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Executive Orders

EXECUTIVE ORDER JBE 20-3

Governor's Advisory Council on Rural Revitalization

WHEREAS, rural areas of the State of Louisiana, as is the case across the country, are in crisis and bear a disproportionate burden of poverty, lack of access to healthcare, and poor quality of life;

WHEREAS, many areas of rural Louisiana lack basic services such as education, healthcare, infrastructure, clean water, and dwindling resources;

WHEREAS, agricultural production is critical to rural economies, rural revitalization goes far beyond agriculture as it includes the development of non-farm opportunities and it makes cutting-edge technology and innovation the key of rural economic growth;

WHEREAS, the State of Louisiana will strive to remove any barriers that may prohibit individuals in rural Louisiana from living a full, healthy, and prosperous life; and

WHEREAS, it is in the best interests of the citizens of the State of Louisiana to engage in a centralized and coordinated effort to further revitalization of rural Louisiana to be more productive, sustainable, healthy, attractive places to live.

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

SECTION 1: The Governor's Advisory Council on Rural Revitalization (hereafter "Council") is established and created within the Office of the Governor.

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

A. Advising the Governor on issues of concern to the citizens of rural Louisiana;

B. Identifying the needs, issues, and solutions relative to rural revitalization, including economic development, education, healthcare, infrastructure, clean water, agriculture, aquaculture & forestry, workforce development, and broadband;

C. Identifying state, federal, and private resources available to facilitate rural revitalization efforts; and

D. Identifying best practices from other states and recommend legislation to accomplish the solutions proposed by the Council.

SECTION 3: On or before January 5, 2021, the Council shall develop and submit a comprehensive strategic plan to the Governor regarding the issues set forth in Section 2 of this Order and shall submit annual progress reports thereafter.

SECTION 4: The Council shall be composed of a maximum of thirty-seven (37) members who, unless otherwise specified, shall be appointed by and serve at the pleasure of the Governor and shall include, but not limited to, the following:

1. The Speaker of the House, or his designee;
2. The President of the Senate, or his designee;
3. A Louisiana congressman whose congressional district is primarily rural, or his designee;
4. The Lieutenant Governor, or his designee;
5. The Commissioner of Agriculture and Forestry, or his designee;
6. The President of the Louisiana Community and Technical College System, or his designee;
7. The State Executive Director of the Louisiana Farm Service Agency State Office of the United States Department of Agriculture, or his designee;
8. The Secretary of Louisiana Economic Development;
9. The Secretary of Louisiana Department of Wildlife and Fisheries;
10. The Secretary of the Louisiana Department of Transportation and Development;
11. The Secretary of Louisiana Workforce Commission;
12. The Chair of the Louisiana Legislative Rural Caucus, or his designee;
13. The Chair of the Louisiana Legislative Black Caucus, or his designee;
14. The Chancellor-Dean of Southern University Agricultural Research and Extension Center, or his designee;
15. Assistant Dean of Rural Health Initiatives Louisiana State University Health Science Center Shreveport, or his designee;
16. The Dean of the Edward Via College of Osteopathic Medicine, or the director's designee;
17. The Dean of the Louisiana State University Health Science Center School of Dentistry, or his designee;
18. The Executive Director of the Police Jury Association, or his designee;
19. The Executive Director of the Louisiana Municipal Association, or his designee;
20. The Executive Director of the Louisiana Sheriffs Association, or his designee;
21. The Chief Executive Officer of the Louisiana Electric Cooperatives, Inc., or his designee;
22. The chair of the Louisiana Rural Hospital Coalition, or his designee;
23. The president of the Louisiana Farm Bureau Federation, or his designee;
24. The chair of the Louisiana Black Farmers Association, or his designee;
25. The Executive Director of the Office of Community Development, Division of Administration;
26. The Executive Director of the Louisiana Housing Corporation;
27. The chair of the Broadband for Everyone in Louisiana Commission;
28. The chair of the Cybersecurity Taskforce;
29. The chair of the Rural Water Association, or his designee;

30. The Dean of the Louisiana State University College of Agriculture, or his designee;

31. One (1) representative of the telemedicine initiative;

32. One (1) member of the Louisiana Bankers Association; and

33. Five (5) members with qualifications deemed appropriate by the Governor, which shall include being a citizen of a rural Louisiana community with an interest in local housing, cybersecurity and infrastructure expansion, and reducing crime.

SECTION 5: The chair of the Council shall be appointed by the Governor from the membership of the Council. All other officers, if any, shall be elected by and from the membership of the Council.

SECTION 6: The Council shall meet at regularly scheduled intervals and at the call of the chair. Additionally, the Chair shall convene meetings of the Council at various geographic locations around the State.

SECTION 7: At its first meeting, the Council shall establish working groups of Council members based on subject matter jurisdiction.

SECTION 8: Council members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Council.

Council members who are an employee or an elected public official of the state of Louisiana or a political subdivision of the state of Louisiana may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency and/or office.

Council members who are also a member of the Louisiana Legislature may seek a per diem from the Louisiana State Senate or House of Representatives, as appropriate, for their attendance.

SECTION 9: Support staff, facilities, and resources for the Council shall be provided by the Office of the Governor.

SECTION 10: 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 Council in implementing the provisions of this Order.

SECTION 11: 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 the State of Louisiana in the City of Baton Rouge, on this 14th day of February, 2020.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Ardoin
Secretary of State
2003#063

EXECUTIVE ORDER JBE 20-4

Flags at Half-Staff
Dudley Anthony "Butch" Gautreaux, Jr.

WHEREAS, Dudley Anthony "Butch" Gautreaux, Jr., a former distinguished member of the Louisiana Legislature, died at the age of 72 on Saturday, February 22, 2020;

WHEREAS, he is survived by his wife of 51 years, Marilyn, their two sons, Michael and Lee, and seven grandchildren;

WHEREAS, he served his nation honorably in the United States Navy from 1968-1972;

WHEREAS, he served his state and his home of Morgan City in the Louisiana Legislature for sixteen years, first elected to the House of Representatives in 1995, then to the Senate in 1999, where he served for three terms; and

WHEREAS, Dudley Anthony "Butch" Gautreaux, Jr., lived his life with integrity and honor, and his public service as a lawmaker to the State of Louisiana will long be remembered.

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

SECTION 1: As an expression of respect for Dudley Anthony "Butch" Gautreaux, Jr., the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol until sunset on Thursday, February 27, 2020.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Thursday, February 27, 2020.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana in the City of Baton Rouge, on this 27th day of February, 2020.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Ardoin
Secretary of State
2003#064

EXECUTIVE ORDER JBE 20-5

Work and Career Development Requirements for
ABAWD Snap Participants
Rescinding Executive Order Number JBE 2016-12

WHEREAS, the Governor's Executive Order Number JBE 2016-12 directed the Department of Children and Family Services (DCFS), the Louisiana Community and Technical College System (LCTCS), and the Louisiana Workforce Commission (LWC) to partner and coordinate in creating requirements that, in order to continue participating

in the United States Department of Agriculture Food and Nutrition Service's Supplemental Nutrition Assistance Program (SNAP), able-bodied adults without dependents (ABAWDs), who were not currently employed, attending school, enrolled in a job training program or otherwise exempt from federal work requirements would be required to register and participate in-person with programs offered by the LWC Business and Career Solutions Centers;

WHEREAS, on December 5, 2019, the United States Department of Agriculture (USDA) published in the Federal Register Rule Number 0584-AE57 (7 CFR Part 273), in accordance with Presidential Executive Order 13828 (2 April 2018) and in keeping with Section 6(O) of the Food and Nutrition Act of 2008, which revises the conditions under which the USDA would waive the ABAWD time limit set forth in Section 6(O) of the Food and Nutrition Act of 2008, and this rule's effective date is April 1, 2020;

WHEREAS, without a statewide waiver of the ABAWD time limits, effective April 1, 2020, ABAWDs receiving SNAP assistance, who are not exempt from the SNAP work requirements, would only qualify for benefits for three months in a thirty-six month period unless the participant resides in a parish with a waiver or can document satisfactory work, education or volunteer activities as provided under the federal law; and

WHEREAS, the rules and provisions created pursuant to the Governor's Executive Order Number JBE 2016-12 would conflict and overlap with the aforementioned federal rule, creating unnecessary confusion in the enforcement of both state and federal regulations.

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

SECTION 1: Executive Order Number JBE 2016-12, shall cease to be effective on February 29, 2020.

SECTION 2: All departmental rules and regulations created pursuant to Executive Order Number JBE 2016-12 shall be without effect if they conflict with the rule in 7 CFR Part 273.

SECTION 3: This Order is effective upon signature.

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 28th day of February, 2020

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Ardoin
Secretary of State
2003#065

EXECUTIVE ORDER JBE 20-6

Broadband for Everyone in Louisiana Commission
Amending Executive Order Number JBE 19-20

WHEREAS, the Broadband for Everyone in Louisiana Commission (hereafter "Commission") was established and created within the executive department, Office of the Governor through Executive Order Number JBE 19-15 on August 29, 2019;

WHEREAS, the Commission has been tasked with serving as the lead facilitator to collaborate with all sectors to successfully execute the statewide broadband plan while embracing all communities to encourage broadband adoption and availability;

WHEREAS, Executive Order Number JBE 19-20, issued on December 3, 2019, amended Executive Order Number JBE 19-15; and

WHEREAS, it is necessary to amend Executive Order Number JBE 19-20.

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

SECTION 1: Section 1 of the Executive Order Number JBE 19-20, issued on December 3, 2019, is hereby amended as follows:

The Broadband for Everyone in Louisiana Commission is hereby created within the governor's office and shall consist of twenty-five members, including fourteen ex-officio members and eleven members appointed by the governor.

SECTION 2: Section 3 of the Executive Order Number JBE 19-20, issued on December 3, 2019, is hereby amended as follows:

There shall be twenty-five (25) members of the Commission. Eleven members shall be appointed by and serve at the pleasure of the governor. Of these eleven members, two shall be at-large business executive members selected at the Governor's discretion, one member shall be the Governor's Director of Rural Revitalization, and one member shall be selected from each of the following:

A. The Public Service Commission;

B. A list of three nominees submitted by the Louisiana Municipal Association;

C. A list of three nominees submitted by the Louisiana Police Jury Association;

D. A list of three private sector individuals submitted by electric utility companies doing business within the state;

E. A list of three private sector individuals submitted by the Internet and Television Association (LCTA);

F. A list of three private sector individuals submitted by the Louisiana Telecommunications Association (LTA); and

G. A list of three private sector individuals submitted by the Cellular Telecommunications and Internet Association (CTIA); and

H. A list of three nominees submitted by the Association of Louisiana Electric Cooperatives (ALEC).

The following 14 members shall serve as ex-officio members:

A. The president of the Louisiana State Senate, or his designee.

B. The speaker of the Louisiana House of Representatives, or his designee.

C. The chairman of the Louisiana Rural Caucus, or his designee.

D. The commissioner of the Louisiana Department of Agriculture and Forestry, or his designee.

E. The secretary of state, or his designee.

F. The commissioner of administration, or his designee.

G. The director of the Governor's Office of Homeland Security and Emergency Preparedness, or his designee.

H. The secretary of Louisiana Economic Development, or his designee.

I. The superintendent of the Department of Education, or his designee.

J. The commissioner of higher education, or her designee.

K. The secretary of the Louisiana Department of Health, or her designee.

L. The secretary of the Louisiana Workforce Commission, or her designee.

M. The secretary of the Louisiana Department of Transportation and Development, or his designee.

N. The governor's designee to the Delta Regional Authority.

SECTION 3: 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 the State of Louisiana in the City of Baton Rouge, on this 2nd day of March, 2020.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Ardoin
Secretary of State
2003#066

EXECUTIVE ORDER JBE 20-7

Governor's Advisory Council on Disability Affairs
Amending Executive Order Number 16-10

WHEREAS, the Governor's Advisory Council on Disability Affairs was originally established by executive order to monitor state compliance with the Americans with Disabilities Act and to advise the Governor of the needs of individuals with disabilities and/or on other related concerns;

WHEREAS, the Governor's Advisory Council on Disability Affairs was reestablished and recreated within the executive department, Office of the Governor, through Executive Order Number JBE 16-10, on April 7, 2016;

WHEREAS, the Council is required to provide an annual report to the Governor regarding issues of concern to Louisiana citizens with disabilities, identifying the needs, issues, and solutions relative to persons with disabilities; assisting the Office of Disability Affairs, when requested, in the resolution of state disabilities issues; and providing education, communication, and networking services concerning disability issues and needs for all Louisiana citizens; and

WHEREAS, it is necessary to amend Executive Order Number JBE 16-10.

NOW, THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, in accordance with the authority vested in me by the Constitution and statutes of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 4 of Executive Order Number JBE 16-10, issued on April 7, 2016, is hereby amended as follows:

The Council shall be composed of a maximum of twenty-nine (29) at-large members, which will include members with disabilities who, unless otherwise specified, shall be appointed by and serve at the pleasure of the Governor and two (2) non-voting members, ex officio members who will not be counted for purposes of a quorum, which shall include:

1. One (1) member of the Louisiana State Senate, designated by the President of the Louisiana Senate; and

2. One (1) member of the Louisiana House of Representatives designated by the Speaker of the Louisiana House of Representatives.

The head of each state agency that reports to the Governor shall assign the appropriate person(s) within the agency to participate in Council meetings, including Council committee meetings, as requested by the Office of Disability Affairs, Office of the Governor.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana in the City of Baton Rouge, on this 2nd day of March, 2020.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Ardoin
Secretary of State
2003#067

EXECUTIVE ORDER JBE 20-8

Statewide Independent Living Council
Amending Executive Order Number 16-14

WHEREAS, the State of Louisiana remains committed to promoting a philosophy of independent living in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities;

WHEREAS, the Federal Rehabilitation Act of 1973, as amended, specifically, 29 U.S.C.A. §796, was enacted to promote independent living by:

A. Providing financial assistance to States for providing, expanding, and improving the provision of independent living services;

B. Providing financial assistance to develop and support statewide networks of centers for independent living; and

C. Providing financial assistance to states for improving working relationships among independent living partners;

WHEREAS, the Statewide Independent Living Council was reestablished and recreated within the executive department, Office of the Governor, in accordance with 29 U.S.C.A. §796d on April 29, 2016, through Executive Order Number JBE 16-14; and

WHEREAS, it is necessary to amend Executive Order Number JBE 16-14.

NOW, THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, in accordance with the authority vested in me by the Constitution and statutes of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 3 of Executive Order Number JBE 16-14, issued on April 29, 2016, is hereby amended as follows:

The Council shall be composed of twenty-four (24) members who shall be designated by the Governor. The membership of the Council shall be as follows:

A. One (1) director of a center for independent living, chosen by the directors of centers for independent living within the state;

B. Sixteen (16) members selected among the following: individuals with disabilities; representatives from centers for independent living; parents and/or legal guardians of individuals with disabilities; advocates of and for individuals with disabilities; representatives from private businesses; representatives from organizations that provide services for individuals with disabilities; and any other individuals deemed appropriate.

C. Seven (7) ex officio, non-voting members, which shall include representatives from State agencies that provides services for individuals with disabilities. Ex officio members will not be counted for purposes of a quorum.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana in the City of Baton Rouge, on this 2nd day of March, 2020.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Ardoin
Secretary of State
2003#068

EXECUTIVE ORDER JBE 20-9

Flags at Half-Staff—Clifton Russell Richardson

WHEREAS, Clifton Russell "Clif" Richardson, a former distinguished member of the Louisiana Legislature, died at the age of 75 on Friday, March 6, 2020;

WHEREAS, he is survived by his wife of 53 years, Dianne Carpenter Richardson, their children Mark Russell Richardson and Robin Richardson Stewart, seven grandchildren, two great-grandchildren, his sister Mary Martello, as well as numerous nieces and nephews and other relatives;

WHEREAS, he served his nation honorably in the United States Navy during the Vietnam War;

WHEREAS, he served his state and his parish of East Baton Rouge Parish in the Louisiana Legislature for five years, from 2008 to 2012; and

WHEREAS, Clifton Russell Richardson's public service as a lawmaker to the State of Louisiana will long be remembered.

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

SECTION 1: As an expression of respect for Clifton Russell Richardson, the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol until sunset on Tuesday, March 10, 2020.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Tuesday, March 10, 2020.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana in the City of Baton Rouge, on this 9th day of March, 2020.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Ardoin
Secretary of State
2003#069

Emergency Rules

DECLARATION OF EMERGENCY

Office of the Governor
Boxing and Wrestling Commission

Blood Work Laboratory Results for Class "B" Contestants
(LAC 46:XI.108)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). By this Emergency Rule, the commission will amend Chapter 5, Subchapter B. Class "B" Wrestling to provide small event wrestling promoters relief from the responsibility of verifying bloodwork lab reports. This responsibility was formerly held by ring doctors and/or event coordinators under Chapter 1, General Rules. Due to the promulgation of R.S. 4.83(B) in 2018, Class B events are not required to have a doctor, event coordinator or commissioner in attendance at these events to review and verify bloodwork lab reports to ensure the validity and negative results of HIV, Hepatitis B and C. The commission will provide an avenue for collection of these class "B" lab reports and establish a database whereupon the commission will become responsible for the review and verification of these lab reports for a fee of $150 per event. The database will contain no personal medical information. This database will be restricted to the name of the contestant, date of blood testing, the negative or positive results and expiration date so as to track when contestants require new testing every six months in accordance with General Rule §108.A, Medical Requirements under this title.

This Emergency Rule is effective March 10, 2020, and will remain in effect for a period of 120 days, unless renewed by the Commissioner or until adoption of the final Rule, whichever occurs first.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XI. Boxing and Wrestling
Chapter 5. Professional Wrestling
Subchapter B. Class "B" Wrestling
§525. Wrestling Promoters Class "B" Licensing

A. - F. …

G. Blood work laboratory results for Class "B" contestants, as required by General Rules - §108(A) Medical Requirements, will be reviewed and verified by the commission and the results entered into an established database.

1. Class "B" contestant's lab reports will be submitted to the commission directly from the testing physician's laboratory or independent laboratory via hard copy, fax or other electronic submission to confirm negative results and verification of legitimacy.

2. A fee of $150 per Class "B" event will be collected by the commission from the promoter to cover the costs of this verification process.

AUTHORITY NOTE: Promulgated in accordance with 4:64, 4:65 and 4:83(B)

HISTORICAL NOTE: Adopted by the Office of the Governor, Boxing and Wrestling Commission, LR 45:541 (April 2019), amended LR 46:

Addie L. Fields
Administrative Assistant

2003#062

DECLARATION OF EMERGENCY

Department of Health
Bureau of Health Services Financing

Abortion Facilities—Licensing Standards
(LAC 48:I.4431)

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.4431 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2175.1 et seq. 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 and replaced the provisions governing the licensing standards for abortion facilities in order to incorporate the changes imposed by legislation, and further revise and clarify those provisions (Louisiana Register, Volume 41, Number 4).

Act 97 of the 2016 Regular Session of the Louisiana Legislature increased the time period required for certain pre-operative services. Act 563 of the 2016 Regular Session of the Louisiana Legislature provides that at least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of certain printed information, including resources, programs and services for pregnant women who have a diagnosis of fetal genetic abnormality, and given printed information about resources, programs and services for infants and children born with disabilities, as well as other related matters. Act 593 of the 2016 Regular Session of the Louisiana Legislature provides for the disposal, by interment or cremation, of fetal remains and designates procedures for giving patients options for arrangements. The department promulgated an Emergency Rule which amended the provisions governing outpatient abortion clinics in order to comply with the provisions of Acts 97, 563 and 593 (Louisiana Register, Volume 42, Number 12).

This Emergency Rule is being promulgated in order to continue the provisions of the December 3, 2016 Emergency Rule. This action is being taken to protect the health and welfare of Louisiana citizens by assuring the health and safety of women seeking health care services at licensed abortion facilities.

Effective March 27, 2020, the Department of Health, Bureau of Health Services Financing amends the provisions governing the licensing standards for abortion facilities.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 44. Abortion Facilities
Subchapter C. Pre-operative, Intra-operative, and Post-Operative Procedures
§4431. Screening and Pre-Operative Services

A. - E.1. ...

2. Requirements

a. Except as provided in Subparagraph b below, at least 72 hours prior to the pregnant woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the pregnant woman, the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the following requirements:

i. perform an obstetric ultrasound on the pregnant woman, offer to simultaneously display the screen which depicts the active ultrasound images so that the pregnant woman may view them and make audible the fetal heartbeat, if present, in a quality consistent with current medical practice. Nothing in this Section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the fetal heart monitor, or from not viewing the images displayed on the ultrasound screen;

ii. provide a simultaneous and objectively accurate oral explanation of what the ultrasound is depicting, in a manner understandable to a layperson, which shall include the presence and location of the unborn child within the uterus and the number of unborn children depicted, the dimensions of the unborn child, and the presence of cardiac activity if present and viewable, along with the opportunity for the pregnant woman to ask questions;

iii. offer the pregnant woman the option of requesting an ultrasound photograph or print of her unborn child of a quality consistent with current standard medical practice that accurately portrays, to the extent feasible, the body of the unborn child including limbs, if present and viewable;

iv. from a form that shall be produced and made available by the department, staff will orally read the statement on the form to the pregnant woman in the ultrasound examination room prior to beginning the ultrasound examination, and obtain from the pregnant woman a copy of a completed, signed, and dated form; and

v. retain copies of the election form and certification prescribed above. The certification shall be placed in the medical file of the woman and shall be kept by the outpatient abortion facility for a period of not less than seven years. If the woman is a minor, the certification shall be placed in the medical file of the minor and kept for at least ten years from the time the minor reaches the age of majority. The woman's medical files shall be kept confidential as provided by law.

b. If the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the requirements of §4431.E.2.a at least 24 hours prior to the woman having any part of an abortion performed or induced.

c. - e. Repealed.

E.3. - G.1. ...

a. Except as provided in Subparagraph b below, at least 72 hours before the abortion the physician who is to perform the abortion or the referring physician shall provide informed consent to the pregnant woman seeking an abortion, pursuant to all laws, rules and regulations regarding informed consent. The informed consent shall be communicated both orally and in-person, and in writing, and shall be provided in a private room. Documentation of all such informed consent provided shall be maintained in the patient's medical record.

b. If the woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion or the referring physician shall comply with all of the requirements of §4431.G.1 at least 24 hours prior to the abortion.

1.c. - 3. ...

a. Except as provided in Subparagraph b below, at least 72 hours before a scheduled abortion the physician who is to perform the abortion, the referring physician, or a qualified person shall inform the pregnant woman seeking an abortion, orally and in-person that:

i. - iv. ...

b. If the woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion the referring physician, or a qualified person shall comply with all of the requirements of §4431.G.3 at least 24 hours prior to the abortion.

4. ...

a. At least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of the printed materials, pursuant to any applicable state laws, rules, and regulations, by the physician who is to perform the abortion, the referring physician, or a qualified person. These printed materials shall include any printed materials necessary for a voluntary and informed consent, pursuant to R.S. 40:1061.17. However, if the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of the printed materials at least 24 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c).

i. - NOTE. Repealed.

b. At least 72 hours before the abortion, the pregnant woman or minor female considering an abortion shall be given a copy of the department's Point of Rescue pamphlet and any other materials described in R.S. 40:1061.16 by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c),

except in the case of medical emergency defined by applicable state laws. However, if the pregnant woman or minor female considering an abortion certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of these printed materials at least 72 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of medical emergency defined by applicable state laws.

i. The physician or qualified person shall provide to the woman, or minor female seeking an abortion, such printed materials individually and in a private room for the purpose of ensuring that she has an adequate opportunity to ask questions and discuss her individual circumstances.

ii. The physician or qualified person shall obtain the signature of the woman or minor female seeking an abortion on a form certifying that the printed materials were given to the woman or minor female.

iii. In the case of a minor female considering an abortion, if a parent accompanies the minor female to the appointment, the physician or qualified person shall provide to the parent copies of the same materials given to the female.

iv. The signed certification form shall be kept within the medical record of the woman or minor female for a period of at least seven years.

c. At least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of a printed informational document including resources, programs and services for pregnant women who have a diagnosis of fetal genetic abnormality and resources, programs and services for infants and children born with disabilities. However, if the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of these printed materials at least 24 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c).

d. If the pregnant woman seeking an abortion is unable to read the materials, the materials shall be read to her. If the pregnant woman seeking an abortion asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

NOTE: The provisions of this Section requiring a physician or qualified person to provide required printed materials to a woman considering an abortion shall become effective 30 days after the department publishes a notice of the availability of such materials.

5. ...

a. Prior to the abortion, the outpatient abortion facility shall ensure the pregnant woman seeking an abortion has certified, in writing on a form provided by the department that the information and materials required were provided at least 72 hours prior to the abortion, or at least 24 hours prior to the abortion in the case of a woman who has given prior certification in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy. This form shall be maintained in the woman's medical record.

b. ...

c. The pregnant woman seeking an abortion is not required to pay any amount for the abortion procedures until the 72-hour period has expired, or until expiration of the 24-hour period applicable in the case of a woman who has given prior certification in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy.

6. - 7.b. ...

8. Disposition of Fetal Remains

a. Each physician who performs or induces an abortion which does not result in a live birth shall ensure that the remains of the fetus are disposed of by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq., and the provisions of LAC 51:XXVI.102 of the Sanitary Code.

b. Prior to an abortion, the physician shall orally and in writing inform the pregnant woman seeking an abortion in the licensed abortion facility that the pregnant woman has the following options:

i. the option to make arrangements for the disposition and/or disposal of fetal remains by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.; or

ii. the option to have the outpatient abortion facility/physician make the arrangements for the disposition and/or disposal of fetal remains by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.

c. The pregnant woman shall sign a consent form attesting that she has been informed of these options, and shall indicate on the form whether she wants to make arrangements for the disposition of fetal remains or whether she wants the facility to make arrangements for the disposition and/or disposal of fetal remains.

d. the requirements of §4431.G.8 regarding dispositions of fetal remains, shall not apply to abortions induced by the administration of medications when the evacuation of any human remains occurs at a later time and not in the presence of the inducing physician or at the facility in which the physician administered the inducing medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:700 (April 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 46:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello 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.

Stephen R. Russo, JD
Interim Secretary

2003#062

DECLARATION OF EMERGENCY

Department of Health
Office of Public Health

Registration of Foods, Drugs,
Cosmetics and Prophylactic Devices
(LAC 49:Chapter 5 and LAC 51.VI.301)

The Louisiana Department of Health, Office of Public Health (LDH/OPH), pursuant to the emergency rulemaking authority granted by R.S. 40:4(A)(13), hereby adopts the following Emergency Rule for the protection of public health. This Emergency Rule is promulgated specifically in accordance with R.S. 49:953(B) of the Administrative Procedure Act (R.S. 49:950 et seq.).

The LDH/OPH finds it necessary to make changes to the Louisiana Administrative Code given the need for regulation of the cannabidiol-containing products made legal for sale to consumers under the provisions of Act No. 164 of the 2019 Louisiana Legislature. The following changes will authorize the LDH/OPH the ability to properly register these items, inspect firms that manufacture such items for human consumption, and conduct oversight of labelling, which could affect the health of Louisiana's citizens and visitors. Further, this Emergency Rule will provide the state health officer the ability to make critical decisions that protect human health. Accordingly, the following Emergency Rule, effective March 8, 2020, shall remain in effect for a maximum of 120 days, or until the final Rule is promulgated, whichever occurs first.

This Rule amends §501, §503, §509, and §515, repeals §511, and adds new §§517-529 of Chapter 5 of Title 49,Public Health—Food, Drugs, and Cosmetics. Changes to §501 amend typographical errors in the original language and add new definitions. Changes to §503 reflect changes to the name of the unit and the agency since the promulgation of the original language. Changes to §509 reflect the schedule actually being followed for registrations, which matches with the state's fiscal year (July 1 – June 30). Changes to §515 address the deletion of date language for February 1, 1986. §511 referenced a delinquent penalty schedule no longer in use or authorized by state law. §§517-529 are the new industrial-hemp-derived cannabidiol product registration rules.

Additionally, this Rule amends §301 of Chapter 3 of Part VI of Title 51, Public Health—Sanitary Code. Changes to §301 update an adoption-by-reference of federal regulations and add a new rule regarding the inspection of manufacturers of cannabidiol-containing products for human consumption.

Title 49
PUBLIC HEALTH—FOOD, DRUGS, AND COSMETICS
Part I. Regulations
Chapter 5. Registration of Foods, Drugs, Cosmetics and Prophylactic Devices

§501. Definitions
[Formerly 49:2.2100]

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter of Title 49, and all other Chapters of Title 49 which are adopted or may be adopted, are defined for the purposes thereof as follows.

Accrediting Body—for the purposes of this Chapter, the International Organization for Standardization (ISO).

* * *

Cannabidiol—a nonpsychotropic cannabinoid found in *Cannabis sativa* L. and other conspecifics that can have a variety of physiological effects on the human body.

CBD—cannabidiol.

Certificate of Analysis—a document produced by an approved laboratory attesting to the composition of a product.

Certificate of Registration (FD-8)—certificate issued by the department attesting that products produced or distributed by the holder's company have been registered with that entity.

Certificate of IHDCP Registration (FD-8a)—certificate issued by the department attesting that IHDCP produced or distributed by the holder's company have been registered as required

* * *

Department—for the purposes of this Chapter, the Food and Drug/Milk and Dairy Unit of the Office of Public Health, Louisiana Department of Health.

* * *

Dietary Supplement—means a product other than tobacco intended to supplement the diet that is not represented for use as a conventional food, that is not a drug, and that is labeled as a dietary supplement and bears or contains one or more of the following dietary ingredients or a concentrate, metabolite, constituent, extract, or combination thereof: a vitamin, a mineral, a botanical, an amino acid, or a dietary substance for use by man to supplement the diet by increasing the total dietary intake.

* * *

Examination and Investigation Fee—as required by R.S. 40:628, shall be referred to as registration fee

Food—includes all substances and preparations used for or entering into the composition of food, drink, confectionery, chewing gum or condiment for man.

Industrial Hemp—the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis.

Industrial-Hemp-Derived Cannabidiol Products (IHDCP)—any product intended for human use and containing cannabidiol that was made from industrial hemp.

Industrial Hemp-Derived Cannabidiol Products Database—repository of information on products and firms that are registered with the Food and Drug/Milk and Dairy Unit of LDH/OPH that fall into the category of industrial-hemp-derived cannabidiol products.

* * *

Medical Opinion—the opinion, within their respective fields, of the practitioners of any branch of the medical profession, the practice of which is licensed by law in this State.

* * *

QR Code—Quick Response Code, a type of machine-readable, two-dimensional barcode that stores information about a product.

Registration Fee—Examination and Investigation Fee

* * *

THC—delta-9 tetrahydrocannabinol.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J), R.S. 40:4(A)(13), R.S. 40:5(A)(8)(17) and R.S. 40:604.

HISTORICAL NOTE: Adopted by the Louisiana State Board of Health, September 1968, amended by the Louisiana Department of Health, Office of Public Health, LR 46:

§503. Registration Provisions
[Formerly 49:2.2110]

A. In accordance with the provisions of R.S. 40:627, each manufacturer, packer or proprietor of processed foods, drugs, proprietary or patent medicines, prophylactic devices and cosmetics in packaged form shall register each separate and distinct product annually with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J), R.S. 40:4(A)(13), R.S. 40:5(A)(8)(17) and R.S. 40:604..

HISTORICAL NOTE: Adopted by the Louisiana State Board of Health, September 1968, amended by the Louisiana Department of Health, Office of Public Health, LR 46:

§509. Product Registration Procedure
[Formerly 49:2.2140]

A. In accordance with the provisions of R.S. 40:627 and 628 and in order to establish revised procedures for the annual registration of products, manufacturers, packers, processors and distributors of all processed foods, proprietary or patent medicines, prophylactic devices and cosmetics in packaged form, whose names appear on the labels, must submit an application for registration of such products on or before July 1 of each year. Certificates of registration will be issued to each firm for a period of one year expiring on June 30 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J), R.S. 40:4(A)(13), R.S. 40:5(A)(8)(17) and R.S. 40:604.

HISTORICAL NOTE: Adopted by the Louisiana State Board of Health, September 1968, amended by the Department of Health and Human Resources, Office of Health Services and Environmental Quality, LR 10:9 (January 1984), LR 9:562 (August 1983), amended by the Department of Health and Human Resources, Office of Preventive and Public Health Services LR 11:1161 (December 1985), amended by the Louisiana Department of Health, Office of Public Health, LR 46:

§511. Late Registration Penalty Fees
[Formerly 49:2.2150]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 40:604, and R.S. 40:627(D).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Office of Preventive and Public Health Services, September 1968, amended by the Department of Health and Human Resources, Office of Health Services and Environmental Quality, LR 10:9 (January 1984), LR 9:562 (August 1983), amended by the Department of Health and Human Resources, Office of Preventive and Public Health Services LR 11:1161 (December 1985), repealed by the Louisiana Department of Health, Office of Public Health, LR 46:

§515. Late Registration Penalty Fee Assessment
[Formerly 49:2.2170]

A. The late registration penalty fees as established by Act 344 of the 1985 Louisiana Legislature will assess each manufacturer, packer, or proprietor a penalty of $10 for failure to register each separate and distinct product annually. The penalty assessed shall be in addition to the examination and investigation charge (registration fee). No manufacturer, packer, or proprietor shall be assessed a late registration penalty fee of more than $100 in any calendar year.

B. ...

* * *

C. Late registration penalty fees will be imposed on those firms which fail to submit an application for registration and registration fees on or before July 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 40:604, and R.S. 40:627(D).

HISTORICAL NOTE: Adopted by the Louisiana State Board of Health, September 1968, amended by the Department of Health and Human Resources, Office of Health Services and Environmental Quality, LR 10:9 (January 1984), LR 9:562 (August 1983), amended by the Department of Health and Human Resources, Office of Preventive and Public Health Services LR 11:1161 (December 1985), amended by the Louisiana Department of Health, Office of Public Health, LR 46:

§517. Registration of Industrial-Hemp-Derived Cannabidiol Products

A. In accordance with the provisions of R.S. 3:1482 as promulgated by the 2019 Legislature, manufacturers or distributors of industrial-hemp-derived cannabidiol products must register each separate and distinct product with the department-annually and initially within 90 days of the effective date of these regulations or prior to marketing the products in the state of Louisiana, whichever comes first.

B. The manufacturer of any product that is not registered within the specified timeframe will be deemed to be in violation of these rules with respect to such product(s).

C. In lieu of the annual examination and administration charge normally collected under R.S. 40:628(B), the applicant for an industrial-hemp-derived cannabidiol product registration must provide (both initially and on or before July 1 of each year) the department with an application form, a cashier's check or money order made payable to the department in the amount of $50 per each separate and distinct CBD product, specimen copies of labeling in paper or electronic format, and a list of all products the applicant wishes to register with the department. If the packet meets these regulatory requirements, the department will issue to the applicant an FD-8a Certificate of IHDCP (industrial hemp-derived cannabidiol products) Registration and the application information will be entered into the industrial hemp-derived cannabidiol products database.

D. No person is authorized to distribute any industrial-hemp-derived cannabidiol products in the state of Louisiana unless that person has first obtained a Certificate of IHDCP Registration from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:

§519. Industrial-Hemp-Derived Cannabidiol Products Labeling Requirements: Certificate of Analysis

A. In addition to the requirements enumerated in R.S. 40:608, industrial-hemp-derived cannabidiol products must bear labeling that includes a scannable bar code, QR code, or a web address linked to a document or website containing the certificate of analysis for that product.

B. The certificate of analysis must be from a laboratory that is accredited by LDH/OPH.

C. The certificate of analysis must include, at a minimum, the following information:

1. the batch number of the product;
2. the date the batch was received by the laboratory;
3. the date the testing was completed;
4. the laboratory methodology used for each analysis referenced in the report;
5. the amount of THC by dry weight in milligrams;
6. the amount of CBD by dry weight in milligrams;
7. the amount of any detected residual solvent in the product in parts per million;
8. the amount of any detected pesticide residues in the product in parts per million;
9. the amount of any microbiological contaminants in the product in appropriate units; and
10. the amount of any detected heavy metal traces in the product in parts per million.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:

§521. Industrial-Hemp-Derived Cannabidiol Products Labeling Requirements: Disclaimer

A. Each primary container of industrial-hemp-derived cannabidiol product must bear the following statement: "This product has not been evaluated by the Food and Drug Administration and is not intended to diagnose, treat, cure, or prevent any disease."

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:

§523. Industrial-Hemp-Derived Cannabidiol Products Labeling Requirements: Medical Claims Prohibited

A. No product labeling or advertising material for any industrial-hemp-derived cannabidiol product sold or otherwise distributed in the state of Louisiana may bear any implicit or explicit medical claims.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:

§525. Industrial-Hemp-Derived Cannabidiol Products Labeling Requirements: Dietary Supplements Prohibited

A. No industrial-hemp-derived cannabidiol product may be marketed as a dietary supplement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:

§527. Penalties for Violations of Requirements to Register Industrial-Hemp-Derived Cannabidiol Products

A. Any person who violates the provisions requiring registration of industrial-hemp-derived cannabidiol products is subject to the penalties provided for by R.S. 3:1484 and other sanctions as provided for by the State Food, Drug, and Cosmetic Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:

§529. Exemptions

A. Industrial-hemp-derived cannabidiol products that have been produced in accordance with R.S. 40: 1046 or that are Food and Drug Administration (FDA)-approved pharmaceuticals are not subject to the requirements of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:

Title 51
PUBLIC HEALTH—SANITARY CODE
Part VI. Manufacturing, Processing, Packing and Holding of Food, Drugs and Cosmetics
Chapter 3. Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding Human Food

§301. General Provisions; Code of Federal Regulations [formerly paragraph 6:039]

A. The criteria in 21 CFR 117, Subpart A, Subpart B and Subpart F (Code of Federal Regulations) shall apply in determining whether the facilities, methods, practices, and controls used in the manufacturing, processing, packing or holding of food are in conformance with or are operated or administered in conformity with good manufacturing practices to assure that food for human consumption is safe and has been prepared, packed and held under sanitary conditions.

B. In accordance with R.S. 3:1468, facilities producing industrial-hemp-derived cannabidiol products intended for human consumption will be inspected under the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:601 et seq., and R.S. 3:1468.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1234 (June 2002), amended by the Louisiana Department of Health, Office of Public Health, LR 46:

Interested persons may submit written comments to Michael Vidrine, Director, Sanitarian Services, Office of Public Health, Louisiana Department of Health, P.O. Box 4489, Baton Rouge, LA 70821-4489. He is responsible for responding to inquiries regarding this Emergency Rule.

Jimmy Guidry, MD
State Health Officer
and
Stephen R. Russo, JD
Interim Secretary

2003#031

DECLARATION OF EMERGENCY

Department of Health
Office of Public Health

Reportable Diseases and Conditions
Coronavirus Disease 2019 (COVID-19)

The Louisiana Department of Health, Office of Public Health (LDH/OPH), pursuant to the emergency rulemaking authority granted by R.S. 40:4(A)(13), hereby adopts the following Emergency Rule for the protection of public

health. This Emergency Rule is promulgated specifically in accordance with R.S. 49:953(B) of the Administrative Procedure Act (R.S. 49:950 et seq.). The LDH/OPH expressly finds that an imminent peril to the public health, safety, or welfare requires adoption of this rule on an emergency basis.

The LDH/OPH finds it necessary to add coronavirus disease 2019 (COVID-19) to the list of reportable diseases and conditions set forth in §105 of Part II of the Sanitary Code (LAC Title 51). On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the recent COVID-19 outbreak a "public health emergency of international concern" (PHEIC). On January 31, 2020, U.S. Health and Human Services Secretary Alex M. Azar II declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to COVID-19.

The following Emergency Rule, effective March 6, 2020, shall remain in effect for a maximum of 120 days, or until the final Rule is promulgated, whichever occurs first.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part II. The Control of Diseases

Chapter 1. Disease Reporting Requirements

§105. Reportable Diseases and Conditions

A. - C. …

D. The following diseases or conditions are hereby declared reportable with reporting requirements by class.

1. Class A Diseases or Conditions which Shall Require Reporting within 24 Hours

a. Class A diseases or conditions include diseases or conditions of major public health concern because of the severity of the disease or condition and the potential for epidemic spread. Class A diseases or conditions shall be reported to the Office of Public Health by telephone (or in another electronic format acceptable to the Office of Public Health) immediately upon recognition that a case, a suspected case, or a positive laboratory result is known. In addition, all cases of rare or exotic communicable diseases, unexplained death, unusual clusters of disease and all outbreaks shall be reported. Any class A disease or condition, rare or exotic communicable disease, unexplained death, or unusual cluster of disease and any disease outbreak, shall be reported to the Office of Public Health as soon as possible but no later than 24 hours from recognition that a case, a suspected case, a positive laboratory result, an unexplained death, an unusual cluster of disease, or a disease outbreak is known. The following diseases or conditions shall be classified as class A for reporting requirements:

a.i. - x. …

xi. coronavirus disease 2019 (COVID-19)/infections with SARS-CoV-2;

xii. diphtheria;

xiii. *Enterobacteriacea*, carbenum-resistant;

xiv. fish or shellfish poisoning (domoic acid poisoning, neurotoxic shellfish poisoning, ciguatera, paralytic shellfish poisoning, scombroid);

xv. food-borne illness;

xvi. glanders (Burkholderia mallei);

xvii. *Haemophilus influenzae* (invasive infection);

xviii. influenza-associated mortality;

xix. measles (rubeola, imported or indigenous);

xx. melioidosis (Burkholderia pseudomallei);

xxi. *Neisseria meningitidis* (invasive infection);

xxii. outbreaks of any infectious diseases;

xxiii. pertussis;

xxiv. plague (*Yersinia pestis*);

xxv. poliomyelitis (paralytic and non-paralytic);

xxvi. *Pseudomonas aeruginosa*, carbapenem-resistant;

xxvii. Q fever (Coxiella burnettii);

xxviii. rabies (animal and human);

xxiv. ricin poisoning;

xxx. rubella (congenital syndrome);

xxxi. rubella (German measles);

xxxii. severe acute respiratory syndrome-associated coronavirus (SARS-CoV);

xxxiii. *Staphylococcus aureus*, vancomycin intermediate or resistant (VISA.VRSA);

xxxiv. staphylococcal enterotoxin B (SEB) pulmonary poisoning;

xxxv. smallpox;

xxxvi. tularemia (Francisella tularensis);

xxxvii. viral hemorrhagic fever (Ebola, Lassa, Marburg, Crimean Congo, etc.); and

xxxviii. yellow fever.

D.2. - E.6. …

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5(2)(10)(11).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1212 (June 2002), amended LR 32:1050 (June 2006), LR 34:2173 (October 2008), repromulgated LR 34:2582 (December 2008), LR 36:1014 (May 2010), repromulgated LR 36:1253 (June 2010), amended LR 39:1053 (April 2013), LR 41:2653 (December 2015), amended by the Department of Health, Office of Public Health, amended LR 45:667 (May 2019), LR 46:

§107. Laboratory and Healthcare Facility Reporting Requirements (Formerly §113)

A - E. …

F. Electronic reporting by a laboratory/facility shall include any results, negative or positive, for all components of testing indicative of the following conditions:

1. coronavirus disease 2019 (COVID-19)/infections with SARS-CoV-2;

2. hepatitis C virus;

3. human immunodeficiency virus (HIV), including nucleotide sequences; and

4. syphilis.

G. …

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5(2)(10)(11).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1214 (June 2002), amended LR 32:1052 (June 2006), LR 39:1054 (April 2013), LR 41:2655 (December 2015), amended by Department of Health, Office of Public Health, LR 45:669 (May 2019), LR 46:

Interested persons may submit written comments to DeAnn Gruber, Bureau Director, Bureau of Infectious

Diseases, Office of Public Health, 1450 Poydras St., Ste. 2136, New Orleans, LA, 70112 or faxed to (504) 568-7044.

Jimmy Guidry, MD
State Health Officer
and
Stephen R. Russo, JD,
Interim Secretary

2003#030

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Grassy Lake Wildlife Management Area
Turkey Season Closure

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

Due to excessive high water levels associated with excessive rainfall along with backwater flooding, Grassy Lake Wildlife Management Area is inundated with floodwater. Turkey on the area are confined to a small percentage of high ground that is not inundated, creating conditions for excessive harvest levels beyond what may occur under normal conditions. Continued unrestricted hunting poses a potential risk of overharvest of the turkey resource, eliminates fair chase, and may pose a safety risk to the hunting public because of the concomitant concentration of hunters in areas where turkey are abnormally concentrated. Additionally, numerous abnormal flood events for the last several years have adversely impacted populations. Therefore, until the high water recedes, it is deemed necessary to close Turkey Season on this Wildlife Management Area.

In accordance with the provisions of R.S. 56:6.1, public access to and use of Grassy Lake Wildlife Management Area shall be as follows: Closed to turkey hunting. This Declaration of Emergency shall become effective March 5, 2020, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until rescinded by the secretary.

William Hogan
Chairman

2003#022

Rules

RULE

Department of Agriculture and Forestry
Office of Agro Consumer Services
Agricultural Commodities Commission

Number of Commission Meetings and
Recordkeeping for Excessive Deduction
(LAC 7:XXVII.103 and 141)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and pursuant to the authority set forth in R.S. 3:3405(A)(1), the Department of Agriculture and Forestry ("Department") has amended LAC 7:XXVII.103 and 141. The action will amend LAC 7:XXVII.103 to eliminate the regulatory requirement that the Agricultural Commodities Commission meet at least once per quarter as R.S. 3:3403 was recently amended to require that the commission meet three times per calendar year, but may meet more frequently upon the call of the chairman. The rule change simply eliminates language that is inconsistent with current law. The change to §141 clarifies language regarding one category of records that licensees must maintain, modifying it from excessive damage of 7.5 percent to language that tracks the federal guidelines set forth in the U.S. Department of Agriculture's Grain Inspection Handbook. This Rule is hereby adopted on the day of promulgation.

Title 7
AGRICULTURE AND ANIMALS
Part XXVII. Agricultural Commodity Dealer and Warehouse
Chapter 1. Agricultural Commodities Commission
Subchapter A. General Provisions
§103. Administration of the Affairs of the Commission

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

B. After the initial election of officers, the chairman and vice-chairman shall be elected at the commission's regular meeting during the first quarter of each year.

C. In the absence of the chairman at any meeting of the commission, the vice-chairman shall preside.

D. Meetings of the commission shall normally be held in its domicile but may be held at other locations upon the determination of the chairman or the will of the commission.

E. There shall be no voting by proxy.

F. The chairman shall designate a hearing officer, who may or may not be a member of the commission, to preside at all adjudicatory proceedings of the commission. The chairman may, if he so desires, serve as hearing officer at any adjudicatory proceeding.

G. The commission shall serve as the hearing body in all adjudicatory proceedings and shall make the final determination with regard to the disposition of all matters coming to adjudication.

H. The director shall provide clerical and other support services as may be required by the commission and shall maintain and distribute appropriate minute records of the commission.

I. No member of the commission shall participate in any discussion or vote concerning any matter before the commission in which such member has a personal or commercial interest.

J. No member of the commission or the staff shall disclose any financial information pertaining to any licensee or applicant for license.

K. The commission may, from time to time, delegate any of its responsibilities to subcommittees appointed by the chairman. Such subcommittees may perform such specific duties as may be assigned by the chairman but all actions of such subcommittees shall be subject to ratification by the full commission.

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

HISTORICAL NOTE: Promulgated by the Department of Agricultural, Agricultural Commodities Commission, LR 9:287 (May 1983), amended 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:494 (February 2011), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 42:1498 (September 2016), LR 46:312 (March 2020).

Subchapter I. Records and Reports
§141. Records Required to be Maintained

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

1. current financial statement;
2. bank statements;
3. bank reconciliations;
4. broker's statements;
5. current listing of unpriced commodities;
6. sequential record of all scale tickets;
7. sequential record of all warehouse receipts;
8. settlement or distribution sheets;
9. weight sheets;
10. perpetual inventory record;
11. insurance file, including copies of monthly reports to the carrier;
12. record of all assessments collected and remitted;
13. copies of all outstanding contracts;
14. copies of all outstanding notes and mortgages affecting the business;
15. a sample of each lot of grain, which contains grade factors equal to the level set forth for U.S. Sample Grade for each grain as published by the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, shall be:

a. maintained for five days from the original grade date; and

b. maintained in separate containers.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), LR 35:2311 (November 2009), amended by the Department of Agriculture and Forestry, Agricultural Commodities Commission, LR 37:508 (February 2011), LR 46:312 (March 2020).

Mike Strain, DVM
Commissioner

2003#035

RULE

Department of Civil Service
Board of Ethics

Campaign Finance Disclosure (LAC 52:I.1611)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has amended certain sections of the Rules for the Board of Ethics to define statutory language and provide clarity to current statutory provisions. This Rule is hereby adopted on the day of promulgation.

Title 52
ETHICS
Part I. Board of Ethics
Chapter 16. The Board as Supervisory Committee of the Louisiana Campaign Finance Disclosure Act

§1611. Violation Contained in a Report

A. The language of R.S. 18:1511.11 of "the violation is contained in a report…" shall mean that the alleged campaign finance violation shall be evident on the face of the report, without further investigation or information provided from another source, in order for the one-year prescriptive period to be applicable.

B. The originating source of a campaign finance contribution or loan must be disclosed and contained in the report of the candidate, political committee, and other person required to file reports pursuant to the CFDA for the purpose of commencing the one year prescriptive period from the filing of the relevant report.

C. Any disclosure other than the originating source of the contribution or loan to the candidate, political committee, or other person required to file reports pursuant to the CFDA shall be an insufficient disclosure for the purpose of commencing the one year prescriptive period from the filing of the relevant report.

D. The specific and aggregate dollar amounts of the contribution or loan, for the requisite filing period, must be accurately disclosed in the relevant report for the purposes of instituting the prescriptive period of "one year has elapsed from the filing of the relevant report."

E. The relevant report for commencing the one-year prescriptive period in the CFDA shall be the filed report required by the Campaign Finance Disclosure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 46:313 (March 2020).

Kathleen M. Allen
Ethics Administrator

2003#025

RULE

Department of Civil Service
Board of Ethics

Code of Governmental Ethics (LAC 52:I.1701 and 1719)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has repealed certain sections of the Rules for the Board of Ethics to bring the Rules into compliance with current statutory provisions. This Rule is hereby adopted on the day of promulgation.

Title 52
ETHICS
Part I. Board of Ethics
Chapter 17. Code of Governmental Ethics

§1701. Exception Contained in Section 1123(13); Sporting and Cultural Events

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 31:1228 (June 2005), repealed LR 46:313 (March 2020).

§1719. Elected Officials; Duties and Rights

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1116.1 and R.S. 42:1141(B)(3).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 24:1895 (October 1998), repealed LR 46:313 (March 2020).

Kathleen M. Allen
Ethics Administrator

2003#060

RULE

Department of Civil Service
Board of Ethics

Hearings and Pre-Hearing Procedures
(LAC 52:I.1002, 1101 and 1102)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Civil Service, Louisiana Board of Ethics, has amended certain sections of the rules for the Board of Ethics to clarify hearing procedures, pre-hearing procedures and motions for

summary judgements and to reference current statutory provisions. This Rule is hereby adopted on the day of promulgation.

Title 52
ETHICS
Part I. Board of Ethics

Chapter 10. Hearings

§1002. Initiating Declaratory Hearings

A. Declaratory hearings may be conducted, at the discretion of the board, upon submission of an application pursuant to R.S. 42:1141.6.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 23:1293 (October 1997), amended LR 39:1416 (June 2013), LR 46:314 (March 2020).

Chapter 11. Pre-Hearing Procedure

§1101. Discovery

A. Any public servant or other person who has been notified that he is to be the subject of a public hearing pursuant to the provisions of R.S. 42:1141.4 et seq. and the trial attorney and general counsel for the board shall be entitled to conduct discovery regarding any matter, not privileged, which is relevant to the pending public hearing. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 23:1296 (October 1997), amended LR 39:1418 (June 2013), LR 46:314 (March 2020).

§1102. Motions and Exceptions

A. - B. …

C. Motion for Summary Judgment; Procedure before the Ethics Adjudicatory Board

1. A motion for summary judgment may be filed by the Louisiana Board of Ethics or the respondent without leave of the Ethics Adjudicatory Board and without an agreement by any other party to the use of summary judgment procedure, at any time before, during or after a public hearing on the merits.

2. The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. This procedure is favored and shall be construed to accomplish these ends.

3. Motions for summary judgment before the Ethics Adjudicatory Board shall be solely governed by the Louisiana Code of Governmental Ethics, the Rules for the Louisiana Board of Ethics and the Administrative Procedure Act.

4. After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to a material fact and that the mover is entitled to judgment as a matter of law.

5. Documents that may be filed in support of or in opposition to the motion are:

a. pleadings;

b. memorandum;

c. affidavits;

d. depositions;

e. answers to interrogatories;

f. written stipulations;

g. admissions;

h. the Louisiana Board of Ethics' investigative file;

i. all records and documents in the possession of the Louisiana Board of Ethics, which may be received in the form of copies or excerpts or by incorporation by reference, which shall be made available to the respondent prior to the hearing on the motion for summary judgement for examination; and

j. any other documents that give probative value commonly accepted by reasonably prudent men in the conduct of their affairs.

6. The Ethics Adjudicatory Board may exclude incompetent, irrelevant, or immaterial, and unduly repetitious evidence.

7. All objections to evidentiary offers may be made and shall be noted in the record. When an objection to an evidentiary offer is sustained by the Ethics Adjudicatory Board, the subject evidence shall be considered proffered into the record with or without a motion.

8. The burden of proof rests with the mover.

a. Nevertheless, if the mover will not bear the burden of proof at the public hearing on the merits on the issue before the Ethics Adjudicatory Board on motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense.

b. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.

9. The Ethics Adjudicatory Board may render summary judgment dispositive of a particular issue or defense in favor of one or more parties even though the granting of the summary judgment does not dispose of the entire case as to that party or parties.

10. The Ethics Adjudicatory Board may render or affirm summary judgment only as to those issues set forth in the motion under consideration by the board at that time.

11. Notice of the hearing on the Motion for Summary Judgment shall be transmitted to the Louisiana Board of Ethics through the secured electronic file transfer system and to the Respondent through his counsel of record, or if no counsel of record, to the Respondent, by either email or regular mail to last known email or mailing address provided by the Respondent's counsel of record or Respondent to the Ethics Adjudicatory Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 23:1297 (October 1997), amended LR 39:1419 (June 2013), LR 46:314 (March 2020).

Kathleen M. Allen
Ethics Administrator

2003#061

RULE

Department of Civil Service
Division of Administrative Law

Division of Administrative Law Adjudications
(LAC 1:III.Chapters 1, 3, 5, 7, 9 and 11)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and pursuant to the authority set forth in R.S. 49:996(7), the Division of Administrative Law has amended its rules regarding adjudications conducted at the Division of Administrative Law. The proposed rules remove unnecessary language, consolidate rules that belong together, update the rules to reflect current law and practice, and make technical changes. Chapter 1 of the rules sets forth the general rules for DAL and includes a procedure for constituents to petition DAL for the adoption, amendment, or repeal of rules, as required by R.S. 49:953(C). Chapter 3 of the rules addresses the adjudicatory record, including the confidentiality of records and the procedure for requesting a transcript of a hearing. Chapter 5 of the rules addresses the commencement of adjudications at DAL, pleadings, and service of process. Chapter 7 of the rules addresses discovery and the adjudication process. Chapter 9 of the rules addresses mediation requests. Chapter 11 of the rules addresses the Ethics Adjudicatory Board. This Rule is hereby adopted on the day of promulgation.

Title 1
ADMINISTRATIVE LAW
Part III. Division of Administrative Law
Chapter 1. General Rules
§101. Purpose

A. Adjudications conducted by the Division of Administrative Law (DAL) are governed by Chapters 13 and 13-B of the Administrative Procedure Act (APA), R.S. 49:950 et seq., and R.S. 49:991, et seq. These rules are not intended to be a comprehensive guide for hearings conducted by DAL, but are intended only as a supplement to the APA and R.S. 49:991, et seq. Adjudications conducted pursuant to federal law or R.S. 49:999.1 may be governed by other rules.

B. Except as otherwise required by law, this Chapter governs procedures used in DAL adjudications.

C. If any provision of these rules, or the application thereof, is held to be invalid, the remaining provisions shall not be affected, so long as they can be given effect without the invalid provision.

D. Procedural issues that are not addressed by the APA are governed by the Louisiana Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002), amended LR 46:315 (March 2020).

§103. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

Adjudication—agency process for the formulation of a decision or order.

Adjudicatory Hearing—a contested case hearing conducted by an administrative law judge pursuant to the APA in which the legal rights, duties, or privileges of a person are required by law to be determined after notice and an opportunity for a hearing. This does not include telephone status conferences.

Adjudicatory Record—all pleadings, documents, correspondence and other items filed with the administrative hearings clerk in connection with an adjudication, including those items specified in R.S. 49:955(E).

Administrative Hearings Clerk—an individual designated by the Director of DAL to administer case files in all adjudications. The administrative hearings clerk is the custodian of records for DAL.

Administrative Law Judge—a judge of the executive branch, employed by DAL, who exercises quasi-judicial power by adjudicating matters pursuant to the APA.

APA—Administrative Procedure Act, R.S. 49:950, et seq.

DAL—the Division of Administrative Law.

Decision or Order—the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing.

Discovery—the process of determining relevant information for use at an administrative hearing. Discovery is conducted prior to an administrative hearing.

Electronic Transmission/Electronic Means—methods to deliver documents over the internet or other wired or wireless means including, but not limited to, e-mail, facsimile, and document sharing through the internet

Evidence—testimony and exhibits admitted by an administrative law judge into the adjudicatory record to prove or disprove the existence of alleged facts.

Exhibits—documents, records, photographs, or other forms of data compilation, regardless of media, or other tangible objects offered by a party as evidence in an adjudication.

In Camera Inspection—a private review by the administrative law judge of records received as evidence, or a proceeding during which such records are reviewed in which only authorized persons are permitted to inspect, copy, or otherwise learn of the contents of such records.

Party—each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

Person—an individual, representative, corporation, or other entity, including a public or non-profit corporation, or an agency or instrumentality of federal, state, or local government.

Pleading—a filed document that sets forth requests for procedural or substantive relief, makes claims, alleges facts, makes legal argument(s), or otherwise addresses matters to be considered in an adjudication.

Qualified Interpreter—a person whose qualifications are such that he/she is able to accurately communicate with and convey information to and from a person who is hearing impaired or who cannot speak or understand the spoken or written English language.

Referring Agency—the state agency for which an adjudication is being held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq. and R.S. 49:958

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002), amended LR 38:2946 (November 2012), amended LR 46:315 (March 2020).

§105. Computation of Time (formerly §109)

A. In computing a period of time allowed or prescribed by law, the date of the act, event, or default is not included in the computation. The last day of the period is to be included, unless it is a legal holiday as defined in R.S. 1:55, in which case the period runs until the end of the next day which is not a legal holiday.

B. A half-holiday is considered a legal holiday. A legal holiday is to be included in the computation of a period of time allowed or prescribed, except when:

1. it is expressly excluded;
2. it would otherwise be the last day of the period; or
3. the period is less than seven days.

C. When one party to a case is an agency in the executive branch of state government, a legal holiday shall be excluded in the computation of a period of time allowed or prescribed to seek rehearing, reconsideration, or judicial review or appeal of a decision in accordance with C.C.P. art. 5059, unless otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq. and La. C.C.P art. 5059.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002), amended LR 38:2946 (November 2012), repromulgated LR 46:316 (March 2020).

§107. Petitions for Adoption, Amendment, or Repeal of Rules; Form and Procedure

A. Petitions for the adoption, amendment, or repeal of rules or regulations promulgated by DAL shall be submitted to: Division of Administrative Law, Attn: Director's Office, Post Office Box 44033, Baton Rouge, LA 70804-4033.

B. Petitions shall be in writing and shall state the name and address of an individual who may be contacted relative to the contents of the petition.

C. A request that does not comply with the Paragraphs in this Subsection shall be returned to the requesting party with an attached statement explaining why the request is incomplete. Petitions shall include the following information:

1. a statement of whether the requested rule change involves the adoption, amendment, or repeal of a rule, or any combination thereof;
2. a citation to the existing rule for which an amendment or repeal is being requested or a statement that the rule will be a new rule, if proposed for adoption;
3. a draft of the proposed wording of the requested rule change or a statement detailing the content of the requested rule change;
4. a statement of why the request is being made;
5. a simple, concise and direct statement of the material facts that the requesting party believes support the requested rule change;
6. if not already included in any of the previously required statements, a statement of who would benefit from the requested rule change and how they would benefit;
7. if known, the citation to any statute(s) that specifically relates to the content of the requested rule change;
8. the name, address, telephone number and, if available, a fax number and e-mail address of the person making the request; and
9. the expected financial impact that the proposed adoption, amendment, or repeal would have.

D. Petitions for the adoption, amendment, or repeal of rules or regulations shall be considered within the time period provided in the APA. Petitions shall either be denied in writing, stating reasons for the denial, or rule-making proceedings shall be initiated in accordance with the APA.

E. DAL, in its review of the requested rule change, shall exercise its rulemaking powers under the APA and its decision shall be a discretionary exercise of its rulemaking powers and shall not be a "decision" or "order" as defined in the APA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 46:316 (March 2020).

§109. Legal Representation of Parties

A. Parties have the right to retain counsel but are not required to do so. A person may appear and be heard on his/her own behalf, unless otherwise provided by law.

B. Representation of a person in a matter before DAL is limited to licensed attorneys, unless state or federal law allows representation by non-attorneys or agency representatives.

1. *Pro Hac Vice*. Attorneys admitted to practice in states other than Louisiana, in good standing, may be admitted to appear *pro hac vice* in a specific hearing by submitting approval of *pro hac vice* admission by the Louisiana Attorney Disciplinary Board, pursuant to Louisiana Supreme Court Rule XVII Section 13.

2. When state or federal law allows representation by a non-attorney authorized representative, the party's authorized representative shall provide DAL with the representative's mailing address, telephone number, and e-mail address. If the party's representative is not licensed to practice law in Louisiana, and the authority of the representative is challenged, the representative must show authority to appear as a representative. This rule does not permit the unauthorized practice of law.

C. When more than one attorney makes an appearance on behalf of a party, the attorney whose signature first appears on the initial pleading for a party shall be deemed the lead attorney for that party unless another attorney is specifically designated as such in writing. Unless otherwise ordered by the administrative law judge, all communications sent by DAL or other parties regarding the matter shall be sent to the lead attorney.

