manufacturing	V
2299	Textile Goods NEC	Textile Mills	Wool Scouring and Felt Manufacturing	V
2300	Apparel and Other Finished Products/From Fabrics	Textile Mills	Apparel	II
2410	Logging Camps and Logging Contractors	Timber Products Processing	All	II
2421	Sawmills and Planing Mills, General	Timber Products Processing	Sawmills and Planing Mills	II
2426	Hardwood Dimension and Flooring Mills	Timber Products Processing	Hardwood Dimension and Flooring Mills	II
2429	Special Product Sawmills, NEC	Timber Products Processing	Special Products Sawmills, NEC	II
2431	Millwork	Timber Products Processing	Millwork	II
2434	Wood Kitchen Cabinets	Timber Products Processing	Wood Kitchen Cabinets	II
2435	Hardwood Veneer and Plywood	Timber Products Processing	Plywood	IV
2435	Hardwood Veneer and Plywood	Timber Products Processing	Veneer	II
2436	Softwood Veneer and Plywood	Timber Products Processing	Plywood	IV
2436	Softwood Veneer and Plywood	Timber Products Processing	Veneer	II
2439	Structural Wood Members, NEC	Timber Products Processing	Millwork, Veneer, Plywood and Structural Wood Members	II
2440	Wood Containers	Timber Products Processing	All	II
2450	Wooden Buildings and Mobile Homes	Timber Products Processing	All	II
2491	Wood Preserving	Timber Products Processing	Wood Preserving—Steam	IV
2491	Wood Preserving	Timber Products Processing	Wood Preserving—Boulton	IV
2491	Wood Preserving	Timber Products Processing	Wood Preserving—Inorganic	II
2493	Reconstituted Wood Products	Timber Products Processing	Particleboard	II
2493	Wood Products NEC	Timber Products Processing	Hardboard—Dry Process	II
2493	Wood Products NEC	Timber Products Processing	Wet Process Hardboard (Two Subcategories)	IV
2493	Wood Products NEC	Timber Products Processing	Wood Products, NEC	II
2661	Building Paper and Buildingboard Mills	Timber Products Processing	Barking	II
2679	Building Paper and Buildingboard Mills	Timber Products Processing	Insulation Board (Two Subcategories)	IV
3900	Miscellaneous Manufacturing Industries	Toys, Musical Instruments, Caskets	All Except 3911	II
4922	Natural Gas Transmission	Transmission and Storage	Natural Gas, Compressors only	II
3710	Motor Vehicles and Motor Vehicle Equipment	Transportation Equipment	All	III
3731	Ship Building and Repairing	Transportation Equipment	Ship Building and Repairing	I – IV* *Shall be determined on a case-by-case basis.
3732	Boat Building and Repairing, Pleasure Craft	Transportation Equipment	All	II
3743	Railroad Equipment	Transportation Equipment	All	IV
3751	Motorcycles, Bicycles and Parts	Transportation Equipment	All	II
3764	Guided Missiles and Space Vehicle Propulsion Units	Transportation Equipment	All	V
3790	Miscellaneous Transportation Equipment	Transportation Equipment	All, Including Travel Trailers, Campers, Tanks, ATV	III
4499	Water Transportation NEC	Transportation Services	All	II
4200	Motor Freight Transportation and Warehousing	Trucking, Courier Services, and Warehousing	All	II

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534

(May 1985), amended LR 14:628 (September 1988), LR 18:735 (July 1992), amended LR 21:798 (August 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 35:

This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on June 25, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ070. Such comments must be received no later than July 2, 2009, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3398 or by e-mail to donald.trahan@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 WQ070. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

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; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Water Pollution Control Fee System Regulation

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 as a result of 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)

There will be no fiscal impact as a result of this proposed rule to the regulated community or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment as a result of this proposed rule.

Herman Robinson, CPM
Executive Counsel
0905#068

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Board of Architectural Examiners

Licensure Renewal Procedures (LAC 46:I.1301)

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 ("LSBAE") gives notice that rule making procedures have been initiated for the amendment of LAC 46:I.1301. The existing Rule describes the procedures used prior to the fall of 2008 for an individual architect renewing his or her architectural license. The proposed Rule describes the procedures implemented by the board in the fall of 2008 for an individual architect renewing his or her architectural license; for the years 2009 and going forward, individual architects are required to renewal their licenses online.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part I. Architects
Chapter 13. Administration
§1301. Renewal Procedure

A. A license for individual architects shall expire and become invalid on December 31 of each year. Licenses for professional architectural corporations, architectural-engineering corporations, and limited liability companies shall expire and become invalid on June 30 of each year. An individual architect, professional architectural corporation, architectural-engineering corporation, and limited liability company who desires to continue his or its license in force shall be required annually to renew same.

B. It is the responsibility of the individual architect, professional architectural corporation, architectural-engineering corporation, and limited liability company to timely renew their licenses.

C. Prior to December 31 of each year, architects shall renew their licenses online in accordance with the instructions set forth on the board website, www.lastbdarchs.com. The license renewal fee for an individual architect domiciled in Louisiana shall be $75; the license renewal fee for an individual architect domiciled outside Louisiana shall be $150. Upon renewal, the architect may download from the board website a copy of his or her renewal license.

D. Prior to June 1 of each year the board shall mail to all professional architectural corporations, architectural-engineering corporations, and limited liability companies currently licensed a renewal form. A professional architectural corporation, an architectural-engineering corporation, and a limited liability company which desires to continue its license in force shall complete said form and return same with the renewal fee prior to June 30. The fee shall be $50. Upon payment of the renewal fee, the executive director shall issue a renewal license.

E. The failure to renew a license timely shall not deprive the architect of the right to renew thereafter. An individual architect domiciled in Louisiana who renews his or her license subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of $75. An individual architect domiciled outside Louisiana who renews his or her license subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of $150. The delinquent fee shall be in addition to the renewal fee set forth in the §1301.C.

F. The failure to renew its license in proper time shall not deprive a professional architectural corporation, an architectural-engineering corporation, or a limited liability company of the right to renew thereafter. A professional architectural corporation, an architectural-engineering corporation, or a limited liability company who transmits its renewal form and fee to the board subsequent to June 30 in the year when such renewal fee first became due shall be required to pay a delinquent fee of $50. This delinquent fee shall be in addition to the renewal fee set forth in §1301.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners, LR 29:563 (April 2003); amended LR 35:

Family Impact Statement

The proposed Rule of the Louisiana State Board of Architectural Examiners 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. 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 Rule.

Interested persons may submit written comments on this proposed Rule amendment to Ms. Mary "Teeny" Simmons, Executive Director, Board of Architectural Examiners, 9625 Fenway Avenue, Suite B, Baton Rouge, Louisiana 70809.

Mary "Teeny" Simmons
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Licensure Renewal Procedures

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The implementation of this proposed rule will result in an increase in expenditures of $11,351 by the Louisiana State Board of Architectural Examiners (LSBAE) for set-up and software modifications; however, the LSBAE will benefit in future years by reduced costs resulting from decreased personnel time and decreased printing, postage, and other charges by $2,875 annually.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will not have any effect on revenue collections of state or local governmental units as there is no increase or decrease in the amount which an individual architect will pay to renew his or her architectural license.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups associated with this proposed rule, since the proposed rule merely implements an online renewal procedure for individual architects; the amount which an individual architect will pay to renew his or her architectural license will neither increase nor decrease.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment associated with this proposed rule, since the proposed rule merely implements an online renewal procedure for individual architects; the amount which an individual architect will pay to renew his or her architectural license will neither increase nor decrease.

Mary "Teeny" Simmons
Executive Director
0905#067

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Board of River Port Pilot Commissioners

River Port Pilots (LAC 46:LXX.Chapters 31-36)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 34:991(B)(3), the Board of River Port Pilot Commissioners hereby gives notice of intent to promulgate Rules and to repeal and reenact its Rules. The proposed Rules restate existing Rules and will be reenacted for the purpose of codification. New Rules are in the public's interest and will promote public safety. The new regulations remove the requirement to obtain a First Class Pilot's License on the Mississippi River Gulf Outlet which has been decommissioned by the United States Government. The rules provide for a notice provision for the submission of apprentices and modify the deputy pilot system. These original rules were promulgated in October 20, 2003. The board has conducted several meetings to receive comments from interested parties and undertook some revisions.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXX. River Pilots
Subpart 4. Board of River Port Pilot Commissioners
Chapter 31. General Provisions
§3103. Definitions

A. The following terms shall have the following meaning as used in these rules.

Applicant—one who submits an application to become a river port pilot.

Apprentice—one who has been selected to become a river port pilot pending successful completion of the apprenticeship program.

Apprentice Candidate—one whose application has been certified by the board.

Board—the Board of River Port Pilot Commissioners as defined in R.S. 34:991.

Commission—the appointment by the governor authorizing one to perform the duties of a river port pilot.

Commissioner—a member of the Board of River Port Pilots Commissioners for the Port of New Orleans as appointed and serving in accordance with state law.

Conviction—having been found guilty by judgment or by plea and includes cases of deferred adjudication (no contest, adjudication withheld, etc.) or where the court requires a person to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court finding. Expunged convictions must be reported unless the expungement was based upon a showing that the court's earlier conviction was in error.

Deputy Pilot—a commissioned river port pilot who is piloting subject to restrictions as set forth in these regulations

Drug—all controlled dangerous substances as defined in R.S. 40:961(7).

Marine Incident—a personal injury, loss of life, discharge of pollution, collision and/or allision, wave wash or suction resulting in an injury or damage, or hard grounding in which the vessel is damaged or needs assistance to be re-floated.

Pilot—river port pilots as defined in R.S. 34:992 or any person performing duties pursuant to a River Port Pilot Commission.

Prescription Medication—medication which can only be distributed by the authorization of a licensed physician as defined in R.S. 40:961(30).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2068 (October 2003), amended LR 35:

§3105. Board of River Pilot Commissioners for the Port of New Orleans

A. The duties of the board are established pursuant to R.S. 34:991.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

§3107. Application

A. Any person wishing to submit an application to become an apprentice candidate must submit a written request for an application to the board at its address. The board's current address is:

Board of River Port Pilot Commissioners
c/o Application Request
P. O Box 7325
Metairie, LA 70010

B. All applications to become an apprentice candidate must be in writing, must be signed by the applicant, and presented to the secretary of the board. All applications must be notarized and accompanied by satisfactory evidence of compliance of the board's requirements.

C. Annually, the board will publish a notice, in a publication meeting the criteria of an official journal for the state of Louisiana, that it will accept applications for the subsequent calendar year for selection into the River Port Pilot Apprenticeship Program.

D. The board will accept applications for selection into the River Port Pilot Apprenticeship Program from January 1st to October 31st of each year.

E. After October 31st, the board will review the applications, schedule physicals, have background checks run on the applicant and certify that the applicants meet the criteria set forth by the board. Upon request, the board may allow the applicant to submit to a physical before October 31st.

F. On or about January 1st the board will prepare a list of apprentice candidates eligible to be selected. The list shall remain in place until December 31st at which time the list will be withdrawn and a new list will be prepared in accordance with these regulations.

G. Any applicant who submits an application with false or misleading information or false, misleading, forged or altered supporting documents will have their application deemed void. The board, in its discretion, may prohibit the applicant from submitting an application in the future. Nothing in this paragraph will affect the enforcement of state and federal laws regarding the submission of a false information and documents to a state board.

H. When the pilots notify the board that there is a necessity for pilots, the board will submit to the pilots the list of eligible apprentice candidates as described in §3107.F, and pursuant to RS 34:993, the pilots will select the apprentice candidates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

Chapter 32. Licensing, Qualifications, and Apprenticeship

§3201. General Qualifications

A. Applicant must be of good moral character. Evidence of a clear police record will be considered, but the board reserves the right to examine other sources of information as to the applicant's character.

B. Applicant is and has been a voter of the state of Louisiana continuously for at least two years before submitting an application to become an apprentice candidate.

C. Applicant must not have reached his fortieth birthday prior to the first day of balloting on apprentices by the pilots.

D. Applicant shall not have been convicted of a felony offense involving either drugs or the personal consumption of alcohol for 60 months prior to the date of application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3) and R.S. 34:993.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

§3203. Licensing Qualifications

A. Each applicant must meet the below listed requirements.

1. Each applicant must hold a United States Coast Guard First Class Pilot License of Steam or Motor Vessel of any gross tons for the Mississippi River from Southport Mile 104.7 to the Head of Passes Mile 0.0 and for the Inner Harbor Navigation Canal (Industrial Canal) from the Mississippi River to Lake Pontchartrain. In the event the Inner Harbor Navigation Canal is closed and or navigation on the canal is severely restricted, the board in its discretion may waive the requirement of a First Class Pilot License on all or part of the Inner Harbor Navigation Canal.

2. Each applicant must meet one of the following requirements:

a. a United States Coast Guard Masters' License of Steam or Motor Vessels of not less than 1600 gross tons or any upgrade thereof upon Inland Waters, Rivers or Lakes; or

b a United States Coast Guard Second Mate's License (or any upgrade thereof) of Steam or Motor Vessels of any gross tons upon oceans;

3. Each applicant must have held one of the licenses described in §3203.A.1., A.2.a. or A.2.b. for a period of one year prior to the deadline for submitting an application (October 31st) to become an apprentice candidate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

§3205. Education Qualifications

A. In addition to the requirements described herein, the Applicant must have a bachelor's degree or diploma granted by a college or university accredited by an accreditation agency or association recognized by the United States Department of Education.

B. Applicants shall document the aforementioned requirements by providing the board with a diploma or a transcript of the mandatory educational requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

§3207. Physical Qualifications

A. The applicant, when requested, must be examined by a physician, clinic or group of physicians of the board's choosing to determine the applicant's physical condition. The examination report must reflect to the board's satisfaction that the applicant’s physical condition is satisfactory and commensurate with the work and responsibilities of the duties of a pilot, and will enable him to safely perform the duties of pilotage. The board shall have no responsibilities for the examinations or their results. The applicant submitting to such examinations will hold the board harmless from any responsibility for any injury or loss, including attorneys' fees and the costs of defense, incurred as a result of the examination or the reliance by the board or any others on the results of such examination.

B. The applicant, when requested, shall submit to an examination by a mental health professional or group composed of such mental health professionals of the board's choosing. The report of this examination must reflect, to the board's satisfaction, that the applicant’s mental condition and aptitude is satisfactory and commensurate with the work and responsibilities of the duties of a pilot, and will enable him to safely perform the duties of pilotage. The board shall have no responsibility for the examinations or their results. The applicant submitting to such examinations will hold the board harmless from any responsibility for any injury or loss, including attorneys' fees and the costs of defense, incurred as a result of the examination or the reliance by the board or any others on the results of such examination.

C. The applicants shall submit to drug screening in the same manner as pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:

§3209. Apprenticeship

A. The apprentice must serve a minimum of 12 months of apprenticeship in his proposed calling, handling deep draft vessel over the operating territory of the pilots under the tutelage of not less than 50 percent of the pilots. The apprentice must set forth in detail the names of the vessels handled, dates handled, draft, tonnage, between what points so moved, and the names of the supervising pilots. No apprentice shall be permitted to be examined for commissioning who has not fulfilled the requirements set forth by the board. The apprenticeship work must be certified by the board during the apprenticeship program. The board reserves the right to substitute work requirements, require satisfactory completion of additional trips, extended the apprenticeship, or terminate the apprenticeship, when deemed necessary.

B. The board shall examine the apprentices as to their knowledge of pilotage and their proficiency and capability to serve as pilots. These examinations shall be given in such manner and shall take such form as the board may, in its discretion from time to time, elect.

C. The board shall certify for the governor’s consideration those apprentices who satisfactorily complete all requirements established by state law and these rules and who complete and pass the examinations given by the board.

D. Should the apprentice fail the examination, the board, at its discretion, may terminate the apprenticeship, or may designate additional apprenticeship requirements to be satisfied by the apprentice before he may again petition the board for examination.

E. If an apprentice fails to successfully satisfy the requirements of the apprenticeship program within 24 months as determined by the board, the apprenticeship may be terminated at the board’s discretion.

F. The apprentice shall submit to drug screening in the same manner as pilots.

G. The apprentice shall report to the board any change in their physical or mental condition that in any way may affect their performance as an apprentice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:

§3211. Age Restrictions

A. A pilot shall be required to resign his pilot commission in the calendar year in which the pilot attains the age of 70.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:

Chapter 33. Deputy Pilots

§3301. Restricted Duties Guidelines

A. The deputy pilots shall adhere to the following guidelines and restrictions. The failure to strictly adhere to these guidelines may subject the deputy pilot to disciplinary action at the board's discretion. The guidelines are divided into three tiers.

1. Tier One shall commence immediately after the deputy pilot is commissioned. The deputy pilot shall pilot:

a. vessels of 650 feet in length or less

b. a minimum of 50 vessel

c. a minimum of four (4) bridge hours per vessel movement

d. for a period of not less than 120 calendar days.

2. Tier Two shall commence upon the completion of Tier One. The deputy pilot shall pilot:

a. vessels of 700 feet in length or less

b. a minimum of 50 vessel

c. a minimum of four (4) bridge hours per vessel movement

d. for a period of not less than 120 calendar days.

3. Tier Three shall commence immediately upon the completion of Tier Two. The deputy pilot shall pilot:

a. vessels of 750 feet in length or less

b. a minimum of 50 vessel

c. a minimum of four (4) bridge hours per vessel movement

d. for a period of not less than 120 calendar days.

B. During each tier, the deputy pilot must set forth a report providing the name of the vessel piloted, the date and time the vessel was piloted, the length draft, tonnage, the route of the vessel piloted and the beginning and start time for each vessel piloted.

C. A deputy pilot shall be prohibited from:

1. piloting passenger vessels regardless of draft, tonnage or length;

2. piloting tank vessels including OBO's (Oil/Bulk/Ore) in the oil trade;

3. standing watch at the Vessel Traffic Center;

4. yachts;

5. military vessels.

D. After a deputy pilot has completed each tier, the board shall evaluate the deputy pilot's ability and competence to handle the above classes of vessels. Upon such examination, the board shall determine whether, and if so, for what time period, the deputy pilot shall continue to be subject to any or all of the restrictions. The board reserves the right to substitute work requirements, require satisfactory completion of additional trips or extend the deputy pilot's restrictions when deemed necessary.

E. No persons are allowed on the bridge with the deputy pilot with the exception of the bridge team, U.S. Coast Guard representatives, government officials, the vessel's crew, or a commissioner or a designee of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:

Chapter 34. Drug and Alcohol Policy

§3401. Drug Use

A. A pilot shall be free of use of any drug as defined in §3103, excluding prescription medication as defined in §3103 so long as use of such prescription medication does not impair the physical competence of the pilot to discharge his duties.

B. The board shall designate a testing agency or agencies to perform scientific test or tests to screen for the presence of drugs. These drug tests shall be conducted at random, post incident, and for reasonable suspicion at the discretion of the board.

C. All pilots shall submit to reasonable scientific testing and screening for drugs when directed by the board.

D. The results of drug testing and screening shall be confidential and disclosed only to the board and the pilot tested, except that:

1. The board may report the results to the governor, the board of directors of the Crescent River Port Pilot Association, and the United States Coast Guard;

2. In the event that the board determines that a hearing is required, there shall be no requirement of confidentiality in connection with the hearing.

E Any pilot testing positive for drugs or any residual thereof shall be suspended from performing the duties of a pilot pending a hearing.

F. Any pilot who refuses to submit to reasonable scientific testing or screening for drugs, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results shall be suspended from performing the duties of a pilot pending a hearing. Such refusal shall be considered as a positive test.

G. Any pilot found to be in violation of this Section may be reprimanded, fined, evaluated, and/or treated for drug use and/or have his commission suspended or revoked.

H. Any pilot who is required to undergo evaluation and/or treatment shall do so at his own personal expense and responsibility; the physician, as well as the evaluation and treatment facility must be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2071 (October 2003), amended LR 35:

§3403. Alcohol Use

A. No pilot shall consume any alcohol of any nature whatsoever within six hours before, or during, the performance of his pilotage duties.

B. No pilot shall perform his duties as a pilot if his blood alcohol content is 0.04 or greater.

C. Any pilot who believes he would be in violation of any of these rules if he were to perform his duties as a pilot is obligated to remove himself from duty. The pilot is the absolute insurer of his or her state of mind, physical abilities, and overall well being.

D. The board may request a pilot to submit himself to a blood alcohol test upon complaint or reasonable suspicion

that a pilot is performing his duties as a pilot while under the influence of alcohol.

E. Any pilot who refuses to submit to reasonable scientific testing or screening for alcohol, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results shall be suspended from performing the duties of a pilot pending a hearing. Such refusal to cooperate will be considered as a positive test.

F. Any pilot found to be in violation of this Section may be reprimanded, fined, evaluated and/or treated for alcoholism and/or have his commission suspended or revoked.

G. Any pilot who is required to undergo evaluation and/or treatment shall do so at his own personal expense and responsibility; the physician, as well as the evaluation and treatment facility must be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2071 (October 2003), amended LR 35:

Chapter 35. Continuing Education

§3501. Continuing Professional Education

A. Every pilot seeking to maintain a pilot's commission must attend 40 hours of professional education classes and programs every five year cycle as defined by the board. The next five year cycle commences on January 1, 2010.

B. In addition the pilot must attend a man model ship training program every five years.

C. The professional education classes and programs approved by the board include but are not limited to:

1. electronic ship simulation training;
2. small-scale ship simulation training;
3. VTS/VTIS simulator training;
4. bridge resource management training for pilots;
5. Pilot Portable Unit training;
6. any other course or program that the board deems appropriate

D. It shall be the responsibility of the pilot to attend the professional education classes and programs approved by the board.

E. It shall be the responsibility of the pilot to file with the board proof that the pilot has attended the required professional education classes and programs.

F. Any pilot who fails to attend the required professional education classes or programs may be reprimanded, fined, and/or suspended until the pilot complies with this Section.

G. The board, for good cause shown, may grant a waiver or extend the time for a pilot to complete the continuing professional education requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:

Chapter 36. Investigation, Competence, Complaints and Criminal Convictions

§3601. Marine Incident Investigation

A. Any pilot piloting a vessel involved or allegedly involved in a marine incident shall as soon as practical notify the board of the incident by telephone, however, said notice must occur within four hours of the incident.

B. The pilot shall provide the board a written report on the form provided by the board within two days after the marine incident was first reported.

C. The pilot shall make himself available to the board and cooperate with the board during the board's investigation of the marine incident.

D. The pilot shall provide the board a detailed written statement of the marine incident if requested by the board. The report shall be provided to the board with 10 days of the board's request. The board, in its discretion, may grant an extension.

E. A pilot failing to comply with these regulations may be reprimanded, fined and/or suspended.

F. After its investigation of the marine incident, the board may render a findings and conclusions. The findings and conclusions is solely and exclusively the opinion of the board relative to the conduct of the pilot and is not intended to be introduced as evidence in legal proceeding. Pursuant to R.S. 34:1005 all communications between the pilot and the board are deemed confidential, and the findings and conclusions of the board shall not be deemed discoverable or relevant in any civil proceeding.

G. The board may, under the procedure herein set out, examine such cases of dereliction of duty of a pilot as come to their attention, and on the basis of such examination make recommendations to the governor relative to the pilot's commission. The pilot may elect to consent to such corrective or remedial steps as may be suggested by the board under the circumstances, waiving executive review. All violations of the regulations of any governmental agency by a pilot shall come within the purview of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:

§3603. Competence

A. Any pilot who has not performed his duties as a pilot for a period of 365 calendar days shall be required to report said absence to the board. Prior to returning to the duties and responsibilities of a pilot, the pilot must satisfy the return to duty requirements set forth by the board.

B. Any pilot or apprentice who for any reason becomes physically or mentally incompetent to perform the duties of a pilot is required to immediately notify the board of the his condition.

C. The pilot is the absolute insurer of his state of mind, physical abilities, and overall well being.

D. Any pilot who lacks the competency to perform the duties of a pilot shall be suspended from performing the duties of a pilot pending a hearing.

E. Any pilot found to be incompetent may be evaluated and/or have his commission suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:

§3605. Complaints

A. Any person having cause to file a complaint against a pilot may file such complaint with the board.

B. The complaint may be sent to the board at its address.

Board of River Port Pilot Commissioners
P. O Box 7325
Metairie, LA 70010

C. The board shall investigate all complaints and take all appropriate action based on the nature of the complaint.

D. The board shall review all anonymous complaints and shall investigate and if necessary take appropriate action on complaints with merit in the board's discretion.

E. Any person wishing to make an anonymous compliant against a pilot may do so by calling the board at its telephone number or by forwarding an anonymous letter to the above address. The board's telephone number is (504) 218-7477.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:

§3607. Criminal Convictions

A. Any pilot or apprentice convicted of the following must notify the board prior to returning to duty as a pilot:

1. a felony;
2. any offense in which the use of drugs or alcohol is involved.

B. The board shall conduct a hearing to review the competency of any pilot who has been convicted of any offense described in §3607.A, and the board, in its discretion, may find the pilot by virtue of the conviction incompetent to perform his pilot duties.

C. Any pilot or apprentice who fails to comply with these regulations may be reprimanded, fined, and/or suspended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2073 (October 2003), amended LR 35:

Family Impact Statement

The proposed Rules of the Board of River Port Pilot Commissioners should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on a 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. the family's earnings and budget;
5. the behavior and personal responsibility of children; or
6. the family's ability or that the local government to perform the function as contained in the proposed Rules.

All interested persons are invited to submit written comments on the proposed regulations. Such comments must be received no later June 18, 2009, at 4:30 p.m. and should be sent to Captain Jack Anderson, President, Board of River Port Pilot Commissioners, P.O. Box 7325, Metairie, LA 70010.

A public hearing will be held on June 18, 2009, at 2728 Athania Pkwy, Metairie, LA at 9:30 a.m. Persons wishing to speak at the hearing must submit a written comment. The proposed regulation is available for inspection at the Office of the State Register website: http://www.doa.louisiana.gov/osr/osr.htm.

Captain Jack Anderson
President

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: River Port Pilots

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is 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)

Applicants to the apprentice program will be required to provide an annual physical to have their application approved. The prior rule required applicants to submit a physical only when a selection process was underway. The cost of the physical evaluation is estimated at $400.

Applicants will no longer be required to obtain a First Class Pilot's License for the Mississippi River Rule Outlet (MRGO). This license is issued by the United States Coast Guard. The elimination of this requirement will save the applicant approximately $100 and applicants will no longer be required to make 10-20 round trips over the MRGO to acquire the license.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Michael R. Delesdernier	H. Gordon Monk
General Counsel	Legislative Fiscal Officer
0905#025	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Medical Examiners

Physician Licensure and Practice; Telemedicine
(LAC 46:XLV.408 and Chapter 75)

Notice is hereby given that the Louisiana State Board of Medical Examiners (the "Board"), pursuant to the authority vested in the Board by the Louisiana Medical Practice Act, R.S. 37:1261-1292, as amended during the 2008 Session of the Louisiana Legislature by Acts 2008, Number 850, R.S. 37:1262(4) and 37:1276.1, and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., intends to adopt LAC Title 46:XLV, Subpart 2, Chapter 3, Subchapter H, Section 408 and Subpart 3, Chapter 75, Subchapter A, Sections 7501-7521 relative to telemedicine. The proposed Rule sets forth the process for telemedicine permit issuance for individuals who are not licensed to practice medicine in this state who may wish to practice in Louisiana via telemedicine. The proposed Rule also governs the practice of all physicians who utilize telemedicine in this state. The proposed Rule is set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Profession
Subpart 2. Licensure and Certification
Chapter 3. Physicians
Subchapter H. Restricted Licensure, Permits
§408. Telemedicine Permit Qualifications, Procedure, Issuance, Expiration and Renewal

A. Qualifications. A physician who does not hold a license to practice medicine in Louisiana may not engage in the practice of medicine across state lines in this state via telemedicine, as defined in Chapter 75 of these rules, unless he or she holds a telemedicine permit issued by the board. To be eligible for a telemedicine permit an applicant shall:

1. possess the qualifications for licensing prescribed by §311 of these rules;

2. possess an unrestricted license to practice medicine issued by the medical licensing authority of a state other than Louisiana (whether allopathic or osteopathic);

3. not be enrolled in a medical residency or other post graduate medical training program. The board may, in its discretion, grant an exception to this requirement on a case-by-case basis where the applicant is enrolled in fellowship or other advanced training and it has been shown to the board's satisfaction that the applicant has completed all training relevant to his or her designated area of practice;

4. have attended the board's physician orientation program described in §449 of these rules or completed it online; and

5. have completed a board-approved application and satisfied the applicable fee.

B. Permit Denial. The board may deny or refuse to issue a telemedicine permit to an otherwise eligible applicant:

1. who does not satisfy the qualifications prescribed by this Chapter;

2. for any of the causes enumerated by R.S. 37:1285(A), or violation of any other provision of the Louisiana Medical Practice Act, R.S. 37:1261 et seq.;

3. who has been the subject of previous disciplinary action by the medical licensing authority of any state;

4. who is the subject of a pending investigation by the board, the medical licensing authority of another state or a federal agency;

5. who has been denied, had suspended, revoked, restricted or relinquished staff or clinical privileges at a hospital or institution while under investigation for, or as a result of, professional competency or conduct;

6. who has been, or is currently in the process of being denied, terminated, suspended, refused, limited, placed on probation or under other disciplinary action with respect to participation in any private, state, or federal health care insurance program; or

7. who voluntarily surrendered while under investigation by the issuing authority, or had suspended, revoked or restricted, his or her state or federal controlled substance permit or registration.

C. Applicant's Burden. The burden of satisfying the board as to the qualifications and eligibility of the applicant for a telemedicine permit shall be upon the applicant, who shall demonstrate and evidence such qualifications in the manner prescribed by and to the satisfaction of the board.

D. Application. Application for a telemedicine permit shall be made in a format approved by the board and shall include:

1. proof documented in a form satisfactory to the board that the applicant possesses the qualifications set forth in this Subchapter;

2. certification of the truthfulness and authenticity of all information, representations and/or documents contained in or submitted with the completed application;

3. a description of the manner of and the primary practice site from which telemedicine is to be utilized by the applicant;

4. acknowledgment that the applicant shall only utilize telemedicine in accordance with the telemedicine rules promulgated by the board in Chapter 75 of these rules and shall retain professional responsibility for the services provided to any patient by telemedicine;

5. criminal history record information;

6. such other information, acknowledgments and documentation as the board may require; and

7. a fee of $150. The board may waive such fee in favor of an applicant who advises the board in writing that his or her use of telemedicine in this state shall be limited to the provision of voluntary, gratuitous medical services.

E. Appearances. An applicant shall be required to appear before the board or its designee if the board has questions concerning the applicant's qualifications.

F. Effect of Application. The submission of an application pursuant to this Subchapter shall constitute and operate as an authorization and consent by the applicant to:

1. submit to the jurisdiction of the board in all matters set forth in the Act or any other applicable Louisiana law, as well as the board's rules;

2. produce medical or other documents, records, or materials and appear before the board upon written request; and

3. report to the board in writing within 30 days of any disciplinary action against the applicant's:

a. license to practice medicine in another state; or

b. federal or state registration or permit to prescribe, dispense or administer controlled substances or the voluntary surrender thereof while under investigation by the issuing authorities.

G. Permit Expiration, Renewal. A telemedicine permit shall expire annually on the expiration date stated thereon or the first day of the month in which the licensee was born, whichever is the later, unless renewed by the submission of a renewal application containing such information as the board may require, together with a renewal fee of $100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

Subpart 3. Practice
Chapter 75. Telemedicine
Subchapter A. General Provisions
§7501. Scope of Subchapter

A. The rules of this Subchapter govern the use of telemedicine by physicians licensed to practice medicine in this state and those who hold a telemedicine permit issued by the board to practice medicine across state lines in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7503. Definitions

A. As used in this Chapter and in §408 of these rules, unless the content clearly states otherwise, the following words and terms shall have the meanings specified.

Board—the Louisiana State Board of Medical Examiners, as constituted in the Medical Practice Act.

Controlled Substance—any substance defined, enumerated, or included in federal or state statute or regulations 21 C.F.R. 1308.11-.15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute.

Department—The Louisiana Department of Health and Hospitals.

Medical Practice Act or the Act—R.S. 37:1261-92, as may from time to time be amended.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or telemedicine permit duly issued by the board.

Primary Practice Site—the location at which a physician spends the majority of time in the exercise of the privileges conferred by licensure or permit issued by the board.

State—any state of the United States, the District of Columbia and Puerto Rico.

Telemedicine—the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data by a physician using interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation, an electronic mail message between a physician and a patient, or a true consultation constitutes telemedicine for the purposes of this Part.