D. Attorneys not identified in the initial pleading as the counsel of record shall enroll as counsel of record by filing a written motion to enroll as counsel, or by oral motion made in a telephone status conference or hearing when all parties or counsel are present or fail to participate after receiving notice. All oral motions should be followed-up in writing.

E. An attorney making a limited appearance in accordance with rule 1.2(c) of the Rules of Professional Conduct must include on any pleading filed, "Attorney for

limited purpose of [state matter or proceeding]" on the signature page of that pleading.

F. An attorney may withdraw from representing a party by written motion filed by the withdrawing attorney, the substituting attorney, or the party. The motion must be served on all parties. An attorney will remain enrolled until the administrative law judge grants the motion to withdraw. The motion shall:

1. contain the name, address, telephone number, fax number, and e-mail address of the substituting attorney, if any; and

2. contain the party's last known address, telephone number, fax number, e-mail address, and a statement that the party or substituting attorney has been notified of all pending hearings and deadlines.

G. A state agency or attorney with a law firm may substitute one attorney for another by providing written notice to all parties and the administrative law judge, without necessity for a motion and order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 46:316 (March 2020).

§111. Public Attendance at In-Person Hearings

A. Unless prohibited by law, DAL hearings are open to the public.

B. Parties, representatives, and other members of the public shall conduct themselves with dignity, show courtesy and respect for one another and for the administrative law judge, and follow any additional guidelines prescribed by the administrative law judge.

C. The administrative law judge retains the authority to exclude any person from a hearing for improper conduct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 46:317 (March 2020).

§113. Media Coverage and Use of Recording Devices

A. Proceedings that are open to the public may be photographed or recorded, whether for broadcast or personal use, in a manner that does not interfere with the orderly conduct of the proceeding, unduly distract participants, or impair the dignity of the proceedings. A person desiring to photograph or record a DAL proceeding must notify the administrative hearings clerk before doing so. Photographing or recording in a covert manner is prohibited.

B. Recording or photographing any of the following is prohibited:

1. proceedings that are closed to the public;

2. conferences between an attorney and his/or her client, conferences between an attorney and witness(es), or conferences between attorneys;

3. bench conferences or other deliberations of the administrative law judge(s); or

4. other privileged or confidential communications.

C. The administrative law judge may:

1. specify the placement of media personnel and/or equipment;

2. require a pool system to be used if media coverage is sought by more than one person. It will be the responsibility of the media to resolve any disputes as to who will operate equipment in the hearing room.

D. Equipment shall not produce distracting sound or light. Moving lights, flash attachments, or sudden lighting changes are prohibited.

E. All equipment shall be in place in advance of the commencement of the proceeding and shall not be moved while the hearing is in progress.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 46:317 (March 2020).

§115. Request for Accommodations; Interpreter

A. A party or witness who wants to request a reasonable accommodation pursuant to the Americans with Disabilities Act may request an accommodation by calling the administrative hearings clerk at 225-342-1800. To ensure the accommodation will be available, written requests should be made at least five business days prior to a hearing or conference.

B. Upon request of a party or witness who cannot hear, speak, or understand the spoken or written English language, a qualified interpreter shall be provided during a hearing or conference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 46:317 (March 2020).

§117. Ex Parte Communications

A. Once a case has been docketed by DAL, no party shall communicate with the assigned administrative law judge regarding the case without the knowledge and consent of all other parties to the matter, except at conferences and/or hearings. The administrative law judge shall promptly notify all parties of any ex parte communication and allow each party an opportunity to respond.

B. To obtain information about a case, calls should be placed to the administrative hearings clerk's office at (225) 342-1800. The administrative hearings clerk's office can answer questions regarding whether a case has been docketed, hearing dates, receipts of filings, and whether an order or decision has been issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 46:317 (March 2020).

Chapter 3. Records

§301. Custodian of Records

A. The administrative hearings clerk is the custodian of records for DAL. The files maintained by the administrative hearings clerk are the official record of adjudications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002), amended LR 38:2946 (November 2012), amended LR 46:317 (March 2020).

§303. Confidentiality (formerly §525)

A. Except as otherwise provided by law, all adjudicatory records are public records.

B. Any portion of the adjudicatory record deemed by statute or regulation to be confidential should be brought to the attention of the administrative law judge, by the party who submitted the document, in order to ensure confidentiality.

C. If a motion for protective order or other request for confidentiality is filed, the administrative law judge may designate, in writing, that all or a portion of the adjudicatory record be sealed. Any such request for confidentiality must state the factual and legal bases that support the claimed privilege or exemption from the records being public. The administrative law judge may require an in camera inspection of all or a portion of the requested documents.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002), repromulgated LR 46:317 (March 2020).

§305. Record of Hearings; Copies of Audio Recordings; Transcripts

A. All decisions, orders, and notices issued by the administrative law judge; all pleadings, audio recordings or transcripts (if available) of hearings; or documentation, information, or other materials of any kind submitted in a matter shall be public record and shall be available for inspection by the public, except as otherwise provided by law.

B. DAL makes an audio recording of all hearings, but only transcribes the recordings upon written request and pre-payment of costs. Requests for transcripts shall be made in writing and be submitted to the Administrative Hearings Clerk. The administrative hearings clerk will furnish an estimate of the transcription costs. The estimated costs shall be paid before the recording will be transcribed. If the estimated costs are less than the actual cost, the difference must be paid in full before the transcript will be delivered. All transcripts requested and transcribed will be filed into the adjudicatory record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002), amended LR 38:2946 (November 2012), amended LR 46:318 (March 2020).

Chapter 5. Commencement of Adjudications

§501. Commencement of Adjudications; Assignment of Docket Number and Administrative Law Judge (formerly §503)

A. A case is commenced for purposes of this Chapter upon the filing of a hearing or mediation request by a party. If DAL has jurisdiction over a matter, the matter will be docketed and assigned to an administrative law judge.

B. When DAL receives a hearing request subject to its jurisdiction, the matter shall be assigned a docket number to be used on all subsequent pleadings filed in the matter.

C. If an administrative law judge is unable to continue presiding or issue a decision after the conclusion of the hearing, the matter may be reassigned to another administrative law judge, who shall review the existing record and, if necessary, conduct further proceedings, before rendering a decision.

D. An administrative law judge may be recused or disqualified from a case based on bias, prejudice, personal interest, or any other good cause. Motions for recusal shall be filed with the administrative hearings clerk. Recusals shall be governed by R.S. 49:999.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002), amended LR 38:2947 (November 2012), repromulgated LR 46:318 (March 2020).

§503. Location of Hearings; Telephone Hearings (formerly §505)

A. Hearings will be held in the venue required by statute except when the hearing is conducted by telephone.

B. When the governing statute does not require a particular venue, or provides for more than one appropriate venue, the location of hearings will be determined by the administrative law judge, unless otherwise provided by law.

C. The administrative law judge may designate, or a party may request, that all or any portion of a proceeding be conducted by telephone, unless prohibited by law.

1. A party may file an objection to a request or to the administrative law judge's decision to conduct all or any portion of a proceeding by telephone.

2. A party requesting to present testimony of a witness by telephone must file a motion to do so no later than 10 days before the proceeding unless a different time period is allowed by the administrative law judge. The motion shall include the following:

a. the reason for the request;

b. the name of the party or witness who will appear by phone;

c. the telephone number at which the party or witness may be reached at the time of the proceeding; and

d. a certification that the party or witness will be the same person who will appear by telephone at the proceeding.

D. All substantive and procedural rights apply to telephone proceedings, subject only to the limitations of the physical arrangement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002), repromulgated LR 46:318 (March 2020).

§505. Hearing Conducted on the Record

A. A party may request a hearing be conducted entirely based on the record, briefs or other written submissions.

B. A party requesting a hearing on the record must file a motion no later than 10 days before the scheduled hearing unless a different time period is allowed by the administrative law judge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 46:318 (March 2020).

§507. Pleadings—Form and Content (formerly §311)

A. Unless otherwise required by law, pleadings should:

1. state the name, physical address, mailing address, e-mail address, and telephone number of the person filing the pleading, and his/her bar roll number, if applicable;

2. be legibly written, typewritten or printed with 1-inch top, bottom, and side margins on white paper, no larger than 8 1/2 by 11 inches;

3. be divided into separately numbered paragraphs and double-spaced;

4. state the relief sought;

5. state clearly, concisely, and particularly all relevant facts that support the relief sought;

6. when appropriate, identify any statute, regulation, rule, written statement of law or policy, decision, order, permit, or license and the particular aspect of each upon which the pleading relies;

7. be signed by the party filing the pleading or by his/her duly authorized representative or attorney. The signature of the person signing the document constitutes a certification that he/she has read the document and that, to the best of his/her knowledge, information and belief, every statement contained in the document is true; and

8. certify that service has been made in accordance with these rules.

B. The heading should be similar in format to, and shall include the information contained in, the following example:

STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
DEPARTMENT OF _____ *
_____ *
_____ *
IN THE MATTER OF _____*DOCKET NO. ____
_____ *
_____ *
_____
(TITLE OF PLEADING)

C. The certificate of service should be similar in format to, and shall include the information contained in, the following example:

"I certify that a copy of this document has been transmitted to all parties of record via (state method of transmission) on this __ day of ___ 20___."

D. Failure to comply with this Section shall not invalidate the pleadings, but the administrative law judge shall have discretion to rule whether pleadings are in substantial compliance with this Section, to require the amendment of or supplementation of any pleading, or to take such other action as may be appropriate.

E. A party may amend a pleading without leave of the administrative law judge up to 10 days prior to the hearing on the merits, unless otherwise provided by law or ordered by the administrative law judge. Thereafter, a party may amend a pleading only with leave of the administrative law judge for good cause shown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002), amended LR 38:2947 (November 2012), repromulgated LR 46:318 (March 2020).

§509. Filing of Pleadings and Documents (formerly §307)

A. Any pleading, document, or other item filed with the administrative hearings clerk into the adjudicatory record shall be filed by hand delivery, postal mail, common carrier, or transmitted by electronic means. Documents sent by fax should not exceed 20 pages.

B. Unless otherwise provided by law, all pleadings or other documents submitted by hand delivery, facsimile, or electronic means shall be deemed filed on the date received by the Administrative Hearings Clerk. Pleadings, other documents, or items received after 5 p.m. shall be deemed filed on the next business day, unless otherwise provided by law. Pleadings or other documents submitted by postal mail or common carrier shall be deemed timely if postmarked by the legal deadline. DAL's office hours are 8 a.m. to 5 p.m., Monday through Friday, except on State legal holidays.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002), amended LR 38:2946 (November 2012), repromulgated LR 46:319 (March 2020).

§511. Service of Pleadings (formerly §313)

A. Except as otherwise required by law, on the day that a pleading or document is filed with the Administrative Hearings Clerk, service of same shall be made upon all other parties, attorneys or designated representatives, by hand delivery, mail or electronic transmission, as shown by a certificate of service. When service is made by hand delivery, a return of service certifying who was served, the time and date of service, the address where the person was served, and the name of the person who served it is required to be filed into the record.

B. Unless otherwise provided herein, service by mail or by electronic transmission is effective on the date mailed or electronically transmitted. Personal or domiciliary service is effective when delivered or tendered, even if delivery is refused.

C. When a party is represented by an attorney, a designated representative, or has appointed an agent for service of process, notice may be given to the party through the attorney, other designated representative, or agent.

D. Service shall be made at the last known physical, postal, or e-mail address filed into the adjudicatory record. All parties shall promptly notify DAL of any change of address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002), amended LR 38:2947 (November 2012), repromulgated LR 46:319 (March 2020).

§513. Notices of Hearings; Orders, Decisions and Other Documents (formerly § 309)

A. All notices of hearings, orders, decisions and other documents sent by DAL shall be sent by postal mail or transmitted by electronic means, unless otherwise required by law.

1. If a party is not represented by counsel, notices are sent to the party's last known physical, postal, or e-mail address as filed in the adjudicatory record. Failure to maintain a current physical, postal, or e-mail address on file with DAL may result in dismissal of a case for failure to appear.

2. If a party is represented by counsel, notices shall be sent to the counsel of record only.

B. If a party provides DAL with an e-mail address, DAL may elect to send all notices, orders, decisions and other documents to the party exclusively at the e-mail address provided. Parties may, at any time, opt out of being served by e-mail, but the opt-out will not be effective until communicated to DAL and all other parties in writing. Parties receiving communications from DAL exclusively by e-mail shall:

1. notify DAL of any change of e-mail address in writing; and

2. ensure that e-mail filters and settings allow the delivery of e-mails from DAL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq., and R.S. 49:958.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002), amended LR 38:2946 (November 2012), repromulgated LR 46:319 (March 2020).

Chapter 7. Adjudications

§701. Consolidation; Severance of Actions (formerly §511)

A. When two or more adjudications involving common issues of law or fact are separately pending before DAL, the administrative law judge, may upon his/her own motion or that of any party, at any time prior to the adjudicatory hearing, order the consolidation of the matters or order a joint hearing on any of the common issues. If the matters are pending before two or more administrative law judges, the approval of each administrative law judge is required for consolidation. The matter with the higher docket number shall be transferred to the administrative law judge to whom the matter with the lower docket number was assigned.

B. An administrative law judge may sever consolidated matters to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the administrative law judge's own motion, or a party's motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002), repromulgated LR 46:320 (March 2020).

§703. Intervention

A. A non-party seeking to intervene shall file a motion stating the specific grounds for the intervention. An administrative law judge may, upon contradictory hearing, permit the intervention of a non-party as permitted by law. To avoid undue delay or prejudice to the original parties, an administrative law judge may limit the factual or legal issues that may be raised by an intervenor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 46:320 (March 2020).

§705. Continuances (formerly §515)

A. Except where otherwise prohibited by law, a continuance may be granted in any case for good cause shown. Motions for continuance, when made prior to the date and time of the noticed hearing, shall be in writing and transmitted in accordance with Rule 511. Continuances may be requested during a hearing or status conference upon an oral motion of a party made on the record.

B. A written motion for continuance should include:

1. the number of motions for continuance previously filed in the case by each party;

2. the specific reason for the continuance;

3. at least three proposed dates for the rescheduled proceeding;

4. a statement of whether the motion for continuance is opposed by any party or that the other party failed to respond whether they oppose the motion; and

5. a certificate of service.

C. Motions for continuance should be filed as soon as the need for the continuance becomes known. In any event, motions for continuance shall be filed no later than five days before a hearing. For good cause shown, the administrative law judge may consider a motion filed after that time or presented orally at the proceeding.

D. A motion for continuance is not granted until it has been ruled on by the administrative law judge, even if the motion is uncontested. A case is subject to default or dismissal for a party's failure to appear at a scheduled hearing in which a motion for continuance has not been ruled on by the administrative law judge.

E. A continuance request may be denied if a continuance would prevent the case from being concluded within any statutory deadline.

F. When an administrative law judge grants a continuance, each party is responsible for notifying its own witnesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002), amended LR 38:2947 (November 2012), repromulgated LR 46:320 (March 2020).

§707. Prehearing Conferences and Orders (formerly §527)

A. An administrative law judge, upon his/her own motion, or upon motion of any party, may direct the parties or their representatives to engage in a prehearing conference. The administrative law judge shall set the time and place for a prehearing conference, and shall give reasonable notice of the prehearing conference to all parties. Prehearing conferences may be conducted by telephone. Prehearing conferences will be conducted in accordance with R.S. 49:998, for the purpose of dealing with any of the following:

1. exploration of settlement possibilities;

2. possibility of obtaining stipulations or admissions of fact;

3. simplification of issues;

4. rulings on the identities and limitation on the number of witnesses;

5. objections to proffers of evidence;

6. order of presentation of evidence and cross-examination;

7. rulings regarding issuance of subpoenas and protective orders;

8. schedules for the submission of written briefs;

9. schedules for the conduct of a hearing; and

10. any other matter to promote the orderly and prompt conduct of the adjudication.

B. After a prehearing conference, the administrative law judge may require, prior to a hearing on the merits, that the parties submit a joint proposed prehearing order approved and signed by all parties, or their counsel of record, incorporating the matters determined at the prehearing conference. Except as otherwise provided, the proposed prehearing order shall set forth the following:

1. a brief but comprehensive statement of the factual and legal contentions of each party;

2. a list of all legal authority, including statutes, code articles, regulations, and cases relied upon by each party;

3. a detailed itemization of all pertinent uncontested facts established by pleadings, stipulations, and admissions;

4. a detailed itemization of all contested issues of fact;

5. a list of all contested issues of law;

6. a list and brief description of all exhibits to be offered into evidence by each party. Exhibits to be used solely for impeachment or rebuttal need not be included on the list;

7. a list naming the fact witnesses and the expert witnesses each party may call and a short statement as to the nature of their testimony. Witnesses to be called solely for impeachment or rebuttal need not be included on the list;

8. a list of all matters to be officially noticed;

9. a statement by each party as to the estimated length of time necessary to present its case;

10. any other stipulations;

11. a list of all pending motions;

12. a statement as to any other matters that may be relevant for a prompt disposition of the case; and

13. the following certification: "We certify that we have conferred for the purpose of preparing this joint proposed prehearing order and that we have no objections to the contents of this prehearing order other than those attached" and this order:

> "IT IS ORDERED that this matter is set for hearing at _____ o'clock, __.M. on the _____ day of _____ 20__ and to continue until completed."
>
> _____
> ADMINISTRATIVE LAW JUDGE

C. In the event that any party disagrees with the proposed prehearing order, or any part of it, he/she shall attach to the order a signed statement of opposition with reasons, but shall sign the joint proposed prehearing order which shall be deemed to be approved in all respects except those covered in the statement of opposition.

D. Any counsel or other representative attending the prehearing conference shall be knowledgeable of all aspects of the case and possess the necessary authority to commit his/her client to changes, stipulations, and hearing dates.

E. Once an order has been signed setting the case for an adjudicatory hearing on the merits, no amendments to the prehearing order shall be made, except at the discretion of the administrative law judge based upon consent of the parties or for good cause shown. If a party fails to cooperate in preparing or filing a prehearing order, the administrative law judge may proceed with the prehearing conference, sign the prehearing order as drafted, continue the prehearing conference, continue the hearing, or order such other action as necessary to facilitate the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002), amended LR 38:2948 (November 2012), repromulgated LR 46:320 (March 2020).

§709. Motions (formerly §517)

A. All requests to the administrative law judge shall be made by written motion, unless made during a hearing or conference, and shall state the grounds for the request and describe the action or order sought. A copy of all written motions shall be served on all parties as provided in §511 of these rules.

B. Unless otherwise provided, all motions shall be filed at least 10 days prior to the hearing, unless the need for the motion could not reasonably have been foreseen. Such motions should be filed as soon as the need for the motion becomes reasonably foreseeable.

C. Unless otherwise ordered by the administrative law judge, a response to a motion must be filed within five days after service of the written motion.

D. In cases where timelines must be accelerated to comply with legal deadlines, the administrative law judge may require motions and responses be filed in a shorter timeframe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002), repromulgated LR 46:321 (March 2020).

§711. Subpoenas (formerly §519)

A. DAL may order the issuance of a subpoena, requiring the attendance and testimony of a witness and/or the production of objects or documents, upon written request of a party in compliance with this rule. All requests for subpoenas shall be received by DAL at least 15 business days prior to the date of the hearing, unless otherwise ordered by the administrative law judge or provided by law. In those instances, the administrative law judge will determine how far in advance subpoena requests must be received by DAL.

1. The subpoena request shall include the following:

a. the heading contained in §507.B of these rules;

b. the name of the party and the representative or attorney requesting the subpoena;

c. the complete name, service address (with directions if necessary), and telephone number of the person being subpoenaed;

d. a sufficient description of any document(s) or item(s) to be produced;

e. a brief statement demonstrating the potential relevance of the testimony or evidence sought;

f. the date, time, place and proceeding for which the subpoena is requested; and

g. a check or money order, made payable to each witness subpoenaed, to cover witness fees, and all other costs, fees, and expenses required by or as referenced by R.S. 49:956(5).

2. The subpoena shall be prepared and served by the party requesting the subpoena. The party requesting the subpoena must file a return of service into the administrative record certifying who was served, the time and date of service, the address where the person was served, and the name of the person who served it.

B. Failure of a witness to appear or respond to a subpoena may be grounds for a continuance unless Subsection A has been complied with. However, the administrative law judge may grant a continuance when the interest of justice requires it.

1. Only the administrative law judge may dismiss a witness who appears at a hearing pursuant to a subpoena issued by DAL.

2. If a hearing is continued, witness fees and all other costs, fees, and expenses required by or as referenced by

R.S. 49:956(5) must be submitted in order for a subpoena to be reissued.

C. Any person served with a subpoena who has an objection to it may file an objection or motion to quash. The objection shall be filed promptly, at or before the time specified in the subpoena for compliance, and shall set forth the reasons for the objection. The administrative law judge may cancel or modify the subpoena if it is improper or unduly burdensome, taking into account the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and whether there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq., and amendments to R.S. 32:668.A effective August 1, 2012.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002), amended LR 38:2948 (November 2012), repromulgated LR 46:321 (March 2020).

§713. Discovery (formerly §521)

A. Any party to a proceeding may conduct discovery in any manner provided by Title III, Chapter 3 of the Code of Civil Procedure.

B. A person from whom discovery is sought may file a motion for protective order to prevent that person from having to produce the discovery sought. A motion for protective order shall be filed prior to the date the discovery response is due. A person must respond to all discovery requests to the extent a protective order is not sought or is not granted.

C. A party alleging failure to comply with discovery shall file a motion to compel as soon as practicable. A motion to compel shall include the relevant portion of the discovery response(s) at issue, and shall be filed no less than 10 days before the date of the hearing on the merits, unless good cause is shown. An administrative law judge may deny or limit the relief sought in a motion to compel if he/she determines that the discovery requests at issue are improper or unduly burdensome.

D. When attempting to obtain documents or things from a party to the proceeding, the party seeking the documents should attempt to do so through other methods of discovery prior to requesting a subpoena duces tecum.

1. In cases conducted under R.S. 32:661 et seq., the Louisiana Tests for Suspected Drunken Drivers law, a party seeking video or audio recordings of the underlying events should request that the subpoena duces tecum be directed to the arresting agency.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002), amended LR 38:2948 (November 2012), repromulgated LR 46:322 (March 2020).

§715. Consent Order, Settlement, or Stipulation

A. The parties must promptly notify DAL of a settlement, stipulation, or consent order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by Department of Civil Service, Division of Administrative Law, LR 46:322 (March 2020).

§717. Reserved

§719. Reserved

§721. Evidence (formerly §523)

A. Maps, drawings, and other exhibits should not exceed 8 1/2 by 14 inches unless they are folded or reduced to the required size.

B. During an in-person hearing, copies of all labeled and numbered exhibits shall be furnished to the administrative law judge and all parties, unless the administrative law judge rules otherwise.

C. For telephone hearings, a party submitting exhibits should submit them to the administrative law judge and all parties no later than three business days before the hearing, unless the administrative law judge rules otherwise. Failure to timely submit and exchange exhibits may result in exhibits not being admitted into evidence.

D. The weight given to any evidence shall be determined by the administrative law judge based on its reliability and probative value.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002), amended LR 38:2948 (November 2012), repromulgated LR 46:322 (March 2020).

§723. Rehearing, Reopening (formerly §529)

A. Requests for reconsideration, reopening, or rehearing are subject to the procedures and requirements of R.S. 49:959. Any request for reconsideration, reopening, or rehearing must be received by DAL within 10 business days (exclusive of legal holidays or weekends) from the date the decision is transmitted. Computation of time shall be determined in accordance with Rule 105.

B. Unless otherwise provided by law, judicial review of a decision is subject to the procedures and time limits of R.S. 49:964 and R.S. 46:107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq., and R.S. 49:958.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002), amended LR 38:2948 (November 2012), repromulgated LR 46:322 (March 2020).

§725. Termination of Adjudications; Voluntary Withdrawal; Abandonment (formerly § 531)

A. The administrative law judge may issue an order terminating an adjudication based upon voluntary waiver, withdrawal of the request for a hearing, rescission by the agency of the underlying action, settlement, stipulation, consent order, or any other reason deemed proper or lawful by the administrative law judge.

B. In accordance with R.S. 49:955(A), a party who requests an administrative hearing may be deemed to have waived the right to a hearing if, after having been provided with reasonable notice, the party fails to appear on the day and time set for hearing, unless otherwise provided by law. In such instances, the rule to show cause, hearing request, or appeal may be terminated based on the party's waiver of the

right to a hearing. The order terminating the adjudication shall be transmitted to the party's last known address.

C. Abandonment. Except as otherwise provided by law, an action is abandoned when the parties fail to take any step in its prosecution or defense for a period of three years.

1. This provision shall be operative without formal order. However, on an ex parte motion of any party, other interested person, or the Administrative Hearings Clerk, supported by an affidavit, the administrative law judge shall enter an order terminating adjudication as of the date of its abandonment.

2. The affidavit shall specify that no step has been taken in the prosecution or defense of the action for a period of three years.

3. The order shall be transmitted to all parties, and the parties shall have 30 days from date of transmission to file a motion to set aside the dismissal based on a showing of good cause.

4. Any request for discovery as authorized by these rules and the APA that is served on all parties, regardless of whether or not such discovery was filed in the record, including the taking of a deposition with or without formal notice, shall be deemed to be a step in the prosecution or defense-of the action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq., and R.S. 49:958.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002), amended LR 38:2949 (November 2012), repromulgated LR 46:322 (March 2020).

Chapter 9. Mediation

§901. Mediation (formerly §701)

A. Any party may request a pre-trial mediation conference.

B. Mediation shall not be conducted over the objection of a party.

C. The administrative law judge to whom the case was originally assigned shall not conduct the mediation. The order setting the matter for mediation shall designate another administrative law judge to act as mediator.

D. Each party, representative, or attorney shall negotiate in good faith, and be prepared to obtain the authority necessary to settle and compromise the adjudication. The mediator may permit a telephone appearance in lieu of a personal appearance for good cause or convenience of the parties.

E. Mediation shall not unduly delay the hearing schedule. The presiding administrative law judge may continue scheduled dates upon the motion of a party or on his/her own motion.

F. Confidentiality of mediations shall be governed by R.S. 9:4112.

G. Each party or representative should submit to the assigned mediator, at least one day prior to the conference, information sufficient to explain the nature and circumstances of the case. The submittals need not be in any certain form and may consist of any documents, exhibits, or writings the party wishes the mediator to consider before the conference. The mediator may use all statements, documents, exhibits or other types of information submitted, as he/she deems appropriate to foster settlement unless a party has expressly stated otherwise.

H. The mediator shall not draft settlement agreements. Agreements may be recited on the record before the presiding administrative law judge and later reduced to writing by the parties or their representatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:45 (January 2002), repromulgated LR 46:323 (March 2020).

Chapter 11. Ethics Adjudicatory Board

§1101. Selection of Board Members and Panels (formerly §801)

A. Public Meeting. The selection of the Ethics Adjudicatory Board will take place during a public meeting of the Louisiana Board of Ethics.

B. Random Selection Process

1. The director of DAL, or his/her designee, shall, at a public meeting of the Board of Ethics in December of the year preceding the year in which the terms are to begin, randomly select seven administrative law judges from among those who meet the qualifications to comprise the Ethics Adjudicatory Board. Members of the adjudicatory board shall have:

a. not less than two years of experience as an administrative law judge; or

b. not less than 10 years of experience in the practice of law.

C. Term of Board. The members shall each serve a three-year term, which shall begin on January first of the year following their selection. There shall be no limitation on the number of times a qualified member may be selected to serve.

D. Three Judge Panels. The administrative law judges shall sit in three judge panels as assigned by the Director. When a new case is docketed, it will be allotted alternately between the two panels. A case docketed and assigned to a panel shall remain with that designated panel until final disposition.

E. Alternate Judge. The seventh name selected shall be an alternate administrative law judge to be substituted for administrative law judges who are unavailable due to recusal, end of employment with DAL, or for other good cause.

F. A vacancy on the Ethics Adjudicatory Board shall be filled for the unexpired term at the next public meeting of the Board of Ethics in the same manner as for the original selection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq., and R.S. 42:1141.2.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 34:1346 (July 2008), amended LR 38:2949 (November 2012), repromulgated LR 46:323 (March 2020).

§1103. Recusal of an Ethics Adjudicatory Board Member (formerly §803)

A. An Ethics Adjudicatory Board member shall voluntarily recuse himself and withdraw from any adjudication in which he cannot accord a fair and impartial hearing or consideration, when required by applicable rules governing the practice of law in Louisiana or for other good cause such as conflict of interest. Applicable recusal provisions include R.S. 49:960, R.S. 49:999, or other conflict of interest provisions.

B. When an Ethics Adjudicatory Board member is recused from a panel or a case to be adjudicated, the alternate administrative law judge shall be assigned to the panel or case.

C. In the event the alternate administrative law judge is unavailable, the administrative hearings clerk shall randomly select a name from the remaining Ethics Adjudicatory Board members. The selected individual shall be substituted on the panel or the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 34:1346 (July 2008), repromulgated LR 46:323 (March 2020).

§1105. Panel Procedure (formerly §805)

A. The panel shall select a chief administrative law judge, from its members, who will preside over the hearings and coordinate the docket of the panel.

B. The determination of the majority of the panel in a particular case shall be the determination of the Ethics Adjudicatory Board.

C. After a hearing, the presiding administrative law judge shall assign authorship responsibility to a panel member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq., and R.S. 42:1141.5.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 34:1346 (July 2008), amended LR 38:2949 (November 2012), repromulgated LR 46:324 (March 2020).

§ 1107. Appeals to the Court of Appeal (formerly § 807)

A. When a decision of the Ethics Adjudicatory Board is appealed to the Court of Appeal, First Circuit, copies of the motion for appeal shall be served upon DAL and all parties of record.

B. DAL shall prepare the record on appeal after the appellant pays the costs pursuant to §305 of these rules.

C. Any motion for an appeal shall comply with the local rules of the Court of Appeal, First Circuit, and Uniform Rules of Louisiana Courts of Appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq., and R.S. 42:1142.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 34:1346 (July 2008), amended LR 38:2949 (November 2012), repromulgated LR 46:324 (March 2020).

Emalie A. Boyce
Director

2003#015

RULE

Board of Elementary and Secondary Education

Alternate Program Candidates
(LAC 28:XLV.745, CXV.507,
and CXXXI.203, 304, 305, 313)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education has amended LAC 28:CXV, *Bulletin 741—Louisiana Handbook for School Administrators*; LAC 28:CXXXI, *Bulletin 746—Louisiana Standards for State Certification of School Personnel*; and LAC 28:XLV, *Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs*. The amendments replace the 80-hour pre-residency practice requirement with an assurance from the employing school systems that alternate program candidates receive mentoring that includes co-teaching, collaborative planning, observation, and feedback session requirements for a minimum of 15 percent of instructional time, or 5 hours per week, in the first year of teaching. This Rule is hereby adopted on the day of promulgation.

Title 28
EDUCATION
Part XLV. Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs
Chapter 7. Louisiana State Standards for Educator Preparation Programs
Subchapter C. Teacher Preparation Programs
§745. Minimum Requirements for Alternate Teacher Preparation Programs

A. - C. …

D. Programs must include the following practice experiences, which directly align with and sequentially develop the competencies identified in LAC 28:CXXXI (Bulletin 746).

1. Clinical experiences will be provided in classroom settings prior to the residency year as follows.

a. In all programs, a minimum of 9 credit hours or 135 contact hours of training is required prior to the residency.

2. - 4. …

a. Candidates participating in a residency beginning in the 2020-2021 academic year, must be mentored at least 15 percent, or 5 hours per week, of the school's instructional time by a school-based mentor teacher, who may collaborate with other personnel providing mentoring support.

i. The school-based mentor teacher must be credentialed in accordance with LAC 28:CXXXI.350 (Bulletin 746).

ii. The mentorship must include intensive individual supports, including:

(a). co-teaching;

(b). collaborative planning; and

(c). observation and feedback sessions.

b. The supervision must include, at a minimum, two formal observations of teaching practice per semester, including feedback on performance and analysis of formative and summative student achievement results and candidate performance data. Observations may be conducted by any member of the supervision team.

D.5. - F.3. …

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 43:1331 (July 2017), amended LR 43:2492 (December 2017), LR 45:1751 (December 2019), LR 46:324 (March 2020).

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 5. Personnel

§507. Mentoring Requirements for Teacher Candidates Enrolled in Alternate Teacher Preparation Programs

A. Beginning with the 2020-2021 academic year, an alternate teacher preparation program candidate participating in a residency as a teacher of record must receive mentorship from a school-based mentor teacher who may collaborate with other personnel providing mentoring support.

1. The school-based mentor teacher must be credentialed in accordance with LAC 28:CXXXI.350 (Bulletin 746).

2. The mentorship must be at least 15 percent, or 5 hours per week, of instructional time of the school.

3. The mentorship must include intensive individual supports, including:

a. co-teaching;

b. collaborative planning; and

c. observation and feedback sessions.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:325 (March 2020).

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 2. Initial Teacher Certification

Subchapter B. Testing Required for Certification Areas

§203. Certification Exams and Scores (Formerly §243)

A. ...

1. Core Academic Skills for Educators[2]. Teacher applicants in all content areas must pass all three Praxis core academic skills tests for educators.

Pre-Professional Skills Test "Paper or Computer Administrations"	Test #	Score	Effective Date
PPST:R—Pre-Professional Skills Test: Reading	0710/5710	176	Effective 7/1/10 to 12/31/13
PPST:W—Pre-Professional Skills Test: Writing	0720/5720	175	
PST:M—Pre-Professional Skills Test: Mathematics	0730/5730	175	

Core Academic Skills for Educators	Test #	Score	Effective Date
Reading	5712	156	Effective 1/1/14 to 7/31/2020
Writing	5722	162	
Mathematics	5732	150	

Core Academic Skills for Educators	Test #	Score	Effective Date
Reading	5713	156	Current-
Writing	5723	162	
Mathematics	5733	150	

[1] NOTE: To differentiate the computer delivered tests, Educational Testing Service has placed the number "5" or "6" preceding the current test code. The department will accept computer delivered passing test scores for licensure.

[2] NOTE: An ACT composite score of 22 or an SAT combined verbal and math score of 1100 or higher (new SAT) or 1030 or higher (pre-March 2016 SAT) may be used in lieu of PRAXIS 1 PPST exams or core academic skills for educators in reading, writing and math by prospective teachers in Louisiana.

A.2. - D. …

* * *

E. Administrative and Instructional Support Areas

Certification Area	Name of Test	Area Test Score
Mentor Teacher	Louisiana Mentor Teacher Assessment Series—Elementary	6
	Louisiana Mentor Teacher Assessment Series—Secondary ELA	4
	Louisiana Mentor Teacher Assessment Series—Secondary Math	
	Louisiana Mentor Teacher Assessment Series—Universal	
Content Leader	Louisiana Content Leader Assessment Series	5
Educational Leader—Level 1	School Leaders Licensure Assessment (1011or 6011)	166 (Effective until 7/31/20)
	School Leaders Licensure Assessment (6990)	151 (Effective 9/1/19)
Educational Leader—Level 3	School Superintendent Assessment (6021)	160 (Effective until 7/31/20)
	School Superintendent Assessment (6991)	162 Current-
Guidance Counselor K-12	Professional School Counselor (0421 or 5421)	156
School Librarian	Library Media Specialist (0311 or 5311)	136
All PRAXIS scores used for certification must be sent directly from ETS to the state Department of Education electronically, or the original PRAXIS score report from ETS must be submitted with the candidate's application. The mentor teacher certificate may be earned by passing one of the cohort-specific Louisiana mentor teacher assessment series tests.		

F. - Table. Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1833 (October 2006), amended LR 36:485 and 488 (March 2010), LR 36:2265 (October 2010), LR 37:551 (February 2011), repromulgated LR 37:556 (February 2011), amended LR 37:3210 (November 2011), LR 39:1461 (June 2013), LR 40:277 (February 2014), LR 40:1680 (September 2014), LR 41:645 (April 2015), LR 41:916 (May 2015), LR 42:233 (February 2016), LR 43:1292 (July 2017), LR 44:264 (February 2018), LR 44:1999 (November 2018), LR 45:228, 230 (February 2019), repromulgated LR 45:403 (March 2019), LR 45:1458 (October 2019), amended LR 46:325 (March 2020).

Chapter 3. Teaching Authorizations and Certifications

Editor's Note: The name of the Division of Student Standards and Assessments has been changed to The Division of Student Standards, Assessments, and Accountability.

Subchapter A. Standard Teaching Authorizations

§304. General Provisions

A. Practitioner Licenses 1-3. Beginning with the 2020-2021 academic year, in order to obtain the first renewal only of a practitioner license 1, 2, or 3 certificate, practitioner candidates participating in a residency as a teacher of record, must receive mentorship by a school-based mentor teacher

who may collaborate with other personnel providing mentoring support, in accordance with LAC 28:XLV (Bulletin 996).

1. The school-based mentor teacher must be credentialed in accordance with §350 of this Chapter.

2. The mentorship must be at least 15 percent, or 5 hours per week, of the instructional time of the school.

3. The mentorship must include intensive individual supports, including:

a. co-teaching;

b. collaborative planning; and

c. observation and feedback sessions.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:325 (March 2020).

§305. Professional Level Certificates

A. - A.1.a.i. …

(a). successfully complete a state-approved traditional or alternate teacher preparation program:

(i). for alternate preparation completers, the applicant must receive mentoring by a school-based mentor teacher in accordance with §350 of this Chapter;

A.1.a.i.(b). - E.6. …

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1797 (October 2006), amended LR 33:433 (March 2007), LR 34:233 (February 2008), LR 34:1611 (August 2008), LR 35:222 (February 2009), LR 37:558 (February 2011), LR 38:1951 (August 2012), LR 40:279 (February 2014), LR 41:2128 (October 2015), LR 43:1304 (July 2017), LR 44:745 (April 2018), LR 45:525 (April 2019), LR 45:1458 (October 2019), LR 45:1748 (December 2019), LR 46:326 (March 2020).

§313. Practitioner Licenses

A. Issuance and Renewals

1. Practitioner licenses 1 and 2 may be issued for one school year, renewed annually, and held a maximum of three years while the holder completes an alternate program. Upon completion of the three years of employment on this certificate, the holder must fulfill guidelines for a level 1 or higher-level certificate for continued employment in a Louisiana school system.

2. The practitioner license 3 may be issued for one school year, renewed annually, and held a maximum of four years while the holder completes an alternate program. Upon completion of the four years of employment on this certificate, the holder must fulfill guidelines for a level 1 or higher-level certificate for continued employment in a Louisiana school system.

3. Beginning with the 2020-2021 academic year, the first renewal only of a PL 1, 2, or 3 will be conducted in accordance with §304.A of this Chapter.

B. - B.2. …

3. Renewal Requirements. The candidate must remain enrolled in the practitioner teacher program and fulfill a minimum of six semester hours of coursework or equivalent contact hours per year (to the extent that required semester hours remain in the program to be completed), teaching assignments, and prescribed activities identified by the program provider.

a. Beginning with the 2020-2021 academic year, the first renewal only of a PL 1, 2, or 3 will be conducted in accordance with §304.A of this Chapter.

B.4. - C.2. …

3. Renewal Requirements. The candidate must remain enrolled in the certification-only alternate certification program and fulfill a minimum of nine semester hours of coursework per year (to the extent that required semester hours remain in the program to be completed), teaching assignments, and prescribed activities identified by the program provider.

a. Beginning with the 2020-2021 academic year, the first renewal only of a PL 1, 2, or 3 will be conducted in accordance with §304.A of this Chapter.

C.4. - D.2. …

3. Renewal Requirements. The candidate must remain enrolled in the master's degree alternate certification program and fulfill a minimum of nine semester hours of coursework per year (to the extent that required semester hours remain in the program to be completed), teaching assignments, and prescribed activities identified by the program provider.

a. Beginning with the 2020-2021 academic year, the first renewal only of a PL 1, 2, or 3 will be conducted in accordance with §304.A of this Chapter.

4. - 4.d.…

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 35:221 (February 2009), LR 38:1952 (August 2012), LR 40:280 (February 2014), LR 43:1307 (July 2017), LR 45:1748 (December 2019), LR 46:326 (March 2020).

Shan N. Davis
Executive Director

2003#014

RULE

Board of Regents
Office of Student Financial Assistance

Scholarship/Grant Programs—TOPS Exceptions
(LAC 28:IV.703)

The Louisiana Board of Regents has amended 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).(SG20188R) This Rule is hereby adopted on the day of promulgation.

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education
Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

§703. Establishing Eligibility

A. - A.5.a.ii.(d)(iii). …

* * *

(e). For students graduating in academic year (high school) 2017-2018 and after, for purposes of satisfying

the requirements of §703.A.5.a.i. above, or §803.A.6.a., the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

TOPS Core Course	Equivalent (Substitute) Course
Algebra I, Geometry, and Algebra II	Integrated Mathematics I, II, and III
Algebra III	Additional Math: Cambridge IGCSE
Algebra III; Advanced Math- Functions and Statistics, Advanced Math-Pre-Calculus, Pre-Calculus, or Math Methods I IB (Mathematical Studies SL); Calculus, AP Calculus AB, or Math Methods II IB (Mathematics SL); AP Calculus BC; Probability and Statistics or AP Statistics; IB Further Mathematics HL; IB Mathematics HL	AP Computer Science A
Arabic	Arabic: Cambridge AICE-AS
Art	Media Arts I-IV; Photography I, Photography II, and Digital Photography; Digital Image and Motion Graphics; Digital Storytelling; Engineering Design and Development; Sound Design
Biology II	Human Anatomy and Physiology Microbiology
IB Biology II	Biology II, Cambridge AICE-AS
Calculus I	Math 2 (Part I): Cambridge AICE – A Level
Calculus II	Math 2 (Part 2): Cambridge AICE- A Level
Chemistry II	Organic Chemistry I
IB Chemistry II	Chemistry II: Cambridge AICE – AS
Chinese	Chinese: Cambridge AICE-AS
Economics	Cambridge AICE-AS
English I	English Language Part 1: Cambridge IGCSE English Literature Part 1: Cambridge IGCSE
English II	English Language Part 2: Cambridge IGCSE English Literature Part 2: Cambridge IGCSE
English III	English Language Part 1: Cambridge AICE-AS Literature in English Part 1: Cambridge AICE-AS
English IV	English Language Part 2: Cambridge AICE-AS Literature in English Part 2: Cambridge AICE-AS
Environmental Science	Environmental Awareness
European History	History European: Cambridge AICE-AS
Foreign Language, both units in the same language, which may include: AP Chinese Language and Culture, AP French Language and Culture, AP German Language and Culture, AP Italian Language and Culture, AP Japanese Language and Culture, AP Latin, AP Spanish Language and Culture, French IV IB, French V IB, Spanish IV IB, and Spanish V IB	Mandarin Chinese I, II, III, IV Hindi I, II, III, IV Portuguese I, II, III, IV Vietnamese I, II, III, IV
French	French: Cambridge AICE-AS
German	German: Cambridge AICE-AS
Japanese	Japanese: Cambridge AICE-AS
Physical Science	Principles of Engineering PLTW Principles of Engineering
Physics I	Physics I: Cambridge IGCSE
IB Physics II	Physics II: Cambridge AICE-AS
Pre-Calculus	Math 1 (Pure Math): Cambridge AICE-AS
Probability and Statistics	Statistical Reasoning Math 1 (Probability and Statistics): Cambridge AICE
Spanish	Spanish: Cambridge AICE-AS
Spanish IV	Spanish Literature: Cambridge ACE
Western Civilization, European History or AP European History; World Geography, AP Human Geography, or IB Geography; World History, AP World History, or World History IB; History of Religion; IB Economics Economics, AP Macroeconomics AP Microeconomics	AP Psychology
World Geography	Physical Geography Geography: Cambridge AICE-AS
World History	History International: Cambridge AICE-AS
Any listed core course or its equivalent	Any core curriculum course taken by a student who has been deemed to be gifted and talented pursuant to R.S. 17:1941 et. seq. as implemented in State Board of Elementary and Secondary Education policy and in fulfillment of the student's Individualized Education Program shall be considered a gifted and talented course and shall fulfill the core curriculum requirement in its given subject area.

(f). For students graduating in academic year (high school) 2017-2018 and after, the courses listed in the tables below have been approved by the Board of Regents and the state Board of Elementary and Secondary Education to be converted to a 5.00 scale when used to complete the core curriculum, and shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a.

(i). Advanced Placement Courses

TOPS Core Course	Advanced Placement
Art	AP Art History AP Studio Art: 2-D Design AP Studio Art: 3-D Design AP Studio Art: Drawing
Biology II	AP Biology
Calculus	AP Calculus AB AP Calculus BC
Chemistry II	AP Chemistry
Chinese	AP Chinese Language and Culture
Economics	AP Macroeconomics AP Microeconomics
English III	AP English Language and Composition
English IV	AP English Literature and Composition
Environmental Science	AP Environmental Science
European History	AP European History
Fine Arts Survey	AP Music Theory
French	AP French Language and Culture
German	AP German Language and Culture
Italian	AP Italian Language and Culture
Japanese	AP Japanese Language and Culture
Latin	AP Latin
Physics I	AP Physics I: Algebra Based AP Physics II: Algebra Based AP Physics C: Electricity and Magnetism AP Physics C: Mechanics
Probability and Statistics	AP Statistics
Spanish	AP Spanish Language and Culture
US Government or Civics	AP U.S. Government and Politics: Comparative AP U.S. Government and Politics: United States
US History	AP U.S. History
World Geography	AP Human Geography
World History	AP World History

(ii). International Baccalaureate® Courses

TOPS Core Course	International Baccalaureate
Advanced Math–Pre Calculus	IB Math Studies (Math Methods)
Arabic	IB Language ab initio: Arabic IB Language B: Arabic
Art	IB Visual Arts
Biology II	IB Biology I IB Biology II
Calculus	IB Mathematics SL IB Mathematics HL
Chemistry II	IB Chemistry I IB Chemistry II
Chinese	IB Language ab initio: Chinese IB Language B: Chinese
Economics	IB Economics
English III	IB Literature IB Language and Literature IB Literature and Performance
English IV	IB Literature IB Language and Literature IB Literature and Performance
Environmental Science	IB Environmental Systems
French	IB Language ab initio: French IB Language B: French
German	IB Language ab initio: German IB Language B: German
Italian	IB Language ab initio: Italian IB Language B: Italian
Japanese	IB Language ab initio: Japanese IB Language B: Japanese
Latin	IB Classical Language
Music (Performance)	IB Music
Physics I	IB Physics I IB Physics II
Pre-Calculus	IB Math Studies (Math Methods)
Spanish	IB Language ab initio: Spanish IB Language B: Spanish
Theatre (Performance)	IB Film Study IB Theatre IB Dance
US History	IB History of the Americas I
World Geography	IB Geography
World History	IB History of the Americas II

(iii). Gifted and Talented Courses

TOPS Core Course	Gifted and Talented
Art	Art History Talented Visual Arts I Talented Visual Arts II Talented Visual Arts III Talented Visual Arts IV
Biology II	Biology II
Calculus	Calculus I Calculus II
Chemistry I	Chemistry I
Chemistry II	Chemistry II
Chinese	Chinese III Chinese IV
Economics	Economics
English III	English III
English IV	English IV
Environmental Science	Environmental Science
European History	European History
French	French III French IV
German	German III German IV
Italian	Italian III Italian IV
Japanese	Japanese III Japanese IV
Latin	Latin III Latin IV
Music (Performance)	Talented Music I, II, III, IV Small Voice Ensemble II Choir: Intermediate Choir: Advanced Orchestra: Intermediate Orchestra: Advanced
Physics I	Physics
Pre-Calculus	Pre-Calculus
Spanish	Spanish III Spanish IV
Theatre (Performance)	Introduction to Film Studies Talented Theater I, II, III, IV
US Government or Civics	Government
US History	U.S. History
World Geography	World/Human Geography

(iv). Dual Enrollment Courses

TOPS Core Course	Dual Enrollment	
	Common Course Name	Common Course Code
Advanced Math–Pre Calculus	Trigonometry	CMAT 1223
Advanced Math-Functions and Statistics	Introductory Statistics	CMAT 1303
Algebra III	College Algebra	CMAT 1213
Arabic	Elementary Arabic I Elementary Arabic II	CARB 1013/1014 CARB 1023/1024
Art	Art History I or II Art Structure/2-D Design Beginning Drawing	CART 2103/2113 CART 1113 CART 2203
Biology I	General Biology I General Biology I (Science Majors)	CBIO 1013 CBIO 1033
Biology II	General Biology I General Biology I (Science Majors) General Biology II General Biology II (Science Majors) Human Anatomy & Physiology I Human Anatomy & Physiology I (Lec/Lab) Human Anatomy & Physiology II Human Anatomy & Physiology II (Lec/Lab	CBIO 1013 CBIO 1033 CBIO 1023 CBIO 1043 CBIO 2213 CBIO 2214 CBIO 2223 CBIO 2224
Calculus	Applied Calculus Calculus I Calculus II	CMAT 2103 CMAT 2113-5 CMAT 2123-5
Chemistry I	General Chemistry Survey I Chemistry I Chemistry I (Science Majors)	CCEM 1013 CCEM 1103 CCEM 1123
Chemistry II	General, Organic and Biochemistry General Chemistry Survey I Chemistry I Chemistry I (Science Majors) Chemistry II Chemistry II (Science Majors)	CCEM 1003 CCEM 1013 CCEM 1103 CCEM 1123 CCEM 1113 CCEM 1133
Earth Science	Physical Geology Historical Geology	CGEO 1103 CGEO 1113
Economics	Economic Principles Macroeconomics Microeconomics	CECN 2113 CECN 2213 CECN 2223
English III	English Composition I English Composition II American Literature I American Literature II Major American Writers	CENL 1013 CENL 1023 CENL 2153 CENL 2163 CENL 2173
English IV	English Composition I English Composition II British Literature I British Literature II Major British Writers World Literature I World Literature II Major World Writers Introduction to Fiction Introduction to Literature Introduction to Poetry and/or Drama	CENL 1013 CENL 1023 CENL 2103 CENL 2113 CENL 2123 CENL 2203 CENL 2213 CENL 2223 CENL 2303 CENL 2323 CENL 2313
Environmental Science	Environmental Science	CEVS 1103
Fine Arts Survey	Exploring the Arts Introduction to Visual Arts Dance Appreciation Music Appreciation	CART 1013 CART 1023 CDNC 1013 CMUS 1013
French	Elementary French I Elementary French II Intermediate French I Intermediate French II	CFRN 1013/1014 CFRN 1023/1024 CFRN 2013/2014 CFRN 2023
German	Elementary German I Elementary German II Intermediate German I Intermediate German II	CGRM 1013/1014 CGRM 1023/1024 CGRM 2013 CGRM 2023
History Of Religion	World Religions	CPHL 2213
Latin	Elementary Latin I Elementary Latin II Intermediate Latin I Intermediate Latin II	CLTN 1013/1014 CLTN 1023/1024 CLTN 2013 CLTN 2023
Physical Science	Physical Science I	CPHY 1023
Physics I	Physics I (Algebra/Trigonometry Based) Physics I (Lecture and Lab) Physics I (Calculus Based)	CPHY 2113 CPHY 2114 CPHY 2133
Pre-Calculus	Algebra and Trigonometry	CMAT 1233
Probability and Statistics	Introductory Statistics	CMAT 1303
Spanish	Elementary Spanish I Elementary Spanish II Intermediate Spanish I Intermediate Spanish II	CSPN 1013/1014 CSPN 1023/1024 CSPN 2013/2014 CSPN 2023
Theatre (Performance)	Acting I or II Introduction to Theatre	CTHE 2103/2113 CTHE 1013
US Government or Civics	Introduction to American Government Introduction to State and Local Government Introduction to Comparative Government	CPOL 2013 CPOL 2113 CPOL 2213
US History	American History I or II	CHIS 2013/2023
Western Civilization	Western Civilization I or II	CHIS 1013/1023
World Geography	World Regional Geography	CGRG 2113
World History	World Civilization I or II	CHIS 1113/1123

(v). Honors Courses

TOPS Core Course	Honors
Arabic	Arabic: Cambridge AICE-AS
Biology II	Biology II: Honors
IB Biology II	Biology II: Cambridge AICE-AS
Calculus I	Calculus: Honors Math 2 (Part 1): Cambridge AICE-A Level
Calculus II	Math 2 (Part 2): Cambridge AICE – A Level
Chemistry I	Chemistry I: Honors
Chemistry II	Chemistry II: Honors
IB Chemistry II	Chemistry II: Cambridge AICE-AS
Chinese	Chinese: Cambridge AICE-AS
Economics	Economics: Cambridge AICE - AS
English III	English III: Honors English Language Part 1: Cambridge AICE – AS Literature in English Part 1: Cambridge AICE - AS
English IV	English IV: Honors English Language Part 2: Cambridge AICE – AS Literature in English Part 2: Cambridge AICE - AS

TOPS Core Course	Honors
Environmental Science	Environmental Science: Honors
European History	History European: Cambridge AICE-AS
French	French: Cambridge AICE-AS
German	German: Cambridge AICE-AS
Government	Government: Honors
Japanese	Japanese: Cambridge AICE-AS
Physics I	Physics: Honors
IB Physics II	Physics II: Cambridge AICE-AS
Pre-Calculus	Pre-Calculus Honors Math 1: (Pure Math): Cambridge AICE-AS
Probability and Statistics	Probability and Statistics: Honors Math 1 (Probability and Statistics)-Cambridge AICE
Spanish	Spanish: Cambridge AICE-AS
Spanish IV	Spanish Literature: Cambridge ACE
US History	U.S. History: Honors
World Geography	Geography: Cambridge AICE-AS
World History	World History: Honors History International: Cambridge AICE-AS

A.5.a.iii.(a). - J.4.b.ii. …

AUTHORITY NOTE:Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1, and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:2269 (October 2010), LR 36:2855 (December 2010), LR 37:2987 (October 2011), LR 38:354 (February 2012), LR 38:3158 (December 2012), LR 39:481 (March 2013), LR 39:2485 (September 2013), LR 40:54 (January 2014), LR 41:373 (February 2015), LR 41:651, 664 (April 2015), LR 41:1486 (August 2015), LR 41:2596, 2599 (December 2015), amended by the Board of Regents, Office of Student Financial Assistance, LR 42:1657 (October 2016), LR 42:1882 (November 2016), LR 43:518 (March 2017), LR 43:1346 (July 2017), amended by the Board of Regents, Office of Student Financial Assistance, LR 44:506 (March 2018), LR 44:1004 (June 2018), LR 44:1870 (October 2018), LR 46:326 (March 2020).

Robyn Rhea Lively
Senior Attorney

2003#001

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs and Criminal Investigations Division

2019 Annual Incorporation by Reference of Certain Water Quality Regulations (LAC 33:IX.4901 and 4903)(WQ105ft)

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.4901 and 4903 (Log #WQ105ft).

This Rule is identical to federal regulations found in Title 40, Volume 25, Part 136; Title 40, Volume 31, Parts 401 and 405-424; and Title 40, Volume 32, Parts 425-471, which are applicable in Louisiana. For more information regarding the federal requirement, contact Deidra Johnson at (225) 219-3985. 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 incorporates the recently updated federal regulations into Louisiana's water quality regulations. This revision increases the enforceability of Louisiana Pollutant Discharge Elimination System (LPDES) permits that include EPA approved analytical methods and effluent limitation guidelines. The published edition of the 40 Code of Federal Regulations is updated on July 1 of every calendar year; therefore, this Rule will incorporate the date of July 1, 2019. 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. This Rule is hereby adopted on the day of promulgation.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program
Chapter 49. Incorporation by Reference
§4901. 40 CFR Part 136

A. 40 CFR part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 2019, in its entirety, is hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 35:1110 (June 2009), LR 36:2275 (October 2010), amended by the Office of the Secretary, Legal Division, LR

38:2747 (November 2012), LR 40:1693 (September 2014), LR 41:2135 (October 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2148 (November 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:330 (March 2020).

§4903. 40 CFR, Chapter I, Subchapter N

A. 40 CFR chapter I, subchapter N, Effluent Guidelines and Standards, parts 401 and 405-471, July 1, 2019, are hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division LR 32:604 (April 2006), LR 32:819 (May 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 35:654 (April 2009), LR 35:1110 (June 2009), LR 36:2275 (October 2010), amended by the Office of the Secretary, Legal Division, LR 38:2747 (November 2012), LR 40:1693 (September 2014), LR 41:2136 (October 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2148 (November 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:331 (March 2020).

Herman Robinson
General Counsel

2003#007

RULE

Office of the Governor
Division of Administration
Office of Community Development

Rulemaking Petitions (LAC 4:VII.Chapter 22)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of Community Development has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 4
ADMINISTRATION
Part VII. Governor's Office
Chapter 22. Office of Community Development—Rulemaking Petitions

§2201. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with RS 33:7611 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development LR 46:331 (March 2020).

§2203. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with RS 33:7611 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 46:331 (March 2020).

Pat Forbes
Executive Director

2003#036

RULE

Office of the Governor
Division of Administration
Office of Facility Planning and Control

Rulemaking Petitions (LAC 34:III.Chapter 11)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of Facility Planning and Control has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 34
GOVERNMENT CONTRACTS, PROCUREMENT, AND PROPERTY CONTROL
Part III. Facility Planning and Control
Chapter 11. Rulemaking Petitions

§1101. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with RS 39:103 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 46:331 (March 2020).

§1103. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:103 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 46:332 (March 2020).

Mark Moses
Director

2003#045

RULE

Office of the Governor
Division of Administration
Office of Group Benefits

Rulemaking Petitions (LAC 32:I.Chapter 17)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of Group Benefits has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 32
EMPLOYEE BENEFITS
Part I. General Provisions

Chapter 17. Rulemaking Petitions

§1701. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(1), and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 46:332 (March 2020).

§1703. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C), 802(B)(1), and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 46:332 (March 2020).

Tommy Teague
Director

2003#043

RULE

Office of the Governor
Division of Administration
Office of Risk Management

Rulemaking Petitions (LAC 37:I.Chapter 11)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of Risk Management has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 37
INSURANCE
Part I. Insurance and Related Matter
Chapter 11. Rulemaking Petitions
§1101. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1535 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 46:333 (March 2020).

§1103. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1535 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 46:333 (March 2020).

Melissa Harris
Director

2003#042

RULE

Office of the Governor
Division of Administration
Office of State Lands

Rulemaking Petitions (LAC 43:XXVII.103 and 105)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of State Lands has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 43
NATURAL RESOURCES
Part XXVII. State Lands
Chapter 1. General Provisions
§103. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with 50:171 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Lands, LR 46:333 (March 2020).

§105. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or

2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with 50:171 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Lands, LR 46:333 (March 2020).

Jonathan Robillard
Administrator

2003#037

RULE

Office of the Governor
Division of Administration
Office of State Procurement

Rulemaking Petitions (LAC 34:V.Chapter 35)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of State Procurement has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 34
GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL
Part V. Procurement
Chapter 35. Rulemaking Petitions
§3501. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;

2. the name of the promulgating agency for the rule in question;

3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;

4. justification for the proposed action; and

5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement LR 46:334 (March 2020).

§3503. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or

2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement LR 46:334 (March 2020).

Paula Tregre
Director

2003#041

RULE

Office of the Governor
Division of Administration
Office of the State Register

Rulemaking Petitions (LAC 1:I.111 and 113)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of the State Register has adopted a rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 1
ADMINISTRATIVE LAW
Part I. Office of the State Register
Chapter 1. Preliminary Provisions
§111. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;

2. the name of the promulgating agency for the rule in question;

3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;

4. justification for the proposed action; and

5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with 49:954.1.and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register LR 46:334 (March 2020).

§113. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or

2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with 49:954.1.and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register LR 46:335 (March 2020).

David J. Truax
Director

2003#070

RULE

Office of the Governor
Division of Administration
Office of State Uniform Payroll

Rulemaking Petitions (LAC 4:III.Chapter 13)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of State Uniform Payroll has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 4
ADMINISTRATION
Part III. Payroll
Chapter 13. Rulemaking Petitions
§1301. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;

2. the name of the promulgating agency for the rule in question;

3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;

4. justification for the proposed action; and

5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455. and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 46:335 (March 2020).

§1303. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or

2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455. and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 46:335 (March 2020).

Andrea Hubbard
Director

2003#039

RULE

Office of the Governor
Division of Administration
Office of Statewide Reporting and Accounting Policy

Rulemaking Petitions (LAC 4:XIII.Chapter 3)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of Statewide Reporting and Accounting Policy has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 4
ADMINISTRATION
Part XIII. Statewide Reporting and Accounting Policy
Chapter 3. Rulemaking Petitions
§301. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview,

an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with 39:88.2 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Statewide Reporting and Accounting Policy, LR 46:335 (March 2020).

§303. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with 39:88.2 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Statewide Reporting and Accounting Policy, LR 46:336 (March 2020).

Afranie Adomako, CPA
Director

2003#040

RULE

Office of the Governor
Division of Administration
Office of Technology Services

Rulemaking Petitions (LAC 4:XV.103 and 105)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of Technology Services has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 4
ADMINISTRATION
Part XV. Information Technology
Chapter 1. General Provisions

§103. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:15.1.1 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 46:336 (March 2020).

§105. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:15.1.1 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 46:336 (March 2020).

Richard "Dickie" Howze
Chief Information Officer

2003#038

RULE

Office of the Governor
Division of Administration
Office of the Commissioner

Rulemaking Petitions (LAC 4:I.Chapter 1)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Office of the Commissioner has adopted a Rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 4
ADMINISTRATION
Part I. General Provisions
Chapter 1. Rulemaking Petitions
§101. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 46:337 (March 2020).

§103. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 46:337 (March 2020).

Jay Dardenne
Commissioner

2003#046

RULE

Office of the Governor
Division of Administration
Property Assistance Agency

Rulemaking Petitions
(LAC 34:VII.107, 109 and IX.107, 109)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Office of the Governor, Division of Administration, Property Assistance Agency has adopted a rule outlining the process for considering rulemaking petitions. This Rule is hereby adopted on the day of promulgation.

Title 34
GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL
Part VII. Property Control
Chapter 1. General Provisions
§107. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 46:337 (March 2020).

§109. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or

2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 46:338 (March 2020).

Part IX. Federal Property Assistance Agency

Chapter 1. General Provisions

§107. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;

2. the name of the promulgating agency for the rule in question;

3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;

4. justification for the proposed action; and

5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration
Re: Rulemaking Petition
P.O. Box 94095, Capital Station
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 46:338 (March 2020).

§109. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or

2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 46:338 (March 2020).