Telemedicine Permit— a permit issued by the board in accordance with Chapter 3 of the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7505. General Uses, Limitations

A. Telemedicine shall not be utilized by a physician with respect to any patient located in this state in the absence of a physician-patient relationship as provided in §7509 of these rules.

B. The practice of medicine by telemedicine, including the issuance of any prescription via electronic means, shall be held to the same prevailing and usually accepted standards of medical practice as those in traditional (face-to-face) settings. An online, electronic or written mail message, or a telephonic evaluation by questionnaire or otherwise, does not satisfy the standards of appropriate care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7507. Prerequisite Conditions

A. Prior to utilizing telemedicine the physician shall ensure that:

1. he or she has access to those portions of the patient's medical record pertinent to the visit;

2. there exists appropriate support staff who:

a. are trained to conduct the visit by telemedicine;

b. are available to implement physician orders, identify where medical records generated by the visit are to be transmitted for future access, and provide or arrange back up, follow up, and emergency care to the patient; and

c. provide or arrange periodic testing and maintenance of all telemedicine equipment.

B. A licensed health care professional who can adequately and accurately assist with the requirements of §§7509 and 7511 of this Chapter shall be in the examination room with the patient at all times that the patient is receiving telemedicine services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7509. Providing Telemedicine Services; Records

A. Physicians who utilize telemedicine shall insure that a proper physician-patient relationship is established that at a minimum includes:

1. verification of the patient. Establishing that the person requesting the treatment is who the person claims to be;

2. evaluation. Conducting an appropriate evaluation of the patient, including review of any relevant history, laboratory or diagnostic studies, diagnoses, or other information deemed pertinent by the physician;

3. diagnosis. A diagnosis shall be established through the use of accepted medical practices including, but not limited to patient history, mental status and appropriate diagnostic and laboratory testing and fully documented in the patient's medical record. The diagnosis shall indicate the nature of the patient's disorder, illness, disease or condition and the reason for which treatment is being sought or provided;

4. treatment plan. The physician shall discuss with his or her patient the diagnosis, as well as the risks and benefits of appropriate treatment options, and establish a treatment plan tailored to the needs of the patient. A treatment plan shall be established and fully documented in the patient's record; and

5. follow-up care. A plan for accessing follow-up care shall be provided to the patient in writing and documented in the patient's record.

B. Patient records generated by a physician conducting a telemedicine visit shall be maintained at the physician's primary practice site and at the location of the patient where such visit was conducted, or such other location as may be directed by the physician(s) responsible for the patient's care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7511. Informed Consent

A. In addition to any informed consent and right to privacy and confidentiality that may be required by state or federal law or regulation, a physician shall insure that each patient to whom he or she provides medical services by telemedicine is:

1. informed of the relationship between the physician and patient and the respective role of any other health care provider with respect to management of the patient; and

2. notified that he or she may decline to receive medical services by telemedicine and may withdraw from such care at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7513. Prohibitions

A. Telemedicine shall not be utilized to provide medical services to patients located in this state in the absence of medical licensure or a current telemedicine permit issued by the board and other than in compliance with the rules of this Chapter.

B. No physician shall utilize telemedicine:

1. for the treatment of non-cancer related chronic or intractable pain, as set forth in §§6915-6923 of the board's rules;

2. for the treatment of obesity, as set forth in §§6901-6913 of the board's rules;

3. to authorize or order the prescription, dispensation or administration of any amphetamine or narcotic, provided, however, that this limitation shall not apply to a physician who is currently certificated by a specialty board of the American Board of Medical Specialties or the American Osteopathic Association:

a. in the specialty of psychiatry from using amphetamines in the treatment of his or her patients suffering from attention deficit disorder; or

b. the American Society of Addiction Medicine in the subspecialty of addictive medicine from using narcotics in the treatment of an addictive disorder, provided such is permitted by and in conformity with all applicable federal and state laws and regulations; or

4. to provide care to a patient who is physically located outside of this state, unless the physician possesses lawful authority to do so by the licensing authority of the state in which the patient is located.

C. A physician shall not utilize telemedicine except in the usual course and scope of his or her medical practice.

D. A non-Louisiana licensed physician who practices across state lines by virtue of a telemedicine permit issued by the board shall not:

1. open an office in this state;

2. meet with patients in this state;

3. receive telephone calls in this state from patients; or

4. engage in the practice of medicine in this state beyond the limited authority conferred by his or her telemedicine permit.

E. No physician shall supervise, collaborate or consult with an allied health care provider located in this state via telemedicine unless he or she possesses a full and unrestricted license to practice medicine in this state and satisfies and complies with the prerequisites and requirements specified by all applicable laws and rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7515. Exceptions

A. The following activities shall be exempt from the requirements of this Chapter:

1. furnishing medical assistance in case of a declared emergency or disaster, as defined by the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or as otherwise provided in Title 29 of the Louisiana Revised Statutes of 1950, or the board's rules;

2. issuance of emergency certificates in accordance with the provisions of R.S. 28:53; and

3. a true consultation, e.g., an informal consultation or second opinion, provided by an individual licensed to practice medicine in a state other than Louisiana, provided that the Louisiana physician receiving the opinion is personally responsible to the patient for the primary diagnosis and any testing and treatment provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7517. Action against Medical License

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed to constitute unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), and may provide just cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician or applicant culpable of such violation, or for such other administrative action as the board may in its discretion determine to be necessary or appropriate under R.S. 37:1285(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7519. Action against Permit

A. For noncompliance with any of the provisions of this Chapter, or upon a finding of the existence of any of the causes enumerated by R.S. 37:1285(A), the board may, in addition to or in lieu of administrative proceedings provided by this Chapter, suspend, revoke, refuse to issue or impose probationary or other restrictions on any permit held or applied for by a physician or applicant culpable of such violation, or take such other administrative action as the board may in its discretion determine to be necessary or appropriate under R.S. 37:1285(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

§7521. Unauthorized Practice

A. Any individual who utilizes telemedicine to practice medicine in this state in the absence of a medical license or a telemedicine permit duly issued by the board, shall be deemed to be engaged in the unauthorized practice of medicine and subject to the civil, injunctive and criminal penalties prescribed by the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1290.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability or autonomy as described in R.S. 49:972.

Interested persons may submit written data, views, arguments, information or comments on the proposed Rule to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, P.O. Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans, LA, 70130), telephone number (504) 568-6820, Ex. 240. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., June 19, 2009. A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice. Should it become necessary to convene a public hearing to receive data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on June 29, 2009 at 10 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA. Any person wishing to attend should call to confirm that a hearing is being held.

Robert L. Marier, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Physician Licensure and Practice; Telemedicine

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Under the rules proposed physicians licensed to practice medicine in this state, under the authority of their Louisiana medical license, will be authorized to utilize telemedicine in the course and scope of their practice. Physicians licensed to practice medicine in another state, but not Louisiana, who may wish to practice in this state by way of telemedicine will be required to apply for and obtain a telemedicine permit from the Board. As to the latter category of physicians, the Louisiana State Board of Medical Examiners anticipates devoting some administrative resources to processing permit applications. Inasmuch as the number of physicians who may seek such a permit is unknown and because renewal applications will be included within the existing license renewal processes, any modest increase in administrative workload will be absorbed by existing personnel. Therefore, other than notice/rule publication costs estimated at a combined total of $1,113.75, which will be absorbed within the Board's budget during FY 2009, it is not anticipated that the proposed rules will result in any additional costs or savings to the Board or any other state or local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

While the Board has no reliable data it is believed that only a limited number of non-Louisiana licensed physician-applicants may seek to practice in this state via a telemedicine permit provided for by the proposed rules. Therefore, the Board is not in a position to estimate the proposed rules' effect in this respect. Any such applicant would be subject to payment of the fees specified by the proposed rules for initial permit issuance ($150) and annual permit renewal ($100). Accordingly, no material effect on the Board's revenue collections or those of any other state or governmental unit is anticipated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

In conformity with Acts 2008, Number 850 (R.S. 37:1262(4) and 37:1276.1), the proposed rules govern physician use of telemedicine in this state. Out-of-state physicians who are not licensed to practice medicine in Louisiana who wish to practice in this state by way of telemedicine, will be required to comply with the Board's application process as set forth in Section 408 of the proposed rules, complete an application supplied by the Board for initial permit issuance and annual renewal, and pay the specified initial permit and renewal fees. Accordingly, it is not anticipated that the proposed rules will have any material effect on costs, paperwork or workload of physicians or applicants who utilize telemedicine in their practice. To an extent not quantifiable, the public will receive an economic benefit by access to medical services from both Louisiana-licensed physicians who utilize telemedicine in their practice, as well as out-of-state physicians who practice in this state via a telemedicine permit, which may not otherwise be available in the absence of telemedicine. Implementation of the proposed rules may also, to an extent not quantifiable, increase receipts and/or income of physicians who utilize telemedicine in their practice.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rules will have any material impact on competition or employment in either the public or private sector.

Robert L. Marier, M.D.	Robert E. Hosse
Executive Director	Staff Director
0905#060	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Veterinary Medicine

Continuing Veterinary Medicine Education
(LAC 46:LXXXV.403, 409, 413, 811, and 1227)

The Louisiana Board of Veterinary Medicine proposes to amend and adopt LAC 46:LXXXV.403, 409, 413, 811, and 1227 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518A(9). The proposed Rule is being amended and adopted to address the requirements and program approval of continuing veterinary medicine education for annual renewal of veterinary medicine license, registered veterinary technician certification, and animal euthanasia technician certification in order to maintain and improve professional competencies for the health, welfare, and safety of the citizens and animals of Louisiana. The proposed amended and adopted Rule allows one-half of the required continuing education credits to be taken as compendium/self-help and online continuing education courses with third party grading; continuing education for annual renewal for registered veterinary technicians, and in-house continuing education programs for veterinarians in board certified speciality practices. Upon promulgation, the proposed Rule is intended to become effective for the period of time (July 1, 2009-June 30, 2010)

for the 2010-2011 annual license and certification renewal and every annual license and certification renewal period thereafter.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXXXV. Veterinarians
Chapter 4. Continuing Veterinary Education
§403. Continuing Veterinary Education Requirements

A. A minimum of 20 actual hours is required each fiscal year (July1 through June 30) as a prerequisite for annual renewal of a license. Hours may be taken from:

1. ...

2. a maximum of 10 hours of credit may be obtained in approved videotaped, self-test programs with third party grading, and/or self-help instruction, including online instruction with third party grading;

3. the 20 hour requirement for annual renewal of a license may be taken in any combination of the following board approved programs regarding subject matter content: clinical, alternative, regulatory, practice management, and/or research; however, the actual mediums of approved videotaped, self-test programs with third party grading, and/or self-help instruction, including online instruction with third party grading, are limited to the 10 hour maximum set forth in Paragraph 403A.2.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated as §405 by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:224 (March 1990), amended LR 19:1427 (November 1993), LR 23:1147 (September 1997), LR 28:1208 (June 2002), LR 33:649 (April 2007), repromulgated LR 33:847 (May 2007), amended LR 35:

§409. Approved Continuing Education Programs

A. - A.3 ...

4. An in-house continuing education programs may be approved by the board if such program's subject matter content is presented by a nationally board certified specialist currently licensed by the board who is associated by ownership, contract, or employment with the in-house practice sponsoring the program, and the program is open by invitation/advertisement to interested veterinarians in general who are not associated with the in-house practice at issue at least 10 calendar days prior to the commencement of the program. The general requirements regarding continuing education, including timely submission for pre-approval of the program by the board, continues to apply.

5. In order to qualify for board approval, all continuing education programs must be open by invitation/advertisement to interested veterinarians in general.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:224 (March 1990), amended LR 19:1428 (November 1993), LR 33:649 (April 2007), repromulgated LR 33:848 (May 2007), amended LR 35:

§413. Non-Compliance

A. - D. ...

E. The promulgation of rule amendments by the board published in the *Louisiana State Register* on (month?) 20, 2009 shall become effective for the period of time (July 1, 2009-June 30, 2010) for the 2010-2011 annual license renewal and every annual license renewal period thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:225 (March 1990), amended LR 19:1428 (November 1993), LR 33:649 (April 2007), repromulgated LR 33:848 (May 2007), amended LR 35:

Chapter 8. Registered Veterinary Technicians
§811. Certificate Renewal, Late Charge, Continuing Education

A. - C. ...

D. Continuing Education Requirements

1. A minimum of 10 continuing education units is required each fiscal year (July 1 through June 30) as a prerequisite for renewal of certification. An RVT who fails to obtain a minimum of 10 continuing education units within the applicable fiscal period will not meet the requirements for renewal of his certificate.

2. All continuing education programs must be approved by the board prior to attendance with the subject matter content properly addressing the clinical practice of a registered veterinary technician. Those continuing education programs not timely submitted in accordance with Subsection F below will not be allowed for annual continuing education credit.

3. Proof of attendance, which shall include the name of the course, date(s) of attendance, hours attended, and specific subjects attended, shall be attached to the annual renewal form. Proof of attendance must include verification from the entity providing or sponsoring the educational program. However, the actual mediums of videotaped, self-test programs with third party grading, and/or self-help instruction, including online instruction with third party grading, are limited to five hours per fiscal period (July 1 through June 30). The requirement of timely pre-approval of the program by the board shall apply.

4. All hours shall be obtained for the applicable fiscal year (July 1 through June 30) preceding the renewal period of the certificate.

5. Each RVT must fulfill his annual educational requirements at his own expense or through a sponsoring agency other than the board.

6. Employment at an accredited school or college will not be accepted in lieu of performance of the required hours of continuing education.

7. Presenters of an approved continuing education program may not submit hours for their presentation of, or preparation for, the program as continuing education.

E. Failure to Meet Requirements

1. If an RVT fails to obtain a minimum of 10 continuing education units within the prescribed fiscal period, his certificate shall automatically expire on September 30, and shall remain expired until such time as

the continuing education requirements have been met and documented to the satisfaction of the board. If the RVT practices during the period of such expiration, then he is subject to disciplinary action by the board.

2. The board may grant extensions of time for extenuating circumstances. The RVT must petition the board at least 30 days prior to the expiration of the certificate. The board may require whatever documentation it deems necessary to verify the circumstances necessitating the extension.

F. Approved Continuing Education Programs

1. Organizations sponsoring a continuing education program for RVTs must submit a request for approval of the program to the board no less than 14 days prior to the commencement of the program. Information to be submitted shall include:

a. the name of the proposed program;

b. course content; and

c. the number of continuing education units to be obtained by attendees.

2. RVTs may also submit a request for approval of a continuing education program, however, it must be submitted to the board no less than 14 days prior to the commencement of the program. Information to be submitted shall comply with the requirements of Paragraph 811.F.1.

3. Continuing education units which are submitted for renewal and were not pre-approved by the board may be reviewed by the board. If the units are not approved, the RVT will be required to take additional continuing education in an approved program prior to renewal of his certificate.

G. The promulgation of rules by the board published in the *Louisiana State Register* on (month?) 20, 2009 shall become effective for the period of time (July 1, 2009-June 30, 2010) for the 2010-2011 annual certificate renewal and every annual certificate renewal period thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1549.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:227 (March 1990), amended LR23:1686 (December 1997), LR 26:84 (January 2000), LR 35:

Chapter 12. Certified Animal Euthanasia Technicians

§1227. Continuing Education

A. Basic Requirements

1. - 2. ...

3. Proof of attendance, which shall include the name of the course, date(s) of attendance, hours attended, and specific subjects attended, shall be attached to the annual renewal form. Proof of attendance must include verification from the entity providing or sponsoring the educational program. However, the actual mediums of video tapes, self-test programs with third party grading, and/or self-help instruction, including online instruction with third party grading, are limited to three hours per fiscal period (July 1 through June 30). The requirement of pre-approval of the program by the board continues to apply.

A.4. - B.2. ...

C. Approved Continuing Education Programs

1. Organizations sponsoring a continuing education program for CAETs must submit a request for approval of the program to the board no less than 14 days prior to the commencement of the program. Information to be submitted shall include:

a. - c. ...

2. CAETs may also submit a request for approval of a continuing education program, however, it must be submitted to the board no less than 14 days prior to the commencement of the program. Information to be submitted shall comply with the requirements of Paragraph 1227.C.1.

3. ...

D. The promulgation of rule amendments by the board published in the *Louisiana State Register* on (month?) 20, 2009 shall become effective for the period of time (July 1, 2009-June 30, 2010) for the 2010-2011 annual certificate renewal and every annual certificate renewal period thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 26:321 (February 2000), amended LR 35:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Interested parties may submit written comments to Wendy D. Parrish, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801, or by facsimile to (225) 342-2142. Comments will be accepted through the close of business on June 18, 2009. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on Thursday, June 25, 2009, at 10 am at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA.

Wendy D. Parrish
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Continuing Veterinary Medicine Education

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated at $300 in FY 2010). Licensees and certificate holders will be informed of this rule change via the board's regular newsletter or other direct mailings, which result in minimal costs to the Board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as no increase in fees will result from the amendment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules are being amended and adopted to address the requirements and program approval of continuing veterinary medicine education for annual renewal of veterinary medicine license, registered veterinary technician certification, and animal euthanasia technician certification in order to maintain and improve professional competencies for the health, welfare, and safety of the citizens and animals of Louisiana.

Amended and adopted rules allow one-half of the required continuing education credits to be taken as compendium/self-help and online continuing education courses with third party grading; continuing education for annual renewal for registered veterinary technicians, and in-house continuing education programs for veterinarians in board certified speciality practices. Upon promulgation, the proposed rules are intended to become effective for the period of time (July 1, 2009-June 30, 2010) for the 2010-2011 annual license and certification renewal and every annual license and certification renewal period thereafter, allowing veterinarians to increase the number of hours of continuing education credits obtained through compendium, self-help and online methods from 4 hours currently, to 10 hours as proposed. It will likely decrease the amounts affected veterinarians spend in fees to obtain the required 20 continuing education credits each year. Affected veterinarians will have reduced travel costs and reduced demands on their time because they can obtain their credits from their own offices or homes. The proposed rules have no know impact on family formation, stability, and autonomy as described in R.S. 49:972.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule.

Wendy D. Parrish Executive Director 0905#063	H. Gordon Monk Legislative Fiscal Officer Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Gaming Control Board

Advertising—Compulsive and Problem Gaming
(LAC 42:VII.2927; IX.2919; and XIII.2927)

Editor's Note: This Notice of Intent is being readvertised to correct printing errors. The original Notice of Intent can be viewed on pages 817-818 of the April 20, 2009 edition of the *Louisiana Register*.

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:VII.2927; IX.2919; and XIII.2927 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42
LOUISIANA GAMING
Part VII. Pari-Mutual Live Racing Facility Slot Machine Gaming
Chapter 29. Operating Standards
§2927. Advertising

A. - C. …

D. Signs displaying the toll-free number shall be posted at each public entrance to the designated gaming area and at each public entrance into the licensed eligible facility. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within a rectangle with a height of at least eight and one-half inches and length of at least eleven inches and the characters shall be of a contrasting color from the background color of the sign. The signs may be either wall mounted or free standing. A licensed eligible facility may include the toll-free telephone number on other interior signage in locations other than the required areas in this subsection in a style and size of its choosing.

E. - F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:765 (April 2000), amended LR 33:856 (May 2007), LR 35:

Part IX. Landbased Casino Gaming
Chapter 29. Operating Standards Generally
§2919. Advertising; Mandatory Signage

A. - C. …

D. Signs displaying the toll-free number shall be posted at each public entrance to the designated gaming area and at each public entrance into the casino. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within a rectangle with a height of at least 8 1/2 inches and length of at least 11 inches and the characters shall be of a contrasting color from the background color of the sign. The signs may be either wall mounted or free standing. The casino operator or casino manager may include the toll-free telephone number on other interior signage in locations other than the required areas in this subsection in a style and size of its choosing.

E. - F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1953 (October 1999), amended LR 26:335 (February 2000), LR 33:857 (May 2007), LR 35:

Part XIII. Riverboat Gaming Commission
Chapter 29. Operating Standards
§2927. Advertising

A. - C. …

D. Signs displaying the toll-free number shall be posted at each public entrance to the designated gaming area and at each public entrance into the riverboat. The toll-free telephone number and accompanying letters must be sized to utilize the entire area within a rectangle with a height of at least 8 1/2 inches and length of at least 11 inches and the characters shall be of a contrasting color from the background color of the sign. The signs may be either wall mounted or free standing. Licensees may include the toll-free telephone number on other interior signage in locations other than the required areas in this subsection in a style and size of its choosing.

E. - F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR21:702 (July 1995), amended by the Department of Public Safety and Correction, Gaming Control Board, LR 33:858 (May 2007), LR 35:

Family Impact Statement

Pursuant to the provisions of R.S. 49:953(A), the Louisiana Gaming Control Board, through its chairman, has considered the potential family impact of amending LAC 42:VII.2927, IX.2919, and XIII.2927.

It is accordingly concluded that amending LAC 42:VII.2927, IX.2919, and XIII.2927 would appear to have a positive yet inestimable impact on the following:

1. the effect on 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.

Small Business Impact Statement

Pursuant to the provisions of R.S. 49:965.5 the Louisiana Gaming Control Board, through its chairman, has concluded that there will be no adverse impact on small business if LAC 42:VII.2927, IX.2919, and XIII.2927 are amended as they will not apply to small businesses.

All interested persons may contact Jonathon Wagner, Attorney General's Gaming Division, telephone (225) 326-6500, and may submit comments relative to this proposed Rule, through May 11, 2009, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

H. Charles Gaudin
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Advertising Compulsive and Problem Gaming

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed administrative rule changes will have no implementation costs to state or local governmental units. These rule changes are merely a clarification of a practice already required to take place in industry.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed administrative rule change is designed to eliminate confusion among licensed eligible facilities regarding the proper display of signage. This confusion sometimes led to fines being levied which were then paid to the Department of Public Safety and Corrections. Elimination of the confusion will likely lead to a slight reduction of fines collected as a result of fewer citations being issued for signage violations.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed administrative rule changes will have no significant costs and/or economic benefit to industry. These rule changes are merely a clarification of a practice already required to take place in industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule changes will have no effect on competition and employment.

H. Charles Gaudin
Chairman
0905#004

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Policy Services Division

Income Tax Withholding Tables (LAC 61:I.1501)

Under the authority of R.S. 47:32, R.S. 47:112, R.S. 47:295, 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.1501 relative to individual income tax withholding tables based on the income tax rates as provided by Act 396 of the 2008 Regular Session of the Louisiana Legislature.

Act 396 amended R.S. 47:32 to reduce state income tax rates in the two highest income brackets for tax years beginning on or after January 1, 2009. Act 396 provided that the revised withholding tables will not become effective until after July 1, 2009. LAC 61:I.1501 is being amended to correct minor errors in the income tax withholding tax formulas. The errors do not affect the income tax withholding tables.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 15. Income: Withholding Tax
§1501. Income Tax Withholding Tables

A. - C.4. …

D. Income Tax Withholding Formulas. The overall structure of the formulas used to compute the withholding tax is to calculate the tax on the total wage amount and then subtract the amount of tax calculated on the personal exemptions and dependency credits the taxpayer claims for withholding purposes. The correct withholding formula depends upon the number of personal exemptions claimed and annual wages.

1. Withholding Formulas for Single or Married Taxpayers Claiming 0 or 1 Personal Exemption

W is the withholding tax per pay period.
S is employee's salary per pay period for each bracket.
X is the number of personal exemptions; X must be 0 or 1.
Y is the number of dependency credits; Y must be a whole number that is 0 or greater.
N is the number of pay periods.
A is the effect of the personal exemptions and dependency credits equal to or less than $12,500;
A=.021(((X * 4500) + (Y * 1000)) ÷ N).
B is the effect of the personal exemptions and dependency credits in excess of $12,500
B=.016((((X * 4500) + (Y * 1000)) – 12,500) ÷ N).
If annual wages are less than or equal to $12,500, then
W=.021(S) - (A + B).
If annual wages are greater $12,500 but less than or equal to $50,000, then
W=.021(S) + .0160(S - (12,500 ÷ N)) - (A + B).
If annual wages are greater than $50,000, then
W=.021(S) + .0160(S - (12,500 ÷ N)) + .0135(S - (50,000 ÷ N)) - (A + B).

2. Withholding Formulas for Married Taxpayers Claiming 2 Personal Exemptions

W is the withholding tax per pay period.
S is the employee's salary per pay period for each bracket.

X is the number of personal exemptions. X must be 2.
Y is the number of dependency credits. Y must be 0 or greater.
N is the number of pay periods.
A is the effect of the personal exemptions and dependency credits equal to or less than $25,000;
A=.021(((X * 4500) + (Y * 1000)) ÷ N)
B is the effect of the personal exemptions and dependency credits in excess of $25,000;
B=.0165((((X * 4500) + (Y * 1000)) - 25,000) ÷ N)
If annual wages are less than or equal to $25,000, then
W=.021(S) - (A + B).
If annual wages are greater $25,000 but less than or equal to $100,000, then
W=.021(S) + .0165(S - (25,000 ÷ N)) - (A + B).
If annual wages are greater than $100,000, then
W=.021(S) + .0165(S - (25,000 ÷ N)) + .0135(S - (100,000 ÷ N)) - (A + B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:32, R.S. 47:112, R.S. 47:295 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Policy Services Division, LR 35:255 (February 2009), amended LR 35:

Family Impact Statement

The proposed adoption of LAC 61:I.1501, regarding income tax withholding 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. The implementation of this proposed Rule will have no known or foreseeable effect on:

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.

Interested persons may submit written data, views, arguments or comments regarding this proposed Rule to Leonore Heavey, Revenue Tax Assistant Director, Policy Services Division by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to 225-219-2759. All comments must be received no later than 4:30 p.m., Wednesday, June 24, 2009. A public hearing will be held on Thursday, June 25, 2009 at 1:30 p.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Income Tax Withholding Tables

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed amendment to LAC 61:I.1501 corrects minor errors in the reproduction of individual income tax withholding formulas in LAC 61:I.1501 based on the new income tax rates provided by Act 396 of the 2008 Regular Session. The Act imposes the individual income tax on joint returns as follows: two percent of the first $25,000, four percent of income from $25,000 to $100,000, and six percent of income over $100,000. For single returns the bracket thresholds are one-half those of joint returns. The formulas containing these changes do not affect the calculated income tax withholding tables in LAC 61:I.1501.

Implementation of this proposed regulation as amended will result in additional costs to the state of less than $100,000 associated with educating taxpayers. This additional cost will be absorbed within the current agency budget.

There will be no costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Effective January 1, 2009, Act 396 expands the four percent bracket, creating a decrease to state individual income tax revenue. However, because Act 396 does not require the amendment of the withholding tables until July 1, 2009, it is expected that most taxpayers will not adjust withholdings in the first half of the 2009 calendar year. The income tax losses over the next several years are $359 million for FY 09/10, $251 million for FY 10/11, $262 million for FY 11/12 and $273 million for FY 12/13, according to the Legislative Fiscal Office.

The corrected formulas will be effective on July 1, 2009, as provided in Act 396.

There will be no impact on local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed amendment to LAC 61:I.1501 directs employers required to deduct and withhold income tax pursuant to R.S. 47:112, to deduct and withhold the tax in an amount determined in accordance with the tables provided in the regulation, or by use of a formula that produces equivalent amounts. The impact on costs for the employers relying on the previously published formulas will be in relation to any expense in adjusting withholding calculators to match the formulaic changes included in this rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed amendment to LAC 61:I.1501 should not affect competition or employment

Cynthia Bridges	Robert E. Hosse
Secretary	Staff Director
0905#059	Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Deer Management Assistance Program (LAC 76:V.111)

The Wildlife and Fisheries Commission hereby advertises their intent to amend the rules and regulations for participation in the Deer Management Assistance Program.

Title 76
WILDLIFE AND FISHERIES
Part V. Wild Quadrupeds and Wild Birds
Chapter 1. Wild Quadrupeds
§111. Rules and Regulations for Participation in the Deer Management Assistance Program

A. The following rules and regulations shall govern the Deer Management Assistance Program.

1. Application Procedure

a. Application for enrollment of a new cooperator in the Deer Management Assistance Program (DMAP) must be submitted to the Department of Wildlife and Fisheries by August 1. Application for the renewal enrollment of an

active cooperator must be submitted to the Department of Wildlife and Fisheries annually by September 1.

b. Each application for a new cooperator must be accompanied by a legal description of lands to be enrolled and a map of the property. Renewal applications must be accompanied by a legal description and map only if the boundaries of the enrolled property have changed from records on file from the previous hunting season. This information will remain on file in the appropriate regional office. The applicant must have under lease or otherwise control a minimum of 500 acres of contiguous deer habitat of which up to 250 acres may be agricultural lands, provided the remainder is in forest and/or marsh. Private lands within Wildlife Management Area boundaries shall be enrolled in DMAP regardless of size.

c. Each cooperator will be assessed a $25 enrollment fee and $0.05/acre for participation in the program. DMAP fees must be paid by invoice to the Department of Wildlife and Fisheries Fiscal Section prior to September 15.

d. An agreement must be completed and signed by the official representative of the cooperator and submitted to the appropriate regional wildlife office for approval. This agreement must be completed and signed annually.

e. Boundaries of lands enrolled in DMAP shall be clearly marked and posted with DMAP signs in compliance with R.S. 56:110 and the provisions of R.S. 56:110 are only applicable to property enrolled in DMAP. DMAP signs shall be removed if the land is no longer enrolled in DMAP. Rules and regulations for compliance with R.S. 56:110 are as follows.

i. The color of DMAP signs shall be orange. The words DMAP and Posted shall be printed on the sign in letters no less than 4 inches in height. Signs may be constructed of any material and minimum size is 11 1/4" x 11 1/4".

ii. Signs will be placed at 1,000 foot intervals around the entire boundary of the property and at every entry point onto the property.

f. By enrolling in the DMAP, cooperators agree to allow department personnel access to their lands for management surveys, investigation of violations and other inspections deemed appropriate by the department. The person listed on the DMAP application as the contact person will serve as the liaison between the DMAP Cooperator and the department.

g. Each cooperator that enrolls in DMAP is strongly encouraged to provide keys or lock combinations annually to the Enforcement Division of the Department of Wildlife and Fisheries for access to main entrances of the DMAP property. Provision of keys is voluntary. However, the cooperator's compliance will ensure that DMAP enrolled properties will be properly and regularly patrolled.

h. Large landowners (>10,000 acres) may further act as cooperators and enroll additional non-contiguous tracts of land deemed sub-cooperators. Sub-cooperators shall be defined by the large landowner lease agreements. Non-contiguous sub-cooperator lands enrolled by large landowners will have the legal description and a map included for those parcels enrolled as sub-cooperators. Sub-cooperators shall be subject to the same requirements, rules and regulations as cooperators. The $25 enrollment fee will be waived for sub-cooperators when the sub-cooperator land is included in the cooperator's enrollment acreage.

2. Tags

a. A fixed number of special tags will be provided by the department to each cooperator/sub-cooperator in DMAP to affix to deer taken as authorized by the program. These tags shall be used only on DMAP lands for which the tags were issued.

b. All antlerless deer (and antlered deer if special antlered tags are issued) taken shall be tagged, including those taken during archery and primitive firearms seasons, and on either-sex days of gun season.

c. Each hunter must have a tag in his possession while hunting on DMAP land in order to harvest an antlerless (or an antlered deer if special antlered tags are issued) deer. The tag shall be attached through the hock in such a manner that it cannot be removed before the deer is transported. The DMAP tag will remain with the deer so long as the deer is kept in the camp or field, is in route to the domicile of its possessor, or until it has been stored at the domicile of its possessor, or divided at a cold storage facility and has become identifiable as food rather than as wild game. The DMAP number shall be recorded on the possession tag of the deer or any part of the animal when divided and properly tagged.

d. Antlerless deer harvested on property enrolled in DMAP do not count in the daily or season bag limit for hunters.

e. Special antlered deer tags may be issued on property enrolled in DMAP to increase the antlered deer harvest if a Regional or Deer Program biologist deems it necessary for herd health or habitat management purposes. DMAP tagged antlered deer will not count in the daily or season bag limits.

f. All unused tags shall be returned by March 1 to the regional wildlife office which issued the tags.

3. Records

a. Cooperators/sub-cooperators are responsible for keeping accurate records on forms provided by the department for all deer harvested on lands enrolled in the program. Mandatory information includes tag number, sex of deer, date of kill, name of person taking the deer, hunting license number (transaction number, authorization number, lifetime number or date of birth for under 16 and over 59 years of age) and biological data (age, weight, antler measurements, lactation) as deemed essential by the Department of Wildlife and Fisheries Deer Section. Biological data collection must meet quality standards established by the Deer Section. Documentation of mandatory information shall be kept daily by the cooperator/sub-cooperator. Additional information may be requested depending on management goals of the cooperator/sub-cooperator.

b. Information on deer harvested shall be submitted by March 1 to the regional wildlife office handling the particular cooperator/sub-cooperator.

c. The contact person shall provide this documentation of harvested deer to the department upon request. Cooperators/sub-cooperators who do not have a field camp will be given 48 hours to provide this requested documentation.