James L. Young Jr.
Director

2003#044

RULE

Office of the Governor
State Board of Certified Public Accountants of Louisiana

Certified Public Accountants; Examination,
Retake and Granting of Credit Requirements
(LAC 46:XIX.505)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the State Board of Certified Public Accountants of Louisiana (Board) by the Louisiana Accountancy Act, R.S. 37:71 et seq., the Board has amended its Rules governing Examination, LAC 46:XIX.505.F.1.b. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XIX. Certified Public Accountants
Chapter 5. Qualifications; Education and Examination
§505. Examination

A. - E.2. …

F. Retake and Granting of Credit Requirements

1. A candidate may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for a rolling qualifying period as measured from the actual date the candidate took that test section, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections. The qualifying period shall be determined by the board and shall be comprised of no less than 18 months.

a. Candidates must pass all test sections of the examination within a single rolling qualifying period, which begins on the date that any test section(s) passed is taken.

b.i. Subject to Clause ii. below, candidates shall not retake a failed test section(s) in the same testing "window." A testing window is equal to a calendar quarter (Jan-Mar, Apr-Jun, Jul-Sep, Oct-Dec). Candidates will be able to test no less than two months out of each testing window.

ii. If the board determines that the examination system changes necessary to eliminate the test window limitations have been implemented, §505F.1.b.i. will no longer be effective, and candidates can retake a failed test section once their grade for any previous attempt of that same test section has been officially released.

F.1.c. - H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 9:208 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1119 (September 1997), LR 26:1970 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 29:1475 (August 2003), LR 32:2248 (December 2006), LR 43:1901 (October 2017), LR 46:338 (March 2020).

Darla M. Saux, CPA, CGMA
Executive Director

2003#026

RULE

Department of Health
Board of Medical Examiners

Complaints and Investigations; Adjudication and Practice-Site Visits; Practice Performance Reviews
(LAC 46:XLV.Chapters 78, 97, and 99)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1261-1292, as amended by Act 599 of the 2018 Session of the Louisiana legislature, the board has amended its rules of procedure governing complaints and investigations (Chapter 97), adjudication (Chapter 99) and practice, site visits; practice performance reviews (Chapter 80). The amendments are set forth below. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 3. Practice
Chapter 78. Site Visits; Practice Performance Reviews
§7801. Scope of Chapter

A. The rules of this Chapter govern the board's initiation of site visits and practice performance reviews prescribed or authorized by the laws or rules administered by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B); 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 46:339 (March 2020).

§7803. Initiation of Site Visit; Requesting Medical Records

A. Prior to conducting a site visit or requesting medical records from an individual licensed by the board who is not the subject of an active investigation, the executive director shall, following discussion in executive session, request approval to conduct the site visit or make the records request by a duly adopted motion by two-thirds vote of the board.

B. The executive director shall include in the request for approval the basis upon which the site visit or records request is warranted, the number of records to be requested, if applicable, the date, time and anticipated length of the proposed site visit, and the dates of any previous site visits.

C. The board shall not disclose the identity of any person included in the request for approval to conduct a site visit or record request.

D. The provisions of this section shall apply to practice performance reviews of physicians practicing telemedicine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 46:339 (March 2020).

Subpart 5. Rules of Procedure
Chapter 97. Complaints and Investigations
§9701. Scope of Chapter

A. The rules of this Chapter govern the board's processing of complaints and investigations relative to the laws governing physicians, allied health care practitioners, as defined herein, and applicants seeking to practice as a physician or allied health care practitioner, as well as other state and federal laws to which physicians and allied health care practitioners are subject and the board's rules. These rules are intended to supplement, but not replace, any applicable provision of the Louisiana Administrative Practice Act, R.S. 49:950 et seq. regarding the disciplinary process and procedures. To the extent that any Rule of this Part is in conflict therewith, the provisions of the Louisiana Administrative Procedure Act shall govern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5) and 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2627 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 46:339 (March 2020).

§9703. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified.

Allied Health Care Practitioner—an individual, other than a physician, authorized by the board to practice in this state including, but not limited to: a licensed acupuncturist, pursuant to R.S. 37:1360; an athletic trainer pursuant to R.S. 37:3301-3312; a clinical exercise physiologist pursuant to R.S. 37:3421-3433; clinical laboratory personnel pursuant to R.S. 37:1311-1329; a genetic counselor pursuant to R.S. 37:1360.101-1360.111; a medical psychologist pursuant to R.S. 37:1360.51-1360.72; a midwife pursuant to R.S. 37:3240-3257; an occupational therapist or occupational therapy assistant pursuant to R.S. 37:3001-3014; a perfusionist pursuant to R.S. 37:1331-37:1343; a physician assistant pursuant to R.S. 37:1360.21-1360.38; a podiatrist pursuant to R.S. 37:611-628; a polysomnographic technologist or technician pursuant to R.S. 37:2861-2870; a private radiological technologist pursuant to R.S. 37:1292; a licensed respiratory therapist pursuant to R.S. 37:3351-3361; as well as any other an individual who holds any form of health care practitioner license, certificate, registration or permit that the board is authorized to issue, other than as a physician.

Applicant—an individual who has applied to the board for lawful authority to engage in the practice of medicine or that of an allied health care practitioner in this state.

* * *

Compliance Counsel—a Louisiana licensed attorney designated to assist the board to observe and comply with the rules of this Chapter and corresponding laws, who is independent of the DOI and the licensee and has not participated in the review, investigation, recommendations for disposition or prosecution of the case; provided, however, that compliance counsel may attend meetings between the DOI and a licensee held pursuant to this Chapter for purposes of compliance.

Complaint—any information, claim or report of whatsoever kind or nature received or obtained by the board, or initiated by the board on its own motion pursuant to R.S. 37:1285.2(A), that alleges or may indicate a violation of the law by a licensee or an applicant.

Director of Investigations (*DOI* or sometimes also referred to in this Part as the *Investigating Officer*)—a physician possessing the qualifications specified by R.S. 37:1270A(9), appointed by the board to serve as the lead investigator for any complaint.

Independent Counsel—an individual licensed to practice law in this state and who is appointed pursuant to §9921.D of these rules to perform such duties as may be required pursuant to R.S. 37:1285.2 and other provisions of this Part.

* * *

Law (or *the Law*)—unless the context clearly indicates otherwise, the Louisiana Medical Practice Act, R.S. 37:1261-1292, the Practice Acts governing allied health care practitioners, other applicable laws administered by the board and the board's rules, LAC 46:XLV.101 et seq.

Licensee—a physician or individual who holds a current license, certificate, registration or permit to practice as an allied health care practitioner as defined herein.

Physician—an individual who holds a current license or permit duly issued by the board to practice medicine in this state pursuant to R.S. 37:1261-1292.

Records or *Files of the Case*—all relevant information, documents and records gathered in a preliminary review or formal investigation, except board investigator work product or notes, communications with board counsel and other records or files in the board's possession that are required by law to remain confidential or are otherwise privileged, as well as those that independent counsel has ruled need not be included in the records or files of the case following review of the grounds of an objection by the DOI.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2628 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 46:339 (March 2020).

§9705. Complaint Origination

A. Complaints may be initiated by any person other than an employee of the board or initiated by the board on its own motion pursuant to R.S. 37:1285.2(A).

B. - C. …

D. The identity of and communications from a complainant constitute part of the records or files of the case and shall:

1. during a preliminary review, be maintained in confidence by the board. Confidentiality shall be waived only by written authorization of the complainant, when the complainant will be offered as a witness in a formal administrative hearing before the board or as otherwise provided by law; and

2. after the filing of an administrative complaint pursuant to Chapter 99 of these rules, not remain confidential unless authorized by ruling of independent counsel or the board pursuant to §9905 of these rules.

E. Information received and requested by the board in connection with carrying out its mandated routine regulatory functions e.g., processing applications, receipt and review of reports of medical malpractice settlements or judgments, conducting audits of continuing medical or professional education, site-visits and performance audits, etc., shall not be deemed to be a complaint. However, if such information provides sufficient cause to indicate that a violation of the laws or rules administered by the board may have occurred, such information will be reviewed or investigated in accordance with §9709 or §9711 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5) and 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2628 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 46:340 (March 2020).

§9709. Preliminary Review

A. A preliminary review may be initiated to determine if the complaint is jurisdictional and whether sufficient cause exists to warrant formal investigation only upon one or more of the following:

1. a complaint, received from a person, other than an individual employed by the board;

2. a report, received from a law enforcement agency, federal or state regulatory agency, a reporting authority verified by the board through electronic or other means, or a professional health or other monitoring or treatment program, that may implicate a potential violation of the laws or rules administered by the board; and

3. a motion duly adopted by a vote of two-thirds of the members, that sufficient cause exists to indicate a violation of the laws or rules administered by the board may have occurred.

B. A preliminary review is initiated upon the receipt, review and assignment of a case number at the direction of the DOI or the assigned investigator. During a preliminary review such action may be initiated and taken as deemed necessary or appropriate and additional information may be obtained to assist in the determination. As part of the preliminary review:

1. the board may obtain all files and records related to the complaint and to the complainant, which may be needed to determine if the complaint is jurisdictional and whether sufficient cause exists to warrant formal investigation; provided, however, no more than twenty additional files or records of patients may be obtained in connection with the review unless authorized by the board. To assist in a review a designee authorized by the board is authorized to issue, as necessary or upon request of board staff, subpoenas to obtain medical, hospital and pharmacy records and records from law enforcement, state and federal agencies. Affidavits may be obtained to preserve the testimony of a complainant and complaint witnesses;

B.2. - 3.c. …

C. Any relevant information, documents and records gathered during the preliminary review will be added to the records or files of the case.

D. Preliminary review of a complaint shall be completed as promptly as possible within ninety days of initiation unless extended by the board for satisfactory cause. However, this period shall not apply to information received from local, state or federal agencies or officials relative to on-going criminal, civil or administrative investigations or proceedings, which do not provide a basis for preliminary review.

E. Nothing in this Chapter requires that a preliminary review be conducted if the complaint is not jurisdictional or information clearly indicates the need for formal investigation or emergent action.

F. - F.2.c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5) and 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2628

(December 2015), amended LR 42:571 (April 2016), amended by the Department of Health, Board of Medical Examiners, LR 46:340 (March 2020).

§9711. Formal Investigation

A. - C. …

D. Past complaints and investigations of a licensee may be utilized in a current investigation for the purpose of determining if there is a pattern of practice or continuing or recurring conduct that fails to satisfy the prevailing and usually accepted standards of practice in this state on the part of the licensee. If past complaints and investigations are utilized, a licensee and/or his counsel shall be notified and they shall be included within the records or files of the case and subject to all applicable provisions of this Chapter.

E. - F. …

G. If the investigation provides sufficient information and evidence to indicate that a violation of the law has occurred, an administrative complaint may be filed with the board, pursuant to Chapter 99 of these rules, provided one or more of the following conditions exist:

1. a draft administrative complaint, in the form and content specified in §9903.B of these rules, has been mailed or provided to the licensee accompanied by a letter providing a reasonable opportunity for a conference to show compliance with all lawful requirements for the retention of the license without restriction, or to show that the complaint is unfounded as contemplated by R.S. 49:961(C); however, the licensee fails to respond to the complaint and letter, waives the opportunity, or the response does not satisfactorily demonstrate lawful compliance or that the complaint is unfounded. Such conference may be attended only by the board's director of investigations, the investigator assigned to the matter and legal counsel, if any, compliance counsel, the licensee and the licensee's counsel, if any;

G.2. - H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5) and 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2629 (December 2015), amended LR 42:571 (April 2016), amended by the Department of Health, Board of Medical Examiners, LR 46:341 (March 2020).

§9713. Informal Settlements and Consent Orders

A. - B. …

C. Informal dispositions may be either non-disciplinary or disciplinary:

1. …

2. Disciplinary dispositions consist of consent orders, and other orders and agreements, and stipulations for voluntary surrender of a license that are approved by the board as evidenced by the signature of the president or other authorized signatory. These dispositions shall constitute disciplinary action, shall be a public record of the board, and are reported and distributed in the same manner as final decisions of the board. Prior to offering a consent order the DOI shall make available the records or files of the case pertaining to the complaint against the licensee before the board. Such offer may be transmitted with a proposed consent order provided the individual is advised of his/her opportunity to review the records or files of the case prior to considering the consent order. Unless waived, the licensee may accept this offer any time before signing a consent order.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292 and 37:1270(A)(5) and 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2629 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 46:341 (March 2020).

Chapter 99. Adjudication

§9902. General Definitions

A. The definitions set forth in Chapter 97 of these rules shall equally apply to this Chapter, unless the context clearly states otherwise.

B. In addition, as used in this Chapter, the following additional terms and phrases shall have the meanings specified:

Respondent—a licensee or applicant who is the subject of an administrative enforcement action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 46:341 (March 2020).

§9905. Notice of Hearing; Complainant Anonymity

A. - B. …

C. The notice shall also include the right to be represented by legal counsel of respondent's selection and at his or her cost, and the right to face any complainant at an administrative hearing unless, following a review of all evidence relating to the complaint submitted by the DOI and respondent, independent counsel rules that the complainant may remain anonymous. The ruling of independent counsel relative to complaint anonymity may be overruled by a motion duly adopted by a two-thirds vote of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B) and 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:507 (June 1990), amended LR 34:1625 (August 2008), repromulgated LR 34:1905 (September 2008), amended by the Department of Health, Board of Medical Examiners, LR 46:341 (March 2020).

§9916. Discovery; Disclosure

A. After filing and notice of an administrative complaint has been served pursuant to §9905 of this Chapter:

1. - 2. …

3. the records or files of the case regarding the complaint shall be made available to the respondent through full discovery and disclosed to the respondent at his or her request.

4. Any potential exculpatory evidence shall be disclosed to the respondent whether or not requested and whether or not reduced to recorded or documentary form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B) and 37:1285.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2630 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 46:341 (March 2020).

Vincent A. Culotta, Jr., M.D.,
Executive Director

2003#006

RULE

Department of Health
Board of Medical Examiners

Physician Practice; Marijuana for Therapeutic Use by Patients Suffering From a Debilitating Medical Condition (LAC 46:XLV.Chapter 77)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, and Louisiana law governing medical marijuana, R.S. 40:1046, the Board has amended its Rules governing physicians who diagnose their patients with a debilitating medical condition for which marijuana may be recommended, LAC 46:XLV Chapter 77. The amendments are needed to conform the board's rules to Act 284 of the 2019 Regular Session of the Louisiana Legislature. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 3. Practice
Chapter 77. Marijuana for Therapeutic Use by Patients Suffering from a Debilitating Condition
Subchapter A. General Provisions
§7701. Preamble, Warning, and Suggested Consultation

A. Preamble—State Law. Pursuant to Act 261, R.S. 40:1046, of the 2015 Session of the Louisiana Legislature, as amended and supplemented by Act 96 of the 2016 Session of the Louisiana Legislature, the Louisiana State Board of Medical Examiners was directed to:

1. ...
2. Repealed.

B. - C. …

AUTHORITY NOTE:Promulgated in accordance with R.S. 37:1261-1292 and R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 41:2631 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:318 (February 2017), LR 46:342 (March 2020).

§7705. Definitions

A. As used in this Chapter, the following terms and phrases shall have the meanings specified.

* * *

Marijuana—tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in any form, except for inhalation, raw or crude marijuana, as permitted by the rules and regulations of the Louisiana Board of Pharmacy (LBP). For purposes of this definition *inhalation* shall not exclude a form of medical marijuana administered by metered-dose inhaler to the extent permitted by LBP rules.

* * *

Step Therapy or Fail First Protocols—repealed.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:319 (February 2017), LR 46:342 (March 2020).

Subchapter B. Prohibitions and Exceptions
§7709. Exceptions

A. This Chapter is subject to the following exceptions.

1. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2632 (December 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:319 (February 2017), LR 46:342 (March 2020).

Subchapter C. Registration
§7711. Registration, Physician Eligibility

A. To be eligible for registration under this Chapter a physician shall, as of the date of the application:

1. - 2. …
3. repealed.

A.4. - D.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 1270, and 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:2633 (December 2015), amended by the Department of Health, Board of Medical Examiners LR 43:319 (February 2017), LR 46:342 (March 2020).

Vincent A. Culotta, Jr., M.D.,
Executive Director

2003#005

RULE

Department of Health
Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment
Psychological Services Staffing Requirements
(LAC 50:XV.7103-7105 and 9531-9535)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:XV.7103-7105 and 9531-9535 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. This Rule is hereby adopted on the day of promulgation.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment
Chapter 71. Health Services
§7103. Covered Services

A. - C.4. ...

D. Physical therapy services are designed to improve the child's movement dysfunction. Physical therapy treatment requires a written referral or prescription on at least an annual basis by a person licensed in Louisiana to practice

medicine, surgery, dentistry, podiatry, or chiropractic. An exception to this requirement is that physical therapy services may be performed without a prescription to a child with a diagnosed developmental disability pursuant to the child's plan of care. An initial evaluation does not require such referral or prescription. Physical therapy services include:

1. - 3. ...

E. Psychological services are designed to obtain, integrate, and interpret information about child behavior, and child and family conditions related to learning, mental health, and development. Psychological services include:

1. ...

2. interpreting assessment results; and

3. planning and managing a program of mental health and behavioral interventions and education programs.

F. - F.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1034 (May 2004), amended LR 31:664 (March 2005), amended by the Department of Health, Bureau of Health Services Financing, LR 46:342 (March 2020).

§7105. Professional Staffing Requirements

A. - D. ...

E. Psychological services must be provided by either a:

1. - 3. ...

4. certified school psychologist, under the supervision of a licensed psychologist.

F. Counseling services must be provided by a:

1. - 2. ...

3. licensed master social worker under the supervision of a licensed clinical social worker.

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 31:665 (March 2005), amended by the Department of Health, Bureau of Health Services Financing, LR 46:343 (March 2020).

Subchapter D. School-Based Therapy Services

§9531. General Provisions

A. EPSDT school-based therapy services are provided pursuant to an individualized service plan (IEP), a section 504 accommodation plan, an individualized health care plan, or are otherwise medically necessary within a local education agency (LEA). School-based services include physical therapy, occupational therapy and other services, including services provided by audiologists and services for individuals with speech, hearing and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth in the therapist licensing requirement.

B. Professionals providing school-based therapy services are required to meet the requirements of licensure for their discipline according to the state of Louisiana.

C. School-based services shall be covered for all recipients who are eligible for EPSDT in accordance with Subsection A.

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, Bureau of Health Services Financing, LR 45:566 (April 2019), amended LR 46:343 (March 2020).

§9533. Covered Services

A. The following school-based services shall be covered.

1. ...

2. Speech/Language Pathology Services. The identification and treatment of children with communicative or oropharyngeal disorders and delays in development of communication skills including diagnosis. Therapists and/or audiologists must meet qualifications established in 42 CFR 440.110(c).

3. - 4. ...

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, Bureau of Health Services Financing, LR 45:566 (April 2019), amended by the Department of Health, Bureau of Health Services Financing, LR 46:343 (March 2020).

§9535. Reimbursement Methodology

A. - A.5. ...

B. Services provided by local education agencies to recipients ages 3 to 21 that are medically necessary and included on the recipient's individualized service plan (IEP), a section 504 accommodation plan, an individualized health care plan, or are otherwise medically necessary are reimbursed according to the following methodology.

B.1. - F.5. ...

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, Bureau of Health Services Financing, LR 45:567 (April 2019), amended by the Department of Health, Bureau of Health Services Financing, LR 46:343 (March 2020).

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.

Stephen R. Russo, JD
Interim Secretary

2003#053

RULE

Department of Health
Bureau of Health Services Financing

Hospice Licensing Standards
(LAC 48:I.8201 and 8235)

The Department of Health, Bureau of Health Services Financing has amended LAC 48:I.8201 and §8235 as authorized by R.S. 36:254 and R.S. 2181-2192. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 82. Minimum Standards for Licensure of Hospice Agencies
Subchapter A. General Provisions
§8201. Definitions

A. ...

* * *

State Certified Hospice Attendant—a former inmate of a Louisiana state prison with a hospice provider license issued by the Department of Health who shall be eligible to be employed as a non-licensed person by a provider licensed to provide hospice services pursuant to the requirements of R.S. 40:2192 if the following provisions are satisfied:

a. the former inmate shall not have been convicted of a sex offense as defined by R.S. 27 15:541;

b. while incarcerated, the former inmate shall have been a caregiver in the licensed hospice program, with documentation of such, and successfully completed the training pursuant to subsection B of R.S.40:2192;

c. the former inmate shall hold a certification issued by the Department of Public Safety and Corrections;

d. the former inmate shall submit notice of his/her certification to the department in a manner prescribed by the Department of Health; and

e. there are no federal restrictions or prohibitions against the former inmate providing hospice services.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2257 (December 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 44:588 (March 2018), LR 46:344 (March 2020).

Subchapter D. Administration
§8235. Agency Operations

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

C. Policies and Procedures

1. ...

2. shall contain policies and procedures specific to agency addressing personnel standards and qualifications, agency operations, patient care standards, problem and complaint resolution, purpose and goals of operation, the hospice's defined service area, as well as regulatory and compliance issues, inclusive of but not limited to, a full disclosure policy when employing and assigning to a patient, a state certified hospice attendant;

3. - 5. ...

D. Operational Requirements

1. - 3.i. ...

4. Responsibility of the hospice prior to employment of a state certified hospice attendant includes, but is not limited to, the following:

a. the hospice provider shall notify HSS of the intent to hire a state certified hospice attendant; and

b. the hospice provider shall have documentation of certification of the state certified hospice attendant meeting the requirements of R.S. 40:2192.

5. Responsibility of the hospice subsequent to employment of a state certified hospice attendant includes, but is not limited to, the following:

a. the hospice provider shall disclose to its employees, patients, and patients' immediate family members that the state certified hospice attendant has successfully completed all state certification training and registry requirements for employment, including successful completion and release from a sentence served at a state prison;

b. upon change in status of employment of the state certified hospice attendant, the hospice provider shall notify HSS;

c. the hospice provider shall ensure that the state certified hospice attendant receives required continuing education or training requirements to maintain state certification in good standing continuously during employment by the hospice provider; and

d. the hospice provider shall ensure that the state certified hospice attendant has continuing education equivalent to a hospice aide/CNA, inclusive of the following:

i. a minimum of 12 hours of job-related in-service training annually, specific to their job responsibilities within the previous 12 months;

ii. at least two of the required 12 hours of annual job-related in-service training shall focus on end of life care; and

iii. ensure six of the 12 hours of required annual job-related in-service training shall be provided every six months.

6. Access by the hospice agency to the state certified hospice attendant registry established by the department pursuant to R.S. 40:2192 shall be limited to an inquiry for a specific state certified hospice attendant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 15:482 (June 1989), amended LR 24:2271 (December 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 44:600 (March 2018), LR 46:344 (March 2020).

Stephen R. Russo, JD
Interim Secretary

2003#054

RULE

Department of Health
Bureau of Health Services Financing

Nursing Facilities—Licensing Standards
Virtual Visitation (LAC 48:I.9781)

The Department of Health, Bureau of Health Services Financing has adopted LAC 48:I.9781 as authorized by R.S. 36:254 and 40:1193.1-1193.11. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 97. Nursing Facilities
Subchapter C. Resident Rights
§9781. Virtual Visitation

A. Each nursing facility licensed by the Department of Health shall comply with the provisions of the Nursing Home Virtual Visitation Act of 2018 enacted by the Louisiana Legislature, and any such amendments enacted thereafter.

B. The term *monitoring device*, as used in this Section, shall have the same meaning as defined in the Nursing Home Virtual Visitation Act of 2018.

C. Capacity to Consent to Virtual Visitation

1. A resident's capacity to consent to the authorization for installation and use of a monitoring device is presumed if the resident has not been interdicted and has no current documented medical diagnosis affecting capacity.

2. Any question as to capacity of a non-interdicted resident to consent to the authorization for installation and use of a monitoring device shall be determined by any one of the following persons in the following order of priority, if there is no person in a prior class who is reasonably available and willing to make such determination:

a. the resident's personal physician;

b. the resident's admitting physician; or

c. the medical director of the nursing facility.

NOTE: Such determination shall be documented in the resident's medical record.

3. The nursing facility shall have a policy regarding capacity to consent to the authorization for installation and use of a monitoring device in a resident's room; such policy shall include, at a minimum, the provisions of §9781.C.1 and §9781.C.2; further, the policy shall be in compliance with the provisions of the Nursing Home Visitation Act of 2018 enacted by the Louisiana Legislature, and any such amendments enacted thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and 40:1193.1-1193.11.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 46:345 (March 2020).

Stephen R. Russo, JD
Interim Secretary

2003#055

RULE

Department of Health
Bureau of Health Services Financing

Pharmacy Benefit Management Program
Vaccine Administration and Reimbursement
(LAC 50:XXIX.123, 991 and 993)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:XI.123, 991, and 993 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. This Rule is hereby adopted on the day of promulgation.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy
Chapter 1. General Provisions
§123. Medication Administration

A. Vaccine Administration. The department shall provide coverage for administration of vaccines by a qualified pharmacist when:

1. - 2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 40:82 (January 2014), amended LR 46:345 (March 2020).

Chapter 9. Methods of Payment
Subchapter H. Vaccines
§991. Vaccine Administration Fees

A. Reimbursement to pharmacies for immunization administration (intramuscular, subcutaneous or intranasal) performed by qualified pharmacists, is a maximum of $15.22. This fee includes counseling, when performed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1783 (August 2010), amended LR 40:82 (January 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1555 (August 2017), amended LR 46:345 (March 2020).

§993. Vaccine Reimbursement

A. Vaccines for recipients aged 19 and over shall be reimbursed at wholesale acquisition cost (WAC) or billed charges, whichever is the lesser amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:82 (January 2014), amended LR 46:345 (March 2020).

Implementation of the provisions of this Rule may be contingent upon the approval of 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.

Stephen R. Russo, JD
Interim Secretary

2003#056

RULE

Department of Health
Bureau of Health Services Financing

Therapeutic Group Homes
Licensing Standards
Criminal Background Checks
(LAC 48:I.6210)

The Department of Health, Bureau of Health Services Financing has adopted LAC 48:I.6210 as authorized by R.S. 36:254 and Act 243 of the 2019 Regular Session of the

Louisiana Legislature. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing
Chapter 62. Therapeutic Group Homes
Subchapter B. Licensing
§6210. Criminal Background Checks; Prohibitions to Ownership of and Employment at a Therapeutic Group Home; Process; Fees

A. The provisions of this Section shall apply to the following persons:

1. any person who owns, operates, or manages a licensed therapeutic group home (TGH);

2. any person who has applied for a license to operate a therapeutic group home;

3. any person who is employed by, is contracted by, volunteers at, or interns with a therapeutic group home;

4. any person who has applied to be employed or contracted by a therapeutic group home; and

5. any person who has applied to volunteer or intern with a therapeutic group home.

B. The provisions of this Section shall not apply to contractors or other individuals providing a service at the therapeutic group home who are not employees, volunteers, interns, or contracted members of the staff of the therapeutic group home, including but not limited to plumbers, landscapers, or visiting resources.

1. For purposes of this Section only, a volunteer is defined as an individual who offers direct care services to clients at the TGH on behalf of the provider for the benefit of the provider willingly and without pay.

2. For purposes of this Section only, an intern is defined as a student or trainee, either paid or unpaid, who offers direct care services to clients of the TGH on behalf of the provider in order to gain work or clinical experience.

C. No person who has been convicted of, or pled guilty to, or pled nolo contendere to a crime listed in §6210.C.1–5, or whose name is recorded on the State Central Registry within the Department of Children and Family Services (DCFS) as a perpetrator for a justified finding of abuse or neglect of a child, or whose name is on any other state's child abuse and neglect registry or repository, may be the owner, operator, manager or administrator of a TGH, be employed by or contracted with a TGH, or be a volunteer or intern, paid or unpaid, at a TGH:

1. R.S. 14:28.1, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:32.12, 14:35.2, 14:38.1; 14:40.1, 14:40.3, 14:40.7, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.1.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:44.2, 14:45, 14:46.4, 14:66, 14:74, 14:79.1, 14:80, 14:80.1, 14:81, 14:81.1., 14:81.2, 14:81.3, 14:81.4, 14:81.5, 14:82, 14:82.1, 14:82.2, 14:83, 14:83.1, 14:83.2, 14:83.3, 14:83.4, 14:85, 14:86, 14:89, 14:89.1, 14:89.2, 14:92, 14:93, 14:93.2.1, 14:93.3, 14:93.4, 14:93.5, 14:106, 14:282, 14:283, 14:283.1, 14:284, 14:286, crimes of violence as defined in R.S. 14:2(B), sex offenses as defined in R.S. 15:541, or the attempt or conspiracy to commit any of these offenses;

2. R.S. 40:966(A), 40:967(A), 40:968(A), 40:969(A), and 40:970(A), or the attempt or conspiracy to commit any of these offenses;

3. a felony offense involving theft, pursuant to R.S. 14:67, or theft of assets of an aged person or person with a disability, pursuant to R.S. 14:67.1, in excess of $500; or, a felony offense involving theft in any case in which the offender has been previously convicted of theft, pursuant to either R.S. 14:67 or R.S. 14:67.1, regardless of the value of the instant theft; or the attempt or conspiracy to commit any of these offenses;

4. those of a jurisdiction other than Louisiana which, in the judgment of the department, would constitute a crime under the provisions cited in this Section; and

5. those under the Federal Criminal Code having analogous elements of criminal and moral turpitude.

D. Notwithstanding the provisions of §6210.C, LDH may, at its discretion, approve a waiver for a person who has a felony conviction for physical assault or battery as provided for in R.S. 14:34 and 14:37, or for a drug-related offense provided for in R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A), provided that the conviction was at least five years from the date of the request for waiver.

E. Criminal Background Checks, Process and Fees

1. The enhanced criminal background check described in §6210 is now required for each TGH, pursuant to the federal Family First Prevention Services Act (Public Law 115-123 enacted February 9, 2018) on child care institutions and Act 243 of the 2019 Regular Session of the Louisiana Legislature. This new enhanced criminal background check process encompasses the state requirements in R.S. 40:1203.1 et seq. A TGH's compliance with this new enhanced criminal background check process will be deemed in compliance with the requirements in R.S. 40:1203.1.

2. The Department of Health shall request, consistent with the provisions of R.S. 15:587.1.2, from the Bureau of Criminal Identification and Information (the bureau), information concerning whether or not any of the persons listed in §6210.A has been arrested for, convicted of, or pled nolo contendere to any criminal offense.

a. The request shall be on a form prepared by the bureau and signed by a responsible official of LDH making the request;

b. The request shall include a statement signed by the person about whom the request is made which gives his/her permission for such information to be released; and

c. The person about whom the request is made shall submit his/her fingerprints in a form acceptable to the bureau.

F. In responding to a request for information regarding criminal history, the bureau shall make available a record of all criminal arrests and convictions prior to the date of request.

G. Upon receiving a request for information regarding criminal history, pursuant to R.S. 15:587.1.2 and R.S. 40:2008.10 (or their successor statutes) and this licensing rule, the bureau shall survey its criminal history records and identification files and make a simultaneous request of the Federal Bureau of Investigation for like information from other jurisdictions. The bureau shall provide a report to HSS

promptly and in writing, but provide only such information as is necessary to specify whether or not that person has been arrested for, or convicted of, or pled guilty to, or pled nolo contendere to any crime or crimes, the crimes for which he has been arrested, or convicted, or to which he has pled nolo contendere, and the date or dates on which they occurred.

1. The report provided by the bureau to HSS shall include arrests, convictions, or other dispositions, including convictions dismissed pursuant to Code of Criminal Procedure Articles 893 or 894.

2. When an individual's record contains information which has been expunged, the bureau shall include in its report to HSS the date of the arrest and a notation that the individual's record contains information which has been expunged and that HSS may contact the bureau in order to obtain further information regarding the expunged information.

H. The LDH, as recipient of the criminal background report and information from the bureau, shall maintain the confidentiality of such criminal history information in accordance with applicable federal and/or state law.

1. The bureau's criminal background report, and any information contained therein, including expunged information, shall not be deemed a public record.

2. The information may be used or admitted as evidence in any court proceeding, or employment or disciplinary hearing, in which LDH is an authorized participant.

I. State Central Registry

1. In addition to the criminal background checks, HSS requires that the TGH request information from the DCFS concerning whether or not any of the persons listed in §6210.A is recorded on the State Central Registry as a perpetrator for a justified finding of abuse or neglect of a child.

a. Upon request by HSS, such information shall be submitted to HSS for its review in §6210.K.

b. If the TGH fails to timely submit this information to HSS for its review, HSS may seek the information directly from DCFS and may sanction the TGH for failing to submit such information to LDH.

J. Other State Registries of Abuse/Neglect

1. For any persons listed in §6210.A who has lived in any other state within the last five years, HSS shall request information from the child abuse and neglect registry or repository of each of those states as to whether the individual's name is recorded on that state's registry or repository.

2. If such information is not readily available or sent to HSS within 15 days of the request, HSS shall complete its review under §6210.K; however, if HSS subsequently receives information from other states' registries or repositories, HSS reserves the right to re-open its review and send a supplemental determination on the individual.

K. For the persons listed in §6210.A, HSS shall review the criminal background check, the State Central Registry (for abuse/neglect of a child), and any other applicable states' child abuse and neglect registry or repository, to determine if the person is eligible to be an owner, operator, manager, or administrator of a TGH, is eligible to be employed by or contracted with a TGH, or is eligible to be a volunteer or intern, paid or unpaid, at a TGH.

1. Notification shall be sent to the TGH.

2. The HSS shall retain such records and determination within a section of the TGH's licensing file for a period of five years, and may be shared with state or federal agencies with authority to access such information; however, such records and determinations are not public records.

L. The costs of any criminal background checks and reviews/checks of abuse/neglect registries or repositories required under statute or this licensing rule shall be the responsibility of the TGH.

1. The HSS may charge a processing fee not to exceed $15 for the processing of the criminal background check and the review of abuse/neglect registries or repositories.

2. Additionally, HSS hereby requires that the TGH pay the charges and fees of the bureau for a state criminal history report, of the Federal Bureau of Investigation for a federal criminal history report, of the DCFS State Central Registry, and of any other state's registry or repository of abuse/neglect; such payments shall be made directly to those bureaus and agencies.

M. The HSS may request any information necessary from the TGH, from any person subject to the provisions of this Section, or from any other appropriate agency to ensure compliance with the requirements of criminal background checks and abuse/neglect registries or repositories.

N. Existing, Active TGH Licensed Before October 1, 2019

1. For any existing, operating TGH licensed as of October 1, 2019, the licensee shall submit to HSS on or before October 15, 2019, the following:

a. A list of all owners, operators, managers, administrators, employees, contractors, volunteers, and interns of the TGH as of October 15, 2019; such list shall indicate whether any such person has worked in another state within the last five years, including the states where worked, if applicable; and

b. Evidence to HSS that none of these individuals are recorded on the State Central Registry (for abuse/neglect of a child) via DCFS.

2. Each such person listed shall:

a. Submit a signed form or statement by October 15, 2019, giving permission for a criminal background check to be conducted by the bureau, and for the results/report to be submitted to HSS, pursuant to statute and this licensing rule; and

b. Submit his/her fingerprints to the bureau by October 15, 2019;

c. Submit an attestation to HSS on a form provided by HSS wherein the person attests that his/her signed form/statement and his/her fingerprints have been so submitted; this attestation must be received by HSS by October 18, 2019.

3. A person who has timely submitted his/her signed form/statement and his/her fingerprints to the bureau, who has timely submitted the attestation in §6210.N.2, and who is not recorded on the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository, may continue to own, operate,

manager, administer, be employed, be contracted, volunteer, and/or intern with the TGH until HSS receives and reviews the information or report from the bureau and receives and reviews any information or report from the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository.

4. If such information reveals that the person cannot be an owner pursuant to this Section, the department shall notify the licensed TGH, and the TGH shall immediately remove the person from ownership or shall immediately surrender its license.

5. If such information reveals that the person cannot be an operator, manager, administrator, employee, contractor, volunteer, or intern with the TGH pursuant to this Section, HSS shall notify the licensed TGH and the TGH shall immediately terminate the person.

6. No new owner may be obtained and no new operator, administrator, manager, employee, contractor, volunteer, or intern may be hired after October 15, 2019, until that person has submitted his/her signed form/statement and his/her fingerprints to the bureau and HSS has:

a. received and reviewed the information or report from the bureau;

b. received and reviewed the information or report regarding the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository; and

c. confirmed that the person can be an owner, operator, administrator, manager, employee, contractor, volunteer, or intern pursuant to the provisions of this Section or of the applicable statutes.

O. A TGH licensed after October 1, 2019, or that has an inactivated license re-activated after October 1, 2019

1. Any TGH licensed after October 1, 2019, or any inactive TGH that has its license re-activated after October 1, 2019, shall submit with its licensing application to HSS, a list of all proposed owners, operators, administrators, managers, employees, contractors, volunteers, and interns.

2. For the initial licensing application process of any TGH licensed after October 1, 2019, or for the reactivation licensing application process of any inactive TGH that has its license re-activated after October 1, 2019, the HSS processing of the application shall not begin until such time that all owners have submitted signed forms/statements and fingerprints to the bureau, and HSS has:

a. received and reviewed the information or report from the bureau;

b. received and reviewed the information or report regarding the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository; and

c. confirmed that the person can be an owner pursuant to the provisions of this Section or of the applicable statute.

3. Once HSS has confirmed that each owner is compliant with the provisions of this Section and is eligible to be an owner of the TGH, then HSS will proceed with processing the licensing application; however, the on-site licensing survey or the on-site reactivation survey at the TGH will not be scheduled by HSS, until such time that all operators, administrators, managers, employees, contractors, volunteers, and interns listed per Section 6210.O.1 have submitted signed forms/statements and fingerprints to the bureau, and HSS has:

a. received and reviewed the information or report from the bureau;

b. received and reviewed the information or report regarding the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository; and

c. confirmed that the person can be an operator, administrator, manager, employee, contractor, volunteer, or intern pursuant to the provisions of this Section or of the applicable statute.

4. No new TGH may be licensed after October 1, 2019, and no inactive TGH may have its license re-activated after October 1, 2019 until all persons listed in Section 6210.O.1 have been determined in compliance with this Section or have been removed from ownership or employ of the TGH.

5. At the on-site licensing survey or the on-site re-activation survey, the TGH shall have sufficient approved staff to admit and treat at least one client continuously for 24 hours.

a. The TGH shall have sufficient approved staff to meet the needs of any client admitted to the TGH.

6. No new owner or operator may be obtained and no new administrator, manager, employee, contractor, volunteer, or intern may be hired by the TGH after submitting the initial license application or reactivation license application, until the TGH has submitted notice of the new person to HSS, and that person has submitted his/her signed form/statement and his/her fingerprints to the bureau, and HSS has:

a. received and reviewed the information or report from the bureau;

b. received and reviewed the information or report regarding the State Central Registry for abuse/neglect of a child or any other states' abuse/neglect registry or repository; and

c. confirmed that the person can be an owner, operator, administrator, manager, employee, contractor, volunteer, or intern pursuant to the provisions of this Section or of the applicable statutes.

P. Subject to §6210.P.1, LDH's review and determination regarding criminal background check and abuse/neglect registry verification(s) for any person subject to the provisions of this Section, is specific to that licensed TGH only. A separate review and determination, along with new criminal background check and abuse/neglect registry verifications, shall be necessary for any person (who is subject to the provisions of this Section) who is an owner, operator, manager, administrator, employee, contractor, volunteer, or intern at a separately licensed TGH.

1. If two or more licensed TGHs are owned by the same corporate entity and such is noted on the license application and license, then LDH, in its discretion, may allow its review and determination regarding criminal background check and abuse/neglect registry verification for a particular owner, operator, manager, administrator, employee, contractor, volunteer, or intern who will be at both (or multiple) of the owned TGHs, to be based on the same criminal background check and abuse/neglect registry

verifications, provided that the background check and verifications were conducted within the last 90 days.

Q. In addition to other sanctions that may be imposed on a TGH, LDH may also deny initial licensure, revoke an existing license, or deny renewal or reactivation of a license of a TGH that violates the provisions of this Section or of the applicable statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Act 243 the 2019 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 46:346 (March 2020).

Stephen R. Russo, JD
Interim Secretary

2003#057

RULE

Department of Health
Office for Citizens with Developmental Disabilities

Individual and Family Support Program
(LAC 48:IX.Chapter 11)

Under the authority of R.S. 28:824, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Louisiana Department of Health (LDH), Office for Citizens with Developmental Disabilities (OCDD), has amended LAC 48:1, Chapter 11, 1101-1137, Individual and Family Support (IFS) Program. The Rule sets forth recommended changes as requested by the Developmental Disabilities Council. The Rule includes a section on the Guiding Principles; redefined the IFS Program's purpose; allows infants and toddlers eligible for Early Steps to also be eligible for IFS services; allows for reimbursement policy changes; replaces "payer of last resort" with the appropriate payer source; deleted references to "ineligible supports;" specified additional information be provided to the Regional Advisory Committee at least quarterly; allows for the continuation of services throughout the appeal process; requires notification to individual/family requesting IFS services of the opportunity to present their request to the IFS Committee during development of the Plan of Support; and stipulates that any LGE internal policy shall be submitted to state office for review, recommendations and feedback. This Rule is hereby adopted on the day of promulgation.

Title 48
PUBLIC HEALTH—GENERAL
Part IX. Developmental Disabilities Services
Chapter 11. Individual and Family Support Program

§1101. Purpose

A. The individual and family support program is designed to meet the needs of individuals with intellectual/developmental disabilities which exceed those normally met by existing resources, entitlements, and those occurring naturally in the individual's family and community pursuant to the guiding principles of ACT 378 of the 1989 Regular Legislative Session as contained in R.S. 28:823.

B. The purposes of the individual and family support program shall be:

1. to establish, maintain and/or improve the quality of life for individuals with intellectual/developmental disabilities and their families in a manner that respects both the individual's needs and aspirations and the individual's ability to use supports in a responsible and accountable manner;

2. to link individuals with intellectual/developmental disabilities and their families to existing supports and resources and to supplement those supports as necessary to maintain and/or improve the integrity of individuals and their families.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:664 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:349 (March 2020).

§1103. Definitions

Applicant—the individual with intellectual/developmental disabilities for whom supports are requested.

Community Support Professional—a Local Governing Entity (LGE) staff person whose duties may include support coordination to applicants and participants in individual and family support program.

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

Direct Service—any good, support or service purchased for or provided to an individual with intellectual/developmental disabilities directly by a service provider or secured/purchased by the individual/family through merchants and/or contractors used to assist the individual to remain in their own home in the community.

Eligible Individual—individual who has a statement of approval (SOA) to participate in intellectual/developmental disabilities services as part of the current single point of entry (SPOE) process established by the OCDD or an individual eligible for and enrolled in EarlySteps services.

Individual and Family Support Committee—the advisory committee to the individual and family support (IFS) program within each local governing entity administering the IFS program.

Local Governing Entity (LGE)—an integrated human services delivery system with local accountability and management and which provides behavioral health and developmental disabilities services through local human services districts and authorities.

Office for Citizens with Developmental Disabilities (OCDD)—the office, within the Louisiana Department of Health (LDH), that has the responsibility for developing, evaluating and guiding programs and supports for Louisiana's citizens with intellectual/developmental disabilities.

Plan of Support—the individualized plan for provision of supports for individuals and families developed utilizing the most recently approved format by the OCDD for individuals with intellectual/developmental disabilities.

Support Coordination—the provision of assistance to individuals with intellectual/developmental disabilities or their families to identify and coordinate necessary supports and to access, utilize and maintain those supports in a fiscally sound manner.

Support Coordinator—the person responsible for support coordination for an individual with intellectual/developmental disabilities and/or his/her family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:665 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:349 (March 2020).

§1105. Participant Records

A. Each LGE will maintain a single participant record for each applicant or participant in the individual and family support program, which will comply with Louisiana Department of Health (LDH), OCDD, Health Insurance Portability and Accountability ACT (HIPAA) requirements. The record will reflect all aspects of service provision to the participant, inclusive of multiple or varied funding sources and/or fiscal year. The record shall include progress note entries that are legible and provide strict chronological documentation for all individual and family support case activity. Progress notes will also include the date written and the signature of the author of each note to be considered complete.

B. Each LGE administering the individual and family support program will comply with established policies and procedures of the LDH and the OCDD for the confidentiality of and access to participant records and the time-periods to retain those records.

C. The following additional information specific to the development of the request for individual and family support resources shall also be included in the participant record:

1. plan of support document that is current within a year or a comprehensive plan of care current within a year, which clearly identifies services requested and received from the LGE, or an EarlySteps individualized family services plan (IFSP), that is current within a year;

2. individual and family support prioritization instrument that is current within a year;

3. notice of decision for the individual and family support program;

4. individual and family support notice of right to appeal, as appropriate; and

5. individual and family support request for appeal, as appropriate.

D. When individual and family support funds are allocated and expended on behalf of participants these documents will be maintained in the participant's record in compliance with the requirements of the LDH, OCDD, and auditing authorities, and shall, at a minimum, include:

1. justification to, and approval from, the executive director of a LGE for expenditures in excess of $15,000, in a single fiscal year;

2. justification to, and approval from, the executive director of a LGE for funding of services outside these program guidelines; and

3. expenditure recap sheet, which specifies the total amount of individual and family support funds authorized, dates and amounts of expenditure of these funds and the total remaining on the initial allocation.

E. Agencies administering the individual and family support program will be required to comply with the requirements set forth and utilize forms approved for use by the OCDD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:665 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:350 (March 2020).

§1107. Eligibility

A. The individual and family support program is a resource available to serve an individual with intellectual/developmental disabilities and his/her family as follows.

1. The individual lives in Louisiana and has a statement of approval to participate in intellectual/developmental disabilities services in accordance with the developmental disability law.

2. The individual may receive individual and family support funds to address identified needed supports to enable the person to remain in the community and/or to improve his/her quality of life.

3. The individual is at risk of being institutionalized or is institutionalized, but intends to return to the community with appropriate supports.

B. The individual and his/her family must demonstrate the ability to provide the necessary and appropriate care and supervision for the individual with intellectual/developmental disabilities who receives the support.

C. Families receiving a subsidy for the care of an individual cannot also receive IFS funds. The following are not considered subsidies: Family Independence Temporary Assistance Program (FITAP), Social Security (SS) benefits, flexible family fund, and child support; requests may be approved on an individual basis for eligible applicants receiving adoption subsidies.

D. Financial circumstances will be considered in the prioritization of individual and family support program funds. Family income will not disqualify applicants, but the applicant's ability to independently provide supports will be considered in funding decisions. Individual income will be considered for persons with intellectual/developmental disabilities who are establishing or maintaining supervised independent living in the community.

E. Requests for individual and family support funding may be approved for non-related persons when the applicant meets all other eligibility criteria, and at least one of the following:

1. The relationship and/or living arrangement is long-standing or of a permanent (not temporary) duration;

2. The person providing care is not the guardian or legally responsible representative of the applicant;

3. The applicant meets the Internal Revenue Service definition for a dependent for federal income tax purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:665 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:350 (March 2020).

§1109. Request for Individual and Family Support Funding

A. The request for individual and family support funding can be made by any eligible individual with intellectual/developmental disabilities, the applicant's family or representatives, a support coordination agency, or designated facility personnel for individuals residing in facilities who desire to return to the community.

B. All requests for individual and family support funding will go to the geographically appropriate LGE for determination.

C. Participants must have a current statement of approval (SOA) or meet criteria and be enrolled in EarlySteps services to receive individual and family support funds. The developmental disabilities director may provide IFS funding to applicants who do not yet have, but are likely to receive, an SOA in emergent situations. The support coordinator or community services professional will assist the individual and/or family in completing the plan of support to request individual and family support funding.

1. The support coordinator or community services professional will complete the plan of support (or comprehensive plan of care) in cooperation with the applicant and his/her family and will provide information on available supports and the type of support requested. The individual and/or family will be considered the primary decision maker.

2. The LGE administering individual and family support (IFS) funds shall have the responsibility for determination of the prioritization for allocation of IFS funds.

3. The developmental disabilities director or his/her designee will determine if the request requires an expedited response.

4. Individuals with intellectual/developmental disabilities, and/or their families, will be notified of and have the opportunity to present their requests to the individual and family support committee in person or by representation of their choice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:666 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:351 (March 2020).

§1111. Plan of Support

A. There will be a single plan of support for each applicant for individual and family support funding, regardless of the funding mechanism or LGE delivering supports.

B. The support coordinator or community services professional will meet with the individual and their family (if applicable) to generate an individualized plan of support specific to the individual's need for supports, which will include the following as defined by the OCDD: personal outcome goal of the IFS being requested, exploration of readily available resources to provide the IFS being requested, the extent and duration of the IFS service being requested, statement of the total amount of funds to be expended, and the terms of service delivery.

C. The plan of support will reflect the participant's current life situation in relation to the IFS being requested and what goal the IFS funds requested will meet. The plan of support will be reviewed and revised at least annually and also when the participant's need for the IFS increases or decreases.

D. The plan of support will be completed prior to the development of any agreement to provide individual and family support, except in the case of an emergent situation as determined by the developmental disabilities director.

E. The plan of support will specify the conditions for use of service and reporting or documentary responsibilities of the participant and/or family receiving services.

F. The comprehensive plan of care generated by the support coordination agency for waiver services may serve as the plan of support according to conditions set forth by the OCDD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:666 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR46:351 (March 2020).

§1113. Prioritization for Individual and Family Support Funding

A. Each LGE will be responsible for the prioritization of all requests for individual and family support funding presented for a funding decision according to the following.

1. Priority 1. Without requested supports, there is an immediate or potential threat of out-of-home placement or homelessness due to:

a. the individual and/or caregiver's emergent or acute medical care needs;

b. documented abuse or neglect of the individual requiring immediate action to preserve his/her health or safety;

c. death or inability of caregiver to continue care due to his/her own age or health exposing the individual and/or caregiver to substantial jeopardy;

d. caregiver's inability to continue care without assistance due to employment or other family obligations;

e. the individual's intense or frequent challenging behavioral needs requiring immediate action to preserve his/her health; or

f. substantial threat that the individual will experience a health crisis leading to death, homelessness, hospitalization, or placement in a nursing facility without the requested supports.

2. Priority 2. Supports are needed to prevent the individual's health from deteriorating or the individual from losing his/her independence or productivity, and/or to maintain the caregiver's ability to provide supports and a stable home environment in the foreseeable future.

3. Priority 3. Supports are needed to maintain the individual's health, independence or productivity, and/or to maintain the caregiver's long-term ability to provide supports in a stable home environment.

4. Priority 4. Supports are needed to enhance the individual's quality of life and enhance the family's ability to provide a stable home environment.

B. All individual and family support allocations will be evaluated at the time of the initial application for funding and at least annually thereafter to determine the continuing need for authorized supports. Documentation shall be provided with completion of the individual and family support prioritization instrument form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:667 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:351 (March 2020).

§1115. Individual and Family Support Committee

A. Each LGE will maintain an individual and family support committee to be convened on a regular basis, but no less than quarterly, and on an as-needed basis, to serve as an advisory function to the LGE about allocation of funding.

B. The individual and family support committee shall be composed of the developmental disabilities director, or designee; the supervisor of the individual and family support program; the support coordinator/community support professional working with the applicant; at least one representative from an advocacy organization; at least one representative from the regional advisory committee; and at least one adult participant or a parent of a participant who has received supports through the individual and family support program. An adult participant or a parent may serve in a dual role on the committee.

C. The developmental disabilities director, or designee, shall report the activities of the individual and family support committee to the regional advisory committee at least quarterly. The report shall include:

1. number of persons receiving individual and family support funding;

2. types of supports provided;

3. total amount of funds budgeted and expended;

4. resolution of emergency funding requests and expenditures;

5. circumstances of imposition of fiscal controls imposed on participants in individual and family support funds, if any;

6. results of the quarterly supervisory review of at least 10 percent of active individual and family support cases completed;

7. composition of the IFS Committee and the number of times the committee met in the past quarter; and

8. number of IFS requests received by priority level and the disposition of each request.

D. The developmental disabilities director, or designee, shall maintain a record of the meetings of the individual and family support committee which shall include, minimally, those in attendance, requests discussed, and resolution of all applications. This record will be made available for review for monitoring or auditing purposes as requested by the OCDD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:667 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:352 (March 2020).

§1117. Allocation of Individual and Family Support Funding

A. Authorization for individual and family support funding will be made by the developmental disabilities director in cases determined to require immediate action. Factors which may influence allocation of funds under these circumstances include, but are not limited to:

1. urgency of need;

2. probable consequences of failure to allocate funds and possible benefits;

3. adequacy of utilization of and exploration of alternative resources; and

4. resources readily available to the individual with intellectual/developmental disabilities and/or the family.

B. Authorization for funding in cases determined to not require immediate action by the developmental disabilities director will be prioritized by the LGE according to §1113 to determine the level of need, IFS authorized and, any limitations, stipulations or conditions to be met by the individual or family to receive individual and family support.

C. Actions which may be taken in response to applications for IFS shall be defined by the OCDD and shall include: approval (all or part), approval pending funding, deferment, or denial.

D. The LGE shall notify applicants of the action taken in response to the IFS application in writing within 10 working days of taking any action on the request.

1. Notification to applicants and/or their families shall be in writing. The letter of notification shall include notification of their right to appeal the action taken if their request was denied or funded in part. A copy of the letter will be provided to the applicant's support coordinator/community support professional and placed in the applicant's record.

2. Separate notifications will be made each time a request for supports is reviewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:667 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:352 (March 2020).

§1119. Individual and Family Support Expenditures

A. Individual and family support expenditures will only be authorized through a plan of support which will:

1. be generated no more than 90 calendar days before the request for support is made;

2. extend for the duration of any agreement to utilize individual and family support funds;

3. define the specific type and duration of supports needed; and

4. identify the agent(s) to provide the service and any special conditions associated with service delivery.

B. The developmental disabilities director, or designee, shall be responsible for expenditures in the individual and family support program, more specifically, the amount budgeted and the number of people served, and shall ensure

administration within the guidelines established by the OCDD.

C. The developmental disabilities director, or designee, shall be responsible for supplying written justification for IFS expenditures above $15,000 for a single individual within a single fiscal year to the executive director of a LGE and receive approval from the executive director prior to expenditure of funds. Plans of support approved for less than this amount will not require such notification or approval. A copy of the letter of justification and notice of approval shall be maintained in the participant record.

D. The developmental disabilities director, or designee, shall be responsible for supplying written justification of expenditures outside guidelines established by the OCDD and/or that exceed an amount specified in the program manual to the executive director of a LGE, and receiving the executive director's approval, before funds are expended. Plans of support which are within program guidelines will not require such notification or approval. A copy of the letter of justification and notice of approval shall be maintained in the participant record.

E. Services in the individual and family support program are cost reimbursements and prior authorized. The developmental disabilities director or designee may authorize expenditures for a payment prior to receipt of service if documentation is provided that justifies the individual or family's inability to provide the advance payment that is typically required for cost-reimbursement individual agreements. Individual and/or family reliance on FITAP, SS disability or SSI will be adequate justification for prior payment.

F. Each participant record will include an expenditure recap sheet, which details all individual and family support expenditures, regardless of payment mechanism.

G. Funds appropriated or allocated to the individual and family support program cannot be used for salaries of civil service or contract employees who coordinate and monitor the individual and family support services and cannot be used to fund other costs associated with administering this program. All funds appropriated or allocated to the individual and family support program shall be spent on the direct purchase of goods, supports or services to assist the individual with an intellectual/developmental disability and/or his/her family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:668 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:352 (March 2020).

§1121. Implementing the Plan of Support

A. The support coordinator or community services professional in cooperation with the participant and the family when applicable, will implement the plan of support as approved.

B. The support coordinator or community services professional will serve as the primary resource to applicants with intellectual/developmental disabilities and/or their families in development and implementation of the plan of support.

C. Participants and families receiving supports will be expected to assume personal responsibility for use of the individual and family support funds.

D. When participants have demonstrated the need for assistance in overseeing supports, which help maintain health, safety and protection from abuse, neglect or exploitation, the LGE will be responsible to provide active support to that individual and/or family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:668 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:353 (March 2020).

§1123. Eligible Supports

A. The individual and family support program supports are intended to maintain and/or improve maximum flexibility for eligible participants with intellectual/developmental disabilities and their families by meeting their needs to enable them to remain at home and be fully participating members of their communities. Because each individual is unique, supports will be person-centered and will change with time and the circumstances of the individual and family needing supports.

1. Examples of eligible supports include, but are not limited to:

a. special equipment/supplies;
b. special nutrition/clothing;
c. special therapies;
d. respite;
e. medical expenses;
f. medications;
g. therapeutic services;
h. personal care attendant;
i. home modifications;
j. crisis intervention;
k. family training/therapies;
l. homemaker services;
m. vehicle modifications;
n. recreation services;
o. communication services;
p. transportation;
q. counseling services;
r. home health services;
s. support coordination;
t. specialized utility costs;
u. sitter services;
v equipment and supplies;
w. adaptive equipment;
x. nutritional supplies;
y. personal assistance services;
z. companion/roommate services;
aa. special evaluations;
bb. therapeutic nursing services;
cc. family subsidy;
dd. vocational/employment supports;
ee. specialized diagnosis and evaluation; and
ff. dental/medical care.

2. Individual and family support funds shall not supplant services from a home and community-based waiver, Medicaid State Plan, EarlySteps, Louisiana Rehabilitation Services, local education agency or Medicaid funded behavioral health.

3. Individual and family support funds can be used to supplement other sources of payment only when that funding is deemed by the developmental disabilities director to be insufficient to meet the existing needs of the participant and is fully documented as such in the participant record.

4. Financial subsidy does not reflect a growth in family income and will not be used in calculations for eligibility for public entitlements, except for ineligibility to participate in the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:668 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:353 (March 2020).

§1125. Ineligible Supports

A. Supports ineligible for payment by individual and family support funding include, but are not limited to:

1. items or supports for which an individual or family is routinely eligible under existing programs, such as home and community-based waiver, Medicaid State Plan, EarlySteps, Louisiana Rehabilitation Services, local education agency or Medicaid funded behavioral health unless there is sufficient documented justification that the specific needs of the individual and/or family are not met;

2. items or supports for which a school-aged (3-22 years) child is eligible as a "related service" under Public Law 94-142, unless there is sufficient documentation of efforts to address the need through the child's individualized education program (IEP) and to pursue due process if warranted;

3. payments made towards or payments made for FICA taxes, workman's compensation insurance, liability insurance, etc. by a participant or their family to insure workers in their home providing IFS services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:669 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:354 (March 2020).

§1127. Payment Mechanisms

A. The developmental disabilities director, or designee, may authorize expenditures of individual and family support funds and shall have final discretion on the type of payment mechanism, with appropriate prior notification to the executive director of a LGE as specified by the OCDD.

B. Individual and family support program supports may be provided through any legitimate and appropriate funding mechanism authorized by current Louisiana Department of Health (LDH) contracting or purchasing practices or the policies and procedures established by a LGE. This may include, but not be limited to, the use of individual agreements for goods and services, purchase orders (integrated statewide information system mechanism) for purchase of goods, and contracts for supports with either individuals or external agencies.

C. Documentation will be required for all individual and family support funds expended. This may take the form of receipts for goods or services, time-sheets for service delivery, utility statements, etc.

D. When an individual receiving individual and family support services moves to a region served by a different LGE and the service is still needed at the new location, the LGEs will negotiate the continuation of the funding of the service in order to ensure continuity of service.

E. The support coordinator or community services professional will instruct the participant and/or his/her family on the means to document delivery of supports, including providing appropriate billing forms and/or special instructions, both at the point of initiation of supports and quarterly thereafter for the duration of service provision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:669 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:354 (March 2020).

§1129. Fiscal Control of Use of Individual and Family Support Funds

A. The plan of support for each participant in individual and family support shall clearly reflect the intended utilization of supports and be specific to the type and level of support to be received; conditions of delivery of service; the frequency and duration of the service.

B. The developmental disabilities director or designee shall be responsible for the appropriate use of individual and family support funds in cooperation with the support coordinator or community services professional to ensure that no support or service is funded, which is not clearly identified on an approved plan of support.

C. All individual and family support agreements will contain clear identification that any payroll and/or other taxes are the sole responsibility of the participant and not the LGE. No individual and family support sponsored reimbursement may be used in any way to defer the participant's responsibility for payroll tax payment or deferral.

D. All questions about payroll or other taxes or other fiscal responsibilities of participants of individual and family support funds are to be referred to tax specialists for advice and/or resolution of questions. No OCDD or LGE employee may answer participant questions about the legal obligations of the participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:669 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:354 (March 2020).

§1131. Monitoring the Plan of Support

A. Support coordinator or community services professional will maintain at least quarterly contact with the participant, with documentation to the record, for the duration of supports; contact can be face-to-face or by telephone except that home or vehicle modification(s) will be viewed by the support coordinator or community services

professional to ensure the modifications are completed and accepted by the participant or his/her family prior to payment. Regardless of the manner of monitoring, a record of monitoring activities shall be maintained in the participant record at the LGE office.

B. Active plans of support will be monitored for the duration of support provision; the participant record will clearly indicate the period during which monitoring will occur and the point at which monitoring can be terminated.

C. Monitoring of supports shall address fiscal issues of whether receipts satisfy and conform to the conditions of delivery of the plan of support. Processing of receipts and billing forms shall not be considered an adequate monitoring of delivery of support.

D. Monitoring of the plan of support will involve follow-up of questionable fiscal practices, including attempts to recoup inappropriate payment if necessary. Such instances will include, but not be limited to, when adequate receipts are not submitted, when eligibility is in question, or when the individual or family has demonstrated questionable compliance with program policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:670 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:354 (March 2020).

§1133. Regional Program Monitoring and Reporting

A. Each LGE will conduct a supervisory review of at least 10 percent of active plans of support of individual and family support applicants and participants on an at least quarterly basis to ensure compliance with program guidelines and quality of service delivery. This internal review shall be the responsibility of the LGE and supervisory personnel as designated by the developmental disabilities director.

B. Each LGE will monitor individual and family support funds allocated for its use and report quarterly in the format required by the OCDD. Periodic reports will be generated by the central data management system of the OCDD.

C. An annual review of LGE program operations will be completed by personnel of the OCDD, and each LGE will work cooperatively with officials of authorized state or federal agencies to satisfy audit or monitoring requirements as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:670 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:355 (March 2020).

§1135. Terminations

A. Terminations occur when an individual and family support service has been approved and is then terminated for one of the reasons listed in Subsection B of this Section. This is not the same as a closure of request, which occurs before a service is approved.