B. Suspension and Cancellation of DMAP Cooperators/Sub-Cooperators

1. Failure of the cooperator/sub-cooperator to follow these rules and regulations may result in suspension and cancellation of the program on those lands involved. Failure to make a good faith attempt to follow harvest recommendations may also result in suspension and cancellation of the program.

a. Suspension of cooperator/sub-cooperator from DMAP. Suspension of the cooperator/sub-cooperator from DMAP, including forfeiture of unused tags, will occur immediately for any misuse of tags, failure to tag any antlerless deer, or failure to submit records to the department for examination in a timely fashion. Suspension of the cooperator/sub-cooperator, including forfeiture of unused tags, may also occur immediately if other DMAP rules or wildlife regulations are violated. Upon suspension of the cooperator/sub-cooperator from DMAP, the contact person may request a Department of Wildlife and Fisheries hearing within 10 working days to appeal said suspension. Cooperation by the DMAP cooperator/sub-cooperator with the investigation of the violation will be taken into account by the department when considering cancellation of the program following a suspension for any of the above listed reasons. The cooperator/sub-cooperator may be allowed to continue with the program on a probational status if, in the judgement of the department, the facts relevant to a suspension do not warrant cancellation.

b. Cancellation of cooperator/sub-cooperator from DMAP. Cancellation of a cooperator/sub-cooperator from DMAP may occur following a guilty plea or conviction for a DMAP rule or regulation violation by any individual or member hunting on the land enrolled in DMAP. The cooperator/sub-cooperator may not be allowed to participate in DMAP for one year following the cancellation for such guilty pleas or conviction. Upon cancellation of the cooperator/sub-cooperator from DMAP, the contact person may request an administrative hearing within 10 working days to appeal said cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 17:204 (February 1991), amended LR 25:1656 (September 1999), LR 26:2011 (September 2000), LR 30:2496 (November 2004), LR 34:1427 (July 2008), LR 35:

Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Interested persons may submit written comments relative to the proposed Rule until 4:30 p.m., Thursday, July 2, 2009 to Mr. Scott Durham, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Robert J. Samanie, III
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Deer Management Assistance Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of the proposed rule amendment will be carried out using existing staff and funding level. No implementation costs or savings to state or local governmental units are anticipated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

State revenue collections are anticipated to increase slightly as acres are added in the Deer Management Assistance Program (DMAP). The amount of increase in state revenue collections will depend on how many additional acres are enrolled in DMAP. The department has no way to determine how many additional acres will be enrolled in this voluntary program, but believes that it will be small.

No effect on revenue collections of local governmental units is anticipated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will allow large landowners (> 10,000 acres) to enroll non-contiguous acreage as a single entity in the Deer Management Assistance Program (DMAP). Cost to large landowners already enrolled in DMAP will include a $.05 per acre charge per year, plus any additional costs incurred to implement the specific requirements of the program. For example, landowners will have to collect harvest information for all deer harvested on their property, post signs according to certain specifications and maintain a current legal description and/or map identifying their enrolled property on file at the local Wildlife and Fisheries regional office. Large landowners not already enrolled in DMAP will also incur a one-time enrollment fee of $25.00.

Landowners who participate in this voluntary program will benefit by being able to meet their desired deer management objective. They will be able to offer hunters high quality deer for harvest and minimize the impact of property damages caused by high deer populations. Hunters who hunt deer on property enrolled in DMAP will benefit from the proposed rule by having additional areas to harvest high quality deer.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is anticipated to have no effect on competition and employment in the public and private sectors.

Wynnette Kees
Fiscal Officer
0905#057

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Special Residential Facility Fishing Permit (LAC 76:I.337)

The Wildlife and Fisheries Commission does hereby give notice of its intent to establish a special permit to persons who reside at publicly-operated residential psychiatric facilities.

Title 76
WILDLIFE AND FISHERIES
Part I. Wildlife and Fisheries Commission and Agencies Thereunder
Chapter 3. Special Powers and Duties
Subchapter I. Special Licenses and License Fee Waivers
§337. Special Permits: Publicly-Operated Residential Psychiatric Facilities

A. In lieu of a license which authorizes a person to take and possess freshwater fish for recreational purposes, the Department may issue a Special Residential Facility Fishing Permit for the benefit of persons who reside at publicly-operated residential psychiatric facilities.

1. Special Residential Facility Fishing Permits shall be issued annually and will be exempt from license fees.

2. Anyone fishing under a Special Residential Facility Fishing Permit must do so only on the grounds of the facility.

3. All Special Residential Facility Fishing Permits shall be issued from the Baton Rouge Headquarters location.

4. To qualify for a Special Residential Facility Fishing Permit, the qualifying facility must submit to the Department of Wildlife and Fisheries a completed application form for the Special Residential Facility Fishing Permit(s).

5. The permit shall be in the name of the facility, and shall entitle all residential patients of the facility to fish on the grounds of the facility for a period of one year from date of issuance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:302.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 35:

Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Interested persons may submit written comments relative to the proposed Rule until 4:30 p.m., Thursday, July 2, 2009 to Mr. Gary Tilyou, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Robert J. Samanie, III
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Special Residential Facility Fishing Permit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No additional increase or decrease in costs or savings to state or local governmental units associated with implementing the proposed rule is anticipated. Implementation of the proposed rule will be carried out using existing staff and funding level.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is anticipated to have no effect on revenue collections of state and local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule allows the Department to issue a Special Residential Facility Fishing Permit for the benefit of persons who reside at publicly-operated residential psychiatric facilities. The Special Residential Facility Fishing Permit entitles all residential patients of the facility to fish without a fishing license only on the grounds of the facility for a period of one year from date of issuance. The qualifying facility must submit to the Department of Wildlife and Fisheries a completed application form for the Special Residential Facility Fishing Permit(s) annually. The permit is issued to the qualifying facility at no charge.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to have no effect on competition or employment in the public or private sectors.

Wynnette Kees
Fiscal Officer
0905#056

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry
Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given July 20-24, 2009, 9:30 a.m. at Louisiana Technical College, Lomax Hall, Ruston, LA. The deadline for sending in application and fee is June 5, 2009. No applications will be accepted after June 5, 2009.

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 June 5, 2009. Questions may be directed to (225) 952-8100.

Mike Strain, DVM
Commissioner

0905#058

POTPOURRI

Department of Environmental Quality
Office of Environmental Assessment

Louisiana Environmental Analytical
Database Management System (LEADMS)

La. R.S. 30:2043 and LAC 33:I.Chapter 21 allow for the submittal of electronic documents to the department to meet requirements set forth in the department regulations. The department is internally testing the Louisiana Environmental Analytical Database Management System (LEADMS). This database system is designed to be the electronic repository for analytical data for the department. The department has compiled the following guidance documents: Electronic Data Deliverable (EDD) Submittal Requirements Manual; the Laboratory Electronic Data Deliverable (EDD) Submittal Requirements Manual; the EQuIS Data Processor User Guide; and the LDEQ's List of Valid Values. The purpose of these documents is to provide detailed instructions for electronically submitting environmental data required by the department once the system is ready for use.

The department is soliciting comments on these documents. Comments are due no later than 4:30 p.m., July 31, 2009, and should be submitted to Gary Fulton, Office of Environmental Assessment, Remediation Services Division, Box 4314, Baton Rouge, LA 70821, or to fax (225) 219-3239, or by e-mail to gary.fulton@la.gov.

Copies of the guidance documents 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. The draft guidance documents are available on the Internet at:

www.deq.louisiana.gov/portal/tabid/2839/Default.aspx.

Herman Robinson, CPM
Executive Counsel

0905#030

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Advanced Notice of Rulemaking and Solicitation
of Comments on Comprehensive Toxic Air Pollutant
Emission Control Program, Log #AQ297
(LAC 33:III.211, 5101, 5103, 5105, and 5107)

The Louisiana Department of Environmental Quality is requesting comments on the proposed revision to the regulations in LAC 33:III.211, 5101, 5103, 5105, and 5107 (AQ297). This is a preliminary step in the rulemaking process. Official rulemaking will be initiated after review and consideration of the comments received on this advanced notice. Some of the revisions include the following: changes made to the applicability provisions to clarify when major sources are subject to all or part of the provisions in Chapter 51; an amended definition for *Virgin Fossil Fuel* to exclude catalytic coke; removal of the electric utility steam generating exemption; new exemption for ammonia emissions from the controls of nitrogen oxide emissions; new exemption for sulfuric acid emissions from the regeneration of the catalyst from the catalytic cracking process; and consolidated reporting requirements. The department particularly wishes to receive comments on the anticipated costs due to the removal of the electric utility steam generating exemption.

All interested persons are encouraged to submit written comments on the draft proposal. Comments are due no later than 4:30 p.m., June 25, 2009, and should be submitted to Gilberto Cuadra, Office of Environmental Assessment, Plan Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by email to gilberto.cuadra@la.gov. Persons commenting should reference this document as AQ297. If you have any questions regarding this document please contact Gilberto Cuadra at (225) 219-3507. Copies of this draft proposed rule can be purchased by contacting DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ297. This draft rule is available on the internet at www.deq.louisiana.gov/portal/tabid/1669/Default.aspx.

The draft rule is also 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, Bldg. 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§211. Methodology

A. Formula to Apportion Fees

Air Toxics Permits Application Fee for major sources of toxic pollutants (based on type of facility and on rated production capacity/throughput)	Surcharge of 10% of the permit application fee to be charged when there is an increase in toxic air pollutant emissions above the Minimum Emission Rates (MER) listed in LAC 33:III.5112, Table 51.1
Air Toxics Annual Emissions Fee (based on air toxic pollutants submitted on the annual emissions inventory)	Variable
Annual Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Variable
New Application Fee (based on type of facility and on rated production capacity/throughput)	Variable
Major and Minor Modification Modified Permit Fee (based on type of facility and on rated production capacity/throughput)	Variable
PSD Application Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 50% of the application fee when a PSD permit application is being processed
"NESHAP" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the Annual Maintenance Fee for that particular process/plant to be added to the Annual Maintenance Fee
"NSPS" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the permit application fee to be charged for any permit application that includes the addition of new equipment subject to NSPS regulation

B. – B.15.b. …

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 Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), 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 26:2444 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2082 (October 2007), LR 33:2620 (December 2007), LR 35:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5101. Applicability

A. The provisions of this Subchapter and LAC 33:III.905 apply to the owner or operator of any *major source*, as of or after December 20, 1991, as defined in LAC 33:III.5103, unless exempted under LAC 33:III.5105.B.

B. The provisions of LAC 33:III.905, 5105.A.1, 3, and 4, and 5113 apply to the owner or operator of:

1. any major source, as of December 20, 1991, that has achieved minor source status through reduction of emissions and/or reduction of potential to emit; and

2. any minor source that became a major source after December 20, 1991, then achieved minor source status through reduction of emissions and/or reduction of potential to emit.

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 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 18:1362 (December 1992), LR 23:56 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2620 (December 2007), LR 35:

§5103. Definitions, Units, and Abbreviations

A. The terms in this Subchapter are used as defined in LAC 33:III.111 except for those terms defined herein as follows.

* * *

Virgin Fossil Fuel—any solid, refined solid, refined liquid, or refined or natural gaseous fossil fuel with a Btu content greater than 7,000 Btu/lb that is not blended with reprocessed or recycled fuels. Group 1 *virgin fossil fuels* consist of natural gas, liquid petroleum gas, distillate fuel oil, gasoline, and diesel fuel. Group 2 *virgin fossil fuels* consist of coal, residual fuel oil, and petroleum coke. Catalytic coke, which is coke deposited on the catalyst used in some petroleum refining processes, such as those in a fluid catalytic cracker, is not a *virgin fossil fuel*.

* * *

B. - B.4.std. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 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 18:1362 (December 1992), LR 23:57 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2621 (December 2007), LR 35:

§5105. Prohibited Activities and Special Provisions

A. - B.1.…

2. Each of the byproduct toxic air pollutant (TAP) emissions listed in Subparagraphs B.2.a, b, c, d, and e of this Section are subject to the reporting provisions in LAC 33:III.5107 but are exempt from all other provisions of this Subchapter:

a. emissions from the combustion of Group 1 virgin fossil fuels;

b. emissions from the combustion of Group 2 virgin fossil fuels vented from a stack that has downwash minimization stack height or a height approved by the department;

c. emissions from the combustion of gas streams with a Btu value of greater than 7,000 Btu/lb that are generated by onsite operations, collected by a *fuel gas system* as defined in 40 CFR Part 63, Subpart G, and used as fuel;

d. emissions from ammonia injected upstream of a combustion process used in a control device to control oxides of nitrogen; and

e. sulfuric acid emissions from the regeneration of the catalyst from the catalytic cracking process.

3. Any source, as defined in accordance with rules promulgated by the United States Environmental Protection Agency under provisions in Section 112(i)(5) of the federal Clean Air Act, that is in compliance with an enforceable commitment approved by the administrative authority* to achieve early reductions of 90 percent or more (95 percent for particulates), or that has demonstrated early reductions of 90 percent or more (95 percent for particulates), in accordance with such rules, shall be exempt from MACT requirements under LAC 33:III.5109.A. The term of exemption shall extend until such time as the compliance extension granted by the administrative authority or the U.S. Environmental Protection Agency has expired, or until nine years from the anticipated date of promulgation of applicable federal MACT standards according to the schedule published by the U.S. Environmental Protection Agency in accordance with Section 112(e)(3) of the federal Clean Air Act, whichever date is earlier. Under no circumstances shall this provision be used to grant an exemption to a source under conditions that do not result in a net air quality benefit for the state of Louisiana, as determined by the administrative authority. Under no circumstances shall the granting of such an exemption to a source relieve any source of other obligations under state or federal law.

4. In accordance with R.S. 30:2060, except under circumstances that may reasonably be expected to pose a threat to human health, whether or not such units are in a contiguous area or under common control, in determining the applicability of emission standards or technical control standards the administrative authority shall not aggregate:

a. emissions from any oil or gas exploration or production well and its associated equipment;

b. emissions from any pipeline compressor or pump station; or

c. emissions from other similar units.

5. The emissions from the remediation of a RCRA, CERCLA, or any nonregulated inactive or abandoned waste site cleanup shall be exempt from the ambient air standards of LAC 33:III.5112, Table 51.2, upon approval of the cleanup plan by the administrative authority.

6. Emissions from the combustion of wood residue fuel from pulp and paper mills are exempt from the provisions of LAC 33:III.5109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:2104 (December 1991), amended LR 18:1362 (December 1992), LR 21:370 (April 1995), LR 23:58 (January 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2621 (December 2007), LR 35:

§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions

A. Annual Emissions Inventory. The owner or operator of any major source that meets the applicability requirements in LAC 33:III.5101.A and emits any toxic air pollutant listed in LAC 33:III.5112, Table 51.1 or 51.3, shall submit a completed annual emissions inventory to the Office of Environmental Assessment in a format specified by the department. The owner or operator shall identify on the emissions inventory the quantity of emissions in the previous calendar year for any such toxic air pollutant emitted. Beginning with the inventory due in 2009, the annual emissions inventory shall meet the following requirements.

1. The owner or operator of any major source subject to the requirements in this Subsection shall submit a completed annual emissions inventory for all emissions, regardless of whether the emissions are submitted in a Title V report or a 40 CFR Part 63 periodic report, to the Office of Environmental Assessment on or before April 30 of each year, unless otherwise directed by the administrative authority, that shall identify the quantity of emissions of all toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3, for the previous calendar year, January 1 to December 31. The annual emissions inventory shall be submitted in accordance with the provisions set forth in LAC 33:III.919.

2. Annual emissions inventories and revisions to any emissions inventory shall include a certification statement that attests that the information contained in the emissions inventory is true, accurate, and complete, and that is signed by a *responsible official*, as defined in LAC 33:III.502. The certification statement shall include the full name of the responsible official, his or her title and signature, the date of the signature, and the phone number of the responsible official.

B. Unauthorized Atmospheric Discharge Reporting Requirements for Toxic Air Pollutants

1. TAP discharges that cause emergency conditions shall be reported in accordance with the provisions set forth in LAC 33:I.3915, *Notification Requirements for Unauthorized Discharges That Cause Emergency Conditions*.

2. Discharges that do not cause emergency conditions shall be reported in accordance with the provisions set forth in LAC 33.I.3917, *Notification Requirements for Unauthorized Discharges That Do Not Cause an Emergency Condition*, and as follows.

a. Emission Control Bypasses. Except as provided in Subparagraph B.2.b 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 LAC 33:III.5112, Table 51.1, or a reportable quantity (RQ) in LAC 33:I.3931, or the quantity of the unauthorized bypass

is greater than 1 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 SPOC of the bypass no later than 24 hours after the beginning of the bypass in the manner provided in LAC 33:I.3917. Where the emission control bypass was the result of an upset, the owner or operator shall comply with LAC 33:I.3917 and Subparagraph B.2.c of this Section.

b. Leaks. Leaks detected pursuant to specific leak detection and repair requirements of any Subchapter of this Chapter shall be recorded and/or reported as required in that Subchapter and shall not be subject to this Paragraph.

c. Unauthorized discharges that can be measured and can be reliably quantified using good engineering practices, and that are not included in any Title V report or any 40 CFR Part 63 periodic report, must be reported to the department along with the annual emissions inventory and where otherwise specified in the applicable subchapters. The report shall include the following information:

i. the identity of the source;

ii. the date and time of the discharge; and

iii. the approximate total loss during the discharge.

C. Availability of Information. The availability to the public of information provided to, or otherwise obtained by, the administrative authority under this Subchapter, shall be governed by R.S. 30:2030, and applicable Rules and Regulations promulgated thereunder.

D. – 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 30:1673 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:2093 (October 2007), LR 33:2622 (December 2007), LR 35:

Herman Robinson, CPM
Executive Counsel

0905#031

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Advanced Notice of Rulemaking and Solicitation of Comments on Criteria Pollutant Emissions Inventory, Log #AQ300
(LAC 33:III.111, 311, 501, 605, 918, 919, 1513, 2115, 2153)

The Louisiana Department of Environmental Quality is requesting comments on the draft regulations regarding criteria pollutant emissions inventory, LAC 33:III.111, 311, 501, 605, 918, 919, 1513, 2115, and 2153 (AQ300). This is a preliminary step in the rulemaking process. Official rulemaking will be initiated after review and consideration of the comments received on this advanced notice. The revisions are necessary to incorporate changes made to the reporting mechanism that regulated entities use in reporting their criteria pollutant emissions inventory as required by the Clean Air Act.

These revisions will:

- extend the reporting deadline to April 30 of each year;
- list applicable data elements;
- clarify contiguous facilities' applicability;
- clarify how and when the reporting requirements will no longer apply to a facility;
- expand and consolidate definitions;
- clarify additional ozone season requirements by pollutant;
- clarify which emission types shall be included in the inventory;
- clarify if and when a facility should report based upon whether the parish the facility is located in is designated in or out of attainment;
- clarify how a change in ownership is handled; and
- clarify which parishes are nonattainment or adjoining.

The revisions will also expand applicability to facilities with a standard oil and gas air permit (SOGA) in nonattainment areas and adjoining parishes, facilities required by rule or permit to report, and facilities with portable source permits that operate in a nonattainment area or adjoining parish.

Request for Cost Information:

Part of the contemplated revisions includes a listing of the required data elements. To comply with the fiscal and economic impact requirement for rulemaking, the Department is requesting assistance in determining costs to affected entities.

The Department's analysis has determined that there are 26 data elements required in the Emissions Reporting and Inventory Center (ERIC) that are not required by a federal rule or federal reporting system; however, these items were included in the Department's previous Emissions Inventory System (EIS). Therefore, the Department has determined that there will be no additional costs incurred by regulated entities for reporting these items in the annual emissions inventory.

The Department's analysis has also determined that there are 10 items required by ERIC that were not included in the previous system and are not required by any federal rule or federal reporting system. Of these 10 items, the Department believes that most of them will not cause any additional cost to regulated entities to include them in the annual emissions inventory. For example, providing the contact person's title will not require additional costs.

Therefore, there are four data elements that may or may not incur additional costs if regulated entities are required to include them in the annual emissions inventory. The Department is requesting comments specifically on the

additional costs, if any, incurred in reporting these four data elements in the annual emissions inventory. The elements are:

1. the facility's primary Standard Industrial Classification (SIC) code;

2. the ozone season average heat content for each process in an ozone nonattainment area;

3. the material or activity used for each emission factor provided, when applicable; and

4. the secondary control device type, when applicable.

The Department determined that there are approximately 54 additional facilities in ozone nonattainment and adjoining parishes that operate under a Standard Oil and Gas Air (SOGA) permit that will be required to submit an annual criteria pollutant emissions inventory and is requesting comments specifically on the additional costs of this reporting incurred, if any, by such a facility.

Written comments concerning the draft rule are due no later than 4:30 p.m., June 25, 2009, and should be submitted to Jackie Heber, Office of Environmental Assessment, Plan Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by email to jackie.heber@la.gov. Persons commenting should reference this document as AQ300. If you have any questions regarding this document please contact Jackie Heber at (225) 219-3506. Copies of the draft rule 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 AQ300. This draft rule is available on the Internet at: www.deq.louisiana.gov/portal/tabid/1669/default.aspx..

The draft rule 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; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below, unless specifically defined elsewhere.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:70 (January 2008), LR 35:

Chapter 3. Regulatory Permits

§311. Regulatory Permit for Emergency Engines

A. - J. …

K. Emissions Inventory. Each facility subject to LAC 33:III.919 shall include emissions from all emergency engines, including temporary units, authorized by this regulatory permit in its annual emissions inventory.

L. - M. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:459 (March 2009), amended LR 35:

Chapter 5. Permit Procedures

§501. Scope and Applicability

A. - C.10. …

11. Emissions shall be calculated in accordance with LAC 33:III.919.G.

12. Emissions estimation methods set forth in the Compilation of Air Pollution Emission Factors (AP-42) and other department-accepted estimation methods may be promulgated or revised. As a result of new or revised AP-42 emission factors for sources or source categories and/or department-accepted estimation methods, changes in calculated emissions may occur. Changes in reported emission levels as required by LAC 33:III.919.F due solely to revised AP-42 emission factors or department-accepted estimation methods do not constitute violations of the air permit; however, the department may evaluate changes in emissions on a case-by-case basis, including but not limited to, assessing compliance with other applicable Louisiana air quality regulations.

13. If the emission factors or estimation methods for any source or source category used in preparing the annual emissions inventory required by LAC 33:III.919 differ from the emission factors or estimation methods used in the current air permit such that resulting "calculated" emissions reflect a significant change, notification of the use of updated emission factors or estimation methods shall be included in the Title V Annual Certification, as specified in the affected permit. The notification shall include the old and new emission factor or estimation method reference source and the date, volume, and edition (if applicable); the raw data for the reporting year used for that source category calculation; and applicable emission point and permit numbers that are impacted by such change. The notification shall include any other explanation, as well as the facility's intended time frame to reconcile the emission limits in the applicable permit. The department reserves the right to reopen a permit pursuant to LAC 33:III.529. For purposes of this Paragraph, a significant change is any of the following:

a. a 5 percent increase or decrease in the total potential or actual emissions from the facility;

b. a 50 ton per year increase or decrease in the total potential or actual emissions from the facility; or

c. a 10 ton per year increase or decrease in the potential or actual emissions from any single emission point (stack, vent, or fugitive).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the

Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§605. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

* * *

Current Total Point-Source Emissions Inventory—the aggregate point-source emissions inventory for either NO_x or VOC from the nine modeled parishes compiled from the emissions inventory records and updated annually in accordance with LAC 33:III.919 plus any banked ERC and pending ERC applications originally included in the base case inventory that have not expired.

* * *

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Chapter 9. General Regulations on Control of Emissions and Emission Standards

§918. Nonattainment Areas and Adjoining Parishes List

A. For the purposes of the emissions inventory requirements set forth in LAC 33:III.919, Tables 1-6 in Subsection B of this Section list all of the parishes that are located in nonattainment areas as of March 1, 2009, as well as those parishes that adjoin nonattainment areas. Any parish that is designated as a nonattainment area after March 1, 2009, may not be listed in Tables 1-6 in Subsection B of this Section, but a facility located in that parish is nevertheless subject to the requirements of LAC 33:III.919.A.1.a. Any facility located in any parish that is listed as a nonattainment area in Tables 1-6 in Subsection B of this Section and is designated as an attainment area after March 1, 2009, shall continue to be subject to the requirements of LAC 33:III.919.A.1.a until otherwise directed by the department.

B. The following tables list all of the parishes that are located in nonattainment areas as of March 1, 2009, as well as those parishes that adjoin the nonattainment areas.

Table 1	
Carbon Monoxide (CO) Nonattainment Areas and Adjoining Parishes	
Parish Code	**Nonattainment Parish(es)**
	None
Parish Code	**Adjoining Parishes to Nonattainment Areas**
	None

Table 2	
Lead (Pb) Nonattainment Areas and Adjoining Parishes	
Parish Code	**Nonattainment Parish(es)**
	None
Parish Code	**Adjoining Parishes to Nonattainment Areas**
	None

Table 3	
Nitrogen Dioxide (NO_2) Nonattainment Areas and Adjoining Parishes	
Parish Code	**Nonattainment Parish(es)**
	None
Parish Code	**Adjoining Parishes to Nonattainment Areas**
	None

Table 4	
Ozone Nonattainment Areas and Adjoining Parishes	
Parish Code	**Nonattainment Parish(es)**
0180	Ascension
0840	East Baton Rouge
1280	Iberville
1740	Livingston
3120	West Baton Rouge
Parish Code	**Adjoining Parishes to Nonattainment Areas**
0200	Assumption
0880	East Feliciana
1260	Iberia
2260	Pointe Coupee
2540	Saint Helena
2560	Saint James
2580	Saint John the Baptist
2620	Saint Martin
2840	Tangipahoa
3160	West Feliciana

Table 5	
Particulate Matter (PM_{10} or $PM_{2.5}$) Nonattainment Areas and Adjoining Parishes	
Parish Code	**Nonattainment Parish(es)**
	None
Parish Code	**Adjoining Parishes to Nonattainment Areas**
	None

Table 6	
Sulfur Dioxide (SO_2) Nonattainment Areas and Adjoining Parishes	
Parish Code	**Nonattainment Parish(es)**
	None
Parish Code	**Adjoining Parishes to Nonattainment Areas**
	None

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§919. Emissions Inventory

A. Applicability

1. The provisions of this Section apply to the owner or operator of any facility located in Louisiana that meets any of the following criteria at any time during a reporting year.

a. The facility is in a nonattainment area or an adjoining parish, as listed in LAC 33:III.918.B.Tables 1-6, and the facility emits, has the *potential to emit* as defined in LAC 33:III.502.A, or is permitted to emit a pollutant that meets or exceeds any threshold value listed in Tables 1-6 in Paragraph A.2 of this Section.

b. The facility is in an attainment parish, and the facility emits, has the *potential to emit* as defined in LAC 33:III.502.A, or is permitted to emit a pollutant that meets or exceeds any threshold value listed in Table 7 in Paragraph A.2 of this Section.

c. The facility is defined as a major stationary source of hazardous air pollutants, in Section 112(a)(1) of the Federal Clean Air Act (FCAA), or a *major source* of toxic air pollutants, in LAC 33:III.5103.

d. The facility has a 40 CFR Part 70 (Title V) operating permit, regardless of emissions.

e. The facility is located in a nonattainment area or adjoining parish and has been issued a standard oil and gas air permit in accordance with LAC 33:III.501, regardless of emissions.

f. The facility is required by rule or permit to submit an emissions inventory.

g. The facility has a portable source permit in accordance with LAC 33:III.513, operates at any time during a reporting year in a nonattainment area or adjoining parish, and meets the applicability criteria of Subparagraph A.1.a of this Section.

2. The following tables list emissions threshold values that require submission of an emissions inventory.

Table 1
Carbon Monoxide (CO) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values

Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH_3)	10	10
CO	10	50
Lead (Pb)	5	5
NO_X	100	100
PM_{10} or $PM_{2.5}$	100	100
SO_2	100	100
VOC	100	100

Table 2
Lead (Pb) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values

Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH_3)	10	10
CO	100	100
Lead (Pb)	5	5
NO_X	100	100
PM_{10} or $PM_{2.5}$	100	100
SO_2	100	100
VOC	100	100

Table 3
Nitrogen Dioxide (NO_2) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values

Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH_3)	10	10
CO	100	100
Lead (Pb)	5	5
NO_X	10	50
PM_{10} or $PM_{2.5}$	100	100
SO_2	100	100
VOC	100	100

Table 4
Ozone Nonattainment Area and Adjoining Parishes: Emissions Threshold Values

Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH_3)	10	10
CO	100	100
Lead (Pb)	5	5
NO_X	25	100
PM_{10} or $PM_{2.5}$	100	100
SO_2	100	100
VOC	10	50

Table 5
Particulate Matter (PM_{10} or $PM_{2.5}$) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values

Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH_3)	10	10
CO	100	100
Lead (Pb)	5	5
NO_X	10	50
PM_{10} or $PM_{2.5}$	10	50
SO_2	10	50
VOC	10	50

Table 6
Sulfur Dioxide (SO_2) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values

Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH_3)	10	10
CO	100	100
Lead (Pb)	5	5
NO_X	100	100
PM_{10} or $PM_{2.5}$	100	100
SO_2	10	50
VOC	100	100

Table 7	
Attainment Areas: Emissions Threshold Values	
Pollutant	Threshold Value (tons/year)
Ammonia (NH_3)	10
CO	100
Lead (Pb)	5
NO_X	100
PM_{10} or $PM_{2.5}$	100
SO_2	100
VOC	100

B. Applicability of this Section for contiguous *Agency Interests* (*AIs*), as defined in Subsection E of this Section, shall be determined by a threshold value that is the greater of:

1. the sum of the actual emissions;
2. the sum of the potentials to emit; or
3. the sum of permitted emissions for all contiguous AIs. However, the emissions inventory shall be reported individually for each AI.

C. Any facility meeting the applicability criteria in Subparagraph A.1.a of this Section and that is located in any parish that is listed as a nonattainment area in LAC 33:III.918.B.Tables 1- 6, but is designated as an attainment area after March 1, 2009, shall continue to be subject to Subparagraph A.1.a of this Section until otherwise directed by the department.

D. Once a facility meets the applicability criteria of Subparagraph A.1.a, b, c, d, e, f, or g of this Section, the facility shall continue to submit an emissions inventory until otherwise directed by the department.

1. If a facility no longer meets its applicability criteria under Paragraph A.1 of this Section for one full calendar year, the owner or operator may request, in writing, approval from the department to discontinue submission of an emissions inventory. All such requests shall be submitted to the Office of Environmental Assessment.

a. An owner or operator who has submitted a request for approval to discontinue submission of an emissions inventory shall continue to submit an emissions inventory unless the owner or operator has received a response from the department.

b. A request for departmental approval to discontinue submission of an emissions inventory will be considered if one or more of the following conditions have been met.

i. The facility's permit has been rescinded for one full year and the most current emissions inventory shows emissions below the applicable reporting thresholds in Paragraph A.2 of this Section.

ii. The facility has been permitted to emit pollutants below reporting thresholds in Paragraph A.2 of this Section for one full year, and the most current emissions inventory shows emissions below those reporting thresholds.

iii. The facility's potential to emit has been below the applicable reporting thresholds in Paragraph A.2 of this Section for one full year, and the most current emissions inventory shows emissions below those reporting thresholds.

iv. For one full year, the facility has not been a major stationary source of hazardous air pollutants in accordance with Section 112(a)(1) of the Federal Clean Air Act (FCAA), or a major source of toxic air pollutants in accordance with LAC 33:III.Chapter 51, and:

(a). the facility does not have a 40 CFR Part 70 (Title V) operating permit;

(b). the facility is located in a nonattainment area or adjoining parish and does not have a standard oil and gas air permit;

(c). the facility is not required by rule or permit to submit an emissions inventory; and

(d). the facility operates in a nonattainment area or adjoining parish and does not have a portable source permit as required by LAC 33:III.513.

2. No facility classes or categories are exempted from emissions inventory reporting.

E. Definitions. For the purposes of this Section, the terms below will have the meaning herein given.

Actual Emissions—a calculation, measurement, or estimate of the actual emissions of a pollutant, in accordance with Subsection G of this Section, for the calendar year or other period of time.