B. Terminations may be initiated by the LGE or individual or family receiving the individual and family support service for any of the following reasons:

1. death of the participant;
2. fraud;
3. relocation of the individual receiving supports outside of Louisiana;
4. termination of program;
5. participant is placed in an ICF/IID or other institutional setting;
6. at individual's request when the individual with intellectual/developmental disabilities is of majority and legally competent;
7. substantial changes occur and are not reported by the individual and/or family that results in the participant becoming eligible for support from sources other than the individual and family support program which include, but are not limited to:
   a. receipt of, or certification of, Medicaid services, or EarlySteps;
   b. receipt of Louisiana Rehabilitation Services
   c. change in financial circumstances; or
   d. change in living arrangements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:670 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:355 (March 2020).

§1137. Appeals

A. Applicants for and participants in the individual and family support program who have had supports approved in part, reduced, denied or terminated, shall have a right to appeal to the Division of Administrative Law-Louisiana Department of Health (LDH) section.

B. Applicants and participants in the individual and family support program will be informed of their right to appeal and of the process to appeal in writing.

C. All persons receiving an adverse eligibility determination shall have 30 calendar days from the date on the letter notifying the person of the adverse eligibility decision to request an appeal.

D. To request an appeal, participants can contact either their support coordinator, community services professional or the LGE office by telephone, in writing, or in person for assistance.

E. The appellant, with or without the assistance of the support coordinator or community service professional, will be responsible for completing the appropriate documentation and forwarding it to the Division of Administrative Law-LDH section as set forth by the OCDD.

F. If the appeal is timely and services were in place at the time of the appeal, services will continue throughout the appeal process.

G. The LGE will cooperate with the Division of Administrative Law to provide information as appropriate to complete the appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:824.

HISTORICAL NOTE: Promulgated by the Department of Health, Office for Citizens with Developmental Disabilities, LR 43:671 (April 2017), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 46:355 (March 2020).

Stephen R. Russo, JD
Interim Secretary

2003#028

RULE

Department of Health
Office of Public Health

Dairy Products—Frozen Dessert Regulations
(LAC 51:VII.2707)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH), has amended Part VII (Dairy Products Regulations) of Title 51 (Public Health—Sanitary Code). These amendments update sampling requirements for certain dairy product businesses that freeze or partially freeze and repackage frozen desserts made from frozen dessert mixes that were pasteurized, ultra-pasteurized or aseptically processed at another plant for wholesale. The state health officer has reviewed the current regulatory scheme and is in agreement with the regulated entities that the currently adopted sampling schedule is excessively onerous on these entities without providing a substantive additional public health benefit. Therefore, the state health officer amends the current regulatory language to adopt a more rational approach to the regulation of these particular dairy product facilities. This Rule is hereby adopted on the day of promulgation.

Title 51
PUBLIC HEALTH—SANITARY CODE
Part VII. Dairy Products Regulations
Chapter 27. Frozen Desserts
Subchapter A. Supplemental Requirements for Dairy Plants that Manufacture Frozen Desserts
§2707. Additional Requirements for Frozen Dessert Manufacturing Plants that Have Been Authorized by the State Health Officer to Freeze or Partially Freeze and Package Frozen Desserts Made from Frozen Dessert Mixes that were Pasteurized, Ultra-pasteurized or Aseptically Processed at Another Plant

A. - B.4. …

C. During any consecutive 6 months one sample of each fat level of product packaged by the plant shall be taken by the state health officer and tested for standard plate count and coliform count. The state health officer shall take appropriate regulatory action on violative sample results as prescribed in §331 of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(A)(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2721 (September 2011), amended by the Department of Health, Office of Public Health, LR 46:356 (March 2020).

Jimmy Guidry, MD
State Health Officer
and
Stephen R. Russo, JD
Interim Secretary

2003#033

RULE

Department of Health
Office of Public Health

Emergency Preparedness Activities
(LAC 48:I.Chapter 6)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the state health officer, acting through the Louisiana Department of Health, Office of Public Health has adopted LAC 48:I.Chapter 6, Uses and Disclosures of Information for Public Health Emergency Preparedness Activities. R.S. 40:4 and R.S. 40:5 authorize the state health officer acting through the Office of Public Health of the Louisiana Department of Health to prepare, promulgate, and enforce rules and regulations related to public health in the state of Louisiana. R.S. 29:766(E) authorizes the Governor's Office of Homeland Security and Emergency Preparedness, in consultation with the secretary of the Louisiana Department of Health, to coordinate all matters pertaining to the public health emergency response of the state. 45 CFR §§164.512(b) and (j) authorize the use and disclosure of protected health information for public health activities and to avert serious threats to health or safety.

This Chapter is enacted to authorize hospitals and other health care providers to use protected health information for the sole purpose of participating in emergency preparedness training, which includes testing the functionality of the AtRisk Registry. The AtRisk Registry assists providers with the safe evacuation of at-risk patients, by keeping track of at-risk patients in any emergency event. The AtRisk Registry is able to integrate with the military systems used to plan and execute evacuations. In order to ensure proper use of the Louisiana AtRisk Registry during public health emergencies, it is critical that health care providers engage in exercises that simulate the actual process prior to an emergency event. Training of proper use of the system, which involves using protected health information, helps to ensure patient health and safety and timely evacuation in the event of a true public health emergency. This Rule is hereby adopted on the day of promulgation.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 1. General
Chapter 6. Uses and Disclosures of Information for Public Health Emergency Preparedness Activities
§601. Purpose and Scope

A. The purpose of this rule is to authorize health care providers operating in the state of Louisiana to use and disclose protected health information (PHI) to the Louisiana AtRisk Registry, or any other reporting database or registry employed by the Louisiana Emergency Support Function (ESF) 8, for the sole purpose of participating in emergency preparedness training activities, which includes exercises to test the AtRisk Registry.

B. The scope of this rule covers all hospitals, home health agencies, hospice agencies, and other health care providers who are enrolled in the Louisiana AtRisk Registry. The rule authorizes health care providers to use and disclose PHI to the Louisiana AtRisk Registry, or any other reporting database or registry employed by ESF 8, for the purpose of participating in public health emergency preparedness activities, unless prohibited by other state or federal law or regulation. This Chapter does not authorize unlawful disclosure of patient PHI.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4, 40:5 and 29:766(E).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:356 (March 2020).

§603. Definitions

Unless otherwise specifically provided herein, the following words and terms used in this Part are defined for the purposes thereof as follows:

AtRisk Registry—a database used by Louisiana Emergency Support Function (ESF) 8 to manage patient information related to the Medical Institution Evacuation Plan.

Disclosure—has the same meaning as set forth in 45 C.F.R. §160.103.

Emergency Preparedness—has the same meaning as set forth in R.S. 29:723.

Health Care Provider—has the same meaning as set forth in 45 C.F.R. §160.103.

Home Health Agency—has the same meaning as set forth in LAC 48:I.9101.

Hospice—has the same meaning as set forth in LAC 48:I.8201.

Hospital—has the same meaning as set forth in LAC 48:I.9303.

Protected Health Information (PHI)—has the same meaning as set forth in 45 C.F.R. §160.103.

Public Health Authority—has the same meaning as set forth in 45 C.F.R. §160.501.

Use—has the same meaning as set forth in 45 C.F.R. §160.103.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4, 40:5 and 29:766(E).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:357 (March 2020).

§605. Permitted Uses and Disclosures for Public Health Emergency Preparedness Activities

A. Protected health information (PHI) of patients of home health agencies and hospice agencies may be used and disclosed for emergency preparedness training activities and for an actual event when:

1. the patient of the home health agency or hospice agency or the patient's legal representative has signed a Health Insurance Portability and Accountability Act (HIPAA)-compliant authorization for use and disclosure of PHI; and

2. the home health agency or hospice agency certifies on a weekly basis that the patient meets at least one of the following criteria:

a. the patient lives alone, without a caregiver and is unable to evacuate himself;

b. the patient has a caregiver, but the caregiver is physically or mentally incapable of complying with an evacuation order;

c. the patient does not have the financial means to comply with an evacuation order; or

d. the patient refuses to evacuate.

B. A hospital may use and disclose PHI without the patient's consent or knowledge for the purpose of its participation in public health emergency preparedness activities, including, but not limited to, training, assessment, and program development, if the provider's use of the PHI meets the requirements of Paragraph 1 below, or if the provider's disclosure of the PHI meets the requirements of Paragraphs 1 and 2 below.

1. The use or disclosure is necessary for the treatment of the individual or for public health activities authorized by law, including public health emergency preparedness activities.

2. The disclosure is made to a public health authority, its agent, or to another hospital or other health care provider involved in the public health emergency preparedness activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4, 40:5 and 29:766(E).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:357 (March 2020).

§607. Treatment of Protected Health Information

A. For both emergency preparedness training activities and actual public health emergency events, the health care provider shall upload patient protected health information (PHI) to the Louisiana AtRisk Registry.

1. The Louisiana AtRisk Registry shall maintain PHI on a secure File Transfer Protocol (FTP) server.

2. After an event or training, all data uploaded to the Louisiana AtRisk Registry FTP server shall be deleted and be non-recoverable.

B. Access to PHI on the Louisiana AtRisk Registry shall be limited to the following entities.

1. Louisiana Department of Health (LDH) shall have access to all patient PHI in the Louisiana AtRisk Registry throughout the state.

2. The Regional Disaster Recovery Center (DRC) shall have access to PHI for patients within its region.

3. Enrolled hospitals shall have access only to its patient's PHI. If a patient is transferred to another hospital, both the sending and receiving hospitals shall have access to the patient's PHI.

4. Enrolled hospice and home health agencies shall have access only to its patient's PHI.

5. The Louisiana-Mississippi Hospice and Palliative Care Organization (LMHPCO) shall have access to PHI of patients of all enrolled hospice and home health agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4, 40:5 and 29:766(E).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:357 (March 2020).

Jimmy Guidry, MD
State Health Officer
and
Stephen J. Russo, JD
Interim Secretary

2003#032

RULE

Department of Health
Office of Public Health

Registration of Foods, Drugs,
Cosmetics and Prophylactic Devices
(LAC 49:I.Chapter 5 and LAC 51:VI.301)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH), has amended certain sections of Chapter 5 (Registration of Foods, Drugs, Cosmetics and Prophylactic Devices) of Title 49 (Public Health—Food, Drugs, and Cosmetics) and Section 301 of Part VI (Manufacturing, Processing, Packing and Holding of Food, Drugs, and Cosmetics) of Title 51 (Public Health-Sanitary Code) of the Louisiana Administrative Code. This Rule implements a regulatory framework for industrial hemp-derived cannabidiol products (IHDCP) in accordance with directives of Subsection J of Section 1382 of Title 3 of the Revised Statutes of 1950, enacted as part of Act 164 of the 2019 Louisiana Legislature.

For the reason set forth above, the following additions and amendments to LAC 49 and 51 are hereby adopted. This Rule is hereby adopted on the day of promulgation.

Title 49
PUBLIC HEALTH—FOOD, DRUGS, AND COSMETICS
Part I. Regulations
Chapter 5. Registration of Foods, Drugs, Cosmetics and Prophylactic Devices

§501. Definitions
[Formerly 49:2.2100]

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter of Title 49, and all other Chapters of Title 49 which are adopted or may be adopted, are defined for the purposes thereof as follows.

Accrediting Body—for the purposes of this Chapter, the International Organization for Standardization (ISO).

* * *

Cannabidiol—a nonpsychotropic cannabinoid found in *Cannabis sativa* L. and other conspecifics that can have a variety of physiological effects on the human body.

CBD—cannabidiol.

Certificate of Analysis—a document produced by an approved laboratory attesting to the composition of a product.

Certificate of Registration (FD-8)—certificate issued by the department attesting that products produced or distributed by the holder's company have been registered as required

Certificate of IHDCP Registration (FD-8a)—certificate issued by the department attesting that IHDCP produced or distributed by the holder's company have been registered as required

* * *

Department—for the purposes of this Chapter, the Food and Drug/Milk and Dairy Unit of the Office of Public Health, Louisiana Department of Health.

* * *

Dietary Supplement—means a product other than tobacco intended to supplement the diet that is not represented for use as a conventional food, that is not a drug, and that is labeled as a dietary supplement and bears or contains one or more of the following dietary ingredients or a concentrate, metabolite, constituent, extract, or combination thereof: a vitamin, a mineral, a botanical, an amino acid, or a dietary substance for use by man to supplement the diet by increasing the total dietary intake.

* * *

Examination and Investigation Fee—as required by R.S. 40:628, shall be referred to as registration fee.

Food—includes all substances and preparations used for or entering into the composition of food, drink, confectionery, chewing gum or condiment for man or beast.

Industrial Hemp—the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis.

Industrial Hemp-Derived Cannabidiol Products (IHDCP)—any product intended for human use and containing cannabidiol that was made from industrial hemp.

Industrial Hemp-Derived Cannabidiol Products Database—repository of information on products and firms that are registered with the department that fall into the category of industrial hemp-derived cannabidiol products.

* * *

Medical Opinion—the opinion, within their respective fields, of the practitioners of any branch of the medical profession, the practice of which is licensed by law in this State.

* * *

QR Code—quick response code, a type of machine-readable, two-dimensional barcode that stores information about a product.

Registration Fee—examination and investigation fee.

* * *

THC—delta-9 tetrahydrocannabinol.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J), R.S. 40:4(A)(13), R.S. 40:5(A)(8)(15)(17) and R.S. 40:604.

HISTORICAL NOTE: Adopted by the Louisiana State Board of Health, September 1968, amended by the Department of Health, Office of Public Health, LR 46:358 (March 2020).

§503. Registration Provisions
[Formerly 49:2.2110]

A. In accordance with the provisions of LSA R.S. 40:627, each manufacturer, packer or proprietor of processed foods, proprietary or patent medicines, prophylactic devices and cosmetics in packaged form shall register each separate and distinct product annually with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J), R.S. 40:5(A)(8)(15)(17) and R.S. 40:604.

HISTORICAL NOTE: Adopted by Louisiana State Board of Health, September 1968, amended by the Department of Health, Office of Public Health, LR 46:358 (March 2020).

§509. Product Registration Procedure
[Formerly 49:2.2140]

A. In accordance with the provisions of R.S. 40:627 and 628 and in order to establish revised procedures for the annual registration of products, manufacturers, packers,

processors and distributors of all processed foods, proprietary or patent medicines, prophylactic devices and cosmetics in packaged form, whose names appear on the labels, must submit an application for registration of such products on or before July 1 of each year. Certificates of registration will be issued to each firm for a period of one year expiring on June 30 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J), R.S. 40:5(A)(8)(15)(17) and R.S. 40:604.

HISTORICAL NOTE: Adopted by the Louisiana State Board of Health, September 1968, amended by the Department of Health and Human Resources, Office of Health Services and Environmental Quality, LR 10:9 (January 1984), LR 9:562 (August 1983), amended by the Department of Health and Human Resources, Office of Preventive and Public Health Services LR 11:1161 (December 1985), amended by the Department of Health, Office of Public Health, LR 46:358 (March 2020).

§511. Late Registration Penalty Fees [Formerly 49:2.2150]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:604 and R.S. 40:627(D).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Office of Preventive and Public Health Services, September 1968, amended by the Department of Health and Human Resources, Office of Health Services and Environmental Quality, LR 10:9 (January 1984), LR 9:562 (August 1983), amended by the Department of Health and Human Resources, Office of Preventive and Public Health Services LR 11:1161 (December 1985), repealed by the Department of Health, Office of Public Health, LR 46:359 (March 2020).

§515. Penalty Fee Assessment [Formerly 49:2.2170]

A. The late registration penalty fees as established by Act 344 of the 1985 Louisiana Legislature will assess each manufacturer, packer, or proprietor a penalty of $10 for failure to register each separate and distinct product annually. The penalty assessed shall be in addition to the examination and investigation charge (registration fee). No manufacturer, packer, or proprietor shall be assessed a late registration penalty fee of more than $100 in any calendar year.

B. …

* * *

C. Late registration penalty fees will be imposed on those firms which fail to submit an application for registration and registration fees on or before July 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:604 and R.S. 40:627(D).

HISTORICAL NOTE: Adopted by the Louisiana State Board of Health, September 1968, amended by the Department of Health and Human Resources, Office of Health Services and Environmental Quality, LR 10:9 (January 1984), LR 9:562 (August 1983), amended by the Department of Health and Human Resources, Office of Preventive and Public Health Services LR 11:1161 (December 1985), amended by the Department of Health, Office of Public Health, LR 46:359 (March 2020).

§517. Registration of Industrial Hemp-Derived Cannabidiol Products

A. In accordance with the provisions of R.S. 3:1482 as promulgated by the 2019 Legislature, manufacturers or distributors of industrial hemp-derived cannabidiol products must register each separate and distinct product with the department-annually and initially within 90 days of the effective date of these regulations or prior to marketing the products in the state of Louisiana, whichever comes first.

B. The manufacturer of any product that is not registered within the specified timeframe will be deemed to be in violation of these rules with respect to such product(s).

C. In lieu of the annual examination and administration charge normally collected under R.S. 40:628(B), the applicant for an industrial hemp-derived cannabidiol product registration must provide (both initially and on or before July 1 of each year) the department with an application form, a cashier's check or money order made payable to the department in the amount of $50 per each separate and distinct CBD product, specimen copies of labeling in paper or electronic format, and a list of all products the applicant wishes to register with the department. If the packet meets these regulatory requirements, the department will issue to the applicant an FD-8a Certificate of IHDCP (Industrial Hemp-Derived Cannabidiol Products) Registration and the application information will be entered into the Industrial Hemp-Derived Cannabidiol Products Database.

D. No person is authorized to distribute any industrial hemp-derived cannabidiol products in the state of Louisiana unless that person has first obtained a Certificate of IHDCP Registration from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:359 (March 2020).

§519. Industrial Hemp-Derived Cannabidiol Products Labeling Requirements: Certificate of Analysis

A. In addition to the requirements enumerated in R.S. 40:608, industrial hemp-derived cannabidiol products must bear labeling that includes a scannable bar code, QR code, or a web address linked to a document or website containing the certificate of analysis for that product.

B. The certificate of analysis must be from a laboratory that is accredited by LDH/OPH.

C. The certificate of analysis must include, at a minimum, the following information:

1. the batch number of the product;
2. the date the batch was received by the laboratory;
3. the date the testing was completed;
4. the laboratory methodology used for each analysis referenced in the report;
5. the amount of THC by dry weight in milligrams;
6. the amount of CBD by dry weight in milligrams;
7. the amount of any detected residual solvent in the product in parts per million;
8. the amount of any detected pesticide residues in the product in parts per million;
9. the amount of any microbiological contaminants in the product in appropriate units; and
10. the amount of any detected heavy metal traces in the product in parts per million.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:359 (March 2020).

§521. Industrial Hemp-Derived Cannabidiol Products Labeling Requirements: Disclaimer

A. Each primary container of industrial hemp-derived cannabidiol product must bear the following statement: "This product has not been evaluated by the Food and Drug

Administration and is not intended to diagnose, treat, cure, or prevent any disease."

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:359 (March 2020).

§523. Industrial Hemp-Derived Cannabidiol Products Labeling Requirements: Medical Claims Prohibited

A. No product labeling or advertising material for any industrial hemp-derived cannabidiol product sold or otherwise distributed in the state of Louisiana may bear any implicit or explicit medical claims.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:360 (March 2020).

§525. Industrial Hemp-Derived Cannabidiol Products Labeling Requirements: Dietary Supplements Prohibited

A. No industrial hemp-derived cannabidiol product may be marketed as a dietary supplement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:360 (March 2020).

§527. Penalties for Violations of Requirements to Register Industrial Hemp-Derived Cannabidiol Products

A. Any person who violates the provisions requiring registration of industrial hemp-derived cannabidiol products is subject to the penalties provided for by R.S. 3:1484 and other sanctions as provided for by the State Food, Drug, and Cosmetic Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:360 (March 2020).

§529. Exemptions

A. Industrial hemp-derived cannabidiol products that have been produced in accordance with R.S. 40: 1046 or that are Food and Drug Administration (FDA)-approved pharmaceuticals are not subject to the requirements of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1482(J) and R.S. 40:604.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 46:360 (March 2020).

Title 51

Public Health—Sanitary Code

Part VI. Manufacturing, Processing, Packing and Holding of Food, Drugs and Cosmetics

Chapter 3. Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding Human Food

§301. General Provisions; Code of Federal Regulations [formerly paragraph 6:039]

A. The Criteria in 21 CFR 117 Subpart A, Subpart B and Subpart F (Code of Federal Regulations) shall apply in determining whether the facilities, methods, practices, and controls used in the manufacturing, processing, packing or holding of food are in conformance with or are operated or administered in conformity with good manufacturing practices to assure that food for human consumption is safe and has been prepared, packed and held under sanitary conditions.

B. In accordance with R.S. 3:1468, facilities producing industrial hemp-derived cannabidiol products intended for human consumption will be inspected under the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:601 et seq., and R.S. 3:1482(J).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1234 (June 2002), amended by the Department of Health, Office of Public Health, LR 46:360 (March 2020).

Jimmy Guidry, MD
State Health Officer
and
Stephen R. Russo, JD
Interim Secretary

2000#034

RULE

Department of Insurance
Office of the Commissioner

Regulation 63—Prohibitions on the Use of Medical Information and Genetic Test Results
(LAC 37:XIII.Chapter 45)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., has amended Regulation 63-Prohibitions on the Use of Medical Information and Genetic Test Results.

The regulation has been amended to comport with current law regarding the use of medical information, including pregnancy tests, genetic tests and related genetic test information, through the passage of Acts 2003, No. 129, §1, Acts 2004, No. 325, §1, Acts 2009, No. 419, §1, Acts 2010, No. 919, §1, and Acts 2016, No. 58, §1 of the Regular Sessions of the Louisiana Legislature. This Rule is hereby adopted on the day of promulgation.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 45. Regulation 63—Prohibitions on the Use of Medical Information and Genetic Test Results

§4503. Authority

A. This regulation is issued pursuant to the authority vested in the Commissioner of Insurance under R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998), amended LR 46:360 (March 2020).

§4505. Definitions

* * *

Genetic Information—all information about genes, gene products, inherited characteristics, or family history/pedigree that is expressed in common language and

1. *Genetic Information* shall include each of the following:

a. an individual's genetic test;

b. the genetic tests of the family members of an individual;

c. the manifestation of a disease or disorder in family members of an individual;

d. with respect to an individual or family member of an individual who is a pregnant woman, genetic information of any fetus or embryo carried by such pregnant woman; and with respect to an individual or family member of an individual utilizing an assisted reproductive technology, genetic information of any embryo legally held by the individual or family member.

2. *Genetic Information* does not include the medical history of an individual insured or applicant for health care coverage and shall not mean information about the sex or age of any individual.

Genetic Services—a genetic test, genetic counseling, including obtaining, interpreting, or assessing genetic information, or genetic education.

Genetic Test—any test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids, such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to diagnose or identify a genetic characteristic or that detects genotypes, mutation, or chromosomal changes. The determination of a genetic characteristic shall not include any diagnosis of the presence of disease, disability, or other existing medical condition. Genetic test shall not mean an analysis of proteins or metabolites that either:

1. does not detect genotypes, mutations, or chromosomal changes;

2. is directly related to a manifested disease, disorder, or pathological condition that could be reasonably detected by a health care professional with appropriate training and expertise in the field of medicine involved.

* * *

Insurer—any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, health and accident insurance policy, or any other insurance contract of this type, including a group insurance plan, or any policy of group, family group, blanket, or association health and accident insurance, a self-insurance plan, health maintenance organization, and preferred provider organization, including insurance agents and third-party administrators, which delivers or issues for delivery in this state an insurance policy or plan. The term *insurer* does not include any individual or entity that does not hold a valid certificate of authority to issue, for delivery in this state, an insurance policy or plan. A certificate of authority to issue an insurance policy or plan for delivery shall not include a license or certificate to act as a preferred provider organization, insurance agent, or third-party administrator.

* * *

Underwriting Purposes—rules for or determination of eligibility, including enrollment and continued eligibility, for benefits under the plan or coverage; the computation of premium or contribution amounts under the plan or coverage; and other activities related to the creation, renewal, or replacement of a contract or policy issued by an insurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998), amended LR 46:361 (March 2020).

§4507. Applicability and Scope

A. Except as otherwise specifically provided, the requirements of this regulation apply to all issuers of health care policies or contracts of insurance, or health maintenance organization subscriber agreements issued for delivery in the state of Louisiana. The requirements of this regulation shall not impinge upon the normal practice of medicine or reasonable medical evaluation of an individual's medical history for the purpose of providing or maintaining health insurance coverage. The requirements of this regulation address the use of medical information, including use of genetic tests, and genetic information for the purpose of issuing, renewing, or establishing premiums for health coverage. The provisions of this regulation do not apply to any actions of an insurer or third parties dealing with an insurer taken in the ordinary course of business in connection with the sale, issuance or administration of a life, disability income, long-term care, or critical illness insurance policy. For the purpose of this Section, "critical illness" insurance policy shall mean health insurance providing a principle sum of benefit following diagnosis of specifically named perils.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998), amended LR 46:361 (March 2020).

§4511. Requirements for Release of Genetic Test and Related Medical Information

A. - A.8. …

B. A copy of the authorization shall be provided to the individual. An individual may revoke or amend the authorization in whole or in part, at any time. In complying with the provisions of this Section, the record holder is responsible for assuring only authorized information is released to insurers with respect to medical records that contain genetic information. The requirements of this Section shall not act to impede or otherwise impinge upon the ability of the patient's attending physician to provide appropriate and medically necessary treatment or diagnosis of a medical condition. Nothing in this Section shall exempt a covered entity from the requirements of the Health Insurance Portability and Accountability Act of 1996 pertaining to the collection, use, or disclosure of genetic information, which for purposes of the Health Insurance Portability and Accountability Act of 1996, is defined as "health information" under 42 U.S.C. §1320d(4)(b) and 42 U.S.C. §1320d-9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998), amended LR 46:361 (March 2020).

§4513. Prohibitions on the Use of Medical Information and Genetic Test Results

A. …

B. All insurers shall, in the application or enrollment information required to be provided by the insurer to each applicant concerning a policy or plan, include a written statement disclosing the rights of the applicant. Such statements shall be printed in 10-point type or greater with a heading in all capital letters that states: your rights regarding the release and use of genetic information. Disclosure statements must be approved by the Department of Insurance as complying with the requirements of R.S. 22:1023 prior to utilization.

C.1. No insurer shall request, require, or purchase genetic information either:

a. of an individual or family member of an individual for underwriting purposes.

b. with respect to any individual or family member of an individual prior to such individual's enrollment under the plan or coverage in connection with such enrollment.

2. If an insurer offering health insurance coverage in the individual or group market obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of Subparagraph 1.b. of this Subsection if such request, requirement, or purchase is not in violation of Subparagraph 1.a. of this Subsection.

D.1. No insurer shall request or require that an individual, a family member of such individual, or a group member undergo a genetic test.

2. Paragraph 1 of this Subsection shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

E.1. No insurer shall establish rules for eligibility, including continued eligibility, of any individual or an individual's family member to enroll or continue enrollment based on genetic information.

2. Nothing in Paragraph 1 of this Subsection or in Subparagraphs C.1.a and b of this Section shall be construed to preclude an insurer from establishing rules for eligibility for an individual to enroll in individual health insurance coverage based on the manifestation of a disease or disorder in that individual or in a family member of such individual where such family member is covered under the policy that covers such individual.

F.1. No insurer shall impose any preexisting condition exclusion on the basis of genetic information of an individual, family member of an individual, or group member.

2. Nothing in Paragraph 1 of this Subsection or in Subparagraphs C.1.a. and b. of this Section shall be construed to preclude an insurer offering coverage in the individual market from imposing any preexisting condition exclusion for an individual with respect to health insurance coverage on the basis of a manifestation of a disease or disorder in that individual.

G.1. No insurer shall adjust premium or contribution amounts for an individual or group health plan on the basis of genetic information concerning the individual or a family member of the individual.

2. Nothing in Paragraph 1 of this Subsection shall be construed to preclude an insurer offering health insurance coverage in the individual market from adjusting premium or contribution amounts for an individual on the basis of a manifestation of a disease or disorder in that individual, or in a family member of such individual where such family member is covered under the policy that covers such individual. In such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other individuals covered under the policy issued to such individual and to further increase premium or contribution amounts.

3. Nothing in Paragraph 1 of this Subsection shall be construed to preclude an insurer offering health insurance coverage in connection with a group health plan from increasing the premium for an employer based upon the manifestation of a disease or disorder of an individual who is enrolled in the plan. In such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the employer.

H.1. Nothing in Paragraph D.1 of this Subsection shall be construed to preclude an insurer offering health insurance coverage in the individual or group market from obtaining and using the results of a genetic test in making a determination regarding payment, as such term is defined for the purposes of applying the regulations promulgated by the secretary of the United States Department of Health and Human Services under Part C of Title XI of the Social Security Act and Section 264 of the Health Insurance Portability and Accountability Act of 1996, consistent with Subsections E and F of this Subsection.

2. For purposes of Paragraph 1 of this Subsection, an insurer offering health insurance coverage in the individual or group market may request only the minimum amount of information necessary to accomplish the intended purpose.

I. Notwithstanding Paragraph D.1 of this Subsection, an insurer offering health insurance coverage in the individual or group market may request, but not require, that an individual, family member of an individual, or a group member undergo a genetic test if each of the following conditions is met.

1. The request is made pursuant to research that complies with Part 46 of Title 45, Code of Federal Regulations, or equivalent federal regulations, and any applicable state or local law or regulations for the protection of human subjects in research.

2. The insurer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made both that:

a. compliance with the request is voluntary;

b. noncompliance will have no effect on enrollment status or premium, or contribution amounts.

3. No genetic information collected or acquired under this Subsection shall be used for underwriting purposes.

4. The insurer notifies the secretary of the United States Department of Health and Human Services in writing that the issuer is conducting activities pursuant to the exception provided for under this Subsection, including a description of the activities conducted.

5. The insurer complies with such other conditions as the secretary of the United States Department of Health and Human Services may by regulation require for activities conducted under this Subsection.

J. The results of any genetic test, including genetic test information, shall not be used as the basis to:

1. terminate, restrict, limit, or otherwise apply conditions to the coverage of an individual or family member under the policy or plan, or restrict the sale of the policy or plan to an individual or family member;

2. cancel or refuse to renew the coverage of an individual or family member under the policy or plan;

3. deny coverage or exclude an individual or family member from coverage under the policy or plan;

4. impose a rider that excludes coverage for certain benefits or services under the policy or plan;

5. establish differentials in premium rates or cost sharing for coverage under the policy or plan;

6. otherwise discriminate against an individual or family member in the provision of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998), amended LR 46:362 (March 2020).

§4515. General Provisions

A. - A.7. …

8. For treatment, payment, and healthcare operations by an insurer consistent with the federal Health Insurance Portability and Accountability Act and its related regulations.

9. For maintenance of information by an insurer in accordance with record retention requirements.

B. - B.2. …

C. For purposes of R.S. 22:1023, any person who acts without proper authorization to collect a DNA sample for analysis, or willfully discloses genetic information without obtaining permission from the individual or patient as required under this regulation, shall be liable to the individual for each such violation in an amount equal to:

C.1. - C.2. …

3. the costs of the action together with reasonable attorney fees as determined by the court, in the case of a successful action to enforce any liability under R.S. 22:1023.

D. Any person who, either through a request, the use of persuasion, under threat, or under a promise of a reward, willfully induces another to collect, store or analyze a DNA sample in violation; or willfully collects, stores, or analyzes a DNA sample; or willfully discloses genetic information in violation of R.S. 22:1023 shall be liable to the individual for each such violation in an amount equal to:

1. …

2. the costs of the action together with reasonable attorney fees as determined by the court, in the case of a successful action under R.S. 22:1023.

E. The discrimination against an insured in the issuance, payment of benefits, withholding of coverage, cancellation, or nonrenewal of a policy, contract, plan or program based upon the results of a genetic test, receipt of genetic information, or a prenatal test other than one used for the determination of pregnancy shall be treated as an unfair or deceptive act or practice in the business of insurance under R.S. 22:1964.

F. This regulation became effective June 20, 1998; however, the amendments to this regulation will become effective upon final publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:971, 22:258, 22:242(7), 22:1964(22) and (23), 22:1022, and 22:1023 of the *Insurance Code*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 24:1120 (June 1998), amended LR 46:363 (March 2020).

James J. Donelon
Commissioner

2003#002

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Restriction of All Oyster Harvesting on Four New Reefs
(LAC 76:VII.537)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:332(N), that the Wildlife and Fisheries Commission has amended LAC 76:VII.537 to designate and set aside four new artificial reef sites as recreational reefs, restricting all harvest of oysters. This Rule is hereby adopted on the day of promulgation.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life

Chapter 5. Oysters

§537. Establishment of Recreational Reef Sites and Restriction of Oyster Harvest

A. The Wildlife and Fisheries Commission hereby establishes the following recreational reef sites as that area within the following coordinates (North America Datum 1983).

1. - 29.d. …

30. Lake Borgne Reef-Saint Bernard Parish

a. 30 degrees 04 minutes 20.28 seconds N 89 degrees 35 minutes 10.32 seconds W

b. 30 degrees 04 minutes 20.28 seconds N 89 degrees 35 minutes 02.76 seconds W

c. 30 degrees 04 minutes 13.8 seconds N 89 degrees 35 minutes 09.96 seconds W

d. 30 degrees 04 minutes 13.80 seconds N 89 degrees 35 minutes 02.40 seconds W

31. Grand Banks Reef-Saint Bernard Parish

a. 30 degrees 08 minutes 53.16 seconds N 89 degrees 22 minutes 55.56 seconds W

b. 30 degrees 08 minutes 53.52 seconds N 89 degrees 22 minutes 48.00 seconds W

c. 30 degrees 08 minutes 46.68 seconds N 89 degrees 22 minutes 55.38 seconds W
d. 30 degrees 08 minutes 47.04 seconds N 89 degrees 22 minutes 48.00 seconds W

32. Cabbage Reef-Saint Bernard Parish
a. 30 degrees 08 minutes 02.76 seconds N 89 degrees 14 minutes 53.52 seconds W
b. 30 degrees 08 minutes 02.76 seconds N 89 degrees 14 minutes 45.96 seconds W
c. 30 degrees 07 minutes 55.92 seconds N 89 degrees 14 minutes 53.16 seconds W
d. 30 degrees 07 minutes 56.28 seconds N 89 degrees 14 minutes 45.60 seconds W

33. West Karako Bay Reef-Saint Bernard Parish
a. 30 degrees 01 minutes 03.36 seconds N 89 degrees 16 minutes 32.88 seconds W
b. 30 degrees 01 minutes 03.36 seconds N 89 degrees 16 minutes 25.32 seconds W
c. 30 degrees 00 minutes 56.52 seconds N 89 degrees 16 minutes 32.52 seconds W
d. 30 degrees 00 minutes 56.88 seconds N 89 degrees 16 minutes 25.32 seconds W

B. No person shall harvest oysters from these recreational reefs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:805.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 41:1309 (July 2015), amended LR 43:91 (January 2017), LR 46:363 (March 2020).

Jack Montoucet
Secretary

2003#023

RULE

Workforce Commission
Office of Unemployment Insurance Administration

Electronic Filing and Payment Requirements
(LAC 40:IV.377)

Under the authority of and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 36:304 and R.S. 23:1531.1, the Louisiana Workforce Commission has amended LAC 40:IV.377. The amendment sets forth the procedure and format for employers' submissions of required reports, payment of unemployment contributions, and submission of requested documents to the Louisiana Workforce Commission. This Rule is hereby adopted on the day of promulgation.

Title 40
LABOR AND EMPLOYMENT
Part IV. Employment Security
Chapter 3. Employment Security Law
§377. Electronic Filing and Payment Requirements

A. - C.1. …

2. automated clearing house (ACH); or

3. any other method of payment approved by the administrator.

D. Any requested Federal 940 and 941 forms, 1099 and 1096 forms, and W-2 and W-3 forms must be submitted in response to an audit in an electronic data format specified by the Workforce Commission and to the site indicated in correspondence from the Workforce Commission. All other forms must be transmitted electronically.

E. Employers, employer's agents, and professional employer organizations shall be required to respond to requests for information as part of a wage investigation. Correspondence from the Workforce Commission will indicate the site where electronic forms can be completed. Responses shall be made by logging into the site and filling out the electronic forms. Other forms of submission may be accepted at the discretion of the administrator.

F. The electronic reporting requirements under Subsection D may be waived by the administrator only upon a showing by the employer, employer's agent, or professional employer organization that electronic reporting creates a hardship. All applications for a waiver must be in writing and submitted to the administrator, setting forth detailed reasons the requirement to file electronically creates a hardship.

1. The term *hardship* includes, without limitation:

a. a financial burden or expense which significantly impairs the employer’s ability to continue to conduct its business;

b. electronic filing requirements under Subsection D would impose a *hardship* due to a physical disability or geographic barrier;

c. the requirement under Subsection D to file electronically is contrary to equity or good conscience due to the specific circumstances of the employer requesting the waiver.

2. A request for a waiver from the electronic filing requirements under Subsection D must be delivered to the administrator prior to the due date for receipt of the reports that the employer is seeking to submit by an alternative method.

G. The failure to file reports in the required electronic formats or make payments electronically may result in the imposition of penalties and interest in accordance with R.S. 23:1543 and R.S. 23:1660.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1631, R.S. 23:1531.1 and R.S. 36:304.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Unemployment Insurance, LR 40:806 (April 2014), amended by the Workforce Commission, Office of Unemployment Insurance Administration, LR 46:364 (March 2020).

Ava Dejoie
Secretary

2003#003

RULE

Workforce Commission
Office of Workers' Compensation

Pain Medical Treatment Guidelines (LAC 40:I.Chapter 21)

A portion of this Rule is being repromulgated to correct technical errors. This Rule may be viewed in its entirety on pages 194-267 of the February 20, 2020, *Louisiana Register*.

The Louisiana Workforce Commission has amended certain portions of the Medical Guidelines contained in the *Louisiana Administrative Code*, Title 40, Labor and Employment, Part I, Workers' Compensation Administration, Subpart 2, Medical Guidelines, Chapter 21, regarding chronic pain guidelines. This Rule is promulgated by the authority vested in the director of the Office of Workers' Compensation found in R.S. 23:1291 and R.S. 23:1310.1(C).

Title 40
LABOR AND EMPLOYMENT
Part I. Workers' Compensation Administration
Subpart 2. Medical Guidelines
Chapter 21. Pain Medical Treatment Guidelines
Subchapter A. Chronic Pain Disorder Medical Treatment Guidelines
§2111. Therapeutic Procedures—Non-Operative

A. - C.8.j.v.(c). …

9. Interdisciplinary rehabilitation programs are the gold standard of treatment for individuals with chronic pain who have not responded to less intensive modes of treatment, except for those determined to be temporarily totally disabled. There is good evidence that interdisciplinary programs that include screening for psychological issues, identification of fear-avoidance beliefs and treatment barriers, and establishment of individual functional and work goals will improve function and decrease disability. There is good evidence that multidisciplinary rehabilitation (physical therapy and either psychological, social, or occupational therapy) shows small effects in reducing pain and improving disability compared to usual care and that multidisciplinary biopsychosocial rehabilitation is more effective than physical treatment for disability improvement after 12 months of treatment in patients with chronic low back pain. Patients with a significant psychosocial impact are most likely to benefit.

a. The International Classification of Functioning, Disability and Health (ICF) model should be considered in patient program planning. The following factors should be addressed: body function and structures, activity expectations, participation barriers, and environmental and personal factors. In general, interdisciplinary programs deal with evaluate and treat multiple and sometimes irreversible conditions, including but not limited to: painful musculoskeletal, neurological, and other chronic painful disorders and psychological issues, drug dependence, abuse, or addiction; high levels of stress and anxiety, failed surgery and pre-existing or latent psychopathology. The number of professions involved on the team in a chronic pain program may vary due to the complexity of the needs of the person served. The OWCA recommends consideration of referral to an interdisciplinary program within six months post-injury in patients with delayed recovery unless surgical interventions or other medical and/or psychological treatment complications intervene.

b. Chronic pain patients need to be treated as outpatients within a continuum of treatment intensity. Outpatient chronic pain programs are available with services provided by a coordinated interdisciplinary team within the same facility (formal) or as coordinated among practices by an authorized treating physician (informal). Formal programs are able to provide coordinated, high intensity level of services and are recommended for most chronic pain patients who have received multiple therapies during acute management.

c. Patients with addiction problems, high-dose opioid use, or abuse of other drugs may require inpatient and/or outpatient chemical dependency treatment programs before or in conjunction with other interdisciplinary rehabilitation. Guidelines from the American Society of Addiction Medicine are available and may be consulted relating to the intensity of services required for different classes of patients in order to achieve successful treatment.

d. Informal interdisciplinary pain programs may be considered for patients who are currently employed, those who cannot attend all-day programs, those with language barriers, or those living in areas not offering formal programs. Before treatment has been initiated, the patient, physician, and insurer should agree on treatment approach, methods, and goals. Generally, the type of outpatient program needed will depend on the degree of impact the pain has had on the patient's medical, physical, psychological, social, and/or vocational functioning.

e. Inpatient pain rehabilitation programs are rarely needed but may be necessary for patients with any of the following conditions: High risk for medical instability; Moderate to severe impairment of physical/functional status; Moderate to severe pain behaviors; Moderate impairment of cognitive and/or emotional status; Dependence on medications from which he or she needs to be withdrawn; and the need for 24-hour supervised nursing and for those temporarily totally disabled. Whether formal or informal, should be comprised of the following dimensions.

i. Communication. To ensure positive functional outcomes, communication between the patient, insurer and all professionals involved must be coordinated and consistent. Any exchange of information must be provided to all parties, including the patient. Care decisions would be communicated to all parties and should include the family and/or support system.

ii. Documentation. Thorough documentation by all professionals involved and/or discussions with the patient. It should be clear that functional goals are being actively pursued and measured on a regular basis to determine their achievement or need for modification. It is advisable to have the patient undergo objective functional measures.

iii. Treatment Modalities. Use of modalities may be necessary early in the process to facilitate compliance with and tolerance to therapeutic exercise, physical conditioning, and increasing functional activities. Active treatments should be emphasized over passive treatments. Active and self-monitored passive treatments should encourage self-coping skills and management of pain, which can be continued independently at home or at work. Treatments that can foster a sense of dependency by the patient on the caregiver should be avoided. Treatment length should be decided based upon observed functional improvement. For a complete list of Active and Passive Therapies, refer to Therapy - Active, and Therapy - Passive. All treatment timeframes may be extended based upon the patient's positive functional improvement.

iv. Therapeutic Exercise Programs. There is good evidence that exercise alone or as part of a multi-disciplinary

program results in decreased disability for workers with non-acute low back pain. There is no sufficient evidence to support the recommendation of any particular exercise regimen over any other exercise regimen. A therapeutic exercise program should be initiated at the start of any treatment rehabilitation. Such programs should emphasize education, independence, and the importance of an on-going exercise regime.

v. Return-to-Work. An authorized treating physician should continually evaluate the patient for their potential to return to work. For patients currently employed, efforts should be aimed at keeping them employed. Formal rehabilitation programs should provide assistance in creating work profiles. For more specific information regarding return-to-work, refer to the Return-to-work section in this guideline.

vi. Patient Education. Patients with pain need to re-establish a healthy balance in lifestyle. All providers should educate patients on how to overcome barriers to resuming daily activity, including pain management, decreased energy levels, financial constraints, decreased physical ability, and change in family dynamics.

vii. Psychosocial Evaluation and Treatment. Psychosocial evaluation should be initiated, if not previously done. Providers of care should have a thorough understanding of the patient's personality profile; especially if dependency issues are involved. Psychosocial treatment may enhance the patient's ability to participate in pain treatment rehabilitation, manage stress, and increase their problem-solving and self-management skills.

viii. Risk Assessments. The following should be incorporated into the overall assessment process, individual program planning, and discharge planning: aberrant medication related behavior, addiction, suicide, and other maladaptive behavior.

ix. Family/Support System Services as Appropriate. The following should be considered in the initial assessment and program planning for the individual: ability and willingness to participate in the plan, coping, expectations, educational needs, insight, interpersonal dynamics, learning style, problem solving, responsibilities, and cultural and financial factors. Support would include counseling, education, assistive technology, and ongoing communication.

x. Discharge Planning. Follow-up visits will be necessary to assure adherence to treatment plan. Programs should have community and/or patient support networks available to patients on discharge.

f. Interdisciplinary programs are characterized by a variety of disciplines that participate in the assessment, planning, and/or implementation of the treatment program. These programs are for patients with greater levels of perceived disability, dysfunction, de-conditioning and psychological involvement. Programs should have sufficient personnel to work with the individual in the following areas: behavioral, functional, medical, cognitive, communication, pain management, physical, psychological, social, spiritual, recreation and leisure, and vocational. Services should address impairments, activity limitations, participation restrictions, environmental needs, and personal preferences of the worker. The following programs are listed in order of decreasing intensity.

i. Formal Interdisciplinary Rehabilitation Programs

(a). Interdisciplinary Pain Rehabilitation. An interdisciplinary pain rehabilitation program provides outcome-focused, coordinated, goal-oriented interdisciplinary team services to measure and improve the functioning of persons with pain and encourage their appropriate use of health care system and services. The program can benefit persons who have limitations that interfere with their physical, psychological, social, and/or vocational functioning. The program shares information about the scope of the services and the outcomes achieved with patients, authorized providers, and insurers.

(i). The interdisciplinary team maintains consistent integration and communication to ensure that all interdisciplinary team members are aware of the plan of care for the patient, are exchanging information, and implement the plan of care. The team members make interdisciplinary team decisions with the patient and then ensure that decisions are communicated to the entire care team.

(ii). Teams that assist in the accomplishment of functional, physical, psychological, social, and vocational goals must include: a medical director, pain team physician(s) who should preferably be board certified in an appropriate specialty, and a pain team psychologist. The medical director of the pain program and each pain team physician should be board certified in pain management or be board certified in his/her specialty area and have completed a one-year fellowship in interdisciplinary pain medicine or palliative care recognized by a national board, or two years of experience in an interdisciplinary pain rehabilitation program, or if less than two years of experience, participate in a mentorship program with an experienced pain team physician. The pain team psychologist should have one year's full-time experience in an interdisciplinary pain program, or if less than two years of experience, participate in a mentorship program with an experienced pain team psychologist. Other disciplines on the team may include, but are not limited to, biofeedback therapist, occupational therapist, physical therapist, registered nurse (RN),case manager, exercise physiologist, psychiatrist, and/or nutritionist. A recent French interdisciplinary functional spine restoration program demonstrated increased return to work at 12 months:

[a]. time to produce effect: three to four weeks;

[b]. frequency: Full time programs: no less than five hours/day, five days/week; part-time programs—four hours per day, two to three days per week;

[c]. optimum duration: 3 to 12 weeks at least two to three times a week. Follow-up visits weekly or every other week during the first one to two months after the initial program is completed;

[d]. maximum duration: four months for full-time programs and up to six months for part-time programs. Periodic review and monitoring thereafter for one year, and additional follow-up based on the documented maintenance of functional gains.

(b). Occupational Rehabilitation. This is a formal interdisciplinary program addressing a patient's employability and return to work. It includes a progressive increase in the number of hours per day in which a patient

completes work simulation tasks until the patient can tolerate a full work day. A full work day is case specific and is defined by the previous employment of the patient. Safe workplace practices and education of the employer and family and/or social support system regarding the person's status should be included. This is accomplished by addressing the medical, psychological, behavioral, physical, functional, and vocational components of employability and return to work.

(i). The following are best practice recommendations for an occupational rehabilitation program:

[a]. work assessments including a work-site evaluation when possible (Refer to Return-To-Work);

[b]. practice of component tasks with modifications as needed;

[c]. development of strength and endurance for work tasks;

[d]. education on safe work practices;

[e]. education of the employer regarding functional implications of the worker when possible;

[f]. involvement of family members and/or support system for the worker;

[g]. promotion of responsibility and self-management;

[h]. assessment of the worker in relationship to productivity, safety, and worker behaviors;

[i]. identification of transferable skills of the worker;

[j]. development of behaviors to improve the ability of the worker to return to work or benefit from other rehabilitation; and

[k]. discharge includes functional/work status, functional abilities as related to available jobs in the community, and a progressive plan for return to work if needed.

(ii). There is some evidence that an integrated care program, consisting of workplace interventions and graded activity teaching that pain need not limit activity, is effective in returning patients with chronic low back pain to work, even with minimal reported reduction of pain. The occupational medicine rehabilitation interdisciplinary team should, at a minimum, be comprised of a qualified medical director who is board certified with documented training in occupational rehabilitation, team physicians having experience in occupational rehabilitation, an occupational therapist, and a physical therapist. As appropriate, the team may also include any of the following: a chiropractor, an RN, a case manager, a psychologist, a vocational specialist, or a certified biofeedback therapist.

(iii). Time frames for occupational rehabilitation:

[a]. time to produce effect: two weeks;

[b]. frequency: two to five visits per week; up to eight hours per day;

[c]. optimum duration: two to four weeks;

[d]. maximum duration: six weeks. Participation in a program beyond six weeks must be documented with respect to need and the ability to facilitate positive symptomatic and functional gains.

(c). Opioid/Chemical Treatment Programs: Refer to the OWCA's Chronic Pain Disorder Medical Treatment Guideline. Recent programs which incorporate both weaning from opioids and interdisciplinary therapy appear to demonstrate positive long-term results.

ii. Informal Rehabilitation Program. A coordinated interdisciplinary pain rehabilitation program is one in which the authorized treating physician coordinates all aspects of care. This type of program is similar to the formal programs in that it is goal-oriented and provides interdisciplinary rehabilitation services to manage the needs of the patient in the following areas: functional; medical; physical; psychological; social; and vocational.

(a). This program is different from a formal program in that it involves lower frequency and intensity of services/treatment. Informal rehabilitation is geared toward those patients who do not need the intensity of service offered in a formal program or who cannot attend an all-day program due to employment, daycare, language or other barriers.

(b). Patients should be referred to professionals experienced in outpatient treatment of chronic pain. The OWCA recommends the authorized treating physician consult with physicians experienced in the treatment of chronic pain to develop the plan of care. Communication among care providers regarding clear objective goals and progress toward the goals is essential. Employers should be involved in return to work and work restrictions, and the family and/or social support system should be included in the treatment plan. Professionals from other disciplines likely to be involved include a biofeedback therapist, an occupational therapist, a physical therapist, an RN, a psychologist, a case manager, an exercise physiologist, a psychiatrist, and/or a nutritionist.

(c). Time frames for informal interdisciplinary rehabilitation program:

(i). time to produce effect: three to four weeks;

(ii). frequency: full-time programs—no less than five hours per day, five days per week; part-time programs—four hours per day for two to three days per week;

(iii). optimum duration: 3 to 12 weeks at least two to three times a week. Follow-up visits weekly or every other week during the first one to two months after the initial program is completed;

(iv). maximum duration: four months for full-time programs and up to six months for part-time programs. Periodic review and monitoring thereafter for one year, and additional follow-up based upon the documented maintenance of functional gains.

10. Medications and Medical Management. A thorough medication history, including use of alternative and over the counter medications, should be performed at the time of the initial visit and updated periodically. The medication history may consist of evaluating patient refill records through pharmacies and the Prescription Monitoring Program (PMP) to determine if the patient is receiving their prescribed regimen. Appropriate application of pharmacological agents depends on the patient's age, past history (including history of substance abuse), drug allergies and the nature of all medical problems. It is incumbent upon the healthcare provider to thoroughly understand pharmacological principles when dealing with the different drug families,

their respective side effects, drug interactions and primary reason for each medication's usage. Healthcare providers should be aware that Interventional procedures can reduce or stop the need for medications while also improving functional capabilities. Patients should be aware that medications alone are unlikely to provide complete pain relief. In addition to pain relief, a primary goal of drug treatment is to improve the patient's function as measured behaviorally. Besides taking medications, continuing participation in exercise programs and using self-management techniques such as biofeedback, cognitive behavioral therapy, and other individualized physical and psychological practices are required elements for successful chronic pain management. Management must begin with establishing goals and expectations, including shared decision making about risks and benefits of medications.

a. Medication reconciliation is the process of comparing the medications that the patient is currently taking with those for which the patient has orders. This needs to include drug name, dosage, frequency, and route. The reconciliation can assist in avoiding medications errors such as omissions, duplications, dosing errors, or drug interactions. The results can also be used to assist discussion with the patient regarding prescribing or changing medications and the likelihood of side effects, drug interactions, and achieving expected goals. At a minimum, medication reconciliation should be performed for all patients upon the initial visit and whenever refilling or prescribing new medications.

b. Control of chronic non-malignant pain is expected to frequently involve the use of medication. Strategies for pharmacological control of pain cannot be precisely specified in advance. Rather, drug treatment requires close monitoring of the patient's response to therapy, flexibility on the part of the prescriber and a willingness to change treatment when circumstances change. Many of the drugs discussed in the medication section were licensed for indications other than analgesia, but are effective in the control of many types of chronic pain.

c. It is generally wise to begin management with lower cost non-opioid medications whose efficacy equals higher cost medications and medications with a greater safety profile. At practitioner's discretion, decisions to progress to more expensive, non-generic, and/or riskier products are made based on the drug profile, patient feedback, and improvement in function. The provider must carefully balance the untoward side effects of the different drugs with therapeutic benefits, as well as monitor for any drug interactions.

d. All medications should be given an appropriate trial in order to test for therapeutic effect. The length of an appropriate trial varies widely depending on the individual drug. Certain medications may take several months to determine the efficacy, while others require only a few doses. It is recommended that patients with chronic nonmalignant pain be maintained on drugs that have the least serious side effects. For example, patients need to be tried or continued on acetaminophen and/or antidepressant medications whenever feasible as part of their overall treatment for chronic pain. Patients with renal or hepatic disease may need increased dosing intervals with chronic acetaminophen use. Chronic use of NSAIDs is a concern due to increased risk of cardiovascular events and GI bleeding.

e. The use of sedatives and hypnotics is not generally recommended for chronic pain patients. It is strongly recommended that such pharmacological management be monitored or managed by an experienced pain medicine physician, medical psychologist or psychiatrist. Multimodal therapy is the preferred mode of treatment for chronic pain patients whether or not these drugs were used acutely or sub-acutely.

f. Pharmaceutical neuropathic pain studies are limited. Diabetic peripheral neuropathy (DPN) and post-herpetic neuralgia (PHN) are the two most frequently studied noncancerous neuropathic pain conditions in randomized clinical trials of drug treatment. Some studies enroll only DPN or PHN patients, while other studies may enroll both kinds of patients. There appear to be consistent differences between DPN and PHN with respect to placebo responses, with DPN showing greater placebo response than PHC. Thus, there is an increased likelihood of a "positive" trial result for clinical trials of drug treatment for PHN than for DPN.

g. Although many studies focus on mean change in pain, this may not be the most reliable result. It does not necessarily allow for subgroups that may have improved significantly. Furthermore, the DPN and PHN studies do not represent the type of neurologic pain usually seen in workers' compensation.

h. For these reasons, few pharmaceutical agents listed in this guideline are supported by high levels of evidence, but the paucity of evidence statements should not be construed as meaning that medication is not to be encouraged in managing chronic pain patients.

i. It is advisable to begin with the lowest effective dose proven to be useful for neuropathic pain in the literature. If the patient is tolerating the medication and clinical benefit is appreciated, maximize the dose for that medication or add another second line medication with another mechanism of action. If a medication is not effective, taper off the medication and start another agent. Maintain goal dosing for up to eight weeks before determining its effectiveness. Many patients will utilize several medications from different classes to achieve maximum benefit.

j. The preceding principles do not apply to chronic headache or trigeminal neuralgia patients. These patients should be referred to a physician specializing in the diagnosis and treatment of headache and facial pain.

k. For the clinician to interpret the following material, it should be noted that: drug profiles listed are not complete; dosing of drugs will depend upon the specific drug, especially for off-label use; and not all drugs within each class are listed, and other drugs within the class may be appropriate for individual cases. Clinicians should refer to informational texts or consult a pharmacist before prescribing unfamiliar medications or when there is a concern for drug interactions.

l. The following drug classes are listed in alphabetical order, not in order of suggested use, which is outlined above for neuropathic pain.

i. Alpha-Acting Agents. Noradrenergic pain-modulating systems are present in the central nervous

system, and the Alpha-2 adrenergic receptor may be involved in the functioning of these pathways. Alpha-2 agonists may act by stimulating receptors in the substantia gelatinosa of the dorsal horn of the spinal cord, inhibiting the transmission of nociceptive signals. Spasticity may be reduced by presynaptic inhibition of motor neurons. Given limited experience with their use, they cannot be considered first-line analgesics or second-line analgesics for neurogenic pain, but a trial of their use may be warranted in many cases of refractory pain.

(a). Clonidine (Catapres, Kapvay, Nexiclon):

(i). description—Central Alpha 2 agonist;

(ii). indications—sympathetically mediated pain, treatment of withdrawal from opioids;

[a]. as of the time of this guideline writing, formulations of clonidine have been FDA approved for hypertension;

(iii). major contraindications—severe coronary insufficiency, renal impairment;

(iv). dosing and time to therapeutic effect—increase dosage weekly to therapeutic effect;

(v). major side effects—sedation, orthostatic hypotension, sexual dysfunction, thrombocytopenia, weight gain, agitation, rebound hypertension with cessation;

(vi). drug interactions—beta adrenergics, tricyclic antidepressants;

(vii). laboratory monitoring—renal function, blood pressure.

ii. Anticonvulsants. Although the mechanism of action of anticonvulsant drugs in neuropathic pain states remains to be fully defined, they appear to act as channel blocking agents. A large variety of sodium channels are present in nervous tissue, and some of these are important mediators of nociception, as they are found primarily in unmyelinated fibers and their density increases following nerve injury. While the pharmacodynamic effects of the various anticonvulsant drugs are similar, the pharmacokinetic effects differ significantly. Gabapentin and pregablin, by contrast, are relatively non-significant enzyme inducers, creating fewer drug interactions. All patients on these medications should be monitored for suicidal ideation. Many of these medications are not recommended for women of child bearing age due to possible teratogenic effects.

(a). Gabapentin and pregabalin are commonly prescribed for neuropathic pain. There is an association between older anticonvulsants including gabapentin and non-traumatic fractures for patients older than 50; this should be taken into account when prescribing these medications.

(b). Gabapentin and pregabalin have indirect (not GABA A or GABA B receptor mediated) GABA-mimetic qualities rather than receptor mediated actions. This can potentially result in euphoria, relaxation, and sedation. It is likely that they also affect the dopaminergic "reward" system related to addictive disorders. Misuse of these medications usually involves doses 3 to 20 times that of the usual therapeutic dose. The medication is commonly used with alcohol or other drugs of abuse. Providers should be aware of the possibility and preferably screen patients for abuse before prescribing these medications. Withdrawal symptoms, such as insomnia, nausea, headache, or diarrhea, are likely when high doses of pregabalin have been used. Tolerance can also develop.

(c). Gabapentin (Fanatrex, Gabarone, Gralise, Horizant, Neurontin)

(i). Description. Structurally related to gamma-aminobutyric acid (GABA) but does not interact with GABA receptors. Gabapentin affects the alpha-2-delta-1 ligand of voltage gated calcium channels, thus inhibiting neurotransmitter containing intra-cellular vesicles from fusing with the pre-synaptic membranes and reducing primary afferent neuronal release of neurotransmitters (glutamate, CGRP, and substance P). It may also modulate transient receptor potential channels, NMDA receptors, protein kinase C and inflammatory cytokines, as well as possibly stimulating descending norepinephrine mediated pain inhibition.

(ii). Indications. As of the time of this guideline writing, formulations of gabapentin have been FDA approved for post-herpetic neuralgia and partial onset seizures.

[a]. There is strong evidence that gabapentin is more effective than placebo in the relief of painful diabetic neuropathy and post-herpetic neuralgia.

[b]. There is some evidence that gabapentin may benefit some patients with post-traumatic neuropathic pain. There is good evidence that gabapentin is not superior to amitriptyline. There is some evidence that nortriptyline (Aventyl, Pamelor) and gabapentin are equally effective for pain relief of postherpetic neuralgia. There is some evidence that the combination of gabapentin and morphine may allow lower doses with greater analgesic effect than the drugs given separately. There is strong evidence that gabapentin is more effective than placebo for neuropathic pain, even though it provides complete pain relief to a minority of patients. There is some evidence that a combination of gabapentin and nortriptyline provides more effective pain relief than monotherapy with either drug.

(iii). Relative Contraindications—renal insufficiency. Dosage may be adjusted to accommodate renal dysfunction.

(iv). Dosing and Time to Therapeutic Effect. Dosage should be initiated at a low dose in order to avoid somnolence and may require four to eight weeks for titration. Dosage should be adjusted individually. It is taken three to four times per day, and the target dose is 1800 mg.

(v). Major Side Effects—confusion, sedation, dizziness, peripheral edema. Patients should also be monitored for suicidal ideation and drug abuse.

(vi). Drug Interactions—antacids.

(vii). Laboratory Monitoring—renal function.

(b). Pregabalin (Lyrica)

(i). Description: structural derivative of the inhibitory neuro transmitter gamma aminobutyric acid which inhibits calcium influx at the alpha-2-subunit of voltage-gated calcium channels of neurons. By inhibiting calcium influx, there is inhibition of release for excitatory neurotransmitters.

(ii). Indications. As of the time of this guideline writing, pregabalin is FDA approved for the treatment of neuropathic pain, post-herpetic neuralgia,

fibromyalgia, diabetic peripheral neuropathy, and partial-onset seizure in adults with epilepsy.

[a]. There is an adequate meta-analysis supporting strong evidence that in the setting of painful diabetic neuropathy, pregabalin as a stand-alone treatment is more effective than placebo in producing a 50 percent pain reduction, but this goal is realized in only 36 percent of patients treated with pregabalin compared with 24 percent of patients treated with placebo. There is an absence of published evidence regarding its effectiveness in improving physical function in this condition. There is also some evidence that pregabalin may be effective in treating neuropathic pain due to spinal cord injury. Unfortunately, most of the studies reviewed used pain as the primary outcome. Only one study considered function and found no improvement.

[b].When pregabalin is compared with other first line medications for the treatment of neuropathic pain and diabetic peripheral neuropathy, such as amitriptyline and duloxetine, there is good evidence that it is not superior to these medications. Additionally, amitriptyline was found more effective compared to pregabalin for reducing pain scores and disability. Side effects were similar for the two medications. Therefore, amitriptyline is recommended for patients without contraindications, followed by duloxetine or pregabalin. This is based on improved effectiveness in treating neuropathic pain and a favorable side effect profile compared to pregabalin. Pregabalin may be added to amitriptyline therapy.

[c].Pregabalin seems to be not effective and/or not well tolerated in a large percentage of patients. This is evident in several of the studies using run-in phases, enrichment, and partial enrichment techniques to strengthen the results. This analysis technique excludes placebo responders, non-responders, and adverse events prior to the treatment part of the study. This was done in the large meta-analysis, and one study had 60 percent of participants excluded in the run-in phase.

[d].Duloxetine, pregabalin, and amitriptyline are approximately of equal benefit with respect to pain relief in the setting of diabetic peripheral neuropathy. There is some evidence that they exert different effects with respect to sleep variables. Total sleep time and REM sleep duration are likely to be greater with pregabalin than with duloxetine or amitriptyline. However, amitriptyline and pregabalin are likely to lead to dizziness and fatigue more frequently than the other drugs, and oxygen desaturation during sleep also appears to be greater with pregabalin.

(iii). Relative Contraindications. Avoid use with hypersensitivity to pregabalin or other similar class of drugs, avoid abrupt withdrawal, avoid use with a CNS depressant or alcohol, and exercise caution when using:

[a]. in the elderly;

[b].with renal impairment;

[c]. with CHF class III/IV;

[d].with a history of angioedema;

[e]. with depression.

(iv). Dosing and Time to Therapeutic Effect. Pregabalin comes in dosages ranging from 25 mg to 300 mg in 25 mg and 50 mg increments. For neuropathic pain, start at 75 mg twice daily for one week and then increase to 150 mg twice daily for two to three weeks if needed, with a possible final increase to 300 mg twice daily with a max dose of 600 mg/day. The full benefit may be achieved as quickly as 1 week, but it may take six to eight weeks. To discontinue, taper the dose down for at least one week.

(v). Major Side Effects: dizziness (less than 45 percent), somnolence (less than 36 percent), peripheral edema (less than 16 percent), weight gain (less than 16 percent), xerostomia (less than 15 percent), headache (less than 14 percent), fatigue (less than 11 percent), tremor (less than 11 percent), blurred vision/diplopia (less than 12 percent), constipation (less than 10 percent), confusion (less than seven percent), euphoria (less than seven percent), impaired coordination (less than six percent), thrombocytopenia (less than one percent). Patients should be monitored for hypersensitivity reactions, angioedema, suicidality, withdrawal symptoms, and seizures during abrupt discontinuation.

(vi). In regards to euphoria, pregabalin has higher rates compared to gabapentin in patients with history of substance misuse. Thus, prescribers should be aware that there is a potential for misuse.

(vii). Drug Interactions. Avoid use with antiepileptic agents and any CNS depression medications. Specifically avoid use with carbinoxamine, doxylamine, and gingko. Monitor closely when pregabalin is use with opioids.

(viii). Laboratory Monitoring: creatinine at baseline.

(c.) Other Anticonvulsants with Limited Third Line Use. It is recommended that a physician experienced in pain management be involved in the care when these medications are used.

(i). Topiramate (Topamax, Topiragen): sulfamate substitute monosacchride. FDA approved for epilepsy or prophylaxis for migraines. Topiramate is without evidence of efficacy in diabetic neuropathic pain, the only neuropathic condition in which it has been adequately tested. The data we have includes the likelihood of major bias due to last observation carried forward imputation, where adverse event withdrawals are much higher with active treatment than placebo control. Despite the strong potential for bias, no difference in efficacy between topiramate and placebo was apparent. There is good evidence that topiramate demonstrates minimal effect on chronic lumbar radiculopathy or other neuropathic pain. If it is utilized, this would be done as a third or fourth line medication in appropriate patients.

(ii). Lamotrigine (Lamictal). This anti-convulsant drug is not FDA approved for use with neuropathic pain. Due to reported deaths from toxic epidermal necrolysis and Stevens Johnson syndrome, increased suicide risk, and incidents of aseptic meningitis, it is used with caution for patients with seizure or mood disorders. There is insufficient evidence that lamotrigine is effective in treating neuropathic pain and fibromyalgia at doses of about 200 to 400 mg daily. Given the availability of more effective treatments including antiepileptics and antidepressant medicines, lamotrigine does not have a significant place in therapy based on the available evidence.

The adverse effect profile of lamotrigine is also of concern. If it is utilized, this would be done as a third or fourth line medication in appropriate patients.

(iii). Zonisamide. There is insufficient evidence that zonisamide provides pain relief in any neuropathic pain condition. There are a number of drug interactions and other issues with its use. If it is utilized, this would be done as a third or fourth line medication in appropriate patients.

(iv). Carbamazepine (Tegretol) has important effects as an inducer of hepatic enzymes and may influence the metabolism of other drugs enough to present problems in patients taking interacting drugs. Dose escalation must be done carefully, since there is good evidence that rapid dose titration produces side-effects greater than the analgesic benefits. Carbamazepine is likely effective in some people with chronic neuropathic pain but with caveats. No trial was longer than four weeks, had good reporting quality, nor used outcomes equivalent to substantial clinical benefit. In these circumstances, caution is needed in interpretation, and meaningful comparison with other interventions is not possible. Carbamazepine is generally not recommended; however, it may be used as a third or fourth line medication. It may be useful for trigeminal neuralgia.

(v). Valproic Acid. There is insufficient evidence to support the use of valproic acid or sodium valproate as a first-line treatment for neuropathic pain. It should be avoided in women of child bearing age. There is more robust evidence of greater efficacy for other medications. However, some guidelines continue to recommend it. If it is utilized, this would be done as a third or fourth line medication in appropriate patients.

(vi). Levetiracetam. There is no evidence that levetiracetam is effective in reducing neuropathic pain. It is associated with an increase in participants who experienced adverse events and who withdrew due to adverse events. Therefore, this is not recommended.

(vii). Lacosamide has limited efficacy in the treatment of peripheral diabetic neuropathy. Higher doses did not give consistently better efficacy but were associated with significantly more adverse event withdrawals. Where adverse event withdrawals are high with active treatment compared with placebo and when last observation carried forward imputation is used, as in some of these studies, significant overestimation of treatment efficacy can result. It is likely, therefore, that lacosamide is without any useful benefit in treating neuropathic pain; any positive interpretation of the evidence should be made with caution if at all. Therefore, this is not recommended.

iii. Antidepressants are classified into a number of categories based on their chemical structure and their effects on neurotransmitter systems. Their effects on depression are attributed to their actions on disposition of norepinephrine and serotonin at the level of the synapse; although these synaptic actions are immediate, the symptomatic response in depression is delayed by several weeks. When used for chronic pain, the effects may in part arise from treatment of underlying depression, but may also involve additional neuromodulatory effects on endogenous opioid systems, raising pain thresholds at the level of the spinal cord.

(a). Pain responses may occur at lower drug doses with shorter times to symptomatic response than are observed when the same compounds are used in the treatment of mood disorders. Neuropathic pain, diabetic neuropathy, post-herpetic neuralgia, and cancer-related pain may respond to antidepressant doses low enough to avoid adverse effects that often complicate the treatment of depression. First line drugs for neuropathic pain are the tricyclics with the newer formulations having better side effect profiles. SNRIs are considered second line drugs due to their costs and the number needed to treat for a response. Duloxetine may be considered for first line use in a patient who is a candidate for pharmacologic treatment of both chronic pain and depression. SSRIs are used generally for depression rather than neuropathic pain and should not be combined with moderate to high-dose tricyclics.

(b). All patients being considered for anti-depressant therapy should be evaluated and continually monitored for suicidal ideation and mood swings.

(i). Tricyclics and Older Agents (e.g., amitriptyline, nortriptyline, doxepin [Silenor, Sinequan, Adapin], desipramine [Norpramin, Pertofrane], imipramine [Tofranil], trazodone [Desyrel, Oleptro])

[a]. Description. Serotonergics, typically tricyclic antidepressants (TCAs), are utilized for their serotonergic properties as increasing CNS serotonergic tone can help decrease pain perception in non-antidepressant dosages. TCAs decrease reabsorption of both serotonin and norepinephrine. They also impact Na channels. Amitriptyline is known for its ability to repair Stage 4 sleep architecture, a frequent problem found in chronic pain patients and to treat depression, frequently associated with chronic pain. However, higher doses may produce more cholinergic side effects than newer tricyclics such as nortriptyline and desipramine. Doxepin and trimipramine also have sedative effects.

[i]. There is some evidence that in the setting of chronic low back pain with or without radiculopathy, amitriptyline is more effective than pregabalin at reducing pain and disability after 14 weeks of treatment. There is some evidence that in the setting of neuropathic pain, a combination of morphine plus nortriptyline produces better pain relief than either monotherapy alone, but morphine monotherapy is not superior to nortriptyline monotherapy, and it is possible that it is actually less effective than nortriptyline. There is insufficient low quality evidence supporting the use of desipramine to treat neuropathic pain. Effective medicines with much greater supportive evidence are available. There may be a role for desipramine in patients who have not obtained pain relief from other treatments. There is no good evidence of a lack of effect; therefore, amitriptyline should continue to be used as part of the treatment of neuropathic pain. Only a minority of people will achieve satisfactory pain relief. Limited information suggests that failure with one antidepressant does not mean failure with all. There is insufficient evidence to support the use of nortriptyline as a first line treatment. However, nortriptyline has a lower incidence of anticholinergic side effects than amitriptyline. It may be considered for patients who are intolerant to the anticholinergic effects of amitriptyline. Effective medicines

with greater supportive evidence are available, such as duloxetine and pregabalin.

[ii]. There is some evidence that a combination of some gabapentin and nortriptyline provides more effective pain relief than monotherapy with either drug, without increasing side effects of either drug.

[b]. Indications. Some formulations are FDA approved for depression and anxiety. For the purposes of this guideline, they are recommended for neuropathic pain and insomnia. They are not recommended as a first line drug treatment for depression.

[c]. Major Contraindications: cardiac disease or dysrhythmia, glaucoma, prostatic hypertrophy, seizures, high suicide risk, uncontrolled hypertension and orthostatic hypotension. A screening cardiogram may be done for those 40 years of age or older, especially if higher doses are used. Caution should be utilized in prescribing TCAs. They are not recommended for use in elderly patients 65 years of age or older, particularly if they are at fall risk.

[d]. Dosing and Time to Therapeutic Effect varies by specific tricyclic. Low dosages, less than 100 mg, are commonly used for chronic pain and/or insomnia. Lower doses decrease side effects and cardiovascular risks.

[e]. Major Side Effects. Side effects vary according to the medication used; however, the side effect profile for all of these medications is generally higher in all areas except GI distress, which is more common among the SSRIs and SNRIs. Anticholinergic side effects including, but not limited to, dry mouth, sedation, orthostatic hypotension, cardiac arrhythmia, urinary retention, and weight gain. Dry mouth leads to dental and periodontal conditions (e.g., increased cavities). Patients should also be monitored for suicidal ideation and drug abuse. Anticholinergic side effects are more common with tertiary amines (amitriptyline, imipramine, doxepin) than with secondary amines (nortriptyline and desipramine).

[f]. Drug Interactions: Tramadol (may cause seizures, both also increase serotonin/norepinephrine, so serotonin syndrome is a concern), clonidine, cimetidine (Tagemet), sympathomimetics, valproic acid (Depakene, Depakote, Epilim, Stavzor), warfarin (Coumadin, Jantoven, Marfarin), carbamazepine, bupropion (Aplezin, Budeprion, Buproban, Forfivo, Wellbutrin, Zyban), anticholinergics, quinolones.

[g]. Recommended Laboratory Monitoring; renal and hepatic function. EKG for those on high dosages or with cardiac risk.

(ii). Selective serotonin reuptake inhibitors (SSRIs) (e.g., citalopram (Celexa), fluoxetine (Prozac, Rapiflux, Sarafem, Selfemra), paroxetine (Paxil, Pexeva), sertraline (Zoloft)) are not recommended for neuropathic pain. They may be used for depression.

(iii). Selective Serotonin Nor-epinephrine Reuptakes Inhibitor (SSNRI)/Serotonin Nor-epinephrine Reuptake Inhibitors (SNRI).

[a]. Description: Venlafaxine (Effexor), desvenlafaxine (Pristiq), duloxetine, and milnacipran (Savella).

[i]. There is strong evidence that duloxetine monotherapy is more effective than placebo in relieving the pain of diabetic peripheral neuropathy; however, monotherapy leads to a 50 percent pain reduction in only half of patients who receive a therapeutic dose.

[ii]. AHRQ supports the use of duloxetine for chronic low back pain.

[iii] There is good evidence that in patients with painful diabetic neuropathy who have not had good responses to monotherapy with 60 mg of duloxetine or 300 mg of pregabalin, a clinically important benefit can be achieved by either of two strategies: doubling the dose of either drug, or combining both drugs at the same dose. It is likely that the strategy of combining the two drugs at doses of 60 and 300 mg respectively is more beneficial overall.

[iv]. There was no evidence to support the use of milnacipran to treat neuropathic pain conditions, although it is used for fibromyalgia. It is not generally recommended but may be used if patients cannot tolerate other medications.

[v]. There is insufficient evidence to support the use of venlafaxine in neuropathic pain. However, it may be useful for some patients who fail initial recommended treatments. Venlafaxine is generally reasonably well tolerated, but it can precipitate fatigue, somnolence, nausea, and dizziness in a minority of people. The sustained release formulations are generally more tolerable as inter-dose withdrawal symptoms can be avoided. They should be trialed if the patient cannot tolerate the immediate release formulation.

[b]. Indications. At the time of writing this guideline, duloxetine has been FDA approved for treatment of diabetic neuropathic pain and chronic musculoskeletal pain. Therefore, best evidence supports the use of duloxetine alone or with pregabalin.

[c]. Relative Contraindications: seizures, eating disorders.

[d]. Major side effects depends on the drug, but commonly includes dry mouth, nausea, fatigue, constipation, and abnormal bleeding. Serotonin syndrome is also a risk. Gastrointestinal (GI) distress, drowsiness, sexual dysfunction less than other classes. Hypertension and glaucoma with venlafaxine. Cardiac issues with venlafaxine and withdrawal symptoms unless tapered. Studies show increased suicidal ideation and attempts in adolescents and young adults. Patients should also be monitored for suicidal ideation and drug abuse.

[e]. Drug Interactions: drug specific.

[f]. Laboratory Monitoring: renal and hepatic monitoring, venlafaxine may cause cholesterol or triglyceride increases.

(iv). Atypical antidepressants/other agents may be used for depression; however, are not appropriate for neuropathic pain.

iv. Cannabinoid Products. At the time of writing, marijuana use is illegal under federal law and cannot be recommended for use in this guideline.

v. Nonsteroidal Anti-Inflammatory Drugs (NSAIDs). NSAIDs are useful for pain and inflammation. In mild cases, they may be the only drugs required for analgesia. There are several classes of NSAIDs. The response of the individual injured worker to a specific medication is unpredictable. For this reason, a range of NSAIDs may be tried in each case, with the most effective

preparation being continued. Patients should be closely monitored for adverse reactions. The FDA advises that many NSAIDs may cause an increased risk of serious cardiovascular thrombotic events, myocardial infarction, and stroke, which can be fatal. Administration of proton pump inhibitors, Histamine 2 Blockers, or prostaglandin analog misoprostol along with these NSAIDs may reduce the risk of duodenal and gastric ulceration in patients at higher risk for this adverse event (e.g., age > 60, concurrent antiplatelet or corticosteroid therapy). They do not impact possible cardiovascular complications. Due to the cross-reactivity between aspirin and NSAIDs, NSAIDs should not be used in aspirin-sensitive patients, and they should be used with caution in all asthma patients. NSAIDs are associated with abnormal renal function, including renal failure, as well as abnormal liver function. Patients with renal or hepatic disease may need increased dosing intervals with chronic use. Chronic use of NSAIDs is generally not recommended due to increased risk of cardiovascular events and GI bleeding.

(a). Topical NSAIDs may be more appropriate for some patients as there is some evidence that topical NSAIDs are associated with fewer systemic adverse events than oral NSAIDs.

(b). NSAIDs may be associated with non-unions. Thus, their use with fractures is questionable.

(c). Certain NSAIDs may have interactions with various other medications. Individuals may have adverse events not listed above. Intervals for metabolic screening are dependent on the patient's age and general health status and should be within parameters listed for each specific medication. Complete Blood Count (CBC) and liver and renal function should be monitored at least every six months in patients on chronic NSAIDs and initially when indicated.

(d). There is no evidence to support or refute the use of oral NSAIDs to treat neuropathic pain conditions.

(e). AHRQ supports the use of NSAIDs for chronic low back pain.

(i). Non-selective non-steroidal anti-inflammatory drugs includes NSAIDs and acetylsalicylic acid. Serious GI toxicity, such as bleeding, perforation, and ulceration can occur at any time, with or without warning symptoms, in patients treated with traditional NSAIDs. Physicians should inform patients about the signs and/or symptoms of serious GI toxicity and what steps to take if they occur. Anaphylactoid reactions may occur in patients taking NSAIDs. NSAIDs may interfere with platelet function. Fluid retention and edema have been observed in some patients taking NSAIDs.

[a]. Time frames for non-selective non-steroidal anti-inflammatory drugs:

[i]. optimum duration: one week;

[ii]. maximum continuous duration (not interment): one year. Use of these substances long-term (three days per week or greater) is associated with rebound pain upon cessation.

(ii). Selective Cyclo-oxygenase-2 (COX-2) Inhibitors. COX-2 inhibitors differ from the traditional NSAIDs in adverse side effect profiles. The major advantages of selective COX-2 inhibitors over traditional NSAIDs are that they have less GI toxicity and no platelet effects. COX-2 inhibitors can worsen renal function in patients with renal insufficiency; thus, renal function may need monitoring.

[a]. There is good evidence that celecoxib (Celebrex) in a dose of 200 mg per day, administered over a long period, does not have a worse cardiovascular risk profile than naproxen at a dose of up to 1000 mg per day or ibuprofen at a dose of up to 2400 mg per day. There is good evidence that celecoxib has a more favorable safety profile than ibuprofen or naproxen with respect to serious GI adverse events, and it has a more favorable safety profile than ibuprofen with respect to renal adverse events. There is an absence of evidence concerning the relative safety of celecoxib at doses greater than 200 mg per day.

[b]. COX-2 inhibitors should not be first-line for low risk patients who will be using an NSAID short-term. COX-2 inhibitors are indicated in select patients who do not tolerate traditional NSAIDs. Serious upper GI adverse events can occur even in asymptomatic patients. Patients at high risk for GI bleed include those who use alcohol, smoke, are older than 65 years of age, take corticosteroids or anti-coagulants, or have a longer duration of therapy. Celecoxib is contraindicated in sulfonamide allergic patients.

[c]. Time frames for selective cyclo-oxygenase-2 (COX-2) inhibitors:

[i]. optimum duration: 7 to 10 days;

[ii]. maximum duration: Chronic use is appropriate in individual cases. Use of these substances long-term (three days per week or greater) is associated with rebound pain upon cessation.

vi. Opioids. Opioids are the most powerful analgesics. Their use in acute pain and moderate-to-severe cancer pain is well accepted. Their use in chronic nonmalignant pain, however, is fraught with controversy and lack of scientific research. Deaths in the United States from opioids have escalated in the last 15 years. The CDC states the following in their 2016 Primary Care guideline for prescribing opioids. Opioid pain medication use presents serious risk, including overdose and opioid use disorder. From 1999 to 2014, more than 165,000 persons died from overdose related to opioid pain medication in the United States. In the past decade, while the death rates for the top leading causes of death such as heart disease and cancer have decreased substantially, the death rate associated with opioid pain medication has increased markedly. Sales of opioid pain medication have increased in parallel with opioid-related overdose deaths. The Drug Abuse Warning Network estimated that less than 420,000 emergency department visits were related to the misuse or abuse of narcotic pain relievers in 2011, the most recent year for which data are available. Opioid poisoning has also been identified in work-related populations.

(a). Effectiveness and Side Effects. Opioids include some of the oldest and most effective drugs used in the control of severe pain. The discovery of opioid receptors and their endogenous peptide ligands has led to an understanding of effects at the binding sites of these naturally occurring substances. Most of their analgesic effects have been attributed to their modification of activity in pain pathways within the central nervous system; however, it has become evident that they also are active in the peripheral nervous system. Activation of receptors on the peripheral terminals of primary afferent nerves can mediate

anti-nociceptive effects, including inhibition of neuronal excitability and release of inflammatory peptides. Some of their undesirable effects on inhibiting gastrointestinal motility are peripherally mediated by receptors in the bowel wall.

(i). Most studies show that only around 50 percent of patients tolerate opioid side effects and receive an acceptable level of pain relief. Depending on the diagnosis and other agents available for treatment, the incremental benefit can be small.

(ii). There is strong evidence that in the setting of chronic nonspecific low back pain, the short and intermediate term reduction in pain intensity of opioids, compared with placebo, falls short of a clinically important level of effectiveness. There is an absence of evidence that opioids have any beneficial effects on function or reduction of disability in the setting of chronic nonspecific low back pain. AHRQ found that opioids are effective for treating chronic low back pain. However, the report noted no evidence regarding the long-term effectiveness or safety for chronic opioids.

(iii). There is good evidence that opioids are more efficient than placebo in reducing neuropathic pain by clinically significant amounts. There is a lack of evidence that opioids improve function and quality of life more effectively than placebo. There is good evidence that opioids produce significantly more adverse effects than placebo such as constipation, drowsiness, dizziness, nausea, and vomiting. There is a lack of evidence that they are superior to gabapentin or nortriptyline for neuropathic pain reduction.

(iv). Patients should have a thorough understanding of the need to pursue many other pain management techniques in addition to medication use in order to function with chronic pain. They should also be thoroughly aware of the side effects and how to manage them. There is strong evidence that adverse events such as constipation, dizziness, and drowsiness are more frequent with opioids than with placebo. Common side effects are drowsiness, constipation, nausea, and possible testosterone decrease with longer term use.

(v). There is some evidence that in the setting of chronic low back pain with disc pathology, a high degree of anxiety or depressive symptomatology is associated with relatively less pain relief in spite of higher opioid dosage than when these symptoms are absent. A study comparing Arkansas Medicaid and a national commercial insurance population found that the top five percent of opioid users accounted for 48 to70 percent of total opioid use. Utilization was increased among those with mental health and substance use disorders and those with multiple pain conditions. Psychological issues should always be screened for and treated in chronic pain patients. Therefore, for the majority of chronic pain patients, chronic opioids are unlikely to provide meaningful increase in function in daily activities. However, a subpopulation of patients may benefit from chronic opioids when properly prescribed and all requirements from medical management are followed.

(b). Hyperalgesia. Administration of opioid analgesics leads not only to analgesia, but may also lead to a paradoxical sensitization to noxious stimuli. Opioid induced hyperalgesia has been demonstrated in animals and humans using electrical or mechanical pain stimuli. This increased sensitivity to mildly painful stimuli does not occur in all patients and appears to be less likely in those with cancer, clear inflammatory pathology, or clear neuropathic pain. When hyperalgesia is suspected, opioid tapering is appropriate.

(c). Opioid Induced Constipation (OIC). Some level of constipation is likely ubiquitous among chronic opioid users. An observational study of chronic opioid users who also used some type of laxative at least four times per week noted that approximately 50 percent of the patients were dissatisfied and they continue to report stool symptoms. 71 percent used a combination of natural and dietary treatment, 64.3 percent used over-the-counter laxatives, and 30 percent used prescription laxatives. Other studies report similar percentages. There are insufficient quality studies to recommend one specific type of laxative over others.

(i). The easiest method for identifying constipation, which is also recommended by a consensus, multidisciplinary group, is the Bowel Function Index. It assesses the patient's impression over the last seven days for ease of defecation, feeling of incomplete bowel evacuation, and personal judgment re-constipation.

(ii). Stepwise treatment for OIC is recommended, and all patients on chronic opioids should receive information on treatment for constipation. Dietary changes increasing soluble fibers are less likely to decrease OIC and may cause further problems if GI motility is decreased. Stool softeners may be tried, but stimulant and osmotic laxatives are likely to be more successful. Osmotic laxatives include lactulose and polyethylene glycol. Stimulants include bisacodyl, sennosides, and sodium picosulfate, although there may be some concern regarding use of stimulants on a regular basis.

(iii). Opioid rotation or change in opioids may be helpful for some patients. It is possible that sustained release opioid products cause more constipation than short acting agents due to their prolonged effect on the bowel opioid receptors. Tapentadol is a u-opioid agonist and norepinephrine reuptake inhibitor. It is expected to cause less bowel impairment then oxycodone or other traditional opioids. Tapentadol may be the preferred opioid choice for patients with OIC.

(iv). Other prescription medications may be used if constipation cannot adequately be controlled with the previous measures. Naloxegol is a pegylaped naloxone molecule that does not pass the blood brain barrier and thus can be given with opioid therapy. There is good evidence that it can alleviate OIC and that 12.5 mg starting dose has an acceptable side effect profile.

(v). Methylnaltrexone does not cross the blood brain barrier and can be given subcutaneously or orally. It is specifically recommended for opioid induced constipation for patients with chronic non-cancer pain.

(vi). Misoprostol is a synthetic prostaglandin E1 agonist and has the side effect of diarrhea in some patients. It also has been tried for opioid induced constipation, although it is not FDA approved for this use.

(vii). Naldemedine is an opioid antagonist indicated for the treatment of opioid induced constipation in adult patients with chronic pain.

(viii). Lubiprostone is a prostaglandin E1 approved for use in opioid constipation.

(ix). Most patients will require some therapeutic control for their constipation. The stepwise treatment discussed should be followed initially. If that has failed and the patient continues to have recurrent problems with experiencing severe straining, hard or lumpy stool with incomplete evacuation, or infrequent stools for 25 percent of the time despite the more conservative measures, it may be appropriate to use a pharmaceutical agent.

(d). Physiologic Responses to Opioids. Physiologic responses to opioids are influenced by variations in genes which code for opiate receptors, cytochrome P450 enzymes, and catecholamine metabolism. Interactions between these gene products significantly affect opiate absorption, distribution, and excretion. Hydromorphone, oxymorphone, and morphine are metabolized through the glucuronide system. Other opioids generally use the cytochrome P450 system. Allelic variants in the mu opiate receptor may cause increased analgesic responsiveness to lower drug doses in some patients. The genetic type can predict either lower or higher needs for opioids. For example, at least 10 percent of Caucasians lack the CYP450 2D6 enzyme that converts codeine to morphine. In some cases, genetic testing for cytochrome P450 type may be helpful. When switching patients from codeine to other medications, assume the patient has little or no tolerance to opioids. Many gene-drug associations are poorly understood and of uncertain clinical significance. The treating physician needs to be aware of the fact that the patient's genetic makeup may influence both the therapeutic response to drugs and the occurrence of adverse effects. A Comprehensive genetic testing panel may be ordered by treating physician for these multiple P450 genes once in a lifetime and utilized whenever there is a question of metabolism or unusual response of any drugs used to treat pain conditions, because multiple drugs and associated genes can cause problems with opioid metabolism.

(e). Adverse Events. Physicians should be aware that deaths from unintentional drug overdoses exceed the number of deaths from motor vehicle accidents in the US. Most of these deaths are due to the use of opioids, usually in combination with other respiratory depressants such as alcohol or benzodiazepines. The risk for out of hospital deaths not involving suicide was also high. The prevalence of drug abuse in the population of patients undergoing pain management varies according to region and other issues. One study indicated that one-fourth of patients being monitored for chronic opioid use have abused drugs occasionally, and one-half of those have frequent episodes of drug abuse. 80 percent of patients admitted to a large addiction program reported that their first use of opioids was from prescribed medication.

(i). There is good evidence that in generally healthy patients with chronic musculoskeletal pain, treatment with long-acting opioids, compared to treatments with anticonvulsants or antidepressants, is associated with an increased risk of death of approximately 69 percent, most of which arises from non-overdose causes, principally cardiovascular in nature. The excess cardiovascular mortality principally occurs in the first 180 days from starting opioid treatment.

(ii). There is some evidence that compared to an opioid dose under 20 MED per day, a dose of 20-50 mg nearly doubles the risk of death, a dose of 50 to 100 mg may increase the risk more than fourfold, and a dose greater than 100 mg per day may increase the risk as much as sevenfold. However, the absolute risk of fatal overdose in chronic pain patients is fairly low and may be as low as 0.04 percent. There is good evidence that prescription opioids in excess of 200 MED average daily doses are associated with a near tripling of the risk of opioid-related death, compared to average daily doses of 20 MED. Average daily doses of 100-200 mg and doses of 50-99 mg per day may be associated with a doubling of mortality risk, but these risk estimates need to be replicated with larger studies.

(iii). Doses of opioids in excess of 120 MED have been observed to be associated with increased duration of disability, even when adjusted for injury severity in injured workers with acute low back pain. Higher doses are more likely to be associated with hypo-gonadism, and the patient should be informed of this risk. Higher doses of opioids also appear to contribute to the euphoric effect. The CDC recommends Primary Care Practitioners limiting to 90 MED per day to avoid increasing risk of overdose or referral to a pain specialist.

(iv). In summary, there is strong evidence that any dose above 50 MED per day is associated with a higher risk of death and 100 mg or greater appears to significantly increase the risk. Interventional techniques such as Spinal Cord Stimulation or Intrathecal Catheters and Programmable pumps should be considered in order to stop oral opioids usage.

(v). Workers who eventually are diagnosed with opioid abuse after an injury are also more likely to have higher claims cost. A retrospective observational cohort study of workers' compensation and short-term disability cases found that those with at least one diagnosis of opioid abuse cost significantly more in days lost from work for both groups and in overall healthcare costs for the short-term disability groups. About 0.5 percent of eligible workers were diagnosed with opioid abuse.

(f). Dependence versus Addiction. The central nervous system actions of these drugs account for much of their analgesic effect and for many of their other actions, such as respiratory depression, drowsiness, mental clouding, reward effects, and habit formation. With respect to the latter, it is crucial to distinguish between two distinct phenomena: dependence and addiction.

(i). Dependence is a physiological tolerance and refers to a set of disturbances in body homeostasis that leads to withdrawal symptoms, which can be produced with abrupt discontinuation, rapid reduction, decreasing blood levels, and/or by administration of an antagonist.

(ii). Addiction is a primary, chronic, neurobiological disease, with genetic, psychological, and environmental factors influencing its development and manifestations. It is a behavioral pattern of drug craving and seeking which leads to a preoccupation with drug procurement and an aberrant pattern of use. The drug use is frequently associated with negative consequences.

(iii). Dependence is a physiological phenomenon, which is expected with the continued

administration of opioids, and need not deter physicians from their appropriate use. Before increasing the opioid dose, the physician should review other possible causes for the decline in analgesic effect. Increasing the dose may not result in improved function or decreased pain. Remember that it is recommended for total morphine milligram equivalents (MME) per day to remain at 50 or below. Consideration should be given to possible new psychological stressors or an increase in the activity of the nociceptive pathways. Other possibilities include new pathology, low testosterone level that impedes delivery of opioids to the central nervous system, drug diversion, hyperalgesia, or abusive use of the medication.

(g). Choice of Opioids. No long-term studies establish the efficacy of opioids over one year of use or superior performance by one type. There is no evidence that one long-acting opioid is more effective than another, or more effective than other types of medications, in improving function or pain. There is some evidence that long-acting oxycodone (Dazidox, Endocodone, ETH-oxydose, Oxycontin, Oxyfast, OxyIR, Percolone, Roxicodone) and oxymorphone have equal analgesic effects and side effects, although the milligram dose of oxymorphone (Opana) is one-half that of oxycodone. There is no evidence that long-acting opioids are superior to short-acting opioids for improving function or pain or causing less addiction. A number of studies have been done assessing relief of pain in cancer patients. A recent systematic review concludes that oxycodone does not result in better pain relief than other strong opioids including morphine and oxymorphone. It also found no difference between controlled release and immediate release oxycodone. There is some evidence that extended release hydrocodone has a small and clinically unimportant advantage over placebo for relief of chronic low back pain among patients who are able to tolerate the drug and that 40 percent of patients who begin taking the drug do not attain a dose which provides pain relief without unacceptable adverse effects. Hydrocodone ER does not appear to improve function in comparison with placebo. A Cochrane review of oxycodone in cancer pain also found no evidence in favor of the longer acting opioid. There does not appear to be any significant difference in efficacy between once daily hydromorphone and sustained release oxycodone. Nausea and constipation are common for both medications between 26 to 32 percent. November 21, 2017, the FDA Commissioner, Scott Gottlieb, M.D., issued a Statement to promote development of generic versions of opioids formulated to deter abuse. One year earlier the FDA issued a statement encouraging development of Abuse Deterrant Formulations for opioids as a meaningful health benefit designed to reduce opoid abuse in the U.S. and to potentially and eventually remove conventional non deterrant opioids from the market if found to be unsafe.

(i). There is some evidence that in the setting of neuropathic pain, a combination of morphine plus nortriptyline produces better pain relief than either monotherapy alone, but morphine monotherapy is not superior to nortriptyline monotherapy, and it is possible that it is actually less effective than nortriptyline.

(ii). Long-acting opioids should not be used for the treatment of acute, sub-acute, or post-operative pain, as this is likely to lead to drug dependence and difficulty tapering the medication. Additionally, there is a potential for respiratory depression to occur. The FDA requires that manufacturers develop Risk Evaluation and Mitigation Strategies (REMS) for most opioids. Physicians should carefully review the plans or educational materials provided under this program. Clinical considerations should determine the need for long-acting opioids given their lack of evidence noted above.

(iii). Addiction and abuse potentials of commonly prescribed opioid drugs may be estimated in a variety of ways, and their relative ranking may depend on the measure which is used. One systematic study of prescribed opioids estimated rates of drug misuse were estimated at 21 to 29 percent and addiction at 8 to 12 percent. There is good evidence that in the setting of new onset chronic non-cancer pain, there is a clinically important relationship between opioid prescription and subsequent opioid use disorder. Compared to no opioid use, short-term opioid use approximately triples the risk of opioid use disorder in the next 18 months. Use of opioids for over 90 days is associated with very pronounced increased risks of the subsequent development of an opioid use disorder, which may be as much as one hundredfold when doses greater than 120 MED are taken for more than 90 days. The absolute risk of these disorders is very uncertain but is likely to be greater than 6.1 percent for long duration treatment with a high opioid dose. Pain physicians should be consulted when the MED reaches 100 to develop an updated treatment plan.

(iv). Hydrocodone is the most commonly prescribed opioid in the general population and is one of the most commonly abused opioids in the population. However, the abuse rate per 1000 prescriptions is lower than the corresponding rates for extended release oxycodone, hydromorphone (Dilaudid, Palladone), and methadone. Extended release oxycodone appears to be the most commonly abused opioid, both in the general population and in the abuse rate per 1000 prescriptions. Tramadol, by contrast, appears to have a lower abuse rate than for other opioids.

(v). Types of opioids are listed below.

[a]. Buprenorphine (various formulations) is prescribed as an intravenous injection, transdermal patch, buccal film, or sublingual tablet due to lack of bioavailability of oral agents. Depending upon the formulation, buprenorphine may be indicated for the treatment of pain or for the treatment of opioid dependence (addiction).

[i]. Buprenorphine for Opioid Dependence (addiction). FDA has approved a number of buccal films including those with naloxone and a sublingual tablet to treat opioid dependence (addiction).

[ii]. Buprenorphine for Pain. The FDA has approved specific forms of an intravenous and subcutaneous injectable, transdermal patch, and a buprenorphine buccal film to treat pain. However, by law, the transdermal patch and the injectable forms cannot be used to treat opioid dependence (addiction), even by DATA-2000 waivered physicians authorized to prescribe buprenorphine for addiction. Transdermal forms may cause significant skin reaction. Buprenorphine is not recommended for most chronic pain patients due to methods of administration, reports of euphoria in some patients, and

lack of proof for improved efficacy in comparison with other opioids. 1

[iii]. There is insufficient evidence to support or refute the suggestion that buprenorphine has any efficacy in any neuropathic pain condition.

[iv]. There is good evidence transdermal buprenorphine is not inferior to oral tramadol in the treatment of moderate to severe musculoskeletal pain arising from conditions like osteoarthritis and low back pain. The population of patients for whom it is more appropriate than tramadol is not established but would need to be determined on an individual patient basis if there are clear reasons not to use oral tramadol.

[v]. In a well done study, 63 percent of those on buccal buprenorphine achieved a 30 percent or more decrease in pain at 12 weeks compared to a 47 percent placebo response. Approximately 40 percent of the initial groups eligible for the study dropped out during the initial phase when all patients received the drug to test for incompatibility.

[vi]. There is strong evidence that in patients being treated with opioid agonists for heroin addiction, methadone is more successful than buprenorphine at retaining patients in treatment. The rates of opiate use, as evidenced by positive urines, are equivalent between methadone and buprenorphine. There is strong evidence that buprenorphine is superior to placebo with respect to retention in treatment, and good evidence that buprenorphine is superior to placebo with respect to positive urine testing for opiates.

[vii]. There is an adequate meta-analysis supporting good evidence that transdermal fentanyl and transdermal buprenorphine are similar with respect to analgesia and sleep quality, and they are similar with respect to some common adverse effects such as constipation and discontinuation due to lack of effect. However, buprenorphine probably causes significantly less nausea than fentanyl, and it probably carries a lower risk of treatment discontinuation due to adverse events. It is also likely that both transdermal medications cause less constipation than oral morphine.

[viii]. Overall, due to cost and lack of superiority, buprenorphine is not a front line opioid choice. However, it may be used in those with a history of addiction or at high risk for addiction who otherwise qualify for chronic opioid use. It is also appropriate to consider buprenorphine products for tapering strategies and those on high dose morphine of 90 MED or more.

[b]. Codeine with Acetaminophen. Some patients cannot genetically metabolize codeine and therefore have no response. Codeine is not generally used on a daily basis for chronic pain. Acetaminophen dose per day should be limited to 2 grams.

[c]. Fentanyl (Actiq, Duragesic, Fentora, Sublimazem, Subsys) is not recommended for use with musculoskeletal chronic pain patients. It has been associated with a number of deaths and has high addiction potential. Fentanyl should never be used transbuccally in this population. If Fentanyl it is being considered for a very specific patient population, it requires support from a pain specialist. Subsys is only indicated for Cancer Pain.

[d]. Meperidine (Demerol) is not recommended for chronic pain. It and its active metabolite, normeperidine, present a serious risk of seizure and hallucinations. It is not a preferred medication for acute pain as its analgesic effect is similar to codeine.

[e]. Methadone requires special precautions given its unpredictably long half-life and non-linear conversion from other opioids such as morphine. It may also cause cardiac arrhythmias due to QT prolongation and has been linked with a greater number of deaths due to its prolonged half-life. No conclusions can be made regarding differences in efficacy or safety between methadone and placebo, other opioids, or other treatments. There is strong evidence that in patients being treated with opioid agonists for heroin addiction, methadone is more successful than buprenorphine at retaining patients in treatment. The rates of opiate use, as evidenced by positive urines, are equivalent between methadone and buprenorphine. Methadone should only be prescribed by those with experience in managing this medication. Conversion from another opioid to methadone (or the other way around) can be very challenging, and dosing titration must be done very slowly (no more than every seven days). Unlike many other opioids, it should not be used on an “as needed” basis, as decreased respiratory drive may occur before the full analgesic effect of methadone is appreciated. If methadone is being considered, genetic screening is appropriate. CYP2B6 polymorphism appears to metabolize methadone more slowly than the usual population and may cause more frequent deaths.

[f]. Morphine may be used in the non-cancer pain population. A study in chronic low back pain suggested that individuals with a greater amount of endogenous opioids will have a lower pain relief response to morphine.

[g]. Oxycodone and Hydromorphone. There is no evidence that oxycodone (as oxycodone CR) is of value in treating people with painful diabetic neuropathy, postherpetic neuralgia, or other neuropathic conditions. There was insufficient evidence to support or refute the suggestion that hydromorphone has any efficacy in any neuropathic pain condition. Oxycodone was not associated with greater pain relief in cancer patients when compared to morphine or oxymorphone.

[h]. Propoxyphene (Darvon, Davon-N, PP-Cap) has been withdrawn from the market due to cardiac effects including arrhythmias.

[i]. Tapentadol (Nucynta) is a mu opioid agonist which also inhibits serotonin and norepinephrine reuptake activity. It is currently available in an intermediate release formulation and may be available as extended release if FDA approved. Due to its dual activity, it can cause seizures or serotonin syndrome, particularly when taken with other SSRIs, SNRIs, tricyclics, or MAO inhibitors. It has not been tested in patients with severe renal or hepatic damage. It has similar opioid abuse issues as other opioid medication; however, it is promoted as having fewer GI side effects, such as constipation. There is good evidence that extended release tapentadol is more effective than placebo and comparable to oxycodone. In that study, the percent of patients who achieved 50 percent or greater pain relief was: placebo, 18.9

percent, tapentadol, 27.0 percent, and oxycodone, 23.3 percent. There is some evidence that tapentadol can reduce pain to a moderate degree in diabetic neuropathy, average difference 1.4/10 pain scale, with tolerable adverse effects. However, a high quality systematic review found inadequate evidence to support tapentadol to treat chronic pain. Tapentadol is not recommended as a first line opioid for chronic, subacute, or acute pain due to the cost and lack of superiority over other analgesics. There is some evidence that tapentadol causes less constipation than oxycodone. Therefore, it may be appropriate for patients who cannot tolerate other opioids due to GI side effects.

[j]. Tramadol (Rybix, Ryzolt, Ultram)

[i]. Description: an opioid partial agonist that does not cause GI ulceration or exacerbate hypertension or congestive heart failure. It also inhibits the reuptake of norepinephrine and serotonin which may contribute to its pain relief mechanism. There are side effects similar to opioid side effects and may limit its use. They include nausea, sedation, and dry mouth. 1

[ii]. Indications: mild to moderate pain relief. As of the time of this guideline writing, formulations of tramadol have been FDA approved for management of moderate to moderately severe pain in adults. This drug has been shown to provide pain relief equivalent to that of commonly prescribed NSAIDs. Unlike other pure opioids agonists, there is a ceiling dose to tramadol due to its serotonin activity (usually 300-400 mg per day). There is some evidence that it alleviates neuropathic pain following spinal cord injury. There is inadequate evidence that extended-release tramadol/acetaminophen in a fixed-dose combination of 75mg/650 mg is more effective than placebo in relieving chronic low back pain; it is not more effective in improving function compared to placebo. There is some evidence that tramadol yields a short-term analgesic response of little clinical importance relative to placebo in post-herpetic neuralgia which has been symptomatic for approximately six months. However, given the effectiveness of other drug classes for neuropathic pain, tramadol should not be considered a first line medication. It may be useful for patients who cannot tolerate tricyclic antidepressants or other medications.

[iii]. Contraindications. Use cautiously in patients who have a history of seizures, who are taking medication that may lower the seizure threshold, or taking medications that impact serotonin reuptake and could increase the risk for serotonin syndrome, such as monoamine oxidase inhibitors (MAO) inhibitors, SSRIs, TCAs, and alcohol. Use with caution in patients taking other potential QT prolonging agents. Not recommended in those with prior opioid addiction. Has been associated with deaths in those with an emotional disturbance or concurrent use of alcohol or other opioids. Significant renal and hepatic dysfunction requires dosage adjustment.

[iv]. Side Effects. May cause impaired alertness or nausea. This medication has physically addictive properties, and withdrawal may follow abrupt discontinuation.

[v]. Drug Interactions: opioids, sedating medications, any drug that affects serotonin and/or norepinephrine (e.g., SNRIs, SSRIs, MAOs, and TCAs).

[vi]. Laboratory Monitoring: renal and hepatic function.

(vi). Health care professionals and their patients must be particularly conscientious regarding the potential dangers of combining over-the-counter acetaminophen with prescription medications that also contain acetaminophen. Opioid and acetaminophen combination medication are limited due to the acetaminophen component. Total acetaminophen dose per day should not exceed 4 grams per any 24-hour period and is preferably limited to 2 grams per day to avoid possible liver damage.

(vii). Indications. The use of opioids is well accepted in treating cancer pain, where nociceptive mechanisms are generally present due to ongoing tissue destruction, expected survival may be short, and symptomatic relief is emphasized more than functional outcomes. In chronic non-malignant pain, by contrast, tissue destruction has generally ceased, meaning that central and neuropathic mechanisms frequently overshadow nociceptive processes. Expected survival in chronic pain is relatively long, and return to a high-level of function is a major goal of treatment. Therefore, approaches to pain developed in the context of malignant pain may not be transferable to chronic non-malignant pain. Opioids are generally not the best choice of medication for controlling neuropathic pain. Tricyclics, SNRIs, and anticonvulsants should be tried before considering opioids for neuropathic pain.

[a]. In most cases, analgesic treatment should begin with acetaminophen, aspirin, NSAIDs, and possibly Baclofen or Tizanidine. While maximum efficacy is modest, they may reduce pain sufficiently to permit adequate function. When these drugs do not satisfactorily reduce pain, medications specific to the diagnosis should be used (e.g., neuropathic pain medications as outlined in Medications and Medical Management).

[b]. There is good evidence from a prospective cohort study that in the setting of common low back injuries, when baseline pain and injury severity are taken into account, a prescription for more than seven days of opioids in the first six weeks is associated with an approximate doubling of disability one year after the injury. Therefore, prescribing after two weeks in a non-surgical case requires a risk assessment. If prescribing beyond four weeks, a full opioid trial is suggested including toxicology screen. Best practice suggests that whenever there is use of opioids for more than seven days, providers should follow all recommendations for screening and follow-ups of chronic pain use.

[c]. Consultation or referral to a pain specialist behavioral therapist should be considered when the pain persists but the underlying tissue pathology is minimal or absent and correlation between the original injury and the severity of impairment is not clear. Consider consultation if suffering and pain behaviors are present and the patient manifests risk behaviors described below, or when standard treatment measures have not been successful or are not indicated.

[d]. A psychological consultation including psychological testing (with validity measures) is indicated for all chronic pain patients as these patients are at high risk

for unnecessary procedures and treatment and prolonged recovery.

[e]. Many behaviors have been found related to prescription-drug abuse patients. None of these are predictive alone, and some can be seen in patients whose pain is not under reasonable control; however, the behaviors should be considered warning signs for higher risk of abuse or addiction by physicians prescribing chronic opioids. Refer to Subsection, High Risk Behavior, below.

(ix). Recommendations for Opioid Use: When considering opioid use for moderate to moderately severe chronic pain, a trial of opioids must be accomplished as described below and the patient must have failed other chronic pain management regimes. Physicians should complete the education recommended by the FDA, risk evaluation and mitigation strategies (REMS) provided by drug manufacturing companies.

[a]. General Indications. There must be a clear understanding that opioids are to be used for a limited term in the first instance (see trial indications below). The patient should have a thorough understanding of all of the expectations for opioid use. The level of pain relief is expected to be relatively small, two to three points on a VAS pain scale, although in some individual patients it may be higher. For patients with a high response to opioid use, care should be taken to assure that there is no abuse or diversion occurring. The physician and patient must agree upon defined functional goals as well as pain goals. If functional goals are not being met, the opioid trial should be reassessed. The full spectrum of side effects should be reviewed. The shared decision making agreement signed by the patient must clarify under what term the opioids will be tapered. Refer to Subsection on the shared decision making agreement, below.

[b]. Therapeutic Trial Indications. A therapeutic trial of opioids should not be employed unless the patient has begun multi-disciplinary pain management. The trial shall last one month. If there is no functional effect, the drug should be tapered. Chronic use of opioids should not be prescribed until the following have been met:

[i]. the failure of pain management alternatives, including active therapies, cognitive behavioral therapy, pain self-management techniques, and other appropriate medical techniques;

[ii]. physical and psychological and/or psychiatric assessment including a full evaluation for alcohol or drug addiction, dependence or abuse, performed by two specialists including the authorized treating physician and a physician or psychologist specialist with expertise in chronic pain. The patient should be stratified as to low, medium, or high risk for abuse based on behaviors and prior history of abuse. High risk patients are those with active substance abuse of any type or a history of opioid abuse. These patients should generally not be placed on chronic opioids. If it is deemed appropriate to do so, physician addiction specialists should be monitoring the care. Moderate risk factors include a history of non-opioid substance abuse disorder, prior trauma particularly sexual abuse, tobacco use, widespread pain, poor pain coping, depression, and dysfunctional cognitions about pain and analgesic medications (see below). Pre-existing respiratory or memory problems should also be considered. Patients with a past history of substance abuse or other psychosocial risk factors should be co-managed with a physician addiction specialist;

[iii]. risk factors to consider: history of severe post-operative pain, opioid analgesic tolerance (daily use for months), current mixed opioid agonist/antagonist treatment (e.g., buprenorphine, naltrexone), chronic pain (either related or unrelated to the surgical site), psychological comorbidities (e.g., depression, anxiety, catastrophizing), history of substance use disorder, history of "all over body pain", history of significant opioid sensitivities (e.g., nausea, sedation), and history of intrathecal pump use or nerve stimulator implanted for pain control;

[iv]. employment requirements are outlined. The patient's employment requirements should also be discussed as well as the need to drive. It is generally not recommended to allow workers in safety sensitive positions to take opioids. Opioid naïve patients or those changing doses are likely to have decreased driving ability. Some patients on chronic opioids may have nominal interference with driving ability; however, effects are specific to individuals. Providers may choose to order certified driver rehabilitation assessment;

[v]. urine drug screening for substances of abuse and substances currently prescribed. Clinicians should keep in mind that there are an increasing number of deaths due to the toxic misuse of opioids with other medications and alcohol. Drug screening is a mandatory component of chronic opioid management. It is appropriate to screen for alcohol and marijuana use and have a contractual policy regarding both alcohol and marijuana use during chronic opioid management. Alcohol use in combination with opioids is likely to contribute to death;

[vi]. review of the prescription monitoring program, Louisiana Revised Statutes 40:978 and 40:1001-1014. Informed, written, witnessed consent by the patient including the aspects noted above. Patients should also be counseled on safe storage and disposal of opioids;

[vii]. the trial, with a short-acting agent, should document sustained improvement of pain control, at least a 30 percent reduction, and of functional status, including return-to-work, and/or increase in activities of daily living. It is necessary to establish goals which are specific, measurable, achievable, and relevant prior to opioid trial or adjustment to measure changes in activity/function. Measurement of functional goals may include patient completed validated functional tools. Frequent follow-up at least every two to four weeks may be necessary to titrate dosage and assess clinical efficacy.

[c]. On-going, long-term management after a successful trial should include:

[i]. prescriptions from a single practitioner;

[ii]. ongoing review and documentation of pain relief, functional status, appropriate medication use, and side effects; full review at least every three months;

[iii]. ongoing effort to gain improvement of social and physical function as a result of pain relief;

[iv]. review of the Prescription Monitoring Program (PMP);

[v]. shared decision making agreement detailing the following:

{a}. side effects anticipated from the medication;

{b}. requirement to continue active therapy;

{c}. need to achieve functional goals including return to work for most cases;

{d}. reasons for termination of opioid management, referral to addiction treatment, or for tapering opioids (tapering is usually for use longer than 30 days). Examples to be included in the contract include, but are not limited to:

{i}. diversion of medication;

{ii}. lack of functional effect at higher doses;

{iii}. non-compliance with other drug use;

{iv}. drug screening showing use of drugs outside of the prescribed treatment or evidence of non-compliant use of prescribed medication;

{v}. requests for prescriptions outside of the defined time frames;

{vi}. lack of adherence identified by pill count, excessive sedation, or lack of functional gains;

{vii}. excessive dose escalation with no decrease in use of short-term medications;

{viii}. apparent hyperalgesia;

{ix}. shows signs of substance use disorder (including but not limited to work or family problems related to opioid use, difficulty controlling use, craving);

{x}. experiences overdose or other serious adverse event;

{xi}. shows warning signs for overdose risk such as confusion, sedation, or slurred speech.

{e}. patient agreements should be written at a sixth grade reading level to accommodate the majority of patients;

{f}. use of random drug screening, initially, four times a year or possibly more with documented suspicion of abuse or diversion or for stabilization or maintenance phase of treatment. In addition to those four or more random urine drug screens, quantitative testing is appropriate in cases of inconsistent findings, suspicions, or for particular medications that patient is utilizing that is not in the qualitative testing;

{i}. drugs or drug classes for which screening is performed should only reflect those likely to be present based on the patient's medical history or current clinical presentation, illicit substances, the practitioner's suspicion, and without duplication;

{ii}. qualitative urine drug testing (UDT) (i.e., immunoassay to evaluate, indicates the drug is present) that is utilized for pain management or substance abuse monitoring, may be considered medically necessary for: baseline screening/Induction phase before initiating treatment or at time treatment is initiated, stabilization phase of treatment with targeted weekly qualitative screening for a maximum of four weeks. (This type of monitoring is done to identify those patients who are expected to be on a stable dose of opioid medication within a four-week timeframe.) Maintenance phase of treatment with targeted qualitative screening once every one to three months. Subsequent monitoring phase of treatment at a frequency appropriate for the risk level of the individual patient. (This type of monitoring is done to identify those patients who are noncompliant or abusing prescription drugs or illicit drugs.) Note: In general, qualitative urine drug testing should not require more than four tests in a 12-month period. Additional testing, as listed above, would require clinical justification of medical necessity;

{iii}. quantitative UDT (i.e., gas chromatography and or mass spectrometry [GCMS] as confirmatory, indicates the amount of drug is present) that is utilized for pain management or substance abuse monitoring, may be considered medically necessary under the following circumstances: When immunoassays for the relevant drug(s) are not commercially available, or in specific situations when qualitative urine drug levels are required for clinical decision making. The following qualitative urine drug screen results must be present and documented: positive for a prescription drug that is not prescribed to the patient; or negative for a prescription drug that is prescribed to the patient; or Positive for an illicit drug;

{iv}. quantitative testing is not appropriate for every specimen and should not be done routinely. This type of test should be performed in a setting of unexpected results and not on all specimens. The rationale for each quantitative test must be supported by the ordering clinician's documentation. The record must show that an inconsistent positive finding was noted on the qualitative testing or that there was not an available qualitative test to evaluate the presence of semisynthetic or synthetic opioid, illicit drugs or other medications used for pain management in a patient. Simultaneous blood and urine drug screening or testing is not appropriate and should not be done;

{v}. uine testing, when included as one part of a structured program for pain management, has been observed to reduce abuse behaviors in patients with a history of drug misuse. Clinicians should keep in mind that there are an increasing number of deaths due to the toxic misuse of opioids with other medications and alcohol. Drug screening is a mandatory component of chronic opioid management. Clinicians should determine before drug screening how they will use knowledge of marijuana use. It is appropriate to screen for alcohol and marijuana use and have a contractual policy regarding both alcohol and marijuana use during chronic opioid management. Alcohol use in combination with opioids is likely to contribute to death. From a safety standpoint, it is more important to screen for alcohol use than marijuana use as alcohol is more likely to contribute to unintended overdose;

{vi}. physicians should recognize that occasionally patients may use non-prescribed substances because they have not obtained sufficient relief on the prescribed regime;

[vi]. chronic use limited to two oral opioids;

[vii]. transdermal medication use, other than buprenorphine, is generally not recommended;

[viii]. use of acetaminophen-containing medications in patients with liver disease should be limited; including over-the-counter medications. Acetaminophen

dose should not exceed 4 grams per day for short-term use or 2 to 3 grams/day for long-term use in healthy patients. A safer chronic dose may be 1800 mg/day;

[ix]. continuing review of overall therapy plan with regard to non-opioid means of pain control and functional status;

[x]. tapering of opioids may be necessary for many reasons including the development of hyperalgesia, decreased effects from an opioid, lack of compliance with the opioid contract, or intolerance of side effects. Some patients appear to experience allodynia or hyperalgesia on chronic opioids. This premise is supported by a study of normal volunteers who received opioid infusions and demonstrated an increase in secondary hyperalgesia. Options for treating hyperalgesia include withdrawing the patient from opioids and reassessing their condition. In some cases, the patient will improve when off of the opioid. In other cases, another opioid may be substituted:

{a}. tapering may also be appropriate by patient choice, to accommodate "fit-for-duty" demands, prior to major surgery to assist with post-operative pain control, to alleviate the effects of chronic use including hypogonadism, medication side effects, or in the instance of a breach of drug agreement, overdose, other drug use aberrancies, or lack of functional benefit. It is also appropriate for any of the tapering criteria listed in Section E above;

{b}. generally, tapering can be accomplished by decreasing the dose 10 percent per week. This will generally take 6 to 12 weeks and may need to be done one drug class at a time. Behavioral support is required during this service. Tapering may occur prior to MMI or in some cases during maintenance treatment.

[xi]. medication assisted treatment with buprenorphine or methadone may be considered for opioid abuse disorder, in addition to behavioral therapy. Refer to Opioid Addiction Treatment;

[xii]. inpatient treatment may be required for addiction or opioid tapering in complex cases. Refer to Interdisciplinary Rehabilitation Programs for detailed information on inpatient criteria.

[d]. Relative Contraindications. Extreme caution should be used in prescribing controlled substances for workers with one or more "relative contraindications": Consultation with a pain or addiction specialist may be useful in these cases:

[i]. history of alcohol or other substance abuse, or a history of chronic, benzodiazepine use;

[ii]. sleep apnea: If patient has symptoms of sleep apnea, diagnostic tests should be pursued prior to chronic opioid use;

[iii]. off work for more than six months with minimal improvement in function from other active therapy;

[iv]. severe personality disorder or other known severe psychiatric disease per psychiatrist or psychologist;

[v]. monitoring of behavior for signs of possible substance abuse indicating an increased risk for addiction and possible need for consultation with an addiction specialist.

[e]. High Risk Behavior. The following are high risk warning signs for possible drug abuse or addiction. Patients with these findings may need a consultation by a physician experienced in pain management and/or addiction. Behaviors in the first list are warning signs, not automatic grounds for dismissal, and should be followed up by a reevaluation with the provider:

[i]. repeated behaviors in the first list may be more indicative of addiction and behaviors in the second list should be followed by a substance abuse evaluation:

{a}. first list: less suggestive for addiction but are increased in depressed patients—Frequent requests for early refills; claiming lost or stolen prescriptions; Opioid(s) used more frequently, or at higher doses than prescribed; Using opioids to treat non-pain symptoms; Borrowing or hoarding opioids; Using alcohol or tobacco to relieve pain; Requesting more or specific opioids; Recurring emergency room visits for pain; Concerns expressed by family member(s); Unexpected drug test results; Inconsistencies in the patient's history.

{b}. second list: more suggestive of addiction and are more prevalent in patients with substance use disorder—Buying opioids on the street; stealing or selling drugs; Multiple prescribers ("doctor shopping"); Trading sex for opioids; Using illicit drugs; Positive urine drug tests for illicit drugs; Forging prescriptions; Aggressive demands for opioids; Injecting oral/topical opioids; Signs of intoxication (ETOH odor, sedation, slurred speech, motor instability, etc.);

[ii]. both daily and monthly users of nicotine were at least three times more likely to report non-medical use of opioid in the prior year. At least one study has demonstrated a prevalence of smokers and former smokers among those using opioids and at higher doses compared to the general population. It also appeared that smokers and former smokers used opioids more frequently and in higher doses than never smokers. Thus, tobacco use history may be a helpful prognosticator;

[iii]. in one study, four specific behaviors appeared to identify patients at risk for current substance abuse: increasing doses on their own, feeling intoxicated, early refills, and oversedating oneself. A positive test for cocaine also appeared to be related;

[iv]. One study found that half of patients receiving 90 days of continuous opioids remained on opioids several years later and that factors associated with continual use included daily opioid greater than 120 MED prior opioid exposure, and likely opioid misuse;

[v]. One study suggested that those scoring at higher risk on the Screener and Opioid Assessment for Patients with Pain-Revised (SOAPP-R), also had greater reductions in sensory low back pain and a greater desire to take morphine. It is unclear how this should be viewed in practice.

[f]. Dosing and Time to Therapeutic Effect. Oral route is the preferred route of analgesic administration because it is the most convenient and cost-effective method of administration. Transbuccal administration should be avoided other than for buprenorphine. A daily dosage above 50 MED may be appropriate for certain patients. However, when the patient's

dosage exceeds 50 MED per day and/or the patient is sedentary with minimal function, consideration should be given to lowering the dosage. Some patients may require dosages above 90 MED per day. However, if the patient reaches a dosage above 90 MED per day, it is appropriate to taper or refer to a pain or addiction specialist. The provider should also adhere to all requirements in this guideline and closely monitor the patient as this is considered a high risk dosage. In some cases, buprenorphine may be a preferred medication for pain control in those patients. Consultation may be necessary.

[g]. Major Side Effects. There is great individual variation in susceptibility to opioid-induced side effects and clinicians should monitor for these potential side effects. Common initial side effects include nausea, vomiting, drowsiness, unsteadiness, and confusion. Occasional side effects include dry mouth, sweating, pruritus, hallucinations, and myoclonus. Rare side effects include respiratory depression and psychological dependence. Constipation and nausea/vomiting are common problems associated with long-term opioid administration and should be anticipated, treated prophylactically, and monitored constantly. Stool softeners, laxatives, and increased dietary fluid may be prescribed. Refer to Opioid Induced Constipation. Chronic sustained release opioid use is associated with decreased testosterone in males and females and estradiol in pre-menopausal females. Patients should be asked about changes in libido, sexual function, and fatigue. Appropriate lab testing and replacement treatment should be completed.

[h]. Naloxone or oral and injection Naltrexone may be prescribed when any risk factors are present. The correct use of Naloxone and Naltrexone should be discussed with the patient and family.

[i]. Benzodiazepine: should not be prescribed when opioids are used.

[j]. Sedation: driving and other tasks. Although some studies have shown that patients on chronic opioids do not function worse than patients not on medication, caution should be exerted, and patients should be counseled never to mix opioids with the use of alcohol or other sedating medication. When medication is increased or trials are begun, patients should not drive for at least five days. Chronic untreated pain, sedatives especially when mixed with opiates or alcohol, and disordered sleep can also impair driving abilities.

[k]. Drug Interactions. Patients receiving opioid agonists should not be given a mixed agonist-antagonist such as pentazocine [Talacen, Talwin] or butorphanol [Stadol] because doing so may precipitate a withdrawal syndrome and increase pain.

[i]. All sedating medication, especially benzodiazepines, should be avoided or limited to very low doses. Over-the-counter medications such as antihistamines, diphenhydramine, and prescription medications such as hydroxyzine (Anx, Atarax, Atazine, Hypam, Rezine, Vistaril) should be avoided except when being used to manage withdrawal during tapering of opioids. Alcohol should not be used.

[l]. Recommended Laboratory Monitoring. Primary laboratory monitoring is recommended for acetaminophen/aspirin/NSAIDs combinations (renal and liver function, blood dyscrasias) although combination opioids are not recommended for long-term use. Morphine and other medication may require renal testing and other screening. A comprehensive genetic testing panel may be ordered by treating physician for these multiple P450 genes once in a lifetime and utilized whenever there is a question of metabolism or unusual response of any drugs used to treat pain conditions, because multiple drugs and associated genes can cause problems with opioid metabolism.

[m]. Sleep Apnea Testing. Both obstructive and central sleep apnea are likely to be exaggerated by opioid use or may occur secondary to higher dose chronic opioid use and combination medication use, especially benzodiazepines and sedative hypnotics. Patients should be questioned about sleep disturbance and family members or sleeping partners questioned about loud snoring or gasping during sleep. If present, qualified sleep studies and sleep medicine consultation should be obtained. Portable sleep monitoring units are generally not acceptable for diagnosing primary central sleep apnea. Type 3 portable units with two airflow samples and an 02 saturation device may be useful for monitoring respiratory depression secondary to opioids, although there are no studies on this topic.

[n]. Regular Consultation of the Prescription Monitoring Program (PMP). Physicians should review their patients on the system whenever drug screens are done. This information should be used in combination with the drug screening results, functional status of the patient, and other laboratory findings to review the need for treatment and level of treatment appropriate for the patient.

[o]. Addiction. If addiction occurs, patients will require treatment. Refer to Opioid Addiction Treatment. After detoxification, they may need long-term treatment with naltrexone (Depade, ReVia, Vivitrol), an antagonist which can be administered in a long-acting form or buprenorphine which requires specific education per the Drug Enforcement Agency (DEA).

[p]. Potentiating Agents. There is some evidence that dextromethorphan does not potentiate the effect of morphine opioids and therefore is not recommended to be used with opioids.

vii. Post-Operative Pain Management. Proper post-operative pain management may avoid overuse and misuse of opioids. A recent practice guideline strongly recommends a multi-modal approach to post-operative pain. Suggestions include use of TENS, cognitive behavioral therapy, use of oral medication over parenteral medication and patient controlled analgesia when parenteral medication is used, use of NSAIDS (for appropriate procedures) or acetaminophen, gabapentin or pregabalin may also be used, and peripheral regional anesthesia when appropriate. Ketamine is also suggested for major surgeries, patients with high opioid tolerance or those who have difficulty tolerating opioids. However, ketamine does have side effects such as hallucination and nightmares. It is not recommended as a first line medication for most patients. A Comprehensive genetic testing panel may be ordered by treating physician for these multiple P450 genes once in a lifetime and utilized whenever there is a question of metabolism or unusual response of any drugs used to treat pain conditions, because multiple drugs and associated genes can cause problems with opioid metabolism.

(a). Pre-operative psychological preparation or neuroscience education may improve post-operative pain management. Pre-operative cognitive-behavioral therapy or other psychological intervention likely improves in-hospital mobilization and analgesic use for lumbar spinal fusion patients and for other surgical patients. One randomized study compared patients who received one session of pre-operative pain neuroscience education from physical therapist prior to lumbar discectomy and those who did not. There was no change in the primary outcomes from surgery. However, significant changes occurred in secondary outcomes which included preparation for surgery, surgery meeting their expectations, and a 45 percent decrease in health expenditure for the follow up year. Thus, pre-operative pain neuroscience education may prove a useful addition for any patient prior to surgical decisions. Refer to Therapy-Active, for a description of Pain Neuroscience Education. Optimal surgical outcomes are more likely when the patient commits to a post-operative active therapy program.

(b). Generally, post-operative pain management is under the supervision of the surgeon and hospitalist with the goal of returning to the pre-operative level of pharmaceutical management. For a specific procedure's post-operative management, refer to the related medical treatment guideline.

(c). Surgical procedures may be necessary for patients already taking chronic opioids, and they may encounter difficulty with pain control post-operatively. These patients will usually require higher doses of opioids during their post-operative phase and may benefit the most from multimodal therapy and/or ketamine as described in Topical Drug Delivery. It is strongly advised that physicians consult a pain specialist or addiction specialist when caring for post-operative patients with a history of substance abuse or previous addiction. Refer to Post-Operative Pain Management.

viii. Skeletal muscle relaxants are most useful for acute musculoskeletal injury or exacerbation of injury. Chronic use of benzodiazepines or any muscle relaxant is not recommended due to their habit-forming potential, seizure risk following abrupt withdrawal, and documented contribution to deaths of patients on chronic opioids due to respiratory depression.

(a). Baclofen (intrathecal or oral):

(i). description: may be effective due to stimulation of Gamma Aminobutyric Acid (GABA) receptors;

(ii). Indications: pain from muscle rigidity. As of the time of this guideline writing, formulations of baclofen injection have been FDA approved for the management of severe spasticity of a spinal cord or cerebral origin;

(iii). side effects: exacerbation of psychotic disorders, may precipitate seizures in epileptics, dry mouth, and sexual dysfunction;

(iv). recommended laboratory monitoring: renal and hepatic function;

(v). caution: abrupt discontinuation of baclofen can precipitate a withdrawal syndrome and has been seen with both low and high doses. The most common side effects of baclofen withdrawal include pruritis, tremor, and mood disturbance. In extreme circumstances, seizures, muscle rigidity (resembling neuroleptic malignant syndrome), and even death can occur.

(b). Cyclobenzaprine (Amrix, Fexmid, Flexeril):

(i). description: structurally related to tricyclics;

(ii). indications—acute exacerbated chronic pain associated with muscle spasm. As of the time of this guideline writing, formulations of this drug are FDA approved as an adjunct to rest and physical therapy for relief of muscle spasm associated with acute, painful musculoskeletal conditions. It should only be used for short periods (less than two weeks) because of lack of evidence for effectiveness with prolonged use;

(iii). major contraindications: cardiac dysrhythmias;

(iv). dosing and time to therapeutic effect: variable, onset of action is one hour;

(v). major side effects: sedation, anticholinergic, blurred vision. Patients should also be monitored for suicidal ideation and drug abuse;

(vi). drug interactions: contraindicated for use with MAO inhibitors; interacts with tramadol, duloxetine, escitalopram, and fluoxetine. Likely interactions with other SSRIs and SNRIs. Drug interactions are similar to those for tricyclics. Refer also to information on tricyclics in Medications and Medical Management;

(vii). recommended laboratory monitoring: hepatic and renal function.

(c). Carisoprodol (Soma, Soprodal, Vanadom): This medication should not be used in chronic pain patients due to its addictive nature secondary to the active metabolite meprobamate.

(d). Metaxalone (Skelaxin):

(i). description: central acting muscle relaxant;

(ii). indications: acute exacerbated chronic pain associated with muscle spasm. As of the time of this guideline writing, formulations of this drug are FDA approved as an adjunct to rest and physical therapy for relief of muscle spasm associated with acute, painful musculoskeletal conditions. It should only be used for short periods (less than two weeks) because of lack of evidence for effectiveness with prolonged use;

(iii). major contraindications: significantly impaired renal or hepatic disease, pregnancy, and disposition to drug induced hemolytic anemia;

(iv). dosing and time to therapeutic effect: 800 mg, three to four times per day, onset of action one hour;

(v). major side effects: sedation, hematologic abnormalities;

(vi). drug interactions: other sedating drugs (e.g., opioids, benzodiazepines);

(vii). recommended laboratory monitoring: hepatic function, CBC.

(e). Methocarbamol:

(i). description: central action muscle relaxant;

(ii). indications: muscle spasm;

(iii). major contraindications: hypersensitivity, possible renal compromise;

(iv). dosing and time to therapeutic effect: 1500 mg. four times per day. Longer dosing 4000 to 4500 mg per day;

(v). major side effects: decreased cognition, light headedness, GI effects among other;

(vii). drug interactions: alcohol and other CNS depressants.

(f). Tizanidine (Zanaflex):

(i). description: alpha 2 adrenergic agonist;

(ii). indications: true centrally mediated spasticity, musculoskeletal disorders. As of the time of this guideline writing, formulations of tizanidine have been FDA approved for the management of spasticity in spinal cord injury and multiple sclerosis;

(iii). major contraindications: concurrent use with ciprofloxacin (Cipro, Proquin) or fluvoxamine (Luvox); or hepatic disease;

(iv). dosing and time to therapeutic effect: 4 mg/day orally and gradually increase in 2 to 4 mg increments on an individual basis over two to four weeks; maintenance, 8 mg orally every six to eight hours (max dose 36 mg/day);

(v). major side effects: hypotension, sedation, hepatotoxicity, hallucinations and psychosis, dry mouth;

(vi). drug interactions. Alcohol can increase sedation, and concurrent use with ciprofloxacin or fluvoxamine is contraindicated. Several other medications increase tizanidine plasma concentrations (e.g., oral contraceptives, verapamil, and cimetidine). Use with caution with other alpha agonists and other antihypertensives as they may increase the risk of hypotension;

(vii). laboratory monitoring: hepatic function, blood pressure.

ix. Smoking Cessation Medications and Treatment. Tobacco dependence is chronic and may require repeated attempts to quit. All smoking cessation programs should be accompanied by behavioral support which may include practical counseling sessions and social support, which usually includes telephone follow-up. A variety of medications have been used including Bupropion SR, nicotine patches, gum, inhaler, lozenges or nasal spray, and varenicline. When nicotine supplements are used, cotinine testing will be positive. Urine anabasine or exhaled carbon monoxide 5 ppm or less may be used to check tobacco abstinence.

(a). There is some evidence that among adults motivated to quit smoking, 12 weeks of open-label treatment including counseling and one of the following: nicotine patch, varenicline, or combination nicotine replacement therapy (nicotine patch and nicotine lozenge) are equally effective in assisting motivated smokers to quit smoking over a period of one year.

(b). There is some evidence that among adults motivated to quit smoking, abrupt smoking cessation is the more effective method that leads to lasting abstinence over a period of four weeks to six months compared to gradual cessation, even for smokers who initially prefer to quit by gradual reduction.

x. Topical Drug Delivery

(a). Description. Topical creams and patches may be an alternative treatment of localized musculoskeletal and neuropathic disorders and can be especially helpful in avoiding opioid use.

(b). Indications: neuropathic pain for many agents; episodic use of NSAIDs and salicylates for joint pain or musculoskeletal disorders. All topical agents should be used with strict instructions for application as well as maximum number of applications per day to obtain the desired benefit and avoid potential toxicity.

(c). Dosing and time to therapeutic effect: all topical agents should be prescribed with clear instructions for application and maximum number of applications per day to obtain the desired benefit and avoid potential toxicity. For most patients, the effects of long-term use are unknown. Thus, episodic use may be preferred for some agents.

(d). Side Effects. localized skin reactions may occur, depending on the medication agent used.

(e). Topical Agents

(i). Capsaicin. As of the time of this guideline writing, formulations of capsaicin have been FDA approved for management of pain associated with post-herpetic neuralgia. Capsaicin offers a safe and effective alternative to systemic NSAID therapy. Although it is quite safe, the local stinging or burning sensation that typically dissipates with regular use, usually after the first 7 to 10 days of treatment, limits effective use of capsaicin. Patients should be advised to apply the cream on the affected area with a plastic glove or cotton applicator and to avoid inadvertent contact with eyes and mucous membranes.

[a]. There is good evidence that low dose capsaicin (0.075 percent) applied four times per day will decrease pain up to 50 percent. There is strong evidence that a single application of eight percent capsaicin is more effective than a control preparation of 0.04 percent capsaicin for up to 12 weeks. However, there may be a need for frequent application, and it is not known whether subsequent applications of capsaicin are likely to be as effective as the first application. There is some evidence that in patients who are being treated with capsaicin 8 percent patches, two methods of pre-treatment are equally effective in controlling application pain and in enabling patients to tolerate the patch: topical four percent lidocaine cream applied to the area for one hour before placement of the capsaicin patch and 50 mg oral tramadol taken 30 minutes before patch placement.

(ii). Clonidine. There is good evidence that topical clonidine gel 0.1 percent is likely to alleviate pain from diabetic peripheral neuropathy in patients who display a nociceptive response to the application of 0.1 percent capsaicin applied to the pretibial area. It is likely that patients who do not display a pain response to pretibial capsaicin are not likely to have a clinically meaningful analgesic response to clonidine gel. It is unknown if this screening test applies to other types of neuropathic pain. Clonidine gel may be used for neuropathic pain.

[a]. Lofexidine (Lucemyra) is now available and indicated for mitigation of opioid withdrawal symptoms to facilitate abrupt discontinuation in adults. This is necessary to block or reduce life threatening side effects of opioid withdrawal. This drug will be beneficial in drug treatment centers and for physicians finding necessity to abruptly stop opioid medication.

(iii). Ketamine and Tricyclics. Topical medications, such as the combination of ketamine and amitriptyline, have been proposed as an alternative treatment for neuropathic disorders including CRPS. A study using a 10 percent concentration showed no signs of systemic absorption. This low-quality study demonstrated decreased allodynia at 30 minutes for some CRPS patients. However, as of the time of this guideline writing, neither tricyclic nor ketamine topicals are FDA approved for topical use in neuropathic pain. Furthermore, there is good evidence that neither two percent topical amitriptyline nor 1 percent topical ketamine reduces neuropathic pain syndromes. Despite the lack of evidence, it is physiologically possible that topical tricyclics and a higher dose of ketamine could have some effect on neuropathic pain. Other less expensive topicals and compounds, including over-the-counter, should be trialed before more expensive compounds are ordered. The use of topical tricyclics and/or ketamine should be limited to patients with neuritic and/or sympathetically mediated pain with documented supporting objective findings such as allodynia and/or hyperalgesia. Continued use of these agents beyond the initial prescription requires documentation of effectiveness, including functional improvement, and/or decreased use of other medications, particularly decreased use of opioids or other habituating medications.

(iv). Lidocaine. As of the time of this guideline writing, formulations of lidocaine (patch form) have been FDA approved for pain associated with post-herpetic neuralgia. Evidence is mixed for long-term use of lidocaine topically. Physicians should always take into account the blood level that may be achieved with topical use as toxic levels have been reported and there is variability and systemic absorption among individuals. There is good evidence that lidocaine five percent plasters, applied for up to 12 hours to the lower extremities of patients with post-herpetic neuralgia and diabetic painful neuropathy, is non-inferior to pregabalin for the same indications. The topical lidocaine is associated with significantly fewer drug-related adverse events over four weeks of observation. There is some evidence that a five percent lidocaine patch may be used as a secondary option for patients with focal neuropathic pain. A 30 to 50 percent pain reduction may be achieved in those who tolerate the patch. Up to three patches may be used simultaneously for 12 hours per day. It should be applied only to intact skin. Metered dose eight percent pump sprays have also been used and usually require a three times per day reapplication. There is some evidence that the eight percent sprays are effective for short-term, two-week use. However, the effects of long-term use are unknown.

(v). Topical Salicylates and Nonsalicylates have been shown to be effective in relieving pain in acute musculoskeletal conditions and single joint osteoarthritis. Topical salicylate and nonsalicylates achieve tissue levels that are potentially therapeutic, at least with regard to COX inhibition.

[a]. There is insufficient evidence to support the use of topical rubefacients containing salicylates for acute injuries or chronic conditions. They seem to be relatively well tolerated in the short-term, based on limited data. The amount and quality of the available data mean that uncertainty remains about the effects of salicylate-containing rubefacients.

[b]. There is good evidence that diclofenac gel (Voltaren, Solaraze) reduces pain and improves function in mild-to-moderate hand osteoarthritis. There is good evidence that topical diclofenac and ketoprofen are more effective than placebo preparations for purposes of relieving pain attributable to knee osteoarthritis. There is good evidence that topical NSAIDs probably reduce the risk of GI adverse effects by approximately one-third compared to oral NSAIDs. Topical diclofenac does not appear to affect the anti-platelet properties of aspirin unlike the oral version. The topical solution of two percent sodium diclofenac applied thrice a day is equal to 1.5 percent four times per day.

[c]. Diclofenac gel has been FDA approved for acute pain due to minor strains, pains, and contusions and for relief of pain due to osteoarthritis of the joints amenable to topical treatment, such as those of the knees, shoulders, and hands. It is likely that other NSAIDs would also be effective topically. Thus, topical NSAIDs are permitted when patients show functional improvement.

[d]. Other than local skin reactions, the side effects of therapy are minimal, although not non-existent. The usual contraindications to use of these compounds needs to be considered. Local skin reactions are rare and systemic effects are even less common. Their use in patients receiving warfarin therapy may result in alterations in bleeding time. Overall, the low level of systemic absorption can be advantageous. This allows the topical use of these medications when systemic administration is relatively contraindicated, such as is the case in patients with hypertension, cardiac failure, or renal insufficiency. Both topical salicylates and NSAIDs are appropriate for many chronic pain patients. However, in order to receive refills, patients should demonstrate increased function, decreased pain, or decreased need for oral medications.

(vi). Other Compounded Topical Agents. At the time of writing this guideline, no studies identified evidence for the effectiveness of compounded topical agents other than those recommended above. Therefore, other compounded topical agents are not generally recommended. In rare cases, they may be appropriate for patients who prefer a topical medication to chronic opioids or who have allergies or side effects from other more commonly used oral agents.

(vii). Prior authorization is required for all agents that have not been recommended above.

xi. Other Agents

(a). Glucosamine. There is good evidence that glucosamine does not improve pain related disability in those with chronic low back pain and degenerative changes on radiologic studies; therefore, it is not recommended for chronic lower spinal or non-joint pain. For chronic pain related to joint osteoarthritis, see specific extremity guidelines. Glucosamine should not be combined with chondroitin as it is ineffective.

(b). Oral Herbals. There is insufficient evidence due to low quality studies that an oral herbal medication, Compound Qishe Tablet, reduced pain more than placebo. There is also insufficient evidence that Jingfukang and a topical herbal medicine, Compound Extractum Nucis

Vomicae, reduced pain more than Diclofenac Diethylamine Emulgel. Further research is very likely to change both the effect size and our confidence in the results. Currently, no oral herbals are recommended.

(c). Vitamin D. A large beneficial effect of vitamin D across different chronic painful conditions is unlikely. Therefore, it is not recommended.

(d). Alpha-Lipoic Acid. An adequate meta-analysis shows that there is some evidence that alpha-lipoic acid at a dose of 600 mg per day may reduce the symptoms of painful diabetic neuropathy in the short term of three to five weeks. The effect of the intravenous route appears to be greater than that of the oral route, but the oral route may have a clinically relevant effect. Doses of 1200 or 1800 mg have not been shown to have additional therapeutic benefit. This medication may be used for neuropathic pain.

11. Non-Invasive Brain Stimulation. This has been proposed as a treatment for chronic pain. Varieties include repetitive transcranial magnetic stimulation (rTMS), cranial electrotherapy stimulation (CES), and transcranial direct current stimulation (tDCS).

a. Single doses of high-frequency rTMS of the motor cortex may have small short-term effects on chronic pain. It is likely that multiple sources of bias may exaggerate this observed effect. The effects do not meet the predetermined threshold of minimal clinical significance and multiple-dose studies do not consistently demonstrate effectiveness. The available evidence suggests that low-frequency rTMS, rTMS applied to the pre-frontal cortex, CES, and tDCS are not effective in the treatment of chronic pain.

b. Therefore, these devices are not recommended due to lack of evidence and safety concerns.

12. Opioid Addiction Treatment. The DSM-V renames opioid addiction as substance use disorder (SUD) and classifies opioid use disorder according to categories defined as mild (two to three features of stated criteria), moderate (four to five features of stated criteria), or severe (six to seven features of stated criteria).

a. Definitions

i. *Opioid Physical Dependence*—opioid withdrawal symptoms (withdrawals) which occur as a result of abrupt discontinuation of an opioid in an individual who became habituated to the medication or through administration of an antagonist. Opioid physical dependency is not in and of itself consistent with the diagnosis of addiction/substance use disorder.

ii. *Tolerance*—a physiologic state caused by the regular use of an opioid in which increasing doses are needed to maintain the same affect. In patients with "analgesic tolerance," increased doses of the opioid may be needed to maintain pain relief.

iii. *Opioid Misuse*—the utilization of opioid medications outside of the prescribing instructions for which it was originally prescribed. Misuse may be as innocuous as taking slightly more or less medications than prescribed to crushing or snorting an opioid.

iv. *Opioid Abuse*—the use of any substance for a non-therapeutic purpose or the use of a medication for purposes other than those for which the agent is prescribed. Abuse includes intentional use for altering a state of consciousness. Abuse frequently affects the individual's ability to fulfill normal societal roles, resulting in difficulty with employment, or legal, or interpersonal problems.

v. *Pseudo-Addiction*—addiction-like behaviors consistent with overutilization of medications outside of the prescribing provider's instructions and recommendations for the express purpose of improved pain management. This occurs when a patient believes there is insufficient pain relief. Once pain is adequately managed with a higher dose of medications than initially prescribed or with improved therapy, the behaviors consistent with addiction are discontinued.

vi. *Addiction*—a primary chronic neurobiological disease influenced by genetic, psychosocial, and/or environmental factors. It is characterized by impaired control over drug use, compulsive drug use, and continued drug use despite harm and because of craving.

b. Substance use disorder/addiction in the workers' compensation system can be encountered in three ways. First, the individual has an active substance use disorder at the time of injury. The party responsible for treatment of the substance use disorder may be outside of the workers' compensation system. However, if there is no other paying party and the treatment is necessary in order to recover from the current workers' compensation injury, treatment may be covered by the workers' compensation payor. The second possibility is that a patient with a substance use disorder, who is currently in recovery at the time of the workers' compensation injury, relapses as a result of the medications which are prescribed by the treating provider. This patient may become re-addicted and will manifest substance use disorder characteristics and symptoms consistent with the diagnosis. The third possibility is an individual with no history of substance use disorder who is injured as a result of an occupational accident. This particular individual becomes "addicted" to the medications as a result of the medications being prescribed. This is most likely to occur with the use of opioids but could possibly occur with use of other medications such as benzodiazepines or specific muscle relaxants such as carisoprodol.

c. If the treating provider is suspicious of a patient exhibiting opioid misuse, abuse, or addiction, the patient should preferably be evaluated by a specialist in the field of addiction medicine. It would be the responsibility of the specialist to identify medication misuse, abuse, addiction, or pseudo-addiction and to determine what additional treatment, if any, needs to be implemented.

d. During the initial injury evaluation, an authorized treating provider should obtain an addiction history as part of a complete history and physical. If it is determined at the time of the initial evaluation by the treating provider that there is the pre-existing condition of active SUD or history of opioid addiction/SUD, then it is prudent to consider an evaluation with an addiction medicine physician prior to issuing opioid treatments if possible. The addiction medication specialist will be able to counsel the patient accordingly, determine medication needs, and determine the appropriate follow-up to hopefully avoid aggravation or relapse of substance abuse disorders which will complicate the recovery process. Many patients exhibit opioid misuse, opioid abuse, and pseudo-addictive behaviors. These issues

can be managed once the problem is identified and a discussion is carried out with the patient regarding these abnormal behaviors.

e. Once the diagnosis of SUD is confirmed, an addiction medicine trained physician familiar with addiction treatment should assist in co-managing the patient's care and the problematic drug prescriptions. This co-management technique is critical for the injured worker with a SUD diagnosis during the initial injury phase, recovery, and stabilization phase until he/she has reached MMI. If it is determined during the active treatment and recovery phase that there is no longer a need for opioids, then the addiction medicine trained physician will be in charge of the transition from use of opioids to safe taper/discontinuation of the opioids while monitoring for relapse of addiction.

f. Co-management is equally important for managing the chronic pain patient that has a concomitant opioid addiction/SUD with a legitimate need for analgesic medications. The addiction medicine trained physician in all likelihood will monitor the patient more closely including judicious prescribing, PMP reviews, urine drug testing, drug counts, and clarifying functional improvement as a result of the medications prescribed and frequent follow-ups which may initially seem excessive.

g. All abstinence addiction treatment begins with a discontinuation of the addicting substance; this is referred to as the detox phase of the treatment and can be performed in a number of ways. However, detoxification alone is not considered adequate addiction treatment. Detoxification is simply a method of discontinuing the medications in an effort to stabilize the patient prior to more extensive treatment.

h. Phase 1

i. The methods of detoxification can include: abrupt discontinuation, not recommended due to high rate of relapse due to craving and withdrawal symptoms; slow but progressive taper, 10 percent of total dosage per week as an outpatient treatment; conversion to a different medication opioid (buprenorphine/naloxone) to enable a more stable and comfortable taper occasionally done as an outpatient but commonly done as part of a more comprehensive treatment program, and; rapid detox under anesthesia, not recommended due to relatively high incidence of complications and high expense. The methodology chosen for phase 1 detoxification is left up to the specialist and is simply the initial phase of stabilization prior to considering the need for a phase 2 of addiction treatment program.

i. Phase 2

i. Once a patient is safely through the detoxification phase and the condition is stabilized regardless of the method chosen, then successful addiction treatment begins generally utilizing a number of techniques to prevent the return to active substance use and addiction. This phase of treatment generally involves teaching the patient to develop control over the compulsions, psychosocial factors, and associated mental health issues which are critical to maintain abstinence. This phase of treatment is generally managed in a 30-90 day non-hospital residential treatment program. The treatment prescribed in a residential treatment program generally includes individual and group therapy with certified addiction counselors and psychologists. Phase 2 of treatment may or may not be combined with opioid substitution therapy with medications such as buprenorphine/naloxone (partial agonist of the opioid receptor), methadone, or naltrexone. Injectable depot naltrexone may be used.

ii. Buprenorphine/naloxone therapy utilizes a sublingual partial opioid receptor agonist which binds to the opioid receptor, reducing craving and resulting in analgesia when necessary. Due to its high affinity to the opioid receptor, it blocks the effect of non-approved additional opioid use. The buprenorphine is administered either sublingually or, when FDA approved, as a subcutaneous implant. Naloxone was added to the sublingual drug formulation to discourage using this medication intravenously. With intravenous administration of buprenorphine/naloxone, the naloxone becomes absorbed neutralizing the effects of opioids. Buprenorphine/naloxone can be an excellent option in patients requiring analgesic medications with a prior history of opioid addiction because buprenorphine results in less sedation and euphoria then the other standard schedule II opioid medications. Prescribing Suboxone film (buprenorphine/naloxone) for addiction purposes can only be done by a physician and requires special training and certification. Once special training is completed, an application is filed with the DEA to obtain a special DEA license referred to as an X-DEA number. This X–DEA number needs to accompany all prescription for Suboxone when delivered to the pharmacy and identifies the prescription is being issued specifically for the treatment of addiction/SUD.

iii. Methadone may be an option if the patient is admitted to a federally licensed methadone treatment facility where a daily dose of medication is administered and the patient continues to utilize therapeutic treatments/cognitive behavioral therapies as noted above. There is strong evidence that in patients being treated with opioid agonists for heroin addiction, methadone is more successful than buprenorphine at retaining patients in treatment. The rates of opiate use, as evidenced by positive urines, are equivalent between methadone and buprenorphine. The methodology and rationale for methadone treatment is to saturate the opioid receptors with methadone (a slow onset and prolonged duration opioid), reducing the opioid craving. The majority of the opioid receptors are bound by the methadone leaving very few unbound opioid receptors available in the event additional opioids are utilized in an attempt to achieve the euphoric effect. When the patient is stabilized on a methadone dose determined by the federally licensed methadone clinic and their associated physicians, the patient's drug-seeking, craving, legal issues, and attempts to utilize non-approved medications is reduced. Patients will frequently return to more productive lives free of the compulsions, cravings, and legal issues and are usually able to maintain jobs and improve family dynamics.

iv. Other medications which may be useful and can be utilized during the phase 2 and 3 treatment include opioid receptor antagonists such as naltrexone (ReVia, Vivitrol) which produces no euphoria. The purpose of naltrexone therapy is to add an additional layer of protection and treatment for the patients by allowing them to receive a daily oral dose of naltrexone (ReVia) or a monthly injection of naltrexone (Vivitrol). Administration of naltrexone will bind with very high affinity to the opioid receptor resulting

in the opioid receptors being non-responsive to other opioid utilization thereby preventing any euphoric response or reinforcement with unsanctioned opioid use. This treatment method can be problematic in an individual receiving intramuscular naltrexone therapy especially if that individual requires surgery and post-operative pain management because the analgesics needed for post-operative pain management will be significantly less effective because of the prolonged opioid antagonist properties of the naltrexone.

j. In Summary

i. Medication assisted treatment for patients addicted to opioids is the treatment recommended by most experts. A Canadian evidence-based guideline recommends long-term treatment with buprenorphine/naloxone, or methadone for some patients, based on the high relapse rate without medication assistance. The likelihood of relapse in the workers' compensation population for individuals who have become addicted through prescription drug use is unknown. Buprenorphine implants are likely equally effective as sublingual buprenorphine for preventing illicit opioid use. Implants are significantly costlier. Naltrexone treatment, an opioid agonist, has also been used to maintain abstinence. It can be provided in monthly injections or orally three times per week. Choice of these medications should be made by the addiction specialist.

k. Phase 3

i. Aftercare begins after discharge from the non-hospital residential treatment program and is designed for long-term management of addiction. This phase is potentially the time when relapse is most likely to occur if the patient has not developed significant skills necessary to deal with the compulsions, cravings, and associated psychosocial factors contributing to SUD. Long-term strategies include: intense outpatient programs (IOP); group therapy/meetings such as Narcotics Anonymous, and; residential communities (RC) which are groups of patients living together in a community for up to six months for the express purpose of maintaining abstinence from their drug of choice but at the same time transitioning and learning how to live in the general community. Residential communities are extremely useful to give patients an opportunity to be reintroduced to employment and psychosocial interactions with family and friends while maintaining contact with the community supporting their addiction recovery. In addition, phase 3 medication treatment may include utilization of opioid substitution therapy (buprenorphine/naloxone) or opioid receptor antagonist therapy as noted above.

ii. It must be noted that relapse is common despite the utilization of intense cognitive behavioral therapy, addiction treatment strategies, and long-term phase 3 treatment and medication. Risk monitoring should be continued, including checking for behavioral aberrancies, checking the PMP, and drug testing. Additional treatment or readmission for repeat treatment is not uncommon.

13. Opioid/Chemical Treatment Program Requirements

a. Chemical dependency for workers' compensation issues will usually be related to opioids, anxiolytics, or hypnotics as prescribed for the original workers' compensation injury. Chemical dependency should be treated with specific programs providing medical and psychological assessment, treatment planning, and individual as well as group counseling and education. Established functional goals which are measurable, achievable, and time specific are required.

b. Inpatient or outpatient programs may be used, depending upon the level of intensity of services required. Formal inpatient treatment programs are appropriate for patients who have more intense (e.g., use extraordinarily excessive doses of prescription drugs to which they have developed tolerance) or multiple drug abuse issues (e.g., benzodiazepines and/or alcohol) and those with complex medical conditions or psychiatric issues related to drug misuse. A medical physician with appropriate training and preferably board certified in addiction medicine should provide the initial evaluation and oversee the program. Full primary assessment should include behavioral health assessment; medical history; physical examination; mental status; current level of functioning; employment history; legal history; history of abuse, violence, and risk taking behavior; education level; use of alcohol, tobacco and other drugs; and social support system. The initial medical exam should include appropriate laboratory testing such as liver function, screening for sexual diseases, etc.

c. Addiction specialists, alcohol and drug counselors, psychologists, psychiatrists, and other trained health care providers as needed, are involved in the program. Peer and group support is an integral part of the program and families are encouraged to attend. Peer support specialists should receive competency-based training. A designated individual is assigned to each worker to assist in coordinating care. There should be good communication between the program and other external services, external health care providers, Al-Anon, Alcoholics Anonymous (AA), and pain medicine providers. Drug screening should be performed as appropriate for the individual, at least weekly during the initial detoxification and intensive treatment phases. Quarterly random drug screens per year should be completed for those that are being prescribed opioid medications and drug diversion control methods should be in place.

d. Clear withdrawal procedures are delineated for voluntary, against medical advice, and involuntary withdrawal. Withdrawal programs must have a clear treatment plan and include description of symptoms of medical and emotional distress, significant signs of opioid withdrawal, and actions taken. All programs should have clear direction on how to deal with violence in order to assure safety for all participants. Transition and discharge should be carefully planned with full communication to outside resources. Duration of inpatient programs are usually four weeks while outpatient programs may take 12 weeks.

e. Drug detoxification may be performed on an outpatient or inpatient basis. Detoxification is unlikely to succeed in isolation when not followed by prolonged chemical dependency treatment. Isolated detoxification is usually doomed to failure with very high recidivism rates.

f. Both ultra-rapid and rapid-detoxification are not recommended due to possible respiratory depression and death and the lack of evidence for long range treatment success. Refer to Opioid Addiction Treatment, for more specific details on treatment plans.

g. Tapering opioids on an outpatient basis requires a highly motivated patient and diligent treatment team and may be accomplished by decreasing the current dose 10

percent per day or per week. Tapering programs under the supervision of physicians with pain expertise may proceed more aggressively. Tapering should be accompanied by addiction counseling. Failing a trial of tapering, a patient should be sent to a formal addiction program. When the dose has reached one-third of the original dose, the taper should proceed at half or less of the initial rate. Doses should be held or possibly increased if severe withdrawal symptoms, pain, or reduced treatment failure otherwise occurs. This method is tedious, time consuming, and more likely to fail than more rapid and formalized treatment programs.

h. Time frames for opioid / chemical treatment programs:

i. time to produce effect: three to four weeks;

ii. frequency: Full time programs - no less than five hours/day, five days/week; part time programs - four hours/day for two to three days per week;

iii. optimum duration: 2 to 12 weeks at least two to three times a week. With follow-up visits weekly or every other week during the first one to two months after the initial program is complete;

iv. maximum duration: four months for full time programs and up to six months for part-time programs. Periodic review and monitoring thereafter for one year, additional follow-up based upon the documented maintenance of functional gains.

14. Orthotics/Prosthetics/Equipment

a. Devices and adaptive equipment may be necessary in order to reduce impairment and disability, to facilitate medical recovery, to avoid re-aggravation of the injury, and to maintain maximum medical improvement. Indications would be to provide relief of the industrial injury, prevent further injury and control neurological and orthopedic injuries for reduced stress during functional activities. In addition, they may be used to modify tasks through instruction in the use of a device or physical modification of a device. Equipment needs may need to be reassessed periodically. Refer to Return-to-work for more detailed information.

b. Equipment may include high and low technology assistive devices, computer interface or seating, crutch or walker training, and self-care aids. It should improve safety and reduce risk of re-injury. Standard equipment to alleviate the effects of the injury on the performance of activities of daily living may vary from simple to complex adaptive devices to enhance independence and safety. Certain equipment related to cognitive impairments may also be required.

c. Ergonomic modifications may be necessary to facilitate medical recovery, to avoid re-aggravation of the injury, and to maintain maximum medical improvement. Ergonomic evaluations with subsequent recommendations may assist with the patients return-to-work. (Refer to Job Site Evaluation for further information.)

d. For chronic pain disorders, equipment such as foot orthoses may be helpful. The injured worker should be educated as to the potential harm from using a lumbar support for a period of time greater than which is prescribed. Harmful effects include de-conditioning of the trunk musculature, skin irritation, and general discomfort. Use of cervical collars is not recommended for chronic cervical myofascial pain. Special cervical orthosis and/or equipment may have a role in the rehabilitation of a cervical injury such as those injuries to a cervical nerve root resulting in upper extremity weakness or a spinal cord injury with some degree of paraparesis or tetraparesis or post spinal fusion surgery. Use of such devices would be in a structured rehabilitation setting as part of a comprehensive rehabilitation program.

e. Fabrication/modification of orthotics, including splints, would be used when there is need to normalize weight-bearing, facilitate better motion response, stabilize a joint with insufficient muscle or proprioceptive/reflex competencies, to protect subacute conditions as needed during movement, and correct biomechanical problems. Orthotic/prosthetic training is the skilled instruction (preferably by qualified providers) in the proper use of orthotic devices and/or prosthetic limbs.

f. For information regarding specific types of orthotics/prosthetics/equipment, refer to individual medical treatment guidelines.

15. Personality/Psychological/Psychiatric/ Psychosocial Intervention

a. Psychosocial treatment is a well-established therapeutic and diagnostic intervention with selected use in acute pain problems, and more widespread use in sub-acute and chronic pain populations. Psychosocial treatment is recommended as an important component in the total management of a patient with chronic pain and should be implemented as soon as the problem is identified.

b. Studies have noted that there is not a direct connection between impairment and disability nor is there a direct connection been lumbar imaging and pain. It appears that the lack of connections is likely accounted for by differences among individuals in level of depression, coping strategies, or other psychological distress.

c. There is some evidence that in the setting of chronic low back pain when disc pathology is present, a high degree of anxiety or depressive symptomatology is associated with relatively less pain relief in spite of higher opioid dosage than when these symptoms are absent. Therefore, psychological issues should always be screened for and treated in chronic pain patients.

d. Psychological treatments for pain can be conceptualized as having a neuropsychological basis. These treatments for pain have been shown to decrease physiological reactivity to stress, alter patterns of brain activation as demonstrated by functional MRI (fMRI), alter the volume of grey matter and other structures in the brain, and alter blood flow patterns in the brain. The most researched psychological treatment is Cognitive Behavioral Therapy (CBT) which is summarized in this Section.

e. The screening or diagnostic workup should have clarified and distinguished between pre-existing, aggravated, and/or purely causative psychological conditions. Therapeutic and diagnostic modalities include, but are not limited to, individual counseling, and group therapy. Treatment can occur within an individualized model, a multi-disciplinary model, or a structured pain management program.

f. A psychologist with a PhD, PsyD, EdD credentials, or a psychiatric MD/DO may perform psychosocial treatments. The following professionals may also perform treatment in consultation with a psychologist with a PhD, PsyD, EdD, or Psychiatric MD/DO: other

licensed mental health providers, licensed health care providers with training in CBT, or providers certified as CBT therapists with experience in treating chronic pain disorders in injured workers.

g. If a diagnosis consistent with the standards of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) or most current ICD has been determined, the patient should be evaluated for the potential need for psychiatric medications. Use of any medication to treat a diagnosed condition may be ordered by an authorized treating physician or by the consulting psychiatrist. Visits for management of psychiatric medications are medical in nature and are not a component of psychosocial treatment. Therefore, separate visits for medication management may be necessary, depending on the patient and medications selected.

h. Psychosocial interventions include psychotherapeutic treatments for behavioral health conditions, as well as behavioral medicine treatments. These interventions may similarly be beneficial for patients without psychiatric conditions but who may need to make major life changes in order to cope with pain or adjust to disability. Examples of these treatments include Cognitive Behavioral Therapy (CBT), relaxation training, mindfulness training, and sleep hygiene psychoeducation.

i. CBT refers to a group of psychological therapies that are sometimes referred to by more specific names such as Rational Emotive Behavior Therapy, Rational Behavior Therapy, Rational Living Therapy, Cognitive Therapy, and Dialectic Behavior Therapy. Variations of CBT methods can be used to treat a variety of conditions, including chronic pain, depression, anxiety, phobias, and post-traumatic stress disorder (PTSD). For patients with multiple diagnoses, more than one type of CBT might be needed. The CBT used in research studies is often "manualized CBT," meaning that the treatment follows a specific protocol in a manual. In clinical settings, CBT may involve the use of standardized materials, but it is also commonly adapted by a psychologist or psychiatrist to the patient's unique circumstances. If the CBT is being performed by a non-mental health professional, a manual approach would be strongly recommended.

j. CBT must be distinguished from neuropsychological therapies used to teach compensatory strategies to brain injured patients, which are also called "cognitive therapy." Many other clinical providers also provide a spectrum of cognitive interventions including: motivational interviewing, pain neuroscience education, and other interventions aimed at patient education and change in behavior. Refer to Therapy-Active, for details.

k. It should be noted that most clinical trials on CBT exclude subjects who have significant psychiatric diagnoses. Consequently, the selection of patients for CBT should include the following considerations. CBT is instructive and structured, using an educational model with homework to teach inductive rational thinking. Because of this educational model, a certain level of cognitive ability and literacy is assumed for most CBT protocols. Patients who lack the cognitive and educational abilities required by a CBT protocol are unlikely to be successful. Further, given the highly structured nature of CBT, it is more effective when a patient's circumstances are relatively stable. For example, if a patient is about to be evicted, is actively suicidal, or is coming to sessions intoxicated, these matters will generally preempt CBT treatment for pain and require other types of psychotherapeutic response. Conversely, literate patients whose circumstances are relatively stable, but who catastrophize or cope poorly with pain or disability, are often good candidates for CBT for pain. Similarly, literate patients whose circumstances are relatively stable, but who exhibit unfounded medical phobias, are often good candidates for CBT for anxiety.

l. CBT is often combined with active therapy in an interdisciplinary program, whether formal or informal. It must be coordinated with a psychologist or psychiatrist. CBT can be done in a small group or individually, and the usual number of treatments varies between 8 and 16 sessions.

m. Before CBT or other psychological treatments are performed, the patient must have a full psychological evaluation. The CBT program must be done under the supervision of a psychologist with a PhD, PsyD, or EdD or a psychiatric MD/DO.

n. Psychological disorders associated with distress and dysfunction are common in chronic pain. One study demonstrated that the majority of patients who had failed other therapy and participated in an active therapy program also suffered from major depression. However, in a program that included CBT and other psychological counseling, the success rate for return to work was similar for those with and without an ICD diagnosis. This study further strengthens the argument for having some psychological intervention included in all chronic pain treatment plans.

o. Hypnosis

i. The term *hypnosis* can encompass a number of therapy types including relaxation, imagery, focused attention, interpersonal processing, and suggestion. Hypnosis has been used in depression and for distress related to medical procedures.

ii. A number of studies support the use of hypnosis for chronic pain management. At least one pilot study suggested that hypnotic cognitive therapy assists recovery in chronic pain. Other imaging studies support the concept that hypnosis can actively affect cortical areas associated with pain. Thus, this therapy may be used at the discretion of the psychologist. A more recent meta-analysis was completed which purported to show evidence for hypnosis. However, the heterogeneity of the studies included prevents this study from meeting our standards for evidence.

iii. For all psychological/psychiatric interventions, an assessment and treatment plan must be provided to the treating physician prior to initiating treatment. The treatment plan must include specific, measurable, achievable, and realistic behavioral goals, with specific interventions and time frames to achieve those goals. The report should also address pertinent issues such as pre-existing, exacerbated or aggravated, and/or causative issues, as well as a realistic functional prognosis.

p. Time frames for cognitive behavioral therapy (CBT) or similar treatment:

i. time to produce effect: 12-16 hours of treatment (one hour individual sessions or alternately one to two hour group sessions);

ii. frequency: one to two times weekly for the first two weeks, decreasing to one time per week thereafter.

iii. maximum duration: 24 one hour sessions.

NOTE: Before CBT or other psychological/psychiatric interventions are done, the patient must have a full psychological evaluation. The CBT program must be done under the supervision of a psychologist with a PhD, PsyD, or EdD, or a Psychiatric MD/DO.

q. Time frames for other psychological/psychiatric interventions:

i. time to produce effect: six to eight weeks;

ii. frequency: one to two times weekly for the first two to four weeks (excluding hospitalization, if required), decreasing to one time per week for the second month. Thereafter, two to four times monthly with the exception of exacerbations, which may require increased frequency of visits. Not to include visits for medication management;

iii. optimum duration: two to six months;

iv. maximum duration: commonly six months for most cases. Extensions under conditions as noted below. (Not to include visits for medication management). For select patients (e.g., ongoing medical procedures or complications, medication dependence, diagnostic uncertainty, delays in care due to patient or systemic variables), less intensive but longer supervised psychological/psychiatric treatment may be required. If counseling beyond six months is indicated, the nature of the psychosocial risks being managed or functional progress must be documented. Progress notes for each appointment should include goal setting, with specific, measurable, achievable, and realistic goals, and a timetable with an expected end point. In complex cases, goal setting may include maintaining psychological equilibrium while undergoing invasive procedures.

16. Restriction of Activities

a. Continuation of normal daily activities is the recommendation for most patients since immobility will negatively affect rehabilitation. Prolonged immobility results in a wide range of deleterious effects, such as a reduction in aerobic capacity and conditioning, loss of muscle strength and flexibility, increased segmental stiffness, promotion of bone demineralization, impaired disc nutrition, and the facilitation of the illness role.

b. Some level of immobility may occasionally be appropriate which could include splinting/casting or as part of a structured schedule that includes energy conservation or intentional rest breaks between activities. While these interventions may have been ordered in the acute phase, the provider should be aware of their impact on the patient's ability to adequately comply with and successfully complete rehabilitation. Activity should be increased based on the improvement of core strengthening.

c. Patients should be educated regarding the detrimental effects of immobility versus the efficacious use of limited rest periods. Adequate rest allows the patient to comply with active treatment and benefit from the rehabilitation program. In addition, complete work cessation should be avoided, if possible, since it often further aggravates the pain presentation and promotes disability. Modified return-to-work is almost always more efficacious and rarely contraindicated in the vast majority of injured workers.

17. Return-to-Work

a. Return to work and/or work-related activities whenever possible is one of the major components in treatment and rehabilitation. Return-to-work is a subject that should be addressed by each workers' compensation provider at the first meeting with the injured employee, and be updated at each additional visit. A return-to-work format should be part of a company's health plan, knowing that return-to-work can decrease anxiety, reduce the possibility of depression, and reconnect the worker with society.

b. A prolonged time off work is likely to lead to chronic disability. In complex cases, experienced nurse case managers may be required to assist in return-to-work. Other services, including psychological evaluation and/or treatment, jobsite analysis, and vocational assistance may be employed.

c. Two counseling sessions with an occupational physician, and work site visit if necessary, may be helpful for workers who are concerned about returning to work.

d. At least one study suggests that health status is worse for those patients who do not return to work than those who do. Self-employment and injury severity predict return to work. Difficulty with pain control, ADLs, and anxiety and depression were common among patients who did not return to work.

e. The following should be considered when attempting to return an injured worker with chronic pain to work.

i. Job History Interview. An authorized treating physician should perform a job history interview at the time of the initial evaluation and before any plan of treatment is established. Documentation should include the workers' job demands, stressors, duties of current job, and duties of job at the time of the initial injury. In addition, cognitive and social issues should be identified and treatment of these issues should be incorporated into the plan of care.

ii. Coordination of Care. Management of the case is a significant part of return-to-work and may be the responsibility of an authorized treating physician, occupational health nurse, risk manager, or others. Case management is a method of communication between the primary provider, referral providers including occupational and physical therapists, insurer, employer, and employee. Because case management may be coordinated by a variety of professionals, the case manager should be identified in the medical record.

iii. Communication is essential between the patient, authorized treating physician, employer, and insurer. Employers should be contacted to verify employment status, job duties and demands, and policies regarding injured workers. In addition, availability of temporary and permanent restrictions, for what duration, as well as other placement options should be discussed and documented. All communications in the absence of the patient are required to be documented and made available to the patient.

iv. Establishment of Return-To-Work Status. Return-to-work for persons with chronic pain should be thought of as therapeutic, assuming that work is not likely to aggravate the basic problem or increase the discomfort. In some cases of chronic pain, the worker may not be currently working or even employed. The goal of return-to-work

would be to return the worker to any level of employment with the current employer or to return them to any type of new employment. Temporary restrictions may be needed while recommended ergonomic or adaptive equipment is obtained; employers should obtain recommended equipment in a timely manner.

v. Establishment of Activity Level Restrictions. A formal job description for the injured worker is necessary to identify physical demands at work and assist in the creation of modified duty. A Job Site Evaluation may be utilized to identify tasks such as pushing, pulling, lifting, reaching, grasping, pinching, sitting, standing, posture, and ambulatory distance and terrain. If applicable, a job site evaluation may also be utilized to assess temperature, air flow, noise and the number of hours that may be worked per day in a specific environment. Also refer to Section, Jobsite Evaluation and Alterations. Due to the lack of predictability regarding exacerbation of symptoms affecting function, an extended, occupationally focused functional capacity evaluation may be necessary to determine the patient's tolerance for job type tasks over a continued period of time. Job requirements should be reviewed for the entire eight hours or more of the working day. When prescribing the FCE, the physician must assess the probability of return to work against the potential for exacerbation of the work related condition. Work restriction assigned by the authorized treating physician may be temporary or permanent. The case manager should continue to seek out modified work until restrictions become less cumbersome or as the worker's condition improves or deteriorates. Ergonomic changes recommended by the worksite evaluation should be put in place.

(a). Between one and three days after the evaluation, there should be a follow-up evaluation by the treating therapist and/or an authorized treating physician to assess the patient's status. Patients should be encouraged to report their status post FCE.

vi. Rehabilitation and Return-to-Work. As part of rehabilitation, every attempt should be made to simulate work activities so that an authorized treating physician may promote adequate job performance. The use of ergonomic or adaptive equipment, therapeutic breaks, and interventional modalities at work may be necessary to maintain employment.

vii. Vocational Assistance. Formal vocational rehabilitation is a generally accepted intervention and can assist disabled persons to return to viable employment. Assisting patients to identify vocational goals will facilitate medical recovery and aid in the maintenance of MMI by 1) increasing motivation towards treatment and 2) alleviating the patient's emotional distress. Physically limited patients will benefit most if vocational assistance is provided during the interdisciplinary rehabilitation phase of treatment. To assess the patient's vocational capacity, a vocational assessment utilizing the information from occupational and physical therapy assessments may be performed. This vocational assessment may identify rehabilitation program goals, as well as optimize both patient motivation and utilization of rehabilitation resources. This may be extremely helpful in decreasing the patient's fear regarding an inability to earn a living, which can add to his/her anxiety and depression.

(a). Recommendations to Employers and Employees of Small Businesses. Employees of small businesses who are diagnosed with chronic pain may not be able to perform any jobs for which openings exist. Temporary employees may fill those slots while the employee functionally improves. Some small businesses hire other workers and if the injured employee returns to the job, the supervisor/owner may have an extra employee. Case managers may assist with resolution of these problems, and with finding modified job tasks, or jobs with reduced hours, etc., depending upon company philosophy and employee needs.

(b). Recommendations to Employers and Employees of Mid-Sized and Large Businesses. Employers are encouraged by the OWCA to identify modified work within the company that may be available to injured workers with chronic pain who are returning to work with temporary or permanent restrictions. To assist with temporary or permanent placement of the injured worker, it is suggested that a program be implemented that allows the case manager to access descriptions of all jobs within the organization.

18. Therapy—Active

a. The following active therapies are widely used and accepted methods of care for a variety of work-related injuries. Active therapy is based on the philosophy that therapeutic exercise and/or activity are beneficial for restoring flexibility, strength, endurance, function, range of motion, and can alleviate discomfort. All active therapy plans should be made directly with patients in the interest of achieving long-term individualized goals.

b. Active therapy requires an internal effort by the individual to complete a specific exercise or task. This form of therapy requires supervision from a therapist or medical provider such as verbal, visual, and/or tactile instruction(s). Active therapy is intended to promote independence and self-reliance in managing the physical pain as well as to improve the functional status in regard to the specific diagnosis, general conditioning and well-being. At times, a provider may help stabilize the patient or guide the movement pattern but the energy required to complete the task is predominately executed by the patient. Therapy in this Section should not be merely a repeat of previous therapy but should focus specifically on the individual goals and abilities of the patient with chronic pain.

c. The goal of active therapy is to teach the patient exercises that they can perform regularly on their own. Patients should be instructed to continue active therapies at home as an extension of the treatment process in order to maintain improvement levels. Follow-up visits to reinforce and monitor progress and proper technique are recommended. Home exercise can include exercise with or without mechanical assistance or resistance and functional activities with assistive devices.

d. On occasion, specific diagnoses and post-surgical conditions may warrant durations of treatment beyond those listed as "maximum." Factors such as exacerbation of symptoms, re-injury, interrupted continuity of care, need for post-operative therapy, and co-morbidities may also extend durations of care. Interventional injections require postoperative active therapy coupled with home exercise to improve function, with a reset of the recommended number of sessions, regardless of the number of therapy visits

previously conducted. Specific goals with objectively measured functional improvement during treatment must be cited to justify extended durations of care. It is recommended that, if no functional gain is observed after the number of treatments under "time to produce effect" has been completed, then alternative treatment interventions, further diagnostic studies, or further consultations should be pursued.

e. Pain Neuroscience Education (PNE): an educational strategy used by physical therapists and other practitioners that focuses on teaching people in pain more about the neurobiological and neurophysiological processes involved in their pain experience, versus a focus on anatomical and pathoanatomical education. PNE helps patients develop an understanding of various pain processes including central sensitization, peripheral sensitization, inhibition, facilitation, the brain's processing of threat appraisal, and various biological systems involved in a pain experience. This reconceptualization of pain via PNE is then combined with various behavioral strategies including aerobic exercise, pacing, graded exposure, graded activity, and goal setting. PNE is likely to positively influence pain ratings, disability, fear-avoidance behaviors, pain catastrophization, and limitations in movement, pain knowledge, and healthcare utilization. PNE is recommended with active therapy for chronic pain patients.

f. The following active therapies are listed in alphabetical order.

i. Activities of daily living (ADL) are well-established interventions which involve instruction, active-assisted training, and/or adaptation of activities or equipment to improve a person's capacity in normal daily activities such as self-care, work re-integration training, homemaking, and driving:

(a). time to produce effect: four to five treatments;

(b). frequency: one to five times per week;

(c). optimum duration: four to six weeks;

(d). maximum duration: six weeks.

ii. Aquatic therapy is a well-accepted treatment which consists of the therapeutic use of aquatic immersion for therapeutic exercise to promote strengthening, core stabilization, endurance, range-of-motion, flexibility, body mechanics, and pain management. Aquatic Therapy is the implementation of active therapeutic procedures (individual or group) in a swimming or therapeutic pool heated to 88 to 92 degrees. The water provides a buoyancy force that lessens the amount of force of gravity applied to the body, and the pool should be large enough to allow full extremity range of motion and full erect posture. The decreased gravity effect allows the patient to have a mechanical advantage and more likely have a successful trial of therapeutic exercise. Aquatic vests, belts and other devices can be used to provide stability, balance, buoyancy, and resistance. In addition, the compression of the water against the affected extremity and ability to move easier with decreased gravity allow for resulting muscular compression against vessels improving lymphatic drainage resulting in decreased edema. Aquatic Therapy may also provide an additional stimulus to assist with desensitization.

(a). There is good evidence that aquatic exercise and land-based exercise show comparable outcomes for function and mobility among people with symptomatic osteoarthritis of the knee or hip.

(b). Indications. The therapy may be indicated for individuals who:

(i). cannot tolerate active land-based or full-weight bearing therapeutic procedures;

(ii). require increased support in the presence of proprioceptive deficit;

(iii). are at risk of compression fracture due to decreased bone density;

(iv). have symptoms that are exacerbated in a dry environment;

(v). have a higher probability of meeting active therapeutic goals than in a dry environment.

(c). Time frames for aquatic therapy:

(i). time to produce effect: four to five treatments;

(ii). frequency: three to five times per week;

(iii). optimum duration: four to six weeks;

(iv). maximum duration: six weeks.

(d). After the supervised aquatics program has been established, either a self-directed aquatic program or a transition to a self-directed dry environment exercise program is recommended.

iii. Functional activities are well-established interventions which involve the use of therapeutic activity to enhance mobility, body mechanics, employability, coordination, and sensory motor integration:

(a). time to produce effect: four to five treatments;

(b). frequency: one to five times per week;

(c). optimum duration: four to six weeks;

(d). maximum duration: eight weeks.

iv. Functional electrical stimulation is an accepted treatment in which the application of electrical current to elicit involuntary or assisted contractions of atrophied and/or impaired muscles. Indications include muscle atrophy, weakness, and sluggish muscle contraction secondary to pain, injury, neuromuscular dysfunction, peripheral nerve lesion, or radicular symptoms. This modality may be prescribed for use at home when patients have demonstrated knowledge of how to self-administer and are in an independent exercise program:

(a). time to produce effect: two to six treatments;

(b). frequency: three times per week;

(c). optimum duration: eight weeks;

(d). maximum duration: eight weeks. if beneficial, provide with home unit;

v. neuromuscular re-education is a generally accepted treatment. It is the skilled application of exercise with manual, mechanical, or electrical facilitation to enhance strength, movement patterns, neuromuscular response, proprioception, kinesthetic sense, coordination, education of movement, balance and posture.

(a). There is some evidence that there is a modest benefit from adding a back school to other treatments such as NSAIDs, massage, transcutaneous electrical nerve stimulation (TENS), and other physical therapy modalities. However, a recent adequate quality systematic review found no evidence for the effectiveness of back schools for treating chronic low back pain.

(b). Indications include the need to promote neuromuscular responses through carefully timed proprioceptive stimuli, to elicit and improve motor activity in patterns similar to normal neurologically developed sequences, and improve neuromotor response with independent control.

(c). Time frames for neuromuscular re-education:

(i). time to produce effect: two to six treatments;

(ii). frequency: one to three times per week;

(iii). optimum duration: four to eight weeks;

(iv). maximum duration: eight weeks.

vi. Spinal stabilization is a generally well-accepted treatment. The goal of this therapeutic program is to strengthen the spine in its neutral and anatomic position. The stabilization is dynamic which allows whole body movements while maintaining a stabilized spine. It is the ability to move and function normally through postures and activities without creating undue vertebral stress.

(a). Time frames for spinal stabilization:

(i). time to produce effect: four to eight treatments;

(ii). frequency: one to three times per week;

(iii). optimum duration: four to eight weeks;

(iv). maximum duration: eight weeks.

vii. Therapeutic exercise with or without mechanical assistance or resistance, may include isoinertial, isotonic, isometric and isokinetic types of exercises. May also include alternative/complementary exercise movement therapy (with oversight of a physician or physical therapist).

(a). Indications include the need for cardiovascular fitness, reduced edema, improved muscle strength, improved connective tissue strength and integrity, increased bone density, promotion of circulation to enhance soft tissue healing, improvement of muscle recruitment, improved proprioception, and coordination, and increased range of motion are used to promote normal movement patterns.

(b). Yoga may be an option for motivated patients with appropriate diagnoses.

(c). Therapeutic exercise programs should be tissue specific to the injury and address general functional deficits as identified in the diagnosis and clinical assessment. Patients should be instructed in and receive a home exercise program that is progressed as their functional status improves. Upon discharge, the patient would be independent in the performance of the home exercise program and would have been educated in the importance of continuing such a program. Educational goals would be to maintain or further improve function and to minimize the risk for aggravation of symptoms in the future.

(d). Available evidence supporting therapy mainly exists in the chronic low back literature.

(e). Time frames for therapeutic exercise:

(i). time to produce effect: two to six treatments;

(ii). frequency: two to five times per week;

(iii). optimum duration: four to eight weeks and concurrent with an active daily home exercise program;

(iv). maximum duration: 8 to 12 weeks of therapist oversight. Home exercise should continue indefinitely. Additional sessions may be warranted during periods of exacerbation of symptoms.

(f). Time frames for yoga:

(i). time to produce effect: eight sessions;

(ii). maximum duration: 48 sessions are the maximum expected duration.

viii. Work Conditioning. These programs are work-related, outcome-focused, individualized treatment programs. Objectives of the program includes, but are not limited to, improvement of cardiopulmonary and neuromusculoskeletal functions (strength, endurance, movement, flexibility, postural control, and motor control functions), patient education, and symptom relief. The goal is for patients to gain full- or optimal- function and return to work. The service may include the time-limited use of modalities, both active and passive, in conjunction with therapeutic exercise, functional activities, general conditioning body mechanics and lifting techniques re-training. These programs are usually initiated once re-conditioning has been completed but may be offered at any time throughout the recovery phase. It should be initiated when imminent return of a patient to modified- or full-duty is not an option, but the prognosis for returning the patient to work at completion of the program is at least fair to good:

(a). length of visit: two to four hours per day;

(b). frequency: two to five visits per week;

(c). optimum duration: two to four weeks;

(d). maximum duration: six weeks. Participation in a program beyond six weeks must be documented with respect to need and the ability to facilitate positive symptomatic or functional gains.

ix. Work Simulation. Work simulation is a program where an individual completes specific work-related tasks for a particular job and return to work. Use of this program is appropriate when modified duty can only be partially accommodated in the work place, when modified duty in the work place is unavailable, or when the patient requires more structured supervision. The need for work place simulation should be based upon the results of a functional capacity evaluation and/or jobsite analysis:

(a). length of visit: two to six hours per day;

(b). frequency: two to five visits per week;

(c). optimum duration: two to four weeks;

(d). maximum duration: six weeks. Participation in a program beyond six weeks must be documented with respect to need and the ability to facilitate positive symptomatic or functional gains.

19. Therapy—Passive

a. Most of the following passive therapies and modalities are generally accepted methods of care for a variety of work-related injuries. Passive therapy includes those treatment modalities that do not require energy expenditure on the part of the patient. They are principally effective during the early phases of treatment and are directed at controlling symptoms such as pain, inflammation and swelling and to improve the rate of healing soft tissue injuries. They should be used adjunctively with active therapies such as postural stabilization and exercise

programs to help control swelling, pain and inflammation during the active rehabilitation process. They may be used intermittently as a licensed practitioner deems appropriate, or regularly if there are episodes of acute pain superimposed upon a chronic pain problem.

b. On occasion, specific diagnoses and post-surgical conditions may warrant durations of treatment beyond those listed as "maximum." Factors such as exacerbation of symptoms, re-injury, interrupted continuity of care and co-morbidities may extend durations of care. Having specific goals with objectively measured functional improvement during treatment can support extended durations of care. It is recommended that if after six to eight visits no treatment effect is observed, alternative treatment interventions, further diagnostic studies or further consultations should be pursued.

c. The following passive therapies are listed in alphabetical order.

i. Electrical Stimulation (Unattended): low frequency transcutaneous muscle stimulator. Electrical stimulation, once applied, requires minimal on-site supervision by the licensed practitioner. Indications include pain, inflammation, muscle spasm, atrophy, decreased circulation, and the need for osteogenic stimulation. A home unit may be purchased or rented if treatment is effective and frequent use is recommended:

(a). time to produce effect: two to four treatments;

(b). frequency: varies, depending upon indication, between two to three times per day to one time week;

(c). optimum maximum duration: four treatments for clinic use.

ii. Iontophoresis is an accepted treatment which consists of the transfer of medication into superficial tissue, including, but not limited to, steroidal anti-inflammatories and anesthetics, through the use of electrical stimulation. Indications include pain (lidocaine), inflammation (hydrocortisone, salicylate, dexamethasone sodium phosphate), edema (mecholyl, hyaluronidase, salicylate), ischemia (magnesium, mecholyl, iodine), muscle spasm (magnesium, calcium), calcific deposits (acetate), scars and keloids (chlorine, iodine, acetate):

(a). time to produce effect: two to four treatments;

(b). frequency: three times per week with at least 48 hours between treatments;

(c). optimum duration: four to six weeks;

(d). maximum duration: six weeks.

iii. Low Level Laser. Not recommended as there is no proven benefit for this intervention due to lack of studies of sufficient quality. There is not enough research at this time to support this modality in the treatment of chronic pain. Results of low level laser have been mixed and often of poor quality.

iv. *Manual treatment including manipulation* is defined as osteopathic manipulative treatment, chiropractic manipulative treatment, manual therapy, manipulation, or mobilization. Manual treatments may be applied by osteopathic physicians (DOs), chiropractors (DCs), physical therapists (PTs), occupational therapists (OTs), or medical doctors (MDs). Some popular and useful techniques include but are not limited to: high velocity, low amplitude (HVLA); muscle energy (ME) or hold-relax; strain-counterstrain (SCS); a balanced ligamentous tension (BLT); and myofascial release (MFR). Under these different types of manipulation, many subsets of different techniques that can be described as a) direct—a forceful engagement of a restrictive/pathologic barrier, b) indirect—a gentle/non-forceful disengagement of a restrictive/pathologic barrier, c) the patient actively assists in the treatment, and d) the patient relaxing, allowing the practitioner to move and balance the body tissues. When the proper diagnosis is made and coupled with the appropriate technique, manipulation has no contraindications and can be applied to all tissues of the body, including muscles, tendons, ligaments, joints, fascia, and viscera. This may consist of a variety of techniques. Pre-treatment assessment should be performed as part of each manual treatment visit to ensure that the correct diagnosis and correct treatment is employed.

(a). The decision to refer a patient for spinal manipulation rather than for other treatments should be made on the basis of patient preference and relative safety, not on an expectation of a greater treatment effect. It may be the first line of treatment, in combination with active therapy for some patients, and should strongly be considered for patients with positive provocative testing for SI joint dysfunction or facet dysfunction who are not recovering in the first few weeks.

(b). Contraindications to HVLA manipulation include joint instability, fractures, severe osteoporosis, infection, metastatic cancer, local primary bone tumor with questionable osseous integrity, Paget's disease, active inflammatory arthritis, aortic aneurysm, and signs of progressive neurologic deficits.

(c). AHRQ supports use of spinal manipulation for chronic low back pain. In addition, based on multiple studies with some and good levels of evidence, there is good evidence supporting the use of manual therapy for treating chronic low back pain and chronic neck pain. There is also good evidence that supervised exercise therapy with added manual mobilization shows moderate, clinically important reductions in pain compared to non-exercise controls in people with osteoarthritis of the knee. There is not sufficient evidence to reliably determine whether manual muscle energy technique (MET) is likely to be effective in practice.

(d). Time frames for manual treatment including manipulation:

(i). time to produce effect: six to nine treatments;

(ii). frequency: one to three times per week for the first two weeks as indicated by the severity of the condition. Treatment may continue at one treatment per week for the next six weeks;

(iii). optimum duration: four to six weeks;

(iv). maximum duration: eight weeks. At week eight, patients should be re-evaluated. Care beyond eight weeks may be indicated for certain chronic pain patients in whom manipulation is helpful in improving function, decreasing pain and improving quality of life. In these cases, treatment may be continued at one treatment every other week until the patient has reached MMI and maintenance treatments, using the accompanying post MMI guideline, have been determined. Refer to Maintenance

Management section. Extended durations of care beyond what is considered "maximum" may be necessary in cases of re-injury, interrupted continuity of care, exacerbation of symptoms, and in those patients with comorbidities.

v. Manipulation under general anesthesia (MUA) refers to manual manipulation of the lumbar spine in combination with the use of a general anesthetic or conscious sedation. It is intended to improve the success of manipulation when pain, muscle spasm, guarding, and fibrosis appear to be limiting its application in patients otherwise suitable for their use.

(a). There have been no high quality studies to justify its benefits given the risks of general anesthetic and conscious sedation. It is not recommended.

vi. Manipulation under joint anesthesia (MUJA) refers to manipulation of the lumbar spine in combination with a fluoroscopically guided injection of anesthetic with or without corticosteroid agents into the facet joint at the level being manipulated.

(a). There are no controlled clinical trials to support its use. It is not recommended.

vii. Massage—Manual or Mechanical. Massage is manipulation of soft tissue with broad ranging relaxation and circulatory benefits. This may include stimulation of acupuncture points and acupuncture channels (acupressure), application of suction cups and techniques that include pressing, lifting, rubbing, pinching of soft tissues by or with the practitioners' hands. Indications include edema (peripheral or hard and non-pliable edema), muscle spasm, adhesions, the need to improve peripheral circulation and range-of-motion, or to increase muscle relaxation and flexibility prior to exercise:

(a). time to produce effect: immediate;

(b). frequency: one to two times per week;

(c). optimum duration: six weeks;

(d). maximum duration: two months.

viii. Mobilization (Soft Tissue) is a generally well-accepted treatment. Mobilization of soft tissue is the skilled application of muscle energy, strain/counter strain, myofascial release, manual trigger point release, and manual therapy techniques designed to improve or normalize movement patterns through the reduction of soft tissue pain and restrictions. Soft tissue mobilization can also use various instruments to assist the practitioner. These are typically labeled "instrument assisted soft-tissue techniques". These can be interactive with the patient participating or can be with the patient relaxing and letting the practitioner move the body tissues. Indications include muscle spasm around a joint, trigger points, adhesions, and neural compression. Mobilization should be accompanied by active therapy:

(a). time to produce effect: six to nine treatments;

(b). frequency: up to three times per week;

(c). optimum duration: four to six weeks;

(d). maximum Duration: six weeks.

ix. Percutaneous Electrical Nerve Stimulation (PENS). Needles are used to deliver low-voltage electrical current under the skin. Theoretically this therapy prevents pain signals traveling through small nerve fibers from reaching the brain, similar to the theory of TENS.

(a). There is good evidence that PENS produces improvement of pain and function compared to placebo; however, there is no evidence that the effect is prolonged after the initial three week treatment episode. There are no well-done studies that show PENS performs better than TENS for chronic pain patients. PENS is more invasive, requires a trained health care provider and has no clear long-term effect; therefore it is not generally recommended.

(b). Time frames for percutaneous electrical nerve stimulation (PENS):

(i). time to produce effect: one to four treatments;

(ii). frequency: two to three times per week;

(iii). optimum duration: nine sessions;

(iv). maximum duration: 12 sessions per year.

x. Superficial heat and cold therapy (including infrared therapy) is a generally accepted treatment. Superficial heat and cold are thermal agents applied in various manners that lowers or raises the body tissue temperature for the reduction of pain, inflammation, and/or effusion resulting from injury or induced by exercise. Includes application of heat just above the surface of the skin at acupuncture points. Indications include acute pain, edema and hemorrhage, need to increase pain threshold, reduce muscle spasm and promote stretching/flexibility. Cold and heat packs can be used at home as an extension of therapy in the clinic setting:

(a). time to produce effect: immediate;

(b). frequency: two to five times per week;

(c). optimum duration: three weeks as primary or intermittently as an adjunct to other therapeutic procedures up to two months;

(d). maximum duration: two months.

xi. Traction—Manual is an accepted treatment and an integral part of manual manipulation or joint mobilization. Indications include decreased joint space, muscle spasm around joints, and the need for increased synovial nutrition and response. Manual traction is contraindicated in patients with tumor, infection, fracture, or fracture dislocation:

(a). time to produce effect: one to three sessions;

(b). frequency: two to three times per week;

(c). optimum and maximum duration: one month.

xii. Traction—Mechanical is indicated for decreased joint space, muscle spasm around joints, and the need for increased synovial nutrition and response. Traction modalities are contraindicated in patients with tumor, infections, fracture, or fracture dislocation. Non-oscillating inversion traction methods are contraindicated in patients with glaucoma or hypertension.

(a). There is some evidence that mechanical traction, using specific, instrumented axial distraction technique, is not more effective than active graded therapy without mechanical traction. Therefore, mechanical traction is not recommended for chronic axial spine pain.

(b). Time frames for mechanical traction:

(i). time to produce effect: one to three sessions up to 30 minutes. If response is negative after three treatments, discontinue this modality;

(ii). frequency: two to three times per week;

(iii). optimum/maximum duration: one month.

xiii. Transcutaneous electrical nerve stimulation (TENS) should include least one instructional session for proper application and use. Indications include muscle spasm, atrophy, and decreased circulation and pain control. Minimal TENS unit parameters should include pulse rate, pulse width and amplitude modulation.

(a). One double-blinded, placebo-controlled study, found that low frequency TENS induces analgesia which is detected on functional MRI with change in brain activity in multiple regions. There was no functional follow-up. High-frequency TENS may be more effective than low frequency for patients on opioids.

(b). Time frames for transcutaneous electrical nerve stimulation (TENS):

(i). time to produce effect: immediate;

(ii). frequency: variable;

(iii). optimum duration: three sessions. If beneficial, provide with home unit;

(iv). maximum duration: three sessions. Purchase if effective.

xiv. Dry Needling (DN) Description. DN is a skilled intervention performed by physical therapists1 (PTs) and Chiropractors (DCs) that utilizes a solid filament needle to penetrate the skin and underlying tissues to treat relevant muscular, neural, and other connective tissues for the evaluation and management of neuromusculokeletal conditions, pain, movement impairments, and disability. The technique can be done with or without electrical stimulation. It has been used for tendinopathies, headaches and occipital neuralgia, plantar fasciitis, shoulder pain, lateral epicondylalgia, spinal pain, hip and knee pain. The goal of dry needling is to improve overall function and disability by decreasing pain and improving range-of-motion, strength, and/or muscle firing patterns. It is a technique that is utilized in conjunction with other physical therapy treatments including therapeutic exercise, manual therapy, stretching, neuromuscular re-education, postural education, and pain neuroscience education.

(a). Indications. Dry needling is indicated when myofascial trigger points are identified in muscles in conjunction with decreased range-of-motion, decreased strength, altered muscle firing patterns, and/or pain which negatively affect a patient's overall function.

(b). Complications. Potential but rare complications of dry needling include infection and pneumothorax. Severe pain on injection suggests the possibility of an intraneural injection, and the needle should be immediately repositioned.

(c). There is some evidence that the inclusion of two sessions of trigger point dry needling into a twice daily five-week exercise program was significantly more effective in improving shoulder pain-related disability than an exercise program alone at 3, 6, and 12 month follow-ups in people with chronic subacromial pain syndrome. Both interventions were equally effective in reducing pain over 12 months.

(d). There is some evidence that four sessions of trigger point deep dry needling with passive stretching over two weeks was significantly more effective in reducing neck pain and improving neck disability than passive stretching alone in the short-term and at six-month follow-up in people with chronic nonspecific neck pain.

(e). Based on a number of meta-analysis and systematic reviews, studies have shown some advantage for dry needling. However, there are also a number of studies with negative results. Because of the low quality of studies and heterogeneity, no form of evidence can be drawn from these reviews, which include a number of anatomic sites.

(f). Time frames for dry needling (DN):

(i). time to produce effect: three to six treatments;

(ii). frequency: one to three times per week;

(iii). optimum duration: one to two months;

(iv). maximum duration: 14 treatments within 6 months.

xv. Ultrasound (Including Phonophoresis) is an accepted treatment which uses sonic generators to deliver acoustic energy for therapeutic thermal and/or non-thermal soft tissue effects. Indications include scar tissue, adhesions, collagen fiber and muscle spasm, and the need to extend muscle tissue or accelerate the soft tissue healing. Ultrasound with electrical stimulation is concurrent delivery of electrical energy that involves dispersive electrode placement. Indications include muscle spasm, scar tissue, pain modulation and muscle facilitation. Phonophoresis is the transfer of medication through the use of sonic generators to the target tissue to control inflammation and pain.

(a). Phonophoresis is the transfer of medication to the target tissue to control inflammation and pain through the use of sonic generators. These topical medications include, but are not limited to, steroidal anti-inflammatory and anesthetics.

(b). There is no high quality evidence to support the use of ultrasound for improving pain or quality of life in patients with non-specific chronic low back pain.

(c). Time frames for ultrasound (including phonophoresis):

(i). time to produce effect: one to four treatments;

(ii). frequency: one to two treatments per week;

(iii). optimum duration: four to six treatments;

(iv). maximum duration: eight treatments.

xvi. Vertebral Axial Decompression (VAX-D)/DRX, 9000: motorized traction devices which purport to produce non-surgical disc decompression by creating negative intradiscal pressure in the disc space include devices with the trade names of VAX-D and DRX 9000.

(a). There are no good studies to support their use. They are not recommended.

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§2113. Therapeutic Procedures—Operative

A. - A.8. …

9. Intrathecal drug delivery—recommended in patients in whom other conservative measures have failed or in those requiring high dose oral opiates or experiencing side effects

to control pain or in cases of spasticity or uncontrolled muscle spasms. Oral pain medication would not be appropriate for chronic pain in conjunction with an Intrathecal pain pump, except for up to the initial ten days after implant for purpose of postop incisional pain or weaning and stopping oral opiates. Treatment for concomitant acute pain separate from chronic pain can combine oral opiates and pump medication at reduced doses orally. Pumps require refilling every one to six months for the life of the patient. More than one medication may be needed in the pump. Once implanted the managing physician must arrange for continuity of care for refills and or pump adjustments. Oral opiates should be stopped 7-10 days after implantation or pump and Intrathecal catheter and pump should be titrated to control chronic pain. A PTM (Patient therapy manager) may be used for breakthrough pain. Acute pain may be treated concomitantly with short courses or oral opiates. Intrathecal pumps may be considered when dystonia and spasticity are dominant features or when pain is not able to be managed using any other non-operative treatment or in cases inadequate opiate management by other routes. Specific brands of infusion systems have been FDA approved for the following: chronic intraspinal (epidural and intrathecal) infusion of preservative-free morphine sulfate sterile solution in the treatment of chronic intractable pain, chronic infusion of preservative-free ziconotide sterile solution for the management of severe chronic pain, and chronic intrathecal infusion of baclofen for the management of severe spasticity. Other medications commonly used and acceptable in the pump as defined in the The Polyanalgesic Consensus Conference (PACC) Recommendations on Intrathecal Drug Infusion Systems Best Practices and Guidelines 2017 Tim Deer et al "Neuromodulation: Technology at the Neural Interface".

a. Due to lack of proven efficacy and safety, the following medications are not recommended: magnesium, benzodiazepines, neostigmine, tramadol, and ketamine.

b. Description. This mode of therapy delivers small doses of medications directly into the cerebrospinal fluid.

c. Complications. Intrathecal delivery is associated with significant complications, such as infection, catheter disconnects, CSF leak, arachnoiditis, pump failure, nerve injury, and paralysis.

i. Typical adverse events reported with opioids (i.e., respiratory depression, tolerance, and dependence) or spinal catheter-tip granulomas that might arise during intrathecal morphine or hydromorphone treatment have not currently been recorded for ziconotide. The most common presentation of an intraspinal mass is a sudden increase in dosage required for pain relief, with new neurologic defects secondary to a mass effect. Technical errors can lead to drug overdose which can be life-threatening. Withdrawal or death can occur if pump refill is denied or prevented.

ii. Surveys have shown technical problems requiring surgical correction in 18 percent to 40 percent of patients. CSF leakage may occur with multiple dural punctures since the needle is larger than the spinal catheter. Follow PACC guidelines on efficacy. The function of the pump depends on its electronic power source, which may be disrupted by the magnet of an MRI; therefore, after the patient has an MRI, the pump should be checked immediately after the MRI to ensure that it does not need to be restarted. The delivery rate can be affected by atmospheric pressure and body temperature. Some pumps are recommended to be emptied before the MRI and refilled immediately after the MRI.

d. Indications. Clinical studies are conflicting, regarding long-term, effective pain relief in patients with non-malignant pain. This treatment must be have preauthorization and the recommendation of at least one physician experienced in chronic pain management. The procedure should be performed by physicians with documented experience.

i. Prior to surgical intervention, the patient and treating physician should identify the possible functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work, as well as possible complications. The patient should agree to comply with the pre- and post-operative treatment plan including home exercise. The provider should be especially careful to make sure the patient understands the amount of post-operative therapy required and the length of partial- and full-disability expected post-operatively.

ii. Informed decision-making should be documented for all invasive procedures. This must include a thorough discussion of the pros and cons of the procedure and the possible complications as well as the natural history of the identified diagnosis. Since many patients with the most common conditions will improve significantly over time, without invasive interventions, patients must be able to make well-informed decisions regarding their treatment.

e. This small eligible sub-group of patients must meet all of the following indications:

i. a diagnosis of a specific physical condition known to be chronically painful has been made on the basis of objective findings; and

ii. all reasonable surgical and non-surgical treatment has been exhausted including failure of conservative therapy including active and/or passive therapy, medication management, or therapeutic injections; and

iii. pre-trial psychiatric or psychological evaluation has been performed (same as for SCS); and

iv. there is no evidence of current addictive behavior. (Tolerance and dependence to opioid analgesics are not addictive behaviors and do not preclude implantation.); and

v. it is recommended that patients be tapered off of opioids before the trial or keep on same dose and wean and stop within two weeks post implant or wean and stop two to three weeks before trial per PACC Guidelines for Trialing; and

vi. a successful trial of continuous infusion by a percutaneous spinal infusion pump for a minimum of 24 hours or by bolus infusion. A screening test is considered successful if the patient (a) experiences a 50 percent decrease in pain, which may be confirmed by VAS, and (b) demonstrates objective functional gains or decreased utilization of other pain medications.

f. Contraindications. Infection, body size insufficient to support the size and weight of the implanted device. Patients with other implanted programmable devices should be given these pumps with caution since interference between devices may cause unintended changes in infusion rates.

10. - 11. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1711 (June 2011), amended LR 46:246 (February 2020), repromulgated LR 46:397 (March 2020).

§2115. Maintenance Management

A. - D.1.a. …

a. frequency: two to three times per week;

b. maximum maintenance duration: three months. Continuation beyond three months should be based on functional benefit and patient compliance. Health club membership should not extend beyond three months if attendance drops below two times per week on a regular basis.

3. Patient Education Management. Educational classes, sessions, or programs may be necessary to reinforce self-management techniques. This may be performed as formal or informal programs, either group or individual:

a. maintenance duration: two to six educational sessions during one 12-month period.

4. Psychological Management. An ideal maintenance program will emphasize management options implemented in the following order: individual self-management (pain control, relaxation and stress management, etc.); group counseling; individual counseling by a psychologist or psychiatrist; and in-patient treatment. Exacerbation of the injury may require psychological treatment to restore the patient to baseline. In those cases, use treatments and timeframe parameters listed in the Biofeedback and Psychological Evaluation or Intervention sections:

a. maintenance duration: 6 to 10 visits during the first year and four to six visits per year thereafter. In cases of significant exacerbation or complexity, refer to Section G.15, on psychological treatment.

5. Non-opioid Medication Management. In some cases, self-management of pain and injury exacerbations can be handled with medications, such as those listed in the Medication section. Physicians must follow patients who are on any chronic medication or prescription regimen for efficacy and side effects. Laboratory or other testing may be appropriate to monitor medication effects on organ function:

a. maintenance duration: usually, four medication reviews within a 12-month period. Frequency depends on the medications prescribed. Laboratory and other monitoring as appropriate.

6. Opioid Medication Management. In very selective cases, scheduled opioids or an implanted programmable pump with different medications including opioids may prove to be the most cost effective means of insuring the highest function and quality of life; however, inappropriate selection of these patients may result in a high degree of iatrogenic illness including addiction and drug overdose. A patient should have met the criteria in the opioids section of these guidelines before beginning maintenance opioids. Laboratory or other testing may be appropriate to monitor medication effects on organ function. The following management is suggested for maintenance opioids:

a. The medications should be clearly linked to improvement of function, not just pain control. All follow-up visits should document the patient's ability to perform routine functions satisfactorily. Examples include the abilities to: perform: work tasks, drive safely, pay bills or perform basic math operations, remain alert and upright for 10 hours per day, or participate in normal family and social activities. If the patient is not maintaining reasonable levels of activity the patient should usually be tapered from the opioid and tried on a different long-acting opioid.

b. A low risk opioid medication regimen is defined, as less than 50 MED per day. This may minimally increase or decrease over time. Dosages will need to be adjusted based on side effects of the medication and objective function of the patient. A patient may frequently be maintained on non- opioid medications to control side effects, treat mood disorders, or control neuropathic pain; however, only one long-acting opioid and one short-acting opioid for rescue use should be prescribed. Buccally absorbed opioids other than buprenorphine are not appropriate for these non-malignant pain patients. Transdermal opioid medications are not recommended, other than buprenorphine.

c. All patients on chronic opioid medication dosages need to sign an appropriate opioid contract with their physician for prescribing the opioids.

d. The patient must understand that continuation of the medication is contingent on their cooperation with the maintenance program. Use of non-prescribed drugs may result in tapering of the medication. The clinician should order random drug testing at least annually and when deemed appropriate to monitor medication compliance.

e. Patients on chronic opioid medication dosages must receive them through one prescribing physician:

i. maintenance duration: 12 visits within a 12-month period to review the opioid plan. Laboratory and other monitoring as appropriate.

7. Therapy Management. Some treatment may be helpful on a continued basis during maintenance care if the therapy maintains objective function and decreases medication use. With good management, exacerbations should be uncommon; not exceeding two times per year and using minimal or no treatment modality beyond self-management. On occasion, exacerbated conditions may warrant durations of treatment beyond those listed below. Having specific goals with objectively measured functional improvement during treatment can support extended durations of care. It is recommended that if after six to eight visits no treatment effect is observed, alternative treatment interventions should be pursued:

a. maintenance duration: Active Therapy, Acupuncture, or Manipulation: 10 visits [for each treatment] during the first year and then decreased to five visits per year thereafter.

8. Injection Therapy

a. Trigger Point Injections and Dry Needling. These injections or dry needling may occasionally be necessary to maintain function in those with myofascial problems:

i. maintenance duration for trigger point injections: not more than four injections per session not to exceed four sessions per 12-month period;

ii. maintenance duration for dry needling: no more than one to three times per week not to exceed 14 treatments within six months.

b. Epidural and Selective Nerve Root Injections. Patients who have experienced functional benefits from these injections in the past may require injection for exacerbations of the condition. Recall that the total steroid injections at all sites, including extremities, should be limited to 3-4 mg/kg per rolling 12 months to avoid side effects from steroids:

i. maintenance duration: two to four injections per 12-month period. For chronic radiculopathy or post herpetic neuralgia or intercostal neuralgia, injections may be repeated only when a functional documented response produces a positive result. A positive result could include positive pain response, a return to baseline function as established at MMI, return to increased work duties, and measurable improvement in physical activity goals including return to baseline after an exacerbation. Injections may only be repeated when these functional and time goals are met and verified by the designated primary physician.

c. Time frames for zygapophyseal (Facet) injections:

i. maintenance duration: four injections per year and limited to three joint levels either unilaterally or bilaterally as in facet joint and medial branch facet joint. injections may be repeated (instead of proceeding with RF) only when a functional documented response lasts for three months. A positive result would include a return to baseline function as established at MMI, return to increased work duties, and a measurable improvement in physical activity goals including return to baseline after an exacerbation. Injections may only be repeated when these functional and time goals are met and verified by the designated primary physician.

d. Time frames for radiofrequency medial branch neurotomy/facet rhizotomy and sacroiliac joint (lateral branch neurotomy and other peripheral nerves listed in these rules:

i. maintenance duration: two times per year not exceeding three levels. The patient must meet the criteria as described in radio frequency denervation. The initial indications including repeat blocks and limitations apply. The long-term effects of repeat rhizotomies, especially on younger patients are unknown. In addition, the patient should always reconsider all of the possible permanent complications before consenting to a repeat procedure. There are no studies addressing the total number of RF neurotomies that should be done for a patient. Patient should receive at least six months with improvement of 50 percent or more in order to qualify for repeat procedures;

ii. optimum/maximum maintenance duration: twice a year after the initial rhizotomy.

9. Purchase or Rental of Durable Medical Equipment (DME). It is recognized that some patients may require ongoing use of self-directed modalities for the purpose of maintaining function and/or analgesic effect. Purchase or rental of modality based equipment should be done only if the assessment by the physician and/or physical/occupational therapist has determined the effectiveness, compliance, and improved or maintained function by its application. It is generally felt that large expense purchases such as spas, whirlpools, and special mattresses are not necessary to maintain function.

10. Implanted programmable pumps or implanted spinal cord stimulators. facet pain, sacroiliac joint pain, genicular nerve pain, peripheral nerve pain and occasional acute exacerbation of radicular pain is common in patients with these implanted devices. It is necessary to continue to treat previously treated genicular nerve pain, facet pain, sacroiliac joint pain, peripheral nerve pain and occasional radicular pain with injections, and maintenance RF ablation and occasional Epidural injections as listed elsewhere in these rules. The presence of these implanted devices does not preclude diagnosis and treatment of these conditions as well as maintenance of these conditions both before and after implantation of these devices. Also these implanted devices require regular maintenance, adjustments; pump refills every one to six months, stimulator adjustments and management for the life of these devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1713 (June 2011), amended LR 46:250 (February 2020), repromulgated LR 46:399 (March 2020).

Ava Dejoie
Secretary

2003#000

RULE

Workforce Commission
Plumbing Board

Plumbers—Introductory Information; Licenses; Revocation and Related Administration Proceedings; Continuing Professional Education Programs (LAC 46:LV.312)

Editor's Note: A portion of this Rule is being repromulgated to correct a printing error. The original Rule may be viewed in its entirety on pages 972-980 of the May 20, 2017 *Louisiana Register*.

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953, the Louisiana State Plumbing Board (board), has amended LAC 46:LV.101, 301, 303, 304, 310, 311, 312, 313, 314, 315, 316, 901, 1001, 1003, 1005, and 1007 and has adopted §§309 and 508 as are necessary to be in compliance with recent legislative changes designated as Act No. 515 of 2016. The amendments to §§101, 301, 303, 309, 310, 312, 901 and 1001 established the designation of tradesman plumbers and provides licensing requirements and procedures relative to the tradesman plumber classification, effective January 1, 2017. Adopted §508 established and maintains a registry of apprentice plumbers employed within the state of Louisiana. The addition of the tradesman plumber classification resulted in the insertion of a new Rule, causing a change in the Sections formerly numbered as §§307-313, as well as changing cross-referencing of Sections throughout the Rules.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LV. Plumbers

Chapter 3. Licenses

§312. Fees
[Formerly 309]

A. - E.8. …

F. The fees and charges of the board relative to water supply protection specialist endorsements shall be as follows:

1. special examinations—$500;
2. examination—$50;
3. initial endorsement fee (this fee to be paid after applicant has successfully passed the exam)—$10;
4. renewal fee—$10;
5. revival fee—$10:
   a. if renewed after March 31—$20;
6. administrative charges for processing application (to be retained by the board should an applicant withdraw his application before taking the examination)—50 percent of exam fee;
7. fee for N.S.F. or returned check—$20;
8. special enforcement fee imposed under §313.K—$500.

G. - I.13. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366.D and R.S. 37:1371.

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended and promulgated LR 7:588 (November 1981), amended LR 15:1089 (December 1989), amended by the Department of Employment and Training, Plumbing Board, LR 16:23 (January 1990), LR 17:53 (January 1991), amended by the Department of Labor, Plumbing Board, LR 19:898 (July 1993), LR 19:1594 (December 1993), LR 21:1351 (December 1995), LR 26:327 (February 2000), amended by the Workforce Commission, Plumbing Board, LR 43: 975 (May 2017), repromulgated LR 46:401 (March 2020).

Ashley Jones Tullier
Executive Director

2003#004

Notices of Intent

NOTICE OF INTENT

Department of Economic Development
Office of Entertainment Industry Development

Louisiana Entertainment Development Fund
(LAC 13:III.Chapter 21)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development proposes to enact program rules for issuance of awards from the fund known as the Louisiana Entertainment Development Fund created by Act 223 of the 2017 Regular Session of the Louisiana Legislature.

Title 13
ECONOMIC DEVELOPMENT
Part III. Financial Assistance Programs
Chapter 21. Louisiana Entertainment Development Fund
Subchapter B. Louisiana Filmmaker Matching Grants

§2125. Preamble and Purpose

A. Film festivals, fellowships, filmmaking labs, and other entertainment initiatives designed to champion indigenous filmmaking talent provide vital opportunities for new and aspiring filmmakers to showcase their work and receive feedback, and support the state's long-term goal of achieving an independent, self-supporting filmmaking industry.

B. The purpose of the program is to support filmmakers statewide by providing matching funds to existing arts and film organizations with film festivals, film grant programs, fellowships, filmmaking labs, and other entertainment initiatives designed to champion indigenous filmmaking talent as approved by LED, as a means of ensuring a high-quality filmmaker matching grant program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2127. Definitions

Applicant—the arts or film organization requesting a matching award from LED under this program.

Award—funding approved under this program for eligible matching funds.

Award Agreement—that agreement or contract hereinafter referred to between the training provider and LED, 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.

LED—Louisiana Department of Economic Development, or their designee, including any third party administrator engaged by LED.

OEID—Office of Entertainment Industry Development.

Program—the Education Development Grant Program.

Secretary—Secretary of the Department of Economic Development, or designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2129. General Principles

A. The following general principles will direct the administration of the program.

1. Awards are not to be construed as an entitlement for companies, and the secretary has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for the award, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of the applicants' award status.

2. Award amounts may vary at the discretion of LED, up to a maximum of $100,000 per applicant, per year.

3. LED shall negotiate with each applicant seeking an award based on the individual merits of each project.

4. Contracts for awards shall contain "clawback" (or refund) provisions to protect the state in the event of a default.

5. Award funds shall be used for the approved project only.

6. Awards may be administered by LED through OEID, or LED may use funds to contract with a third party administrator to undertake such activities.

7. Applications will be accepted on a year round basis, subject to availability of funding in any given year, or as otherwise determined by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2131. Eligibility

A. An eligible applicant is a non-profit arts or film organization approved by LED, with a proven track record of organizing film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent as approved by LED.

B. Applicants must demonstrate a track record of successful organization and operations that have been in effect for at least two years. Start-up companies or training providers with less than two years of documented program history or performance shall be ineligible for this program, unless evidence of funding can be provided from established arts, film or entertainment organizations, as approved by LED

C. An applicant 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 LED in which the company is in default and/or is not in compliance.

D. Applicants must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2133. Criteria

A. LED will consider various factors when determining which proposal will be funded. Among the factors which may be taken into account in the review of the award requests are the following:

1. needs of the entertainment industry;
2. disbursement of funding statewide;
3. unique or innovative nature of the proposed project;
4. availability of other federal, state, local or private funding programs for the project;
5. the terms of the "clawback" (or refund) provisions, in the event of a default;
6. evidence of likely success of project;
7. availability of funding; and
8. best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2135. Application Procedure

A. The applicant(s) must submit an application to LED, or if a third party administrator has been engaged, as otherwise directed by LED, which may be in letter form or in a more formal application format, as directed by LED, which shall contain, but not be limited to the following:

1. an overview of the arts organization, its history, and the business climate in which it operates;
2. a preliminary budget, overall description of the proposed film initiative, and funding to be provided;
3. information evidencing eligibility;
4. an articulation of any relevant factors in §2133; and
5. any additional information required to make a determination of qualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§2137. General Award Provisions

A. In the event the Secretary determines, in his discretion, that an award would be appropriate, an award agreement shall demonstrate the intent and commitments of the applicant and LED to enter into an award agreement consistent with the Constitution and laws of the state of Louisiana and with these rules.

1. The award agreement will specify the amount of the award, the terms and conditions of the award, the performance objectives expected of the applicant and the compliance requirements in exchange for the award. Under the agreement, LED or its designated third party administrator will oversee the progress of the project.

2. Award funds will be disbursed to the applicant on an as-needed reimbursement basis following submission of required documentation to LED or its third party administrator, sufficient to demonstrate compliance, as set forth in the award agreement between the parties.

3. 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 applicant in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED.

4. In the event an applicant knowingly files a false statement in its application or in subsequent compliance documentation, the applicant may be guilty of the offense of filing false public records, and may be subject to the penalty provided in R.S. 14:133.

5. LED shall retain the right, for itself, for the Legislative Auditor, and for the Division of Administration, to require and/or conduct financial and performance audits of a project, including all relevant documents of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

Subchapter C. Loan Guarantee Program—Reserved.

Subchapter D. Deal Closing Fund Reserved.

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Small Business Analysis

All entities requesting funding from this program must provide documents sufficient to show eligibility for and compliance with all requirements for funding. A handful of small businesses, mainly non-profit entities or entertainment organizations may be impacted, but the benefit from additional matching award funding, at a nominal cost of some additional planning and paperwork associated with the application process, reports and invoices for reimbursement should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Chris Stelly through the close of business on Friday, April 24, 2020 at Department of Economic Development, 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to chris.stelly@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 3 p.m. on Monday, April 27,

2020 at the La Salle Building, La Belle Room, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Entertainment Development Fund

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be an increase in expenditures of the Department of Economic Development (LED) as a result of the rules promulgated to provide guidelines and application procedures for the Louisiana Economic Development Fund (Fund) created by Act 223 of 2017.

Act 223 of 2017 created the Louisiana Entertainment Development Fund for education development initiatives, matching grants for Louisiana filmmakers, a loan guarantee program, and a deal closing fund. Expenditures of the LED will consist of grant awards to non-profit arts or film organizations with a proven track record of organizing film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent, as approved by LED. These awards may provide additional funding for indigenous filmmaker initiatives. Award amounts may vary at the discretion of the Department, with a maximum of $100,000 per applicant, per year.

Administration of the awards will be carried out utilizing existing staff and resources at LED. Administration may also be handled by a third-party administrator (TPA). Should LED hire a TPA, administrative fees would be up to 10% of any award.

There may also be an increase in expenditures of those non-profit arts or film organizations to the extent that they successfully participate in the competitive grant program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be an increase in revenues of the Department of Economic Development (LED).

Act 223 of 2017 provides that for film projects that apply to LED after July 1, 2017, a transfer fee of 2% of the tax credit transfer value is placed in the fund. A total of 25 percent is allocated to the Louisiana Department of Revenue (LDR) for administrative purposes and 75 percent to the Department of Economic Development for education development initiatives, matching grants for Louisiana filmmakers, a loan guarantee program, and a deal closing fund. The Department of Economic Development will see increased revenues as a result of this transfer fee. The Department estimates annual revenues as high as $2.7 M could be generated based on the maximum transfer rate. However, actual total collections to date are approximately $1.8 M. Since the transfer fee projections are occurring under the auspices of the $150 M credit issuance and $180 M claims caps, aggregate revenues for the state will not be affected.

Those non-profit arts or film organizations that organize film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent may see an increase in their revenue as a result of the grant award, to the extent that they successfully participate in the competitive grant program.

The proposed rule change will not affect local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Non-profit arts or film organizations may benefit from additional revenues should they choose to participate in the LED grant program. The cost to these entities may include the cost of some additional planning and paperwork requirements associated with the application process, reports, and invoices for reimbursement. Those Louisiana businesses, including small businesses (mainly non-profit entities) in the entertainment industry will benefit from better trained and more productive filmmakers. Louisiana residents will benefit from enhanced employment opportunities in the Louisiana entertainment industry.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The program's goal is to make workers more employable in the Louisiana entertainment industry. The competitiveness of Louisiana businesses should be enhanced as employees become better equipped to adapt to the demands of this industry.

Anne G. Villa	Evan Brasseaux
Undersecretary	Staff Director
2002#018	Legislative Fiscal

NOTICE OF INTENT

Department of Economic Development
Office of Entertainment Industry Development

Sound Recording Investor Tax Credit Program
(LAC 61:I.Chapter 65)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development proposes to amend the Sound Recording Investor Tax Credit Program (R.S. 47:6023) to align the rules with current statutory provisions and administrative practices.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 65. Louisiana Sound Recording Investor Tax Credit Program

§6531. Purpose and Description

A. The purpose of this program is to encourage development in Louisiana of a strong capital and infrastructure base for sound recording productions in order to achieve an independent, self-supporting sound recording industry, and to encourage investments in multiple state-certified sound recording production projects.

B. Approvals and certifications as to whether a project qualifies as a state-certified production as required for Sound Recording Investor Tax Credits are not to be considered as entitlements for sound recording production companies, and the Louisiana Department of Economic Development shall have the discretion to determine whether or not each particular sound recording, meets the criteria for such qualification as provided herein.

C. These rules implement the Louisiana sound recording investor tax credit pursuant to R.S. 47:6023.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1347 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:304 (February 2010), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:881 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§6533. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Base Investment—the actual investment made and expended in the state by a state-certified production as production expenditures incurred in this state that are directly used in state-certified production or productions.

* * *

Investor—any individual or entity that makes an investment in a state-certified production, including but not limited to any individual or entity that is identified as a source of funds for a state certified production on its expenditure verification report, or any tax credit broker, individual or entity identified as an irrevocable designee for receipt of tax credits.

* * *

Project Completion—completion or end date outlined in the project application, or as otherwise approved in writing by LED.

Qualified Music Company or "QMC"—an entity authorized to do business in Louisiana, engaged directly or indirectly in the production, distribution and promotion of music, certified by the secretary as meeting program eligibility criteria, and executing a contract providing the terms and conditions for its participation.

* * *

Resident Copyright—the copyright of a musical composition written by a Louisiana resident or owned by a Louisiana-domiciled music company as evidenced by documents of ownership such as registrations with the United States copyright office or performing rights organizations which denote authors and music publishing entities.

* * *

State-Certified Musical Recording Infrastructure Project—repealed.

* * *

Source within the State—a physical facility in Louisiana, operating with posted business hours and employing at least one full-time equivalent employee.

State-Certified Production—a sound recording production or a series of productions occurring over the course of a 12-month period, including but not limited to master and demonstration recordings, and costs related to such production or productions that are approved by the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Department of Revenue, LR 34:1347 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:304 (February 2010), LR 42:37 (January 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:881 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§6535. Rules of Application

A. The sound recording investor tax credit authorized by R.S. 47:6023(C) may be earned and claimed as follows.

1. There is authorized a credit against the state income tax for investments made in state-certified productions, which credit will be earned by investors at the time expenditures are certified by the Louisiana Department of Economic Development according to the total base investment certified for the sound recording production company per calendar year. No credit shall be allowed for any expenditures for which a credit was granted under R.S. 47:6007.

2. - 2.b.i. …

c. for applications by qualified music companies ("QMC's") for state certified productions, received on or after June 18, 2019:

i. to the extent that the base investment by a QMC is expended on a sound recording production of a resident copyright, the investor shall be allowed an additional ten percent increase in the base investment rate.

3. -7. …

8. Expenditure Verification Report Fee. The department shall directly engage and assign a CPA to prepare an expenditure verification report on an applicant's cost report of production or project expenditures. Applicants shall submit an advance deposit at the time of application, and shall later be assessed the department's actual cost based upon an hourly rate as provided in R.S. 36.104.1, in the amounts set forth below:

a. for applicants with project expenditures of at least $10,000 but less than $25,000, an advance deposit of $750, with a maximum fee of $1,500;

b. for applicants with project expenditures of at least $25,000, an advance deposit of $1,500, with a maximum fee of $3,000;

c. for applicants with project expenditures of at least $50,000, but less than $100,000, an advance deposit of $2,500, with a maximum fee of $5,000;

d. for applicants with project expenditures of more than $100,000, an advance deposit of $3,750, with a maximum fee of $7,500;

e. any unused balance shall be refunded to the applicant within 60 days following receipt of CPA's final invoice and payment of all CPA costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:305 (February 2010), LR 42:38 (January 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:881 (July 2019), repromulgated by the Department of Economic Development, Office of Business

Development, LR 45:881 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§6537. Certification

A. Initial Certification of State-Certified Productions

1. To obtain the approval of the department for a "state-certified production" as required by R.S. 47:6023(B)(5) and (6), the sound recording production company that will produce the sound recording production must submit a written request to the department for approval of the production as a "state-certified production" and setting forth the following facts, when applicable:

a - l.vii. …

2. After review, and upon a determination of qualification, the department shall submit its initial certification of a project as an "initial state-certified production" to investors and to the Secretary of the Department of Revenue, containing a unique identifying number.

3.a. The applicant shall countersign the initial certification letter, acknowledging the conditions therein stated, and return a countersigned original to the department within 30 business days of receipt.

b. If a countersigned original is not returned to the department within the allotted time frame, it shall be nullified unless reissued or confirmed by the department.

4.a. For projects with applications received by LED prior to 2020 rule promulgation, the initial certification shall be effective for expenditures made no more than 12 months prior to the date of application and shall be valid until the project is complete.

b. For projects with applications received by LED on or after 2020 rule promulgation, the initial certification shall be effective for qualifying expenditures made within a period 12 months prior to the date of application and 12 months after the date of initial certification, as outlined in the initial certification letter. Expenditures outside of this approved initial certification period shall not qualify for tax credits.

B. Final Certification of Sound Recording Investor Tax Credits

1. For projects with applications received by LED prior to 2020 rule promulgation, upon project completion, or for projects with applications received by LED on or after 2020 rule promulgation, no later than six months after the expiration of the initial certification period, the applicant shall make a request to LED to proceed to final certification by submitting to the department a cost report of production expenditures to be formatted in accordance with instructions of the department, after which time all claims to tax credits shall be deemed waived. The applicant shall make all records related to the cost report available for inspection by the department and the CPA selected by the department to prepare the expenditure verification report. After review and investigation of the cost report, the CPA shall submit to the department an expenditure verification report. The department shall review such expenditures and shall issue a tax credit certification letter to the investors and the Louisiana Department of Revenue indicating the amount of tax credits certified for the state-certified production.

a. - c …

2. After receiving a written request from an investor and after the meeting of all criteria, the department shall issue a letter of certification to such investor signed by the secretary reflecting the investor's name, the dollar amount of sound recording investor tax credits earned by the investor pursuant to R.S. 47:6023(C) through the date of such request, the calendar year in which the sound recording investor tax credits were earned by the investor, the state-certified production with respect to which the investor earned the sound recording investor tax credits, and the identifying number assigned to such state-certified production.

3. …

4. Once certification of a project has been granted under the criteria established within this provision and pursuant to R.S. 47:6023, the granting of such credit will be based upon a first come, first serve basis of the approved cost report or audit and shall be set for a maximum aggregate amount not to exceed $2,160,000 during any calendar year. For purposes of this Section the applicant will be considered the investor.

a. However, 50 percent of the aggregate amount of credits certified each year shall be reserved for QMC's.

b. No more than $100,000 in tax credits may be granted per project, per calendar year.

5. - 6.c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:305 (February 2010), amended LR 37:310 (January 2011), LR 42:38 (January 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:883 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§6541. Illustrative Examples of Production Expenses

A. - C.1. …

2. Producer fees may be subject to limitation as follows.

a. Applicants must provide detailed accounting and verification of expenditures relating to "all-in producer deals." For example, audits must reflect payments made to all vendors, and Producer Agreements should reflect the scope of services to be provided in Louisiana and include a clause allowing the State to audit the Producer's accounting records directly related to any expenses claimed for tax credits.

b. LED establishes a benchmark of up to 20 percent of total qualifying Louisiana production expenditures for Producers Fees (for the calculation, Louisiana production expenditures exclude any producer fees), which shall be considered fair market value. While applicants may enter into producer agreements with fees in excess of LED's approved benchmark, producer fee payments exceeding 20 percent may not be eligible to earn tax credits.

c. LED establishes a benchmark of up to 12 percent of total qualifying Louisiana production expenditures (for the calculation, Louisiana production expenditures exclude any producer fees), for related-party producer fee expenditures, which must be supported by a cost report or audit, when applicable, and documentation of services provided. Fair market value for related-party services

rendered must also be established by submission of third-party contracts for similarly-sized projects and scope of work or other documents as approved by LED. While productions may enter into agreements with fees in excess of LED's approved benchmark, payments exceeding 12 percent will not be eligible to earn tax credits unless the benchmark is exceeded through expenditures (supported by a cost report or audit, when applicable, and documentation of services provided) under third-party contracts only with no related-party expenditures.

3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:38 (January 2016), repromulgated by the Department of Economic Development, Office of Business Development, LR 45:885 (July 2019), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Small Business Analysis

All entities requesting funding from this program must provide documents sufficient to show eligibility for and compliance with all requirements for funding. A handful of small businesses, mainly musicians and artists may be impacted, but the benefit from additional funding for their projects, at a nominal cost of some additional planning and paperwork associated with the application process, reports and invoices for reimbursement should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Lacey Chataignier through the close of business on Friday, April 24, 2020 at Department of Economic Development, 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to Lacey.Chataignier@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 1 p.m. on Monday, April 27, 2020 at the La Salle Building, La Belle Room, Department of Economic Development, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Sound Recording Investor Tax Credit Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no impact on expenditures of the Louisiana Department of Economic Development (LED) as a result of the proposed rule setting forth guidelines required by portions of Act 275 of 2017. Revisions align the rules with statutory provisions and administrative practices, including deleting provisions relating to the now sunset infrastructure program and reducing the costs of expenditure verification fees. Any administrative duties brought about by the proposed rule change will be carried out by utilizing existing staff and resources at LED.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be reductions in revenues to the State General Fund (Direct) to the extent that entities take advantage of this tax credit; any decrease is indeterminable at this time. All activity must operate within the auspices of the $2.16 M program cap and $100,000 project cap per calendar year.

The Sound Recording Investor Tax Credit Program, established in 2005, encourages development in Louisiana of a strong capital and infrastructure base for sound recording productions in order to achieve an independent, self-supporting sound recording industry. The current program cap is $2.16 M; however, LED has never issued the maximum amount of credits allowed per year. The total credits certified per year for 2017-2020 are as follows: FY 2017 $57,343; FY 2018 $41,672l; FY 19 $43,278; FY 20 $74,166.

The proposed rule change will not affect local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be reduced costs for businesses as a result of reduced expenditure verification report fees. These fees are held in escrow and used by LED for payment of the expenditure verification report; any remaining balance is later refunded to the entity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will continue to gain competitively over companies that do not receive the program's benefits.

Anne G. Villa	Evan Brasseaux
Undersecretary	Staff Director
2002#017	Legislative Fiscal Office

NOTICE OF INTENT

Economic Development
Office of Entertainment Industry Development

Sound Recording Investor Tax Credit Program
Qualified Music Company Payroll Tax Credit Program
(LAC 61:I.Chapter 71)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development proposes to

amend rules for the Sound Recording Investor Tax Credit Program (R.S. 47:6023) to provide guidance for the newly created Qualified Music Company Payroll Tax Credit provided by Act 275 of the 2017 Regular Session of the Louisiana Legislature.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 71. Sound Recording Investor Tax Credit Program—Qualified Music Company Payroll Tax Credit Program

§7101. General

A. Purpose. The purpose of this chapter is to implement the Qualified Music Company Payroll Tax Credit Program as established by Act 275 of the 2017 Regular Session of the legislature, contained within the Sound Recording Investor Tax Credit Program, pursuant to the provisions of R.S. 47:6023.

B. Program Description. The Qualified Music Company Payroll Tax Credit Program provides payroll tax credits as an inducement for qualified music companies ("QMC's) to permanently locate new or expand existing operations in Louisiana.

C. No other LED incentives for QMC payroll expenditures. A QMC shall not receive any other incentive administered by LED that is based directly upon any QMC Payroll, for which the QMC is obligated or has received benefits under the QMC Contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§7103. Definitions

A. Terms not otherwise defined in this Subchapter shall have the same meaning given to them in R.S. 47:6023, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Affiliate—

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

Baseline Jobs—the number of employees of a QMC, including affiliates, working an average of 30 hours per week, during the payroll period including the twelfth of the month, in the month completed prior to the application date, as verified on the applicable ES-4 form, quarterly wage report or any other documentation requested by the office to confirm baseline jobs. Baseline Jobs must be maintained in any year for which the QMC requests tax credits.

Baseline Job Payroll—W-2, Box 1 wages for Baseline Jobs.

Contract Effective Date—the date the application and application fee are received by LED, or a later contract effective date as agreed to between the parties. The contract effective date cannot be earlier than the date the application and application fee are received by LED.

Department—Louisiana Department of Economic Development, also known as "LED"

LDR—Louisiana Department of Revenue

Minimum Payroll Threshold—a minimum QMC payroll of $35,000 per new job, or for a partial year employee, shall mean $2,917 per month for each month from the date of initial employment.

New Jobs—

1. full-time employment in Louisiana, working an average of 30 hours or more per week,
2. filled by Louisiana residents,
3. at the project site,
4. who were not previously on the QMC's Louisiana payroll, nor previously on the payroll of the QMC's parent entity, subsidiary, or affiliate in Louisiana, or previously on the payroll of any business whose physical location and employees are substantially the same as those of the QMC in Louisiana, as confirmed by an independent CPA in an annual expenditure verification report submitted to LED for review, and approved by the secretary.

Office—Office of Entertainment Industry Development, also known as "OEID"

Project Site—the facility name and street address, as stated in the QMC contract.

QMC Payroll—W-2, Box 1 wages. For a partial year employee, the minimum payroll threshold may be met if the payroll for the partial year employee meets or exceeds $2,917 per month for each month from the date of initial employment.

QMC Payroll Tax Credits—a tax credit for expenditures related to QMC Payroll, authorized by the Sound Recording Investor Tax Credit Program, R.S. 47:6023.

Resident—a natural person who is required to file a Louisiana resident individual income tax return, as verified by independent CPA's on the annual verification report.

Secretary—secretary of the Department of Economic Development

Total Jobs—the number of baseline jobs plus new jobs.

Total Payroll—the amount of baseline jobs payroll plus new jobs payroll.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§7105. QMC Application and Application Fee

A. Application

1. A QMC application form shall be submitted to the office, via registered mail or if available, submitted electronically, to include;

a. a detailed company description, explaining how the business is directly or indirectly engaged in the production, distribution and promotion of music;

b. number of current and proposed new employees, with payroll estimates and average hours worked per week;

c. disclosure of affiliates;

d. most recent ES-4 form, quarterly wage report or other wage and tax reporting documentation as requested by the office;

e. any other additional information as requested by the office or the secretary.

B. Application Fee.

1. A non-refundable application fee of 0.5 percent of the estimated total tax credits, with a minimum fee of $500, and a maximum fee of $15,000, shall be submitted with the QMC application, payable to the office, as required by R.S. 36:104.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§7107. QMC Application Review and Qualification Determination

A. Application review

1. When determining which applicants may qualify, the office and the secretary shall consider a number of discretionary factors, including but not limited to:

a. type of music business;

b. number and payroll of current and proposed new jobs;

c. location of facility that will be the project site;

d. number and location of similar music facilities in Louisiana;

e. business history, i.e. start-up company or track record of established business;

f. the impact of the business on the overall economy of the state;

g. conviction for a criminal offense related to obtaining or attempting to obtain tax credits;

h. availability of tax credits in any given year.

B. Qualification Determination

1. Upon a determination of qualification, LED will contact applicant to discuss contract terms and to request an expenditure verification report fee advance deposit of $7,500.

2. Upon a determination of non-qualification, the office and the secretary shall issue a denial letter to the applicant indicating the reason for denial, and the office shall provide written notice to the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means. The denial letter shall be the final agency decision of LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§7109. QMC Contract

A. Upon a determination of qualification, and receipt of the $7,500 expenditure verification report fee advance deposit, the office and the secretary may enter into a QMC contract with an applicant, which shall include but not be limited to;

1. job and payroll estimates, per calendar year;

2. tax credit reservation schedule, per fiscal year;

3. expenditure verification report fees;

4. procedure for requesting final certification of tax credits;

5. requirements for eligibility to receive final certification of tax credits, including but not limited to retention of baseline jobs, establishment of new jobs and attainment of minimum payroll threshold;

6. term for a period of up to five years, as may be offered by the office and the secretary;

7. designation of a single project site in Louisiana—the QMC payroll tax credits the applicant shall receive will be based upon the operations at the project site;

B. A fee of $250 shall be filed with a request for any contract amendment, including but not limited to, a revision to the tax credit reservation schedule, a change in ownership, a change in name or a change in location.

C. An applicant may have multiple QMC contracts covering multiple locations. The eligibility of each location shall be determined separately;

D. For each QMC contract, LED shall certify that the applicant has a net overall increase in employment statewide for each new job;

E. A QMC contract may, with the written approval of the office and the secretary, be transferred to a business entity purchasing or continuing the operation of a project site. Upon such transfer, the employment baseline shall be that of the transferee or purchaser during the 45 day period prior to the transfer or purchase;

F. The QMC contract may be renewed at the discretion of the office and the secretary, for an additional five years, if the applicant has complied with the terms of the QMC contract and has not performed any act, nor failed to perform any act, which would have made the applicant liable for suspension, and has otherwise complied with the provisions of R.S. 47:6023. The same approval process as used for the original application and QMC contract will be followed for renewal QMC contracts, including additional application and expenditure verification report advance deposit fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§7111. QMC Final Certification Procedures

A. By March 1 of every year, QMC's may request final certification of credits by filing its employee W-2s with the office and its assigned CPA, and any other additional information as requested by LED to verify conformance with statutory requirements.

B. An expenditure verification report shall then be completed by an independent certified public accountant, licensed in the state of Louisiana and assigned by LED. Failure to submit W-2s by March 1 may result in credit issuance being delayed into the next available fiscal year.

C. After receipt and review of the expenditure verification report, and any other supporting documentation, the office and the secretary shall issue a final tax credit certification letter to the QMC indicating the type, credit rate

and amount of credits granted, in accordance with the provisional allocations and amounts set forth in the tax credit reservation schedule, or a written denial.

a. In the event that less than the reserved amount of tax credits has been verified, any unused credits will be released and made available for issuance by the office.

b. In the event that more than the reserved amount of tax credits has been verified, the office shall preliminarily issue tax credits in an amount not to exceed the total set forth in the Tax Credit Reservation Schedule, but may at its discretion, subsequently issue a supplemental tax credit for any excess expenditures, subject to availability of credits in any given fiscal year.

D. Tax credits shall be issued on a first come, first serve basis, until the QMC or total cap have been met, in accordance with program rules.

E. If the total amount of credits applied for in any particular year exceeds the total or QMC cap for that year, the excess shall be treated as having been applied for on the first day of the subsequent year.

F. After review of the expenditure verification report, final tax credit certification letter (if any), and any other pertinent factors, including but not limited to availability of tax credits in any given year, future year tax credit reservations may be revised, by amending the Tax Credit Reservation Schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

§7113. Application of QMC Payroll Tax Credits

A. The QMC payroll tax credit can be used to offset taxes, penalties and interest.

B. Notwithstanding the amount of the credit earned by the investor and issued by LED, application of tax credits earned and claimed against an investor's income tax liability shall never reduce the investor's income tax liability below 50 percent of the amount of the liability prior to application of the credit.

C. Any excess credit may be carried forward for up to five years and shall be applied against the subsequent income tax liability of the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 46:

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Small Business Analysis

All entities requesting funding from this program must provide documents sufficient to show eligibility for and compliance with all requirements for funding. A handful of small businesses, mainly musicians and artists may be impacted, but the benefit from additional funding for their projects, at a nominal cost of some additional planning and paperwork associated with the application process, reports and invoices for reimbursement should provide a positive impact to any small businesses that choose to apply to the program.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Interested persons should submit written comments on the proposed Rule to Lacey Chataignier through the close of business on Friday, April 24, 2020 at Department of Economic Development, 617 North Third Street, Floor 11, Baton Rouge, LA 70802 or via email to Lacey.Chataignier@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 2 p.m. on Monday, April 27, 2020 at the La Salle Building, La Belle Room, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Sound Recording Investor Tax Credit Program—Qualified Music Company Payroll Tax Credit Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no impact on expenditures of the Department of Economic Development (LED) as a result of the proposed rules establishing guidelines for the Qualified Music Company (QMC) Payroll Tax Credit created by Act 275 of 2017. These encourage development in Louisiana of a strong capital base for sound recording productions by developing a tax and capital infrastructure which encourages private investment. Administration of the tax credits will be carried out utilizing existing staff and resources at LED.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be reductions in revenues to the State General Fund (Direct) to the extent that entities take advantage of this tax credit. The QMC Payroll Tax Credit is capped at $2.16 M and $100,000 project cap, per calendar year.

There will be a benefit to state and local governmental units to the extent that an expansion of an existing business and/or new business is established in their municipality and/or parish. The state and local governmental units will benefit from new job creation and the increase in tax revenue as a result of those new jobs. The extent of the impact will be determined by the size and location of the new entities.

The proposed rules further state that QMCs receiving payroll tax credits shall not receive any other LED-administered incentives based upon a QMC's payroll.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

All entities requesting funding from this program must provide documents sufficient to show eligibility for and compliance with all requirements for funding. A handful of small businesses, mainly musicians and artists may be impacted, but the benefit from additional funding for their projects, at a nominal cost of some additional planning and paperwork associated with the application process, expenditure

verification reports, and invoices for reimbursement should provide a positive impact to any small businesses that choose to apply to the program.

Firms who are eligible for QMC payroll tax credits may realize a reduction in tax liabilities to the extent they qualify for the credit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will continue to gain competitively over companies that do not receive the program's benefits.

Anne G. Villa	Evan Brasseaux
Undersecretary	Staff Director
2003#016	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools—Charter School Renewals and Virtual Charter School Attendance
(LAC 28:CXXXIX.1505 and 3709)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:CXXXIX (Bulletin 126). Proposed amendments in §1505 clarify renewal criteria for BESE-authorized charter schools and ensure that the state superintendent of education considers student performance and/or growth data of neighboring and comparable schools when making a recommendation. Additionally, proposed amendments in §3709 outline student attendance policy requirements for state-authorized virtual charter schools, in accordance with Act 398 of the 2019 Regular Legislative Session.

Title 28
EDUCATION
Part CXXXIX. Bulletin 126—Charter Schools
Chapter 15. Charter Renewal
§1505. Eligibility for Renewal of BESE-Authorized Charter Schools (Formerly §1503.B)

A. - B.2.b.i. …

C. When a charter school does not meet the criteria for renewal in the initial or subsequent charter term, BESE may renew the charter based upon the recommendation of the state superintendent. Such renewal may include conditions to be incorporated in the charter school contract and may require the charter operator to phase out operation of the school over the course of the renewal term. Prior to recommending such renewal, the following must be considered:

1. nonrenewal may require students to attend lower-performing schools;

2. available academic data, including student performance data and/or student growth data of neighboring and comparable schools, has been reviewed; and

3. efforts to find a new, high-quality operator for the charter school have failed.

D. - F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:3981, and 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:871 (March 2011), LR 37:2388 (August 2011), LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 38:3119 (December 2012), LR 39:1436 (June 2013), LR 39:3066 (November 2013), LR 40:1323 (July 2014), LR 41:1264 (July 2015), LR 44:238 (February 2018), LR 46:

Chapter 37. Virtual Charter Schools
§3709. Virtual Charter School Attendance

A. State-authorized virtual charter schools are required to enforce student attendance and address cases of student truancy and unexcused absences.

B. Virtual charter school operators must annually submit attendance policies to the department for approval to ensure compliance with applicable laws and regulations. The state superintendent will set forth the process for attendance policy submission.

C. Attendance policies for virtual schools must include:

1. a definition of the method in which attendance is measured for students enrolled at the school including, but not limited to, minimum expectations regarding active class participation, time spent connected online, and/or completion and submission of assignments;

2. a plan regarding the method in which student attendance will be recorded and enforced; and

3. a plan for providing orientation including the school attendance policy to enrolled students and parents or legal custodians, with such orientation occurring upon enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

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 earning 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

Poverty Impact Statement

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on the rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below one hundred percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No

2. Will the proposed rule affect early childhood development and preschool through postsecondary education development? Yes

3. Will the proposed rule affect employment and workforce development? No

4. Will the proposed rule affect taxes and tax credits? No

5. Will the proposed rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until noon, April 9, 2020, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 126—Charter Schools—Charter School Renewals and Virtual Charter School Attendance

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There may be adjustments in state Minimum Foundation (MFP) costs and an increase in costs for state-authorized virtual charter schools and local school districts as a result of the proposed rule changes requiring the adoption and enforcement of student attendance policies, pursuant to Act 398 of 2019.

The rule requires virtual charter schools to adopt an attendance policy which includes a definition of attendance based on, at a minimum, expectations regarding active class participation, time spent connected online, and/or completion and submission of assignments. To the extent that currently enrolled students do not meet the new attendance policy, it may result in students identified as truant and prompt certain procedural actions, in accordance with virtual charter school policy. State MFP allocations are driven by student counts taken on Feb. 1 and Oct. 1, therefore policies which affect student count could either increase or decrease state block grant funding for the virtual charter school.

There is an indeterminable impact to virtual charter schools. Costs associated with the development of such policies and orientation for enrolled students and parents are not expected to be material. However, because virtual charter schools serve students statewide, there could be increased costs to the extent the virtual charter school seeks assistance from local school districts for truancy enforcement actions.

Additionally, the proposed rule requires the review of certain performance and student growth data as part of the renewal of BESE-authorized charter schools. This codifies existing practice, thus there are no additional costs associated with this change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

In the event that virtual charter schools identify students as truant under their new attendance policies and this results in a decrease in student enrollment counts, there may be reductions to their allocations from the MFP. Potential impacts are indeterminable at this time.

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 as a result of the proposed policy revisions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux	Evan Brasseaux
Deputy Superintendent	Staff Director
2003#013	Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs and Criminal Investigations Division

Hazardous Waste Generator Improvements
(LAC 33:V.Chapters 1, 3, 5, 10, 11, 13, 15, 17, 18, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 35, 38, 40, 41, 42, 43, 45, 49, 51, and 53)(HW124)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations. (HW124)

The proposed Rule adopts the federal Generator Improvements Rule which amends the hazardous waste program as relating to generators. A summary of the revisions are as follows: reorganizes the regulations to make

them more user-friendly, provides a better understanding of the program, addresses regulatory gaps to strengthen environmental protection, provides greater flexibility for generators to manage hazardous waste, and makes corrections to address inadvertent errors and remove obsolete references. The proposed Rule will also provide additional clarification and updates specific to the hazardous waste program in Louisiana.

Louisiana is authorized by the U.S. Environmental Protection Agency (EPA) to administer the hazardous waste program under Subtitle C of the Resource Conservation and Recovery Act. One requirement for retaining authorization is to maintain state hazardous waste regulations so that they are equivalent to or more stringent than corresponding federal regulations. This includes adoption of the Generator Improvements Rule published on November 28, 2016. Since inception of the regulatory hazardous waste program in 1980, EPA and states have become increasingly aware of the need for more clarity, consistency, and flexibility. The majority of these issues were identified in several program evaluations conducted by EPA that included feedback from the regulated community and other stakeholders. The purpose of this rulemaking is to adopt the federal Generator Improvements Rule which contains many of the recommendations noted in these evaluations. Additionally, Louisiana will be seeking additional changes to go along with EPA improvements to the program to increase both environmental protection and business flexibility. 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 V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or individual unit at a treatment, storage, and disposal (TSD) facility under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Wastes that are excluded from regulation are found in this Section.

A. EPA Identification Numbers and Notification of Hazardous Waste Activity

1. Within 90 days after the promulgation or revision of these regulations anyone subject to these regulations who has not previously notified the department on the Notification of Hazardous Waste Activity Form (HW-1), or whose notification on the HW-1 form is not approved, must notify the Office of Environmental Services, using the HW-1 form.

2. Within 90 days after changes in waste characteristics or changes in these regulations that result in changes in the notification, interim status facilities must revise their notification form by resubmitting a corrected copy of the HW-1 form.

3. All notifications of hazardous waste activity received must be in accordance with the department's notification procedures and must receive an active EPA identification number issued through the state of Louisiana.

4. All facilities with an active EPA identification number shall be subject to requirements in LAC 33:V.Subpart 1.

5. Approved Forms for Notification of Hazardous Waste Activity

a. Notification of Hazardous Waste Activity Form (HW-1). All notifications of hazardous waste activity shall be made on the most current HW-1 form approved by the department and found on the department's website. The department may provide the HW-1 form in either a hardcopy or web-based format or both.

b. Other forms approved by the department. At the discretion of the department, other forms may be approved for use. In these instances, the official notification of approval forms will be found on the department's website.

6. Out-of-date forms and forms not approved by the department. Notification of hazardous waste activity submitted on forms not approved by the department, or on forms that are not current, will be rejected.

a. If rejected, the applicant shall resubmit the notification using the appropriate, approved form.

b. Resubmittals shall be submitted timely to the Office of Environmental Services. Original due dates will not be extended for resubmittals due to an unapproved or out-of-date form.

7. See LAC 33:V.1017 for additional notification requirements for generators of hazardous waste.

8. Facilities who cease hazardous waste activities shall notify the Office of Environmental Services within 30 days using the department's Notification of Hazardous Waste Activity Form (HW-1) or other forms approved by the department in accordance with Subparagraph 105.A.5.b of this Section.

9. Failure to submit a timely and complete Notification of Hazardous Waste Activity Form (HW-1), obtain an active EPA identification number or notify the department of changes to the notification shall constitute a violation of these regulations and subject the applicant to enforcement action up to and including the assessment of civil penalties.

B. - D.1.f. …

g. spent sulfuric acid used to produce virgin sulfuric acid provided it is not *accumulated speculatively* as defined in LAC 33:V.109.*Solid Waste*;

h. - t.iii.(d). …

iv. nothing in this Section preempts, overrides, or otherwise negates the provision in LAC 33:V.1005 that requires any person who generates a solid waste to determine if that waste is a hazardous waste; and

v. interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in Subclause D.1.t.iii.(b) of this Section, and that afterward will be used only to store hazardous secondary materials excluded under this Subparagraph, are not subject to the

closure requirements of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37 and 43;

u. - x.viii. …

ix. persons operating under this exclusion must meet the requirements of the *Code of Federal Regulations* at 40 CFR 261, subpart M (emergency preparedness and response for management of excluded hazardous secondary materials), July 1, 2017, which are hereby incorporated by reference;

y. - y.v.(d). …

(e). the hazardous secondary material generator must comply with the emergency preparedness and response conditions in 40 CFR 261, subpart M (emergency preparedness and response for management of excluded hazardous secondary materials), July 1, 2017; these requirements are hereby incorporated by reference for this exclusion;

1.y.vi. - 4.c. …

5. Treatability Study Samples

a. Except as provided in Subparagraph D.5.b of this Section, persons who generate or collect samples for the purpose of conducting *treatability studies* as defined in LAC 33:V.109 are not subject to any requirement of LAC 33:V.Chapters 10, 11, 13, 15, or 49, or to the notification requirements of Subsection A of this Section, nor are such samples included in the quantity determinations of LAC 33:V.1009 and 1013.C when:

a.i. - c.iii.(e). …

6. Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to LAC 33:V.Subpart 1 requirements) are not subject to any requirement of LAC 33:V.Chapters 3, 5, 10, 11, 13, 15, 22, 41, and 43 or to the notification requirements of Subsection A of this Section, provided that the following conditions are met. A mobile treatment unit may qualify as a testing facility subject to Subparagraphs D.6.a-k of this Section. Where a group of mobile treatment units is located at the same site, the limitations specified in Subparagraphs D.6.a-k of this Section apply to the entire group of mobile treatment units collectively as if the group were one mobile treatment unit:

a. - i.vii. …

j. the facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under LAC 33:V.109.*Hazardous Waste* and, if so, are subject to LAC 33:V.Chapters 3, 5, 10, 11, 13, 15, 22, 41, 43, and 49, unless the residue and unused samples are returned to the sample originator under the Paragraph D.5 of this Section exemption; and

D.6.k. - L.2. …

a. if a generator is accumulating the waste, the administrative authority will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of LAC 33:V.Chapters 10 and 11. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the administrative authority will hold a public hearing. The administrative authority will provide notice of the hearing to the public and allow public participation at the hearing. The administrative authority will issue a final order after the hearing stating whether or not compliance with LAC 33:V.Chapters 10 and 11 is required. The order becomes effective 30 days after service of the decision unless the administrative authority specifies a later date or unless review by the administrative authority is requested. The order may be appealed to the administrative authority by any person who participated in the public hearing. The administrative authority may choose to grant or to deny the appeal. Final department action occurs when a final order is issued and department review procedures are exhausted; and

L.2.b. - O.2.d.iii. …

iv. the intermediate or reclamation facility shall have the equipment and trained personnel needed to safely manage the hazardous secondary material and shall meet emergency preparedness and response requirements under 40 CFR part 261, subpart M, July 1, 2017, which is hereby incorporated by reference;

O.2.d.v. - R.8.h. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq., and in particular, 2186(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813, 831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564, 567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007), LR 34:614 (April 2008), LR 34:1008 (June 2008), LR 34:1893 (September 2008), LR 34:2395 (November 2008), LR 35:1878 (September 2009), LR 36:2553 (November 2010), LR 38:791 (March 2012), amended by the Office of the Secretary, Legal Division. LR 40:1336 (July 2014), LR 42:2178, 2181 (December 2016), LR 43:1151 (June 2017), repromulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:1523 (August 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§108. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

Editor's Note: The requirements in §108 were repromulgated as independent requirements for very small quantity generators under LAC 33:V.1003.A.1.a and conditions for

exemption for very small quantity generators under LAC 33:V.1009.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:706, 716 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 32:606 (April 2006), LR 36:2554 (November 2010), LR 38:774 (March 2012), amended by the Office of the Secretary, Legal Division, LR 43:1138 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:40 (January 2018), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Act—the Louisiana Environmental Quality Act, R.S. 30:2001, et seq.

* * *

Acute Hazardous Waste—hazardous wastes that meet the listing criteria in LAC 33:4907.A.2 and therefore are either listed in LAC 33:4901.B with the assigned hazard code of (H) or are listed in LAC 33:4901.E.

* * *

Central Accumulation Area—any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either LAC 33.V.1013 (for small quantity generators) or LAC 33:V.1015 (for large quantity generators).

* * *

EPA Identification Number—the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility. An EPA identification number is site-specific. If a facility moves to another location, the owner/operator must obtain a new EPA identification number for the facility.

* * *

Final Closure—the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under LAC 33:V.Chapters 15, 19, 21, 23, 25, 27, 29, 31, 33, 35 and 43 are no longer conducted unless subject to provisions of LAC 33:V.1011, 1013, and 1015.

* * *

Large Quantity Generator—a generator who generates any of the following amounts in a calendar month:

1. greater than or equal to 1,000 kilograms (2200 lbs) of nonacute hazardous waste; or
2. greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in LAC 33:V.4901.B with the assigned hazard code of (H) or LAC 33:V.4901.E; or
3. greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in LAC 33:V.4901. with the assigned hazard code of (H) or LAC 33.V.4901.E.

* * *

Nonacute Hazardous Waste—all hazardous wastes that are not acute hazardous waste, as defined in this Section.

* * *

Partial Closure—the closure of a hazardous waste management unit in accordance with the applicable closure requirements of LAC 33:V.Chapters 10, 11, 13, 15, 17, 18, 19, 23, and 43 at a facility that contains other active hazardous waste management units. For example, a partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

* * *

Personnel or *Facility Personnel*—all persons who work at or oversee the operations of a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

* * *

Small Quantity Generator—a generator who generates the following amounts in a calendar month:

1. greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2200 lbs) of nonacute hazardous waste; and
2. less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in LAC 33:V.4901.B with the assigned hazard code of (H) or LAC 33:V.4901.E; and
3. less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in LAC 33:V.4901. with the assigned hazard code of (H) or LAC 33.V.4901.E.

* * *

Very Small Quantity Generator—a generator who generates less than or equal to the following amounts in a calendar month:

1. 100 kilograms (220 lbs) of nonacute hazardous waste; and
2. 1 kilogram (2.2 lbs) of acute hazardous waste listed in in LAC 33:V.4901.B with the assigned hazard code of (H) or LAC 33:V.4901.E; and
3. 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in in LAC 33:V.4901.B with the assigned hazard code of (H) or LAC 33:V.4901.E.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR

20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008), LR 34:1894 (September 2008), LR 34:2396 (November 2008), LR 36:1235 (June 2010), repromulgated LR 36:1535 (July 2010), amended LR 36:2554 (November 2010), LR 38:774, 781 (March 2012), repromulgated LR 38:1009 (April 2012), amended by the Office of the Secretary, Legal Division, LR 40:1338 (July 2014), LR 41:2600 (December 2015), LR 42:565 (April 2016), LR 42:2178 (December 2016), LR 43:1138 (June 2017), repromulgated by the Office of the Secretary, Legal Affairs and Criminal Investigation Division, LR 43:1531 (August 2017), LR 46:

§110. Incorporation by Reference

A. - D. …

1. "Flammable and Combustible Liquids Code" (NFPA 30) (1977 or 1981), approved for LAC 33:V.1013.C, 1917.B, and 4443;

D.2. - G.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:814 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:656 (April 1998), LR 24:1690 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:270 (February 2000), LR 27:291 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1010 (June 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§301. Authority

A. …

B. This Chapter establishes general conditions for permit standards applicable to treatment, storage, and disposal (TSD) facilities. LAC 33:V.Chapter 5 establishes the contents of the permit application and LAC 33:V.Chapter 7 establishes the administrative procedures for receipt, evaluation, and issuance of TSD permits. LAC 33:V.Chapters 10 and 11 establishes standards applicable to generators of hazardous waste. LAC 33:V.Chapter 13 establishes standards applicable to transporters of hazardous waste. LAC 33:V.Chapter 15 establishes general standards for TSD facilities. LAC 33:V.Chapters 19-32 establish specific technical requirements for various disposal facility components.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§305. Scope of the Permit

A. - B.4. …

C. Specific Exclusions and Exemptions. The following persons are not required to obtain a hazardous waste permit:

1. …

2. generators who accumulate hazardous waste on-site in compliance with all of the conditions for exemption provided in LAC 33:V.1009, 1011, 1013, and 1015;

3. farmers who dispose of hazardous waste pesticides from their own use as provided in LAC 33:V.1003.C;

4. persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulation under LAC 33:V.105.D or 1009 (very small quantity generator exemption);

C.5. - F.1. …

2. If the owner/operator has not submitted a Part II application for a post-closure permit, the owner/operator may petition the administrative authority for a determination that a post-closure permit is not required because the closure met the applicable LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37 closure standards.

F.2.a. - H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 23:567 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1105 (June 1998), LR 24:1690, 1759 (September 1998), LR 25:435 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:708 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3116 (December 2005), LR 33:1625 (August 2007), LR 34:619 (April 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§311. Establishing Permit Conditions

A. - D. …

E. Each RCRA permit shall include permit conditions necessary to achieve compliance with Subtitle II of Title 30 of the Louisiana Revised Statutes and LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 37, and 41. In satisfying this provision the administrative authority may incorporate applicable requirements of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 37, and 41 directly by reference into the permit or establish other permit conditions that are based on these regulations. Each permit issued under Subtitle II of Title 30 of the Louisiana Revised Statutes shall contain terms and conditions as the administrative authority determines necessary to protect human health and the environment.

F. RCRA Permits for Hazardous Waste Combustion Units. If, as the result of an assessment or other information, the administrative authority determines that conditions are necessary in addition to those required under 40 CFR Part 63, Subpart EEE, as incorporated by reference at LAC 33:III.5122, or LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 37, and 41, to ensure protection of human health and the environment, the

administrative authority shall include those conditions in a RCRA permit for a hazardous waste combustion unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), amended by the Office of the Secretary, Legal Affairs Division, LR 34:619 (April 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§321. Modification of Permits

A. - C.2.n.i. …

ii. the requested modification does not comply with the appropriate requirements of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37 or other applicable requirements;

2.n.iii. - 5.c.ii. …

iii. sufficient information to ensure compliance with LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37 standards; and

5.c.iv. - 5.d. …

i. the authorized activities are in compliance with the standards of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37; and

5.d.ii. - 11.c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 15:378 (May 1989), LR 16:614 (July 1990), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1691 (September 1998), LR 25:435 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2466 (November 2000), LR 28:1000 (May 2002), LR 29:319 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2430, 2454 (October 2005), LR 33:2100 (October 2007), LR 34:619 (April 2008), LR 35:1879 (September 2009), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§329. Research, Development, and Demonstration Permits

A. The administrative authority may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 37, or 41. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

A.1. - D.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:220 (March 1990), amended LR 20:1000 (September 1994), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 5. Permit Application Contents

Subchapter A. General Requirements for Permit Applications

§501. Permit Application

A. - C.1. …

a. six months after the date of publication of regulations which first require them to comply with LAC 33:V.Chapters 10, 11, 15, 25, 30, 41 or 43; or

b. thirty days after the date they first become subject to the standards set forth in LAC 33:V.Chapters 10, 11, 15, 25, 30, 41, or 43, whichever first occurs.

2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:300 (February 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2467 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2454 (October 2005), LR 33:2100 (October 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 10. Generators of Hazardous Waste

Editor's Note: Chapter 10 consolidates and reorganizes the requirements for generators formerly contained in LAC:V.108 and Chapter 11.

Subchapter A. General

§1001. Definitions Used in Chapter

A. The following definitions apply to this Chapter.

Condition for Exemption—any requirement in LAC 33:V.1003.C, 1009, 1011, 1013, 1015, or Subchapter C of this Chapter that states an event, action, or standard that shall occur or be met in order to obtain an exemption from any applicable requirement in LAC 33:V.Subpart 1.

Independent Requirement—a requirement of Chapter 10 that states an event, action, or standard that shall occur or be met; and that applies without relation to, or irrespective of, the purpose of obtaining a conditional exemption from storage facility permit, interim status and operating requirements under LAC 33:V.1009, 1011, 1013, 1015, or Subchapter C of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1003. Purpose, Scope and Applicability

A. The regulations of this Chapter establish standards for a generator of hazardous waste as defined in LAC 33:V.109.

1. A person who generates a hazardous waste as defined in LAC 33:V.109 is subject to all the applicable independent requirements in the regulations below.

a. Independent requirements of a very small quantity generator include:

i. LAC 33:V.1005.A-E (Hazardous Waste Determination and Recordkeeping);

ii. LAC 33:V.1007 (Generator Category Determination);

iii. LAC 33:V.1017 (EPA Identification Numbers and Notification of Hazardous Waste Activities for Generators); and

iv. LAC 33:V.5121.C.2 (Annual Fees).

b. Independent requirements for a small quantity generator include:

i. LAC 33:V.1005 (Hazardous Waste Determination and Recordkeeping);

ii. LAC 33:V.1007 (Generator Category Determination);

iii. LAC 33:V.1017 (EPA Identification Numbers and Notification of Hazardous Waste Activities for Generators);

iv. LAC 33:V.1019 (Recordkeeping);

v. LAC 33:V.1027 (Recordkeeping and Reporting for Small Quantity Generators);

vi. LAC 33:V.1107 (The Manifest System);

vii. LAC 33:V.Chapter 10.Subchapter E (Pre-transport Requirements);

viii. LAC 33:V.Chapter 11.Subchapter B (Transboundary Shipments of Hazardous Waste); and

ix. LAC 33:V.5121.C.1 (Annual Fees).

c. Independent requirements of a large quantity generator include:

i. LAC 33:V.1005 (Hazardous Waste Determination and Recordkeeping);

ii. LAC 33:V.1007 (Generator Category Determination);

iii. LAC 33:V.1017 (EPA Identification Numbers and Notification of Hazardous Waste Activities for Generators);

iv. LAC 33:V.Chapter 10.Subchapter B (Recordkeeping and Reporting for Small Quantity Generators and Large Quantity Generators), except LAC 33:V.1027;

v. LAC 33:V.1107 (Manifest Requirements);

vi. LAC 33:V.Chapter 10.Subchapter E (Pretransport Requirements);

vii. LAC 33:V.Chapter 11.Subchapter B (Transboundary Shipments of Hazardous Waste); and

viii. LAC 33:V.5121.C.1 (Annual Fees).

2. A generator that accumulates hazardous waste on-site is a person that stores hazardous waste and is subject to the applicable requirements of LAC 33:V.Subpart 1, unless it is one of the following:

a. a very small quantity generator that meets the conditions for exemption in LAC 33:V.1009;

b. a small quantity generator that meets the conditions for exemption in LAC 33:V.1011 and 1013; or

c. a large quantity generator that meets the conditions for exemption in LAC 33:V.1011 and 1015.

3. If a generator is a small quantity generator or a large quantity generator, it shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in LAC 33:V.109, or not otherwise authorized to receive the generator's hazardous waste. A very small quantity generator shall comply with the requirements of Section 1009 of this Chapter regarding management of hazardous waste.

B. Determining Generator Category. A generator shall use LAC 33:V.1007 to determine which provisions of this Chapter are applicable to the generator based on the quantity of hazardous waste generated per calendar month.

C. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards of this Chapter or other standards in LAC 33:V.Chapters 3, 5, 7, 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43 for those wastes, provided he triple rinses each emptied pesticide container in accordance with the provisions of LAC 33:V.109.Empty Container.2.c and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label.

D. Failure to Comply

1. A person who generates a hazardous waste as defined in LAC 33:V.109 and further specified in LAC 33:V.Chapter 49 is subject to the requirements of this Chapter and penalties prescribed in the Louisiana Environmental Act, R.S. 30:2001, et seq., for noncompliance.

2. A generator's noncompliance with a condition for exemption in this Chapter is not subject to penalty or injunctive relief under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., as a violation of a condition for exemption in this Chapter. Noncompliance by a generator with an applicable condition for exemption for storage permit and operations requirements means that a facility is a storage facility operating without an exemption from the permit, interim status, and operations requirements in LAC 33:V.Subpart 1. Without an exemption, any violations of such storage requirements are subject to penalty and injunctive relief under the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq.

E. An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in this Chapter. The provisions of this Chapter are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of this Chapter only apply to owners or operators who are shipping hazardous waste, which they generated at that facility. A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and requirements set forth in LAC 33:V.Subpart 1.

F. Persons responding to an explosives or munitions emergency in accordance with LAC 33:V.1501.C.7.a.iv or d or 4307, and 305.C.12 or 13 are not required to comply with the standards of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1005. Hazardous Waste Determination and Recordkeeping

A. A person who generates a solid waste, as defined in LAC 33:V.109, shall determine if that waste is a hazardous waste in order to ensure the wastes are properly managed according to applicable RCRA regulations. A hazardous waste determination is made using the steps in Subsections B-G of this Section.

B. The hazardous waste determination for each solid waste shall be made at the point of waste generation, before any dilution, mixing, or other alteration of the waste occurs, and at any time in the course of its management that it has, or may have, changed its properties as a result of exposure to the environment or other factors that may change the properties of the waste such that the RCRA classification of the waste may change.

C. The generator shall determine if the waste is exempted or excluded from regulation under LAC 33:V.105.D.

D. If the waste is not exempted or excluded under LAC 33:V.105.D, the person shall then use knowledge of the waste to determine whether the waste meets any of the listing descriptions under LAC 33:V.Chapter 49. Acceptable knowledge that may be used in making an accurate determination as to whether the waste is listed may include waste origin, composition, process producing the waste, feedstock, and other reliable and relevant information. If the waste is listed, the person may file a delisting petition under LAC 33:V.105.M to demonstrate to the Office of Environmental Services that the waste from this particular site or operation is not a hazardous waste.

E. The person then shall also determine whether the waste exhibits one or more hazardous characteristics as identified in LAC 33:V.4903 by following the procedures in Paragraph E.1 or 2 of this Section, or a combination of both.

1. The person shall apply knowledge of the hazard characteristic of the waste in light of the materials or the processes used to generate the waste. Acceptable knowledge may include process knowledge (e.g., information about the chemical feedstocks and other inputs to the production process); knowledge of products, byproducts, and intermediates produced by the manufacturing process; chemical or physical characterization of wastes; information on the chemical and physical properties of the chemicals used or produced by the process or otherwise contained in the waste; testing that illustrates the properties of the waste; or other reliable and relevant information about the properties of the waste or its constituents. A test other than a test method set forth in LAC 33:V.4903, or an equivalent test method approved by the administrative authority under LAC 33:V.105.I, may be used as part of a person's knowledge to determine whether a solid waste exhibits a characteristic of hazardous waste. However, such tests do not, by themselves, provide definitive results. Persons testing their waste shall obtain a representative sample of the waste for testing, as defined at LAC 33:V.109.

2. When available knowledge is inadequate to make an accurate determination, the person shall test the waste according to the methods set forth in LAC 33:V.4903, or according to an equivalent method approved by the administrative authority under LAC 33:V.105.I and in accordance with Subparagraphs a and b below.

a. Persons testing their waste shall obtain a representative sample of the waste for testing as defined at LAC 33:V.109.

b. Where a test method is specified in LAC 33:V.4903, the results of the regulatory test, when properly performed, shall be definitive for determining the regulatory status of the waste.

F. If the waste is determined to be hazardous, the generator shall refer to LAC 33:V. Subpart 1 for other possible exclusions or restrictions pertaining to management of the specific waste.

G. Recordkeeping for Small Quantity Generators and Large Quantity Generators. A small or large quantity generator shall maintain records supporting its hazardous waste determinations, including records that identify whether a *solid waste* is a *hazardous waste*, as defined by LAC 33:V.109. Records shall be maintained for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal. These records shall comprise the generator's knowledge of the waste and support the generator's determination, as described in Subsections D and E of this Section. The records shall include, but are not limited to the following types of information: the results of any tests, sampling, waste analyses, or other determinations made in accordance with this section; records documenting the tests, sampling, and analytical methods used to demonstrate the validity and relevance of such tests; records consulted in order to determine the process by which the waste was generated, the composition of the waste, and the properties of the waste; and records which explain the knowledge basis for the generator's determination, as described in Paragraph E.1 of this Section. The periods of record retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrative authority.

H. Identifying Hazardous Waste Numbers for Small Quantity Generators and Large Quantity Generators. If the waste is determined to be hazardous, small quantity generators and large quantity generators shall identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in LAC 33:V.4901 and 4903. Prior to shipping the waste off-site, the generator shall mark its containers with all applicable EPA hazardous waste numbers (EPA hazardous waste codes) according to LAC 33:V.1063.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1007. Generator Category Determination

A. A Generator Shall Determine its Generator Category. A generator's category is based on the amount of hazardous waste generated each month and may change from month to month. This Section sets forth procedures to determine whether a generator is a very small quantity generator, small quantity generator, or large quantity generator for a particular month, as defined in LAC 33:V.109.

B. Generators of Either Acute Hazardous Waste or Nonacute Hazardous Waste. A generator who generates either acute hazardous waste or nonacute hazardous waste in a calendar month shall determine its generator category for that month by doing the following:

1. counting the total amount of hazardous waste generated in a calendar month;

2. subtracting the total of any amounts of waste exempt from counting as described in Subsections D and E of this Section; and

3. determining the resulting generator category for the hazardous waste generated using Table 1 of this Section.

C. Generators of Both Acute Hazardous Waste and Nonacute Hazardous Waste. A generator who generates both acute hazardous waste and nonacute hazardous waste in the same calendar month shall determine its generator category for that month by doing the following:

1. counting separately the total amount of acute hazardous waste and the total amount of nonacute hazardous waste generated in a calendar month;

2. subtracting from each total any amounts of waste exempt from counting as described in Subsections D and E of this Section;

3. determining separately the resulting categories for the quantities of acute and nonacute hazardous waste generated using Table 1 of this Section; and

4. comparing the resulting generator categories from Paragraph C.3 of this Section and applying the more stringent generator category to the accumulation and management of both nonacute and acute hazardous waste generated for that month.

Table 1. Generator Categories Based on Quantity of Hazardous Waste Generated in a Calendar Month

Quantity of Acute Hazardous Waste Generated in a Calendar Month	Quantity of Nonacute Hazardous Waste Generated in a Calendar Month	Quantity of Residues from a Clean-up of Acute Hazardous Waste in a Calendar Month	Generator Category
Greater than 1 kg (2.2 lbs) (> 1 kg)	Any Amount	Any Amount	Large Quantity Generator
Any Amount	Greater than or equal to 1,000 kg (2,000 lbs) (≥ 1,000 kg)	Any Amount	Large Quantity Generator
Any Amount	Any Amount	Greater than 1,000 kg (220 lbs) (>100 kg)	Large Quantity Generator
Less than or equal to 1 kg (2.2 lbs) (≤ 1 kg)	Greater than 100 kg (220 lbs.) and less than 1,000 kg (2,200 lbs) (>100 kg and <1,000 kg)	Less than or equal to 100 kg (220 lbs) (≤ 100 kg)	Small Quantity Generator
Less than or equal to 1 kg (2.2 lbs) (≤ 1 kg)	Less than or equal to 100 kg (220 lbs) (≤ 1 kg)	Less than or equal to 100 kg (220 lbs) (≤ 100 kg)	Very Small Quantity Generator

D. When making the monthly quantity-based determination required by this Chapter, the generator shall include all hazardous waste that it generates, except hazardous waste that is:

1. exempt from regulation under LAC 33:V.105.D.3-6 and 8, 109.Empty Container.1.a, and 4105.A.1;

2. managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in LAC 33:V.109;

3. recycled, without prior storage or accumulation, only in an on-site process subject to regulation under LAC 33:V.4105.D;

4. used oil managed under the requirements of LAC 33:V.4105.A.3 and Chapter 40;

5. spent lead-acid batteries managed under the requirements of LAC 33:V.4145;

6. universal waste managed under LAC 33:V.105.D.7 and Chapter 38; or

7. managed as part of an episodic event in compliance with LAC 33:V.Chapter 10.Subchapter C.

E. In determining the quantity of hazardous waste generated in a calendar month, a generator need not include:

1. hazardous waste when it is removed from on-site accumulation, as long as the hazardous waste has been previously counted once;

2. hazardous waste generated by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once; or

3. hazardous waste spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been previously counted once.

F. Based on the generator category as determined under this Section, the generator shall meet the applicable independent requirements listed in LAC 33:V.1003. A generator's category also determines which of the provisions of LAC 33:V.1009, 1011, 1013, or 1015 shall be met to obtain an exemption from the storage facility permit, interim status, and operating requirements when accumulating hazardous waste.

G. Mixing Hazardous Waste with Solid Waste

1. Very Small Quantity Generator Waste

a. Hazardous waste generated by a very small quantity generator may be mixed with solid waste. Very small quantity generators may mix a portion or all of its hazardous waste with solid waste and remain subject to LAC 33:V.1009 even though the resultant mixture exceeds the quantity limits identified in the definition of *very small quantity generator* at LAC 33:V.109, unless the mixture exhibits one or more of the characteristics of hazardous waste identified in LAC 33:V.4903.

b. If the resulting mixture exhibits a characteristic of hazardous waste, this resultant mixture is a newly generated hazardous waste. The very small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the calendar month quantity limits for the very small quantity generator identified in the definition of generator categories found in LAC 33:V.109. If so, to remain exempt from permitting, interim status, and operating standards, the very small quantity generator shall meet the conditions for exemption applicable to either a small quantity generator or a large quantity generator. The very small quantity generator shall also comply with the applicable independent requirements for either a small quantity generator or a large quantity generator.

c. If a very small quantity generator's waste is mixed with used oil, the mixture is subject to LAC 33:V.Chapter 40. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under LAC 33:V.Chapter 40.

2. Small Quantity Generator and Large Quantity Generator Hazardous Waste

a. Hazardous waste generated by a small quantity generator or a large quantity generator may be mixed with a solid waste. These mixtures are subject to the following: the mixture rule in LAC 33:V.109.Hazardous Waste.2.c, 3.b, 3.c, and 4.e; the prohibition of dilution rule at LAC 33:V.2207.A; the land disposal restriction requirements of LAC 33:V.2223 if a characteristic hazardous waste is mixed with a solid waste so that it no longer exhibits the hazardous characteristic; and the hazardous waste determination requirement at LAC 33:V.1005.

b. If the resulting mixture is found to be a hazardous waste, this resultant mixture is a newly generated hazardous waste. A small quantity generator shall count both the resultant mixture amount plus the other hazardous waste generated in the calendar month to determine whether the total quantity exceeds the small quantity generator calendar monthly quantity limits identified in the definition of generator categories found in LAC 33:V.109. If so, to remain exempt from the permitting, interim status, and operating standards, the small quantity generator shall meet the conditions for exemption applicable to the large quantity generator. The small quantity generator shall also comply with the independent requirements for a large quantity generator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1009. Conditions for Exemption for Very Small Quantity Generators

A. Provided that the very small quantity generator meets all the conditions for exemption listed in this Section, hazardous waste generated by the very small quantity generator is not subject to the requirements of LAC 33:V.Subpart 1 (except LAC 33:V.1003-1009) and the very small quantity generator may accumulate hazardous waste on-site without complying with such requirements. The conditions for exemption are included in Paragraphs 1-7 below.

1. In a calendar month, the very small quantity generator shall generate less than or equal to the amounts specified in the definition of very small quantity generator in LAC 33:V.109.

2. The very small quantity generator shall comply with LAC 33:V.1005.A-E.

3. If the very small quantity generator accumulated at any time greater than 1 kilogram (2.2 lbs.) of acute hazardous waste or 100 kilograms (220 lbs.) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any acute hazardous waste listed in LAC 33:V.4901.B or E, all quantities of that acute hazardous waste are subject to the following additional conditions for exemption:

a. such waste is held on-site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided above; and

b. the conditions for exemption in LAC 33:V.1015.

4. If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs.) or greater of nonacute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption:

a. such waste is held on-site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided above;

b. the quantity of waste accumulated on-site never exceeds 6,000 kilograms (13,200 lbs.); and

c. the conditions for exemption in LAC 33:V.1013.C.2-G.

5. A very small quantity generator that accumulates hazardous waste in amounts less than or equal to the limits in Paragraphs A.3 and 4 of this Section shall either treat or dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

a. permitted under 40 CFR 270, LAC 33:V.Subpart 1, or a RCRA approved hazardous waste program of any other state;

b. in interim status under 40 CFR 265 and 270, LAC 33:V.Subpart 1, or a RCRA approved hazardous waste program of any other state;

c. authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR 271;

d. permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to 40 CFR 258, LAC 33:VII.Subpart 1;

e. permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit, is subject to the requirements in 40 CFR 257.5-30, LAC 33:VII.Subpart 1; or

f. a facility which:

i. beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

ii. treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

g. for universal waste managed under LAC 33:V.Chapter 38, a universal waste handler or destination facility subject to the requirements of 40 CFR 273 or LAC 33:V.Chapter 38;

h. a large quantity generator under the control of the same person as the very small quantity generator, provided the following conditions are met:

i. the very small quantity generator and the large quantity generator are under the control of the same *person* as defined in LAC 33:V.109. Control for the purpose of this Section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person as defined in LAC 33:V.109 shall not be deemed to control such generators;

ii. the very small quantity generator marks its container(s) of hazardous waste with:

(a). the words "Hazardous Waste"; and

(b). an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704).

6. A container holding hazardous waste shall be closed at all times during accumulation, except when:

a. adding, removing, or consolidating the hazardous waste; or

b. temporary venting of a container is necessary:

i. for the proper operation of equipment; or

ii. to prevent a dangerous situation, such as build-up of extreme pressure.

7. A very small quantity generator shall label or mark each container accumulating hazardous waste with the words "Hazardous Waste" or with other words that identify the contents of the container.

B. The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

C. A very small quantity generator experiencing an episodic event may generate and accumulate hazardous waste in accordance with LAC 33:V.Chapter 10.Subchapter C in lieu of LAC 33:V.1011, 1013, and 1015.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1011. Satellite Accumulation Area Regulations for Small Quantity Generators and Large Quantity Generators

A. A generator may accumulate as much as 55 gallons of nonacute hazardous waste and/or either one quart of liquid acute hazardous waste listed in LAC 33:V.4901.B or E, or 1 kg (2.2 lbs.) of solid acute hazardous waste listed in LAC 33:V.4901.B or E in containers at or near any point of generation where waste initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with the requirements of LAC 33:V.Subpart 1, provided that all of the conditions for exemption in this Section are met. A generator may comply with the conditions for exemption in this Section instead of complying with the conditions for exemption in LAC 33:V.1013.C. or 1015.B, except as required in Paragraphs A.7 and 8 of this Section. The conditions for exemption for satellite accumulation are included in Paragraphs 1-8 below.

1. If a container holding hazardous waste is not in good condition, or if it begins to leak, the generator shall immediately transfer the hazardous waste from this container to a container that is in good condition and does not leak, or immediately transfer and manage the waste in a central accumulation area operated in compliance with LAC 33:V.1013.C or 1015.B.

2. The generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

3. Special Standards for Incompatible Wastes

a. Incompatible wastes, or incompatible wastes and materials (see LAC 33:V.199.Appendix B for examples), shall not be placed in the same container, unless the generator complies with LAC 33:V.1517.B.

b. Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material, unless the generator complies with LAC 33:V.1517.B.

c. A container holding a hazardous waste that is incompatible with any waste or other material accumulated nearby in other containers shall be separated from the other materials or protected from them by any practical means.

4. A container holding hazardous waste shall be closed at all times during accumulation, except:

a. when adding, removing, or consolidating waste; or

b. when temporary venting of a container is necessary:

i. for the proper operation of equipment; or

ii. to prevent dangerous situations, such as build-up of extreme pressure.

5. A generator shall mark or label its container with:

a. the words "Hazardous Waste"; and

b. an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704).

6. A generator who accumulates either acute hazardous waste listed in LAC 33:V.4901.B or E or nonacute hazardous waste in excess of the amounts listed in Subsection A of this Section at or near any point of generation shall do the following:

a. comply within three consecutive calendar days with the applicable central accumulation area regulations in LAC 33:V.1013.C or 1015.B, or

b. remove the excess from the satellite accumulation area within three consecutive calendar days to either:

i. a central accumulation area operated in accordance with the applicable regulations in LAC 33:V.1013.C or 1015.B;

ii. an on-site interim status or permitted treatment, storage, or disposal facility, or

iii. an off-site designated facility; and

c. during the three consecutive calendar day period the generator shall continue to comply with Paragraphs A.1-

5 of this Section. (The generator shall mark or label the container(s) holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.)

7. All satellite accumulation areas operated by a small quantity generator shall meet the preparedness and prevention regulations of LAC 33:V.1013.C.8 and emergency procedures regulations of LAC 33:V.1013.C.9.

8. All satellite accumulation areas operated by a large quantity generator shall meet the preparedness, prevention and emergency procedures in LAC 33:V.Chapter 10.Subchapter D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1013. Conditions for Exemption for Small Quantity Generators

A. A small quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the requirements of LAC 33:V.Subpart 1, provided that all the conditions for exemption listed in this Section are met.

B. Generation. The generator generates in a calendar month no more than the amounts specified in the definition of small quantity generator in LAC 33:V.109.

C. Accumulation. The generator accumulates hazardous waste on-site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in Subsections E and F of this Section. The following accumulation conditions also apply:

1. Accumulation Limit. The quantity of hazardous waste accumulated on-site never exceeds 6,000 kilograms (13,200 lbs.).

2. Accumulation of Hazardous Waste in Containers

a. Condition of Containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the small quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this Section.

b. Compatibility of Waste with Container. The small quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be accumulated, so that the ability of the container to contain the waste is not impaired.

c. Management of Containers

i. A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

ii. A container holding hazardous waste shall not be opened, handled, or accumulated in a manner that may rupture the container or cause it to leak.

d. Inspections. At least weekly, the small quantity generator shall inspect central accumulation areas. The small quantity generator shall look for leaking containers and for deterioration of containers caused by corrosion or other factors. See Subparagraph C.2.a of this Section for remedial action required if deterioration or leaks are detected.

e. Special Conditions for Accumulation of Incompatible Wastes

i. Incompatible wastes, or incompatible wastes and materials (see LAC 33:V.199.Appendix B for examples), shall not be placed in the same container, unless the generator complies with LAC 33:V.1517.B.

ii. Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see LAC 33:V.199.Appendix B for examples), unless the generator complies with LAC 33:V.1517.B.

iii. A container accumulating hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

3. Accumulation of Hazardous Waste in Tanks

a. A small quantity generator of hazardous waste shall comply with the following operating conditions.

i. Treatment or accumulation of hazardous waste in tanks shall comply with LAC 33:V.1517.B.

ii. Hazardous waste or treatment reagents shall not be placed in a tank if they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

iii. Uncovered tanks shall be operated to ensure at least 60 centimeters (2 feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2 feet) of the tank.

iv. Where hazardous waste is continuously fed into a tank, the tank shall be equipped with a means to stop this inflow (e.g., waste feed cutoff system or by-pass system to a standby tank).

b. Except as noted in Subparagraph C.3.c of this Section, a small quantity generator that accumulates hazardous waste in tanks shall inspect, where present:

i. discharge control equipment (e.g., waste feed cutoff systems, bypass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order;

ii. data gathered from the monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day to ensure that the tank is being operated according to its design;

iii. the level of waste in the tank at least once each operating day to ensure compliance with Clause C.3.a.iii of this Section;

iv. the construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

v. the construction materials of, and the area immediately surrounding, discharge confinement (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). The generator shall remedy any deterioration or malfunction of equipment or structures, which the inspection reveals on a schedule, which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is

imminent or has already occurred, remedial action shall be taken immediately.

c. A small quantity generator accumulating hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert personnel to leaks, or implement established workplace practices to ensure leaks are properly identified, shall inspect at least weekly, where applicable, the areas identified in Clauses C.3.b.i-v of this Section. Use of the alternate inspection schedule shall be documented in the generator's operating record. This documentation shall include a description of the established workplace practices at the generator.

d. A small quantity generator accumulating hazardous waste in tanks shall, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the small quantity generator can demonstrate, in accordance with LAC 33:V.109.Hazardous Waste.4 or 5, that any solid waste removed from its tank is not a hazardous waste, then it shall manage such waste in accordance with all applicable provisions of LAC 33:V.Chapters 10, 11, 13, 22, and 43.

e. A small quantity generator shall comply with the following special conditions for accumulation of ignitable or reactive waste.

i. Ignitable or reactive waste shall not be placed in a tank, unless:

(a). the waste is treated, rendered, or mixed before or immediately after placement in a tank so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under LAC 33:V.4903.B or D and LAC 33:V.1517.B is complied with;

(b). the waste is accumulated or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(c). the tank is used solely for emergencies.

ii. A small quantity generator which treats or accumulates ignitable or reactive waste in covered tanks shall comply with the buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the 1977 or 1981 National Fire Protection Association's "Flammable and Combustible Liquids Code" (incorporated by reference in LAC 33:V.110).

iii. A small quantity generator shall comply with the following special conditions for incompatible wastes.

(a). Incompatible wastes, or incompatible wastes and materials (see LAC 33:V.199.Appendix B for examples), shall not be placed in the same tank, unless the generator complies with LAC 33:V.1517.B.

(b). Hazardous waste shall not be placed in an unwashed tank that previously held an incompatible waste or material, unless the generator complies with LAC 33:V.1517.B.

f. A small quantity generator accumulating hazardous waste in tanks shall use inventory logs, monitoring equipment or other records in accordance with LAC 33:V.1909.D or E to demonstrate that hazardous waste has been emptied within 180 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 180 days of first entering.

g. A small quantity generator accumulating hazardous waste in tanks shall keep inventory logs or records documenting the generator's compliance with LAC 33:V.1909.D or E on-site and readily available for inspection.

4. Accumulation of Hazardous Waste on Drip Pads. If the waste is placed on drip pads, the small quantity generator shall:

a. comply with LAC 33:V.2801, 2803, 2804, 2805, 2807, and 2809;

b. remove all wastes from the drip pad at least once every 90 days (Any hazardous wastes that are removed from the drip pad at least once every 90 days are then subject to the 180-day accumulation limit in Subsection C of this Section and LAC 33:V.1011 if hazardous waste is being managed in satellite accumulation areas prior to being moved to the central accumulation area.); and

c. maintain on-site at the facility the following records readily available for inspection:

i. a written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least every 90 days; and

ii. documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system, and the date and time of the removal.

5. Accumulation of Hazardous Waste in Containment Buildings. If the wastes is placed in containment buildings, the small quantity generator shall:

a. comply with LAC 33:V.Chapter 43.Subchapter T;

b. label its containment building with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on-site;

c. provide an indication of the hazards of the contents in a conspicuous place (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazardous communication consistent with the U.S. Department of Transportation requirements in 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard in 29 CRF 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);

d. maintain the following records on-site and made readily available for inspection:

i. the professional engineer certification that the building complies with the design standards specified in LAC 33:V.4703 (This certification shall be in the generator's files prior to operation of the unit.); and

ii. inventory logs or other records (i.e., monitoring equipment or any other effective means) with the following information:

(a). a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the

generator is consistent with maintaining the 90-day limit, and documentation that the procedures are complied with; or

(b). documentation that the unit is emptied at least once every 90 days.

6. Labeling and Marking of Containers and Tanks

a. A small quantity generator shall mark or label its containers and tanks accumulating hazardous waste with:

i. the words "Hazardous Waste"; and

ii. an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements in 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Communication Standard in 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704).

b. In addition to Clauses 6.a.i and ii above, each container shall be marked or labelled with the date upon which each period of accumulation begins. The date shall be clearly visible for inspection on each container.

7. Land Disposal Restrictions. A small quantity generator shall comply with all the applicable requirements in LAC 33:V.Chapter 22.

8. Preparedness and Prevention

a. Maintenance and Operation of Facility. A small quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water, which could threaten human health or the environment.

b. Required Equipment. All areas where hazardous waste is either generated or accumulated shall be equipped with the items in Clauses 1013.C.b.i-iv of this Section, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below. A small quantity generator may determine the most appropriate locations to locate equipment necessary to prepare for and respond to emergencies. The required equipment consists of:

i. an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

ii. a device (i.e., a telephone) immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

iii. portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

iv. water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

c. Testing and Maintenance of Equipment. All communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to ensure its proper operation in time of emergency.

d. Access to Communications or Alarm System

i. Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access (e.g., direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Subparagraph C.8.b of this Section.

ii. In the event there is just one employee on the premises while the facility is operating, the employee shall have immediate access (e.g., direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Subparagraph C.8.b of this Section.

e. Required Aisle Space. The small quantity generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

f. Arrangements with Local Authorities

i. The small quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals, taking into account the types and quantities of hazardous waste handled at the facility. Arrangements may be made with the local emergency planning committee, if it is determined to be the appropriate organization with which to make arrangements.

(a). A small quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

(b). As part of this coordination, the small quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses that could result from fires, explosions, or releases at the facility.

(c). Where more than one police or fire department might respond to an emergency, the small quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

ii. A small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or in cases where no

arrangements exist, confirms that attempts to make such arrangements were made.

iii. A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code at the facility's location (i.e., state fire marshal or district fire chief) as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided the waiver is documented in the operating record.

9. Emergency Procedures. The small quantity generator shall comply with the following conditions for those areas of the generator facility where hazardous waste is generated and accumulated.

a. At all times there shall be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in Subparagraph C.9.d of this Section. This employee is the emergency coordinator.

b. The small quantity generator shall post the following information next to telephones or in areas directly involved in the generation and accumulation of hazardous waste:

i. the name and emergency telephone number of the emergency coordinator;

ii. location of fire extinguishers and spill control material, and if present, fire alarm; and

iii. the telephone number of the fire department, unless the facility has a direct alarm.

c. The small quantity generator shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

d. The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows.

i. In the event of a fire, the small quantity generator shall call the fire department or attempt to extinguish it using a fire extinguisher.

ii. In the event of a spill, the small quantity generator is responsible for containing the flow of hazardous waste to the extent possible, and as soon as is practicable, cleaning up the hazardous waste and any contaminated materials or soil. Such containment and cleanup can be conducted either by the small quantity generator or by a contractor on behalf of the small quantity generator.

iii. Immediate Emergency Notification

(a). Notification to the Louisiana State Police, Department of Public Safety

(i). In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water, the small quantity generator shall immediately, but in no case later than one hour, notify the 24-hour Louisiana Emergency Hazardous Materials Hotline by calling 1-877-922-6595 or 225-925-6595. This notification to the Louisiana State Police, Department of Public Safety shall be in accordance with LAC 33:I.Chapter 39 and shall include the following information:

[a]. the name and telephone number, and employer of the contact person;

[b]. the company or responsible party's name;

[c]. where the incident occurred (mailing address and physical location);

[d]. date and time the incident began and ended;

[e]. the identity of the hazardous material released or involved (this would include proper chemical name if available, an indication of whether it is an extremely hazardous substance and whether it is a solid, liquid or gas);

[f]. the actual amount or an estimate of the amount released; or in the absence of quantity data for the hazardous materials released, one of the following incident classifications: unusual event, site emergency, or general emergency;

[g]. whether the material released escaped or could reasonably be expected to escape, beyond the site of the facility;

[h]. if available, the substance's hazard class and any other identifier (e.g., U.N. number, CHRIS code, etc.);

[i]. medium into which the hazardous materials was released (e.g., air, water, land);

[j]. whether the release resulted in a fire or explosion;

[k]. injury to personnel, or a fatality resulting from the release or incident;

[l]. details regarding wind direction, wind speed, temperature, and precipitation;

[m]. any need or a recommendation for, an offsite protective action (road closure, shelter-in-place, evacuation, or none);

[n]. details of the release or incident; and

[o]. whether other responsible state and local agencies such as the local emergency planning committee have been notified.

(ii). Updates During the Incident. The hotline must be immediately notified of any adverse change in the nature or rate of the discharge. Additional notifications must be made for discharges of multiple constituents when they originate from different causes or sources or they are substantially different in nature from the discharges in the initial notification.

(iii). Written Follow-Up Reports. Written follow-up reports for any unauthorized discharge that requires notification shall be submitted by the small quantity generator to SPOC in accordance with LAC 33:I.3925 and the Louisiana State Police, Department of Public Safety in accordance with LAC 33.V.Subpart 2.10111.

(b). Emergency Notifications to Other Regulatory Agencies. The small quantity generator should be aware that other federal, state and local agencies may require immediate and/or follow-up notification of an emergency situation under other regulatory authorities, including, but not limited to, the following:

(i). the National Response Center by calling their 24-hour toll free number 1-800-424-8802, to the extent that immediate notification is required under 40 CFR 302.6 (exceedance of reportable quantities) or 40 CFR 110.6 (oil spills); and/or

(ii). the appropriate local emergency planning committee having jurisdiction over the facility to the extent that immediate notification is required under 40 CFR part 355, Subpart C or LAC 33:V.Subpart 2.Chapter 101. (Contact information for each local emergency planning committee is available on the Louisiana State Police, Department of Public Safety's website.)

D. Transporting Over 200 Miles. A small quantity generator who transports its waste, or offers its waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that the generator complies with the conditions of Subsection C of this Section.

E. Accumulation Time Limit Extension. A small quantity generator who accumulates hazardous waste for more than 180 days (or for more than 270 days if it transports its waste, or offers its waste for transportation, over a distance of 200 miles or more) is subject to the requirements of LAC 33:V.Subpart 1 unless it has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by the Office of Environmental Services if hazardous waste shall remain on-site for longer than 180-days, or 270 days if applicable, due to temporary, unforeseen, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Office of Environmental Services on a case-by-case basis.

F. Rejected Load. A small quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of LAC 33:V.1516.C may accumulate the returned waste on-site in accordance with Subsections B-E of this Section. Upon receipt of the returned shipment, the generator shall:

1. sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

2. sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

G. A small quantity generator experiencing an episodic event may accumulate hazardous waste in accordance with Subchapter C of this Chapter in lieu of Section 1015 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1015. Conditions for Exemption for Large Quantity Generators

A. A large quantity generator may accumulate hazardous waste on-site without a permit or interim status, and without complying with the requirements of LAC 33:V.Subpart 1, provided that all of the following conditions for exemption are met.

B. Accumulation. A large quantity generator accumulates hazardous waste on-site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 waste accumulation conditions for exemption in Subsections C-F of this Section. The following accumulation conditions also apply.

1. Accumulation of Hazardous Waste in Containers. If the hazardous waste is placed in containers, the large quantity generator shall comply with the following:

a. Air Emission Standards. The applicable requirements of LAC 33:V.Chapter 43.Q, R, and V;

b. Condition of Containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the large quantity generator shall immediately transfer the hazardous waste from this container to a container that is in good condition, or immediately manage the waste in some other way that complies with the conditions for exemption of this Section;

c. Compatibility of Waste with Container. The large quantity generator shall use a container made of or lined with materials that will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

d. Management of Containers

i. A container holding hazardous waste shall always be closed during accumulation, except when it is necessary to add or remove waste.

ii. A container holding hazardous waste shall not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

e. Inspections. At least weekly, the large quantity generator shall inspect central accumulation areas. The large quantity generator shall look for leaking containers and deterioration of containers caused by corrosion and other factors. See Subparagraph B.1.b of this Section for remedial action required if deterioration or leaks are detected.

f. Special Conditions for Accumulation of Ignitable and Reactive Wastes

i. A container holding ignitable or reactive waste shall be located at least 15 meters (50 feet) from the facility's property line unless a written approval is obtained from the authority having jurisdiction (AHJ) over the fire code at the facility's location (i.e., state fire marshal or district fire chief) allowing hazardous waste accumulation to occur within this restricted area. A record of the written approval shall be maintained as long as ignitable or reactive hazardous waste is accumulated in this area.

ii. The large quantity generator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to the following: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the large quantity generator shall confine smoking and open flame to specially designated locations. Signs stating "No Smoking" shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

g. Special Conditions for Accumulation of Incompatible Wastes

i. Incompatible wastes, or incompatible wastes and materials (see LAC 33:V.199.Appendix B for examples), shall not be placed in the same container, unless the generator complies with LAC 33:V.4321.B.

ii. Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material (see LAC 33:V.199.Appendix B for examples), unless the generator complies with LAC 33:V.4321.B.

iii. A container holding a hazardous waste that is incompatible with any waste or other materials accumulated or stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

2. Accumulation of Hazardous Waste in Tanks

a. If waste is placed in tanks, the large quantity generator shall comply with the applicable requirements of LAC 33:V.1903.A, 1905.B-H, 1907, 1909, 1911, 1913, 1915 (except 1915.C), 1917, 1919, and 1921.

b. A large quantity generator accumulating hazardous waste in tanks shall use inventory logs, monitoring equipment or other records in accordance with LAC 33:V.1909.D or E to demonstrate that hazardous waste has been emptied within 90 days of first entering the tank if using a batch process, or in the case of a tank with a continuous flow process, demonstrate that estimated volumes of hazardous waste entering the tank daily exit the tank within 90 days of first entering.

c. A large quantity generator accumulating hazardous waste in tanks shall keep inventory logs or records documenting the generator's compliance with LAC 33:V.1909.D or E on-site and readily available for inspection.

3. Accumulation of Hazardous Waste on Drip Pads. If the hazardous waste is placed on drip pads, the large quantity generator shall comply with the following.

a. The large quantity generator shall comply with LAC 33:V.2801, 2803, 2804, 2805, 2807, and 2809.

b. The large quantity generator shall remove all wastes from the drip pad at least once every 90 days. Any hazardous wastes that are removed from the drip pad are then subject to the 90-day accumulation limit in Subsection B of this Section and LAC 33:V.1011, if the hazardous wastes are being managed in satellite accumulation areas prior to being moved to a central accumulation area.

c. The large quantity generator shall maintain on-site at the facility the following records readily available for inspection:

i. a written description of procedures that are followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

ii. documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

4. Accumulation of Hazardous Waste in Containment Buildings. If the waste is placed in containment buildings, the large quantity generator shall:

a. comply with LAC 33:V.Chapter 43.Subchapter T;

b. label its containment building with the words "Hazardous Waste" in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on-site;

c. provide an indication of the hazards of the contents in a conspicuous place (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements in 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard in 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);

d. maintain the following records on-site and made readily available for inspection:

i. the professional engineer certification that the building complies with the design standards specified in LAC 33:V.4703 (This certification shall be in the generator's files prior to operation of the unit.); and

ii. inventory logs or other records (i.e., monitoring equipment or any other effective means) with the following information:

(a). a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that the generator is consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(b). documentation that the unit is emptied at least once every 90-days.

5. Labeling and Marking of Containers and Tanks

a. A large quantity generator shall mark or label its containers and tanks accumulating hazardous waste with:

i. the words "Hazardous Waste"; and

ii. an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704).

b. In addition to Clauses 5.a.i and ii above, each container shall be marked or labelled with the date upon which each period of accumulation begins. The date shall be clearly visible for inspection on each container.

6. Emergency Procedures. The large quantity generator complies with the standards in Subchapter D of this Chapter, Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators.

7. Personnel Training

a. The Required Training Elements

i. Facility personnel shall successfully complete a program of classroom instruction, online training (e.g., computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures

compliance with this Chapter. The large quantity generator shall ensure that this program includes all the elements described in the document required under Clause B.7.d of this Section.

ii. This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

iii. At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(a). procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(b). key parameters for automatic waste feed cut-off systems;

(c). communications or alarm systems;

(d). responses to fires or explosions;

(e). responses to groundwater contamination incidents; and

(f). shutdown of operations.

iv. For facility employees that receive emergency response training in accordance with U.S. Occupational Safety and Health Administration regulations 29 CFR 1910.120(p)(8) and 120(q), the large quantity generator is not required to provide separate emergency response training in accordance with this Section, provided that the overall facility training meets all the conditions of exemption in this Section.

b. Facility personnel shall successfully complete the program required in Subparagraph B.7.a of this Section within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. Employees shall not work in unsupervised positions until they have completed the training standards of Subparagraph B.7.a of this Section.

c. Facility personnel shall take part in an annual review of the initial training required in Subparagraph B.7.a of this Section.

d. The large quantity generator shall maintain documents and records at the facility including:

i. the job title of each position at the facility related to hazardous waste management, and the name of the employee filling each job;

ii. a written job description of each position listed under Clause B.7.d.i of this Section (This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position);

iii. a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under Clause B.7.d.i of this Section; and

iv. records that document that the training or job experience, required under Subparagraphs B.7.a-c of this Section, has been given to, and completed by, facility personnel.

e. Training records on current personnel shall be kept until closure of the facility. Training records on former employees shall be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

8. Closure. These regulations regarding closure are applicable to large quantity generators accumulating hazardous waste in a central accumulation area (i.e., container storage [e.g., drums, roll-off boxes, etc.], tank systems, drip pads, or containment buildings) at a facility. The closure requirements of this Paragraph do not apply to satellite accumulation areas. Except as allowed for by Subparagraph B.8.k of this Paragraph (i.e., Notification requirements for closures initiated prior to {REGULATION PROMULGATION DATE}), prior to closing a central accumulation area, or prior to closing the facility, the large quantity generator shall meet the following conditions.

a. Notification of Closure of a Central Accumulation Area. A large quantity generator shall perform one of the following when closing a central accumulation area.

i. The large quantity generator shall notify the Office of Environmental Services following the procedures in Subparagraph B.8.b of this Paragraph in order to meet the closure performance standards of Clause B.8.c.i of this Paragraph for container storage, tank systems, and containment buildings or Clause B.8.c.ii for drip pads. If the central accumulation area is subsequently reopened, the large quantity generator shall update the notice in the operating record.

ii. The large quantity generator shall place a notice in the operating record to document the closure of the central accumulation area within 30 days after closure of the unit. If the central accumulation area is subsequently reopened, the large quantity generator shall update the notice in the operating record. Information required as part of the notice in the operating record shall include:

(a). reason for closure;

(b). name and/or other unit designation;

(c). description of the type of waste accumulation (e.g., single roll-off box accumulating solids, tank system with secondary containment, etc.);

(d). basic design and construction information for any unit that is a tank system, containment building, or drip pad;

(e). basic design and construction information for secondary containment (e.g., long-term [i.e., fixed, immovable] or temporary, materials of construction, coating, etc.) (The information shall include whether there are any sumps or engineered swales serving as a receptacle for drainage in the secondary containment.);

(f). location within the facility (at a minimum, a general location relative to a fixed building or unit along with cardinal direction and distance; a map may be included; geographic coordinates are required for long-term [i.e., fixed, immovable] units);

(g). period of time of use;

(h). description of the hazardous waste and waste codes (waste profiles may be included);

(i). documentation showing how the last stored hazardous waste was managed (e.g., copies of final

manifests or written/signed notation if sent off-site for treatment or disposal; written/signed notation if transferred elsewhere on-site for treatment, storage, or disposal as may be authorized by LAC 33:V.Subpart 1);

(j). for a central accumulation area consisting of container storage, the following information to support a presumptive demonstration of closure in accordance with Clause B.8.d.i of this Paragraph:

(i). weekly inspection logs, summary, or other information (e.g., photographs, written documentation of spill clean ups, etc.) to demonstrate during the entirety of the accumulation period that:

[a]. there were no spills, leaks, or releases of hazardous waste or hazardous constituents onto the secondary containment or soil immediately surrounding and beneath the unit, or they were properly cleaned up and managed in order to meet the closure performance standards; and

[b]. for container storage with long-term (i.e., fixed, immovable) secondary containment, there were no visible signs of significant cracks, gaps, or deterioration of the secondary containment, or they were properly repaired in a timely manner. Any sumps or engineered swales serving as a receptacle for drainage in the secondary containment should be clearly mentioned;

(ii). for container storage with long-term (i.e., fixed, immovable) secondary containment, after removal of all waste a final inspection log/report and other information (e.g., photographs, etc.) to demonstrate that:

[a]. there was no significant staining or other signs of contamination from hazardous waste on the secondary containment, including sumps or engineered swales serving as a receptacle for drainage in the secondary containment; and

[b]. there were no visible signs of significant cracks, gaps, or deterioration for sumps or engineered swales serving as a receptacle for drainage;

(k). any information that might be needed in support of a sufficiency demonstration (see Subparagraph B.8.e of this Paragraph); and

(l). any other information that might be deemed relevant by the large quantity generator (e.g., documentation regarding additional activities necessary to meet the closure performance standards, photographs, manifests, etc.).

b. Notification of Closure of a Facility, or Optional Notification of Closure of a Central Accumulation Area. A large quantity generator shall provide the following notification for closure of the facility:

i. notify the Office of Environmental Services using the department's Notification of Hazardous Waste Activity Form (HW-1) no later than 30 days prior to closing the facility, and include the following supplemental information in a cover letter:

(a). contact information for person responsible for closure;

(b). reason for closure;

(c). list of units being closed including names and/or other unit designations;

(d). for each unit, description of the type of waste accumulation (e.g., single roll-off box accumulating solids, tank system with secondary containment, etc.);

(e). basic design and construction information for any unit that is a tank system, containment building, or drip pad;

(f). for each unit, basic design and construction information for secondary containment (e.g., long-term [i.e., fixed, immovable] or temporary, materials of construction, coating, etc.) (The information shall include whether there are any sumps or engineered swales serving as a receptacle for drainage in the secondary containment.);

(g). for each unit, location within the facility (at a minimum, a general location relative to a fixed building or unit along with cardinal direction and distance; a map may be included; geographic coordinates are required for long-term [i.e., fixed, immovable] units);

(h). period of time of use for each unit;

(i). for each unit, description of the hazardous waste and waste codes (waste profiles may be included);

(j). for any unit being closed that is container storage, provide either:

(i). a statement that the unit will be closed in accordance with Clause B.8.d.i of this Paragraph (presumptive demonstration of closure); or

(ii). supplemental information required by Subclause B.8.b.i.(k) of this Paragraph below; and

(k). for any units being closed that are tank systems, containment buildings, drip pads, or container storage requiring additional demonstration efforts of closure under Clause B.8.d.ii of this Paragraph, provide the following:

(i). decontamination method(s) of aboveground components;

(ii). protocol/methods and list of constituents for confirmatory sampling and analysis of rinsate;

(iii). protocol/methods, list of constituents, and locations and depths for confirmatory sampling and analysis of soil (and groundwater, if deemed necessary) immediately surrounding and beneath the unit considering the following:

[a]. soil sampling shall consider random locations and specific locations under the containment including sumps, or engineered swales serving as a receptacle for drainage, and areas where there may have been visible signs of significant staining, cracks, gaps or other deterioration;

[b]. if there is confirmed soil contamination resulting from a release of hazardous waste or hazardous constituents from the central accumulation area, or if there is reason to believe that the groundwater may have been impacted by a release of hazardous waste or hazardous constituents from the central accumulation area, the large quantity generator shall conduct confirmatory groundwater sampling and analysis. The extent of any confirmatory groundwater sampling and analysis shall be based upon site-specific conditions, including but not limited to: depth to the water table; information regarding any suspected or known contamination in the environmental media; potential mobility of the constituents; site-specific conditions that may encourage constituent mobility; and the extent and effectiveness of any previous response actions; and

[c]. in lieu of confirmatory sampling and analysis of soil (and groundwater, if deemed necessary), the large quantity generator may state its intent to demonstrate that the closure performance standards for soil and groundwater have been met through the Risk Evaluation/Corrective Action Program (RECAP) and remedial activities (See Clause B.8.f.ii of this Paragraph for container storage, tank systems, and containment buildings and LAC 33:V.2809.B.2 for drip pads); and

ii. notify the Office of Environmental Services using the department's Notification of Hazardous Waste Activity Form (HW-1) within 90 days after closing the facility that it has complied with the closure performance standards of Subparagraph B.8.c of this Paragraph. If the facility cannot meet the closure performance standards of Subparagraph B.8.c of this Paragraph, the facility shall notify the Office of Environmental Services using the department's Notification of Hazardous Waste Activity Form (HW-1) that it will close as a landfill (i.e., close with waste in place) under 4501.B and D in the case of container storage, tank system or containment building unit(s). A facility with drip pads shall notify using the department's Notification of Hazardous Waste Activity Form (HW-1) that it will close under the standards of LAC 33:V