Agency Interests (AIs)—those regulated entities that are the largest logical entities of interest to the department.

Attainment Area—an area of the state that is not listed as a nonattainment area by the U.S. Environmental Protection Agency.

Certified—the status of an emissions inventory once the department has received it, as well as the certification statement required by this Section.

Contiguous Facilities—facilities under common control separated by 0.25 miles or less.

Control Efficiency—the percentage by which a control system or technique reduces the emissions from a source.

Control System—a combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of pollutants to the ambient air.

Emissions Factor—the ratio relating emissions of a specific pollutant to an activity or material throughput level.

Excess Emissions—emissions quantities greater than those produced by routine operations.

Facility—all emissions sources under common control on contiguous property.

[NOTE: A facility can be one or more AIs, and each AI must comply with Subsection C of this Section.]

Flash Gas Emissions—emissions from depressurization of crude oil or condensate when it is transferred from a higher pressure to a lower pressure tank, reservoir, or other container.

Fugitive Emissions—emissions that do not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

General Condition XVII Emissions—authorized discharges that are very small emissions to the air resulting from routine operations that are predictable, expected, periodic, and quantifiable and that are submitted by the permitted facility and approved by the department. General Condition XVII emissions must be approved as authorized discharges in the General Condition XVII activities list of a permit, and these very small releases must:

a. generally be less than 5 TPY;
b. be less than the minimum emission rate (MER);
c. be scheduled daily, weekly, monthly, etc.; or
d. be necessary prior to plant start-up or after shutdown (for line or compressor pressuring/depressuring, for example).

National Ambient Air Quality Standard (NAAQS)—a standard established in accordance with Section 109 of the CAA, including standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter ($PM_{2.5}$ and PM_{10}), and sulfur dioxide (SO_2).

Nonattainment Area—an area (parish or group of parishes) that has been declared by the administrative authority not to be in compliance with a federal National Ambient Air Quality Standard and that is listed in the *Federal Register* as a nonattainment area.

Ozone Season—May 1 to September 30, inclusively.

Process—the activity that a source was operating when it generated emissions.

Release Point—the point where emissions from one or more processes are released into the atmosphere.

Reporting Year—the year for which an emissions inventory is being submitted.

Routine Operations—operations that are authorized and/or permitted and that do not include any start-up/shutdown emissions.

Source—the point at which the emissions are generated, typically a piece of, or a closely related set of, equipment.

F. Requirements

1. Data for emissions inventory reports shall be collected annually. The owner or operator of each facility that meets the applicability criteria of Paragraph A.1 of this Section shall submit an emissions inventory, separately for each AI, for all air pollutants for which a NAAQS has been issued and for all NAAQS precursor pollutants, in a format specified by the department.

a. The emissions inventory shall include actual emissions in tons per year of volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO_2), particulate matter of less than 10 microns (PM_{10}), particulate matter of less than 2.5 microns ($PM_{2.5}$), lead (Pb), and ammonia (NH_3).

i. In addition to the requirements of Subsection C of this Section, the owner or operator of any facility located in the parish of Ascension, East Baton Rouge, Iberville, Livingston, St. Charles, St. James, St. John the Baptist, or West Baton Rouge is required to include actual emissions in tons per year of ethylene and propylene in the emissions inventory.

ii. Supporting Information. In order to meet federal emissions inventory requirements and regulations, support modeling analyses, permit projection of future control strategies, allow the measurement of progress in reducing emissions, facilitate preparation of state implementation plans, and provide data for setting baselines from which to do future planning and for answering public requests for information, the emissions inventory shall include the required information listed in the following table. The emissions inventory shall also include all required data applicable to the facility. The information provided does not constitute permit limits. Submittal of a report of excess emissions above allowable limits under this regulation does not pre-empt the need for compliance with provisions of LAC 33:III.Chapter 5 that require a permit request to initiate or increase emissions; nor does it qualify as a notice of excess emissions.

Supporting Information for Emissions Inventory		
Data Element	**Description**	**Status**
I. Inventory Information — Information describing the inventory being submitted.		
Inventory Year	The calendar year for which emissions estimates are calculated	Required
Reporting Period Start Date	The first day of the inventory period	Required
Reporting Period End Date	The last day of the inventory period	Required
Ownership Start Date	The first day of ownership of the facility	Required
Ownership End Date	The last day of ownership of the facility, if applicable	Required
II. Facility Information — Information describing the facility (AI) for which the inventory is being submitted. A facility corresponds to one AI Number.		
Facility ID (AI Number)	Unique ID assigned by the department to each facility	Required
Facility Name	Short name of facility	Required
Owner Company Name	Name of company that owns the facility	Required
Operator Company Name	Name of company that operates the facility, if different than owner	Required
Description	Description of business conducted at facility	Required
Facility Status	Operating status of the facility during the emissions inventory year	Required
Address	Facility physical address	Required
City	Facility city	Required
Parish	Facility parish	Required
State	Facility state	Required
Zip Code	Facility zip code	Required
Longitude	Longitude of facility front gate	Optional
Latitude	Latitude of facility front gate	Optional
UTM Easting	UTM easting of facility front gate	Required
UTM Northing	UTM northing of facility front gate	Required
UTM Zone	UTM zone of facility front gate [15 or 16]	Required
Datum	Code that represents the reference datum used to determine the location coordinates	Required
Primary SIC Code	Standard Industrial Classification (SIC) for the entire facility	Required
Primary NAICS Code	North American Industrial Classification System (NAICS) for the entire facility	Required
ORIS Code	Four digit number assigned by the Energy Information Agency (EIA) at the U.S. Department of Energy to power plants owned by utilities	Optional
Comments	Miscellaneous information	Optional

Supporting Information for Emissions Inventory		
Data Element	**Description**	**Status**
III. Contact Information — Information describing the contact person(s) for each facility (AI).		
Contact Type	Emissions inventory (EI) facility contact person, EI consultant, responsible official, EI billing party, or other	Required — Both EI billing party and EI facility contact persons' names are required, if different.
Name	Full name of contact person	Required
Company	Name of company that the contact person works for	Required
Title	Contact person's title	Required
Email Address	Email address of contact person	Required
Phone Number	Phone number of contact person	Required
Mailing Address	Contact person's mailing address	Required
City	Contact person's city	Required
State	Contact person's state	Required
Zip Code	Contact person's zip code	Required
IV. Source Information — Information describing the point at which the emissions are generated (which is typically a piece of, or a closely related set of, equipment).		
Source ID	Unique ID assigned to the source by the facility and reported consistently over time	Required
NEDS Point ID	The NEDS point ID for the source from the legacy Emissions Inventory System	Optional
Subject Item ID #	Subject item ID assigned by the agency to the source, if available	Required
Source Description	Description of source	Required
Source Type	The type of equipment or unit that generates the emissions. Examples include heaters, boilers, flares, storage tanks, cooling towers, fugitive emissions, and spills.	Required
Permit Number	The permit number under which the source is permitted	Required
EIQ Number	Emission Inventory Questionnaire number from the permit application	Required
Serial Number	Serial number of equipment, if available	Optional
Construction Date	Date source was constructed, not put into operation	Optional
Start-up Date	Date source actually started operating	Optional
Shutdown Date	Date source was permanently taken out of service/no longer operating	Optional
Status	Operating status of the source during the emissions inventory year (active, idle, permitted but not built, shutdown)	Required
SIC	Standard Industrial Classification (SIC) for the source	Required
NAICS	North American Industry Classification Code (NAICS) for the source	Optional
Maximum Design Rate	Maximum design heat input (MMBTU/hr)	Required for combustion sources only
Maximum Nameplate Capacity	For electrical generators powered by combustion unit(s), the maximum electrical generating output in megawatts (MW) that the generator is capable of producing on a steady-state basis and during continuous operation	Optional
Engine Rating	Power rating in HP for engines	Optional
Firing Type	Describes the burner type for boilers: front, opposed, tangential, internal, or other	Optional
Comments	Miscellaneous information	Optional
V. Process Information — Information describing the process that each source was engaged in when it generated emissions.		
Process ID	Unique ID for the process assigned by the facility and reported consistently over time	Required
Source ID	Facility-assigned source ID to which this process record applies	Required
Process Description	A text description of the emission process	Required
Confidentiality	Flag indicating that the process information is confidential	Optional
SCC	Source Classification Code (SCC) — a ten-digit EPA-developed code used to associate air pollution estimates with unique, identifiable industrial processes	Required
Material Name	Name of input material for the process (fuel, raw material)	Required
Average Annual Throughput	Annual throughput of material for the process	Required
Annual Throughput Units	Units of measure for material throughput	Required
Average Ozone Season Throughput	Average daily throughput during the ozone season	Required for facilities in ozone nonattainment areas
Ozone Season Throughput Units	Units of measure for material throughput	Required for facilities in ozone nonattainment areas
Annual Average Ash Content	For solid fuels, the concentration of ash produced by the fuel, expressed as a percentage of total weight averaged over the emissions inventory reporting year, for the process	Required
Ozone Season Average Ash Content	For solid fuels, the concentration of ash produced by the fuel, expressed as a percentage of total weight averaged over the emissions inventory ozone season, for the process	Optional
Annual Average Sulfur Content	The concentration of sulfur in the fuel, expressed as a percentage of weight averaged over the emissions inventory reporting year, for the process	Required
Ozone Season Average Sulfur Content	The concentration of sulfur in the fuel, expressed as a percentage of weight averaged over the emissions inventory ozone season, for the process	Optional

Supporting Information for Emissions Inventory		
Data Element	**Description**	**Status**
Annual Average Heat Content	Total annual heat input (MMBTU/year), for combustion units	Required
Ozone Season Average Heat Content	Ozone season total heat input (MMBTU), for combustion units	Required for facilities in ozone nonattainment areas
Spring Throughput (%)	Seasonal operating percentage—the percentage of annual facility operations that occurs during the Spring season, March through May	Required
Summer Throughput (%)	Seasonal operating percentage—the percentage of annual facility operations that occurs during the Summer season, June through August	Required
Fall Throughput (%)	Seasonal operating percentage—the percentage of annual facility operations that occurs during the Fall season, September through November	Required
Winter Throughput (%)	Seasonal operating percentage—the percentage of annual facility operations that occurs during the Winter season, January, February and December of the same calendar year	Required
Hours per Day in Operation	The actual number of hours per day for which the facility is normally active	Required
Days per week in Operation	The actual number of days per week for which the facility is normally active	Required
Weeks per year in Operation	The actual number of weeks per year for which the facility is normally active	Required
VI. Emissions Factor — Information describing a ratio relating emissions of a specific pollutant to an activity or material throughput level. The emissions factor describes the calculation for a pollutant emitted by a specific process.		
Process ID	Facility-assigned process ID to which this emission factor applies	Required
Pollutant	Pollutant for which the emission factor applies	Required
Emission Factor	Emission factor numeric value for specified pollutant	Required
Material or Activity	Material name for emission factor	Required
Emission Factor Source	Source of information for emission factor (stack test, AP-42, etc.)	Required
Emissions Units (Numerator)	Unit of measure for emission factor numerator	Required
Material or Activity Rate (Denominator)	Unit of measure for emission factor denominator	Required
VII. Control System Information — Information describing the system where control measures are applied at or to a source or process to reduce the amount of a pollutant released into the environment. The information describes the control equipment chain (series of one or more control devices) that is used to control or abate emissions from a source.		
Control System ID	Unique ID assigned to the control system by the facility and reported consistently over time	Required
Subject Item ID #	Subject item ID assigned by the department to the control equipment, if available	Required
Control System Description	Description of the control equipment chain	Required
Primary Control Device Type	Type of primary control device. Examples include flare, scrubber, condenser, and vapor recovery unit.	Required
Secondary Control Device Type	Type of secondary control device (if applicable)	Required
VIII. Control Efficiency — Information describing the percentage by which a control system or technique reduces the emissions from a source.		
Control System ID	Unique ID assigned to the control system by the facility and reported consistently over time	Required
Pollutant	Pollutant for which the control efficiency applies	Required
Primary Device Efficiency (%)	Emission reduction efficiency of the primary control device	Optional
Secondary Device Efficiency (%)	Emission reduction efficiency of the secondary control device	Optional
Total Efficiency	Net emission reduction efficiency of all emissions collection devices	Required
IX. Release Point Information — Information describing the point where emissions from one or more processes are released into the atmosphere.		
Release Point ID	Unique ID assigned to the release point by the facility and reported consistently over time	Required
Subject Item ID #	Subject item ID assigned by the department to the release point, if available	Required
Release Point Description	Description of emissions release point	Required
Release Point Type	Release point type. Examples include vertical stack, horizontal stack, gooseneck stack, and area.	Required
Height	Physical height of release point above the surrounding terrain	Required
Diameter	Inside diameter of tower top (natural draft); of fan (mechanical draft); or of one fan (multicell tower)	Required
Width	Width of area for area release point types. This is the shorter dimension of the rectangular area over which the emissions occur.	Required for fugitive and area release point types
Length	Length of area for area release point types. This is the longer dimension of the rectangular area over which the emissions occur.	Required for fugitive and area release point types
Orientation	Orientation (bearing) of long axis of area release point types for fugitive or area sources, measured in degrees of clockwise rotation from true north	Required
Flow Rate	Stack gas flow rate (actual cubic feet per second)	Required
Velocity	Air exit velocity at tower top (natural draft), or velocity of the fan-propelled air under normal operating conditions (mechanical draft). If velocity is not directly known, divide the volumetric air flow rate by the cross sectional area of the release point.	Required
Temperature	Air temperature at tower tip (if unknown, assume 10 -15 degrees warmer than ambient temperature)	Required
Moisture Content	Moisture content of exit gas stream, designated as a percentage	Optional
Longitude	Longitude of release point	Optional
Latitude	Latitude of release point	Optional

Supporting Information for Emissions Inventory		
Data Element	**Description**	**Status**
UTM Easting	UTM easting of release point	Required
UTM Northing	UTM northing of release point	Required
UTM Zone	UTM zone of release point [15 or 16]	Required
Datum	Code that represents the reference datum used to determine the location coordinates	Required
Accuracy	Measure of accuracy of the release point coordinates (if using GPS reading, accuracy of GPS device)	Required
Collection Method	Method used to determine the release point coordinates (USGS quad, satellite photo, GPS, Address Geocoding, other)	Required
X. Portable Source Location — Information describing the specific location or locations at which a portable source released emissions over the inventory year.		
Release Point ID	Facility-assigned release point ID for which this is a supplemental location, if any	Required
Location ID	Unique ID assigned by facility to the location and reported consistently over time, if any	Required
Start Date	Date source started operating at this location	Required
End Date	Date source stopped operating at this location	Required
Parish	Parish containing this location	Required
Longitude	Longitude of release point at this location	Optional
Latitude	Latitude of release point at this location	Optional
UTM Easting	UTM easting of release point at this location	Required
UTM Northing	UTM northing of release point at this location	Required
UTM Zone	UTM zone of release point [15 or 16] at this location	Required
Datum	Code that represents the reference datum used to determine the location coordinates	Required
Accuracy	Measure of accuracy of the location's release point coordinates (if using GPS reading, accuracy of GPS device)	Required
Collection Method	Method used to determine the location's release point coordinates (USGS quad, satellite photo, GPS, Address Geocoding, other)	Required
XI. Emissions Record — Information describing the emissions for a specified combination of process (source and operating mode), control equipment, and release point.		
Source ID	Facility-assigned source ID for this emission record	Required
Process ID	Facility-assigned process ID for this emission record	Required
Control System ID	Facility-assigned control system ID for this emission record	Optional
Release Point ID	Facility-assigned release point ID for this emission record	Required
Location ID	Facility-assigned location ID if this is a portable source operating at a location other than the location on the release point record	Optional
Emission Record Type	Routine, start-up/shutdown, upset/malfunction/other, variance. Separate emission records must be submitted showing the annual total and ozone season daily emissions for each category.	Required
Pollutant	Pollutant emitted	Required
Total Emissions	Annual total emissions of specified pollutant (tons/year)	Required
Emissions Units	Ton	Required
Estimation Method	The method used to estimate emissions (AP-42, mass balance, etc.)	Required
Ozone Season Emissions	Ozone season average daily emissions of specified pollutant (pounds/day)	Required for facilities in ozone nonattainment areas
Ozone Season Emissions Units	Pounds/day	Required for facilities in ozone nonattainment areas
Ozone Season Estimation Method	A code indicating the method used to estimate emissions (AP-42, mass balance, etc.)	Required for facilities in ozone nonattainment areas
Number of Start-ups	Number of start-up events for which this record applies (only for emissions records of permitted start-ups/shutdowns)	Optional
Number of Shutdowns	Number of shutdown events for which this record applies (only for emissions records of permitted start-ups/shutdowns)	Optional

iii. Ozone Nonattainment Area Requirement. In addition to the requirements of Subsection C of this Section, the owner or operator of any facility located in an ozone nonattainment area that meets the applicability criteria of Subparagraph A.1.a of this Section shall submit an emissions inventory that includes:

(a). ozone season average daily emissions (in pounds/day) of CO, NO_x, VOC, ethylene, and propylene;

(b). average ozone season throughput;

(c). ozone season average heat content (in MMBtu/ozone season); and

(d). ozone season estimation method for emissions of CO, NO_x, VOC, ethylene, and propylene.

b. Actual emissions shall be reported for all sources of emissions at a facility, including but not limited to, emissions from routine operations, General Condition XVII emissions, fugitive emissions, flash gas emissions, emissions from insignificant sources (as defined in LAC 33:III.501.B.5, Insignificant Activities List, A—Based on Size or Emission Rate, and D—Exemptions Based on Emissions Levels), and excess emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime.

c. Certification Statement. A certification statement, required by Section 182(a)(3)(B) of the Federal Clean Air Act, shall be signed by a *responsible official*, as defined in LAC 33:III.502.A, for the facility or facilities and shall be submitted for each emissions inventory to attest that the information contained in the inventory is true and accurate to the best knowledge of the certifying official. The certification statement shall include the full name, title,

signature and date of signature, and telephone number of the certifying official.

d. The emissions inventory shall be submitted, as well as the certification statement required by Subparagraph F.1.c of this Section, to the Office of Environmental Assessment by April 30 of each year (for the period January 1 to December 31 of the previous year) unless otherwise directed by the department. Any subsequent revisions shall be accompanied by a certification statement.

i. Any facility located in a parish designated as a nonattainment area, or within a nonattainment area, after March 1, 2009, and that meets the applicability criteria in Subparagraph A.1.a of this Section, shall submit an emissions inventory, as well as the certification statement required by Subparagraph F.1.c of this Section, to the Office of Environmental Assessment by April 30 of the year following the first full calendar year of the nonattainment designation, unless otherwise directed by the department.

ii. Any facility located in a parish that adjoins a parish designated as a nonattainment area, or within a nonattainment area, after March 1, 2009, and that meets the applicability criteria in Subparagraph A.1.a of this Section, shall submit an emissions inventory, as well as the certification statement required by Subparagraph F.1.c of this Section, to the Office of Environmental Assessment by April 30 of the year following the first full calendar year of the nonattainment designation, unless otherwise directed by the department.

2. When there is a change of ownership of any facility to which this Section applies, submitted in accordance with LAC 33:III.517.G, at any time during a reporting year, each owner shall submit an emissions inventory, in accordance with this Section, with a start and/or end date that coincides with the date of transfer of ownership.

3. Special Inventories. Upon request by the administrative authority, any facility subject to any rule of the Environmental Quality regulations, LAC Title 33, shall file additional emissions data with the department. The request shall specify a reasonable time for response, which shall not be less than 60 days from receipt of the request.

4. The department will publish a Potpourri notice in the *Louisiana Register*, as early as possible, advising of any planned changes in required data elements or reporting format, so that entities subject to reporting requirements under this Section will be able to make necessary adjustments.

G. Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) or approved stack testing shall be used for reporting of emissions from an emissions point when such data exists. In the absence of CEMS or stack test data, emissions shall be calculated using methods found in the most recent edition, as of December 31 of the current reporting year, of the Compilation of Air Pollution Emission Factors (AP-42), calculations published in engineering journals, and/or EPA or department-approved estimation methodologies.

H. Enforcement. The department reserves the right to initiate formal enforcement actions, under R.S. 30:2025, for failure to submit emissions inventories as required in this Section.

I. Fees. The annual emissions inventory will be used to assess the criteria pollutant annual fee in accordance with LAC 33:III.223.

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), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:184 (February 1993), repromulgated LR 19:485 (April 1993), amended LR 19:1418 (November 1993), LR 20:1101 (October 1994), LR 22:339 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 32:241 (February 2006), LR 33:2084 (October 2007), LR 35:

Chapter 15. Emission Standards for Sulfur Dioxide

§1513. Recordkeeping and Reporting

A. – D. …

E. All compliance data shall be made available to a representative of the department or the U.S. EPA on request. When applicable, compliance data shall be reported to the department annually in accordance with LAC 33:III.919. In addition, quarterly reports of three-hour excess emissions and reports of emergency conditions 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 30:1671 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1013 (June 2007), LR 35:

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2115. Waste Gas Disposal

Any waste gas stream containing volatile organic compounds (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 25 TPY or more of VOC in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge; 50 TPY or more of VOC in the parishes of Calcasieu and Pointe Coupee; 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.919. Emergency conditions shall be reported in accordance with LAC 33:I.Chapter 39.

M. - M.Waste Gas Stream. …

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 30:745 (April 2004), LR 30:1672 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 35:

Subchapter M. Limiting Volatile Organic Compound (VOC) Emissions from Industrial Wastewater

§2153. Limiting VOC Emissions from Industrial Wastewater

A. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Chapter shall have the meanings normally used in the field of air pollution control. Additionally the following meanings apply, unless the context clearly indicates otherwise.

* * *

Plant—all facilities located within a contiguous area, under common control, and identified by the Plant ID number as assigned by the department, within the parish in which the plant is primarily located, for inclusion in the emissions inventory.

* * *

B. - I. …

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 21:936 (September 1995), amended LR 22:1212 (December 1996), LR 24:26 (January 1998), LR 25:850 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:1765 (August 2002), LR 30:747 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2441 (October 2005), LR 33:2087 (October 2007), LR 35:

Herman Robinson, CPM
Executive Counsel

0905#032

POTPOURRI

Department of Health and Hospitals
Office of Public Health
Maternal and Child Health Section

Maternal and Child (MCH) Block Grant Federal Funding

The Department of Health and Hospitals (DHH) intends to apply for Maternal and Child (MCH) Block Grant Federal Funding for FY 2009-2010 in accordance with Public Law 97-35 and the Omnibus Budget Reconciliation Act of 1981. The Office of Public Health, Maternal and Child Health Section, is responsible for program administration of the grant.

The Block Grant Application describes in detail the goals and planned activities of the State Maternal and Child Health Program for the next year. Program priorities are based on the results of a statewide needs assessment conducted in 2005, which is updated annually based on relevant data collection.

Interested persons may request copies of the application from:

State of Louisiana
DHH - Office of Public Health
Maternal and Child Health Section
628 N. Fourth Street
Baton Rouge, LA 70821

Or view a summary of the application at: http://www.dhh.louisiana.gov/offices/publications.asp?ID=267&Detail=1065

Additional information may be gathered by contacting Tracy Hubbard at (225) 342-7805.

M. Rony Francois, M.D., MSPH, Ph.D.
Assistant Secretary

0905#061

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
Charles G Hickman	Monroe	M	Manning Acree	001	168265
Charles G Hickman	Monroe	M	Manning Acree	003	169998
Omega Energy Corp.	Dequincy	L	Labokay Swd	001	203365
Omega Energy Corp.	Opelousas	L	L Hebert	001	155591
Omega Energy Corp.	Port Barre	L	Wx Ra Suc; Tomlinson	001	185639
Great Southern Oil &Gas Co Inc	Port Barre	L	H L Garland Swd	003	27426 (30)
Great Southern Oil &Gas Co Inc	Port Barre	L	J S Watkins	005	182166 (30)
Americas Oil & Gas, LLC	Grogan	S	Wilson	001	232285
Americas Oil & Gas	Caddo Pine Island	S	Mattison	001	234515
Americas Oil & Gas	Caddo Pine Island	S	Renfro	002	235643
Americas Oil & Gas	Caddo Pine Island	S	Renfro	003	235644

Operator	Field	District	Well Name	Well Number	Serial Number
Americas Oil & Gas	Caddo Pine Island	S	Renfro	001	235907
United Producing Company	Larose	L	I R Price et al	002	84490
Price Minerals, Inc	Larose	L	Hugh A Hawthorne et al	001	108297
Delta Petroleum, Inc.	Bayou Mallet, South	L	A Leonards Heirs Swd	001	138801
Delta Petroleum	Bayou Mallet, South	L	A Leonards Heirs B	005	150627
Delta Petroleum	Bayou Mallet, South	L	A Leonard Heirs B Swd	006	163154
Delta Petroleum	Bayou Mallet, South	L	A Leonards Heirs B	003	185560
Delta Petroleum	Bayou Mallet, South	L	A Leonards Heirs B	008	189317
Delta Petroleum	Bayou Mallet, South	L	A Leonards Heirs B	010	207817
Delta Petroleum	Bayou Mallet, South	L	A Leonards Heirs B	011	208303
Delta Petroleum	Bayou Mallet, South	L	A Leonards Heirs B	015	210760
Delta Petroleum	Bayou Mallet, South	L	Hmskrs A Ra Sua;Leonards Hrs B	016-Alt	211139
Delta Petroleum	Bayou Mallet, South	L	A Leonards Heirs R	001	220253
Delta Petroleum	Big Creek	M	Medlin	001	178055
Delta Petroleum	Big Creek	M	Medlin A	002	179458
Delta Petroleum	Carterville	S	Pet Ra Suh;Coyle Est	001	191034
Delta Petroleum	Carterville, North	S	Bolinger A	001	85581
Delta Petroleum	Carterville, North	S	Bolinger	001	95841
Delta Petroleum	Carterville, North	S	Bolinger	002	97603
Delta Petroleum	Carterville, North	S	S B & T Et Al	001	97904
Delta Petroleum	Carterville, North	S	Bolinger A	004	98918
Delta Petroleum	Carterville, North	S	Robertson	001	99122
Delta Petroleum	Carterville, North	S	Bolinger Swd	003	99578
Delta Petroleum	Carterville, North	S	Bolinger A	003	99846
Delta Petroleum	Carterville, North	S	Pet Ra Sul; Willamette O	002	187652
Delta Petroleum	Carterville, North	S	Willamette P	002	188598
Delta Petroleum	Lamar	M	Ma Tusc Ra Sua;Biggs	002	221396
Delta Petroleum	Lamar	M	Carter	001	222758
Delta Petroleum	Lamar	M	Carter Swd	002	222822
Delta Petroleum	Little Creek	M	Hanson	019	207564
Delta Petroleum	Little Creek	M	Wx H Ra Su38;Hanson	020	207565
Delta Petroleum	Sarepta	S	C C Gish Swd	001	172300
Delta Petroleum	Sarepta	S	C C Gish	002	175498
Delta Petroleum	Sarepta	S	Horace Morgan	001	178007
Delta Petroleum	Sarepta	S	C C Gish	004	179711
Delta Petroleum	Sarepta	S	Horace Morgan	002	180290
Delta Petroleum	Sarepta	S	Willie Slack	001	180315
Delta Petroleum	Sarepta	S	Horace Morgan	003	181924
Delta Petroleum	Sarepta	S	Willie Slack	002	183768
Delta Petroleum	Sarepta	S	Paul Slack	001	184783
Delta Petroleum	Sarepta	S	Carraway	002	192963
Delta Petroleum	Sarepta	S	Kenneth Benson	001	193008
Delta Petroleum	Sarepta	S	Mrs Bobby Slack	001	193219
Delta Petroleum	Sarepta	S	Mrs Bobby Slack	002	193220

James H. Welsh
Commissioner

0905#034

POTPOURRI

Department of Natural Resources
Office of Conservation
Environmental Division

Advanced Notice of Rulemaking and Solicitation of Comments on Exploration and Production ("E and P") Waste Manifest System Requirements for Commercial Facilities (LAC 43:XIX.545)

The Department of Natural Resources, Office of Conservation is requesting comments on the draft proposed regulations regarding E and P Waste Manifest System requirements for Commercial Facilities, LAC 43:XIX.545.

The provisions of this draft Rule are applicable to the manifest system for monitoring the movement and disposal of E and P Waste. The draft Rule would allow commercial facilities to accept E and P Waste when Part II of the "E and P Waste Shipping Control Ticket" is incomplete or improperly completed, so long as the remainder of the manifest is properly completed. Furthermore, the draft Rule change requires a commercial facility to forward to the Office of Conservation, within 24 hours of receipt, any manifests regarding accepted E and P Waste shipments which did not have a completed Part II. The office also requests comments on the estimated cost of this proposed Rule to the public and other interested parties who could be affected by this Rule, for the purpose of preparing a Fiscal and Economic Impact Statement as required by law.

Written comments concerning the draft Rule are due no later than 4:30 p.m., June 22, 2009, and should be submitted to Gary Snellgrove, Office of Conservation, Environmental Division, P.O. Box 94275 Capitol Station, Baton Rouge, LA 70804-9275 or by Fax to (225) 342-3094. Persons commenting should reference this document as SOC 09-01.

Title 43
NATURAL RESOURCES
Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B
Chapter 5. Off-Site Storage, Treatment and/or Disposal of Exploration and Production Waste Generated from Drilling and Production of Oil and Gas Wells

§545. Manifest System

A. In order to adequately monitor the movement and disposal of E and P Waste, every shipment of E and P Waste transported to a commercial facility or transfer station shall be accompanied by a manifest entitled "E and P Waste Shipping Control Ticket." It is expressly forbidden to transport or accept E and P Waste without a properly completed manifest form, with the following exception: commercial facilities and transfer stations shall be allowed to accept E and P Waste when the Public Service Commission Permit Code Box found in Part II of the E and P Waste Shipping Control Ticket is either empty or improperly completed, so long as the remainder of the manifest, including the remainder of Part II, is properly completed.

B. - K. …

L. A commercial facility or transfer station shall forward, by facsimile, a copy of any manifest accepted with an empty or improperly completed Public Service Permit Code Box to the Office of Conservation within 24 hours of its receipt. The commercial facility or transfer station shall mail the manifest to the Office of Conservation, immediately following its delivery via facsimile.

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 27:1911 (November 2001), amended LR 35:

James H. Welsh
Commissioner

0905#079

POTPOURRI

Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 4 claims in the amount of $18,252.99 were received for payment during the period April 1, 2009-April 30, 2009.

There were 4 claims paid and 0 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2917.453	8943.290	Plaquemines
2937.689	8944.971	Plaquemines
2941.655	8917.972	St. Bernard
2951.600	9320.487	Calcasieu

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle
Secretary

0905#062

POTPOURRI

Department of Social Services
Office of Community Services

Public Review of 2009 Annual Progress and Services Report (APSR) and 2010-2015 Child and Family Services Plan (CFSP)

The Department of Social Services (DSS), Office of Community Services (OCS) announces opportunities for public review of the OCS 2009 Annual Progress and Services Report (APSR) and the 2010 through 2015 Child and Family Services Plan (CFSP).

The APSR is the final report (year five) on the 2004-2009 CFSP with regard to the use of Title IV-B, Subpart 1 and Subpart 2, Title IV-E Chafee Foster Care Independence Program and Child Abuse Prevention and Treatment Act (CAPTA) funds. The APSR is a report on the achievement of goals and objectives along with amendments to the agency's plan for providing services. The CFSP describes the agency's short and long term plans for providing services in 2010 through 2015.

Louisiana, through the DSS/OCS, provides services that include child protection investigations, family services, foster care, adoption and the Chafee Foster Care 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 Chafee Foster Care Independence Program funds services to assist foster children ages 15 years and older who are likely to remain in foster care until age 18. Former foster care recipients who are age 18 to 21 years of age who have aged out of foster care are eligible for services including basic life skills training and education and employment initiatives. 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.

DSS/OCS is encouraging public participation in the planning of services and the development of these documents. The CFSP and APSR are available for public review on the Internet under www.dss.state.la.us by scrolling to the OCS, Plans and Reports, Annual Progress and Services Reports and Child and Family Services Plan links.

Internet access is available at the State Library located at 701 N. Fourth Street, Baton Rouge, LA and at parish libraries located throughout the state. Inquiries and comments on the plan may be submitted in writing to the OCS Assistant Secretary, P.O. Box 3318, Baton Rouge, LA 70821.

All interested persons will have the opportunity to provide recommendations on the plan, orally or in writing, at a public hearing scheduled for June 3, 2009 at 10 a.m. in Room 1-125 of the Iberville Building, 627 North Fourth Street in Baton Rouge, LA.

Kristy H. Nichols
Secretary

0905#075

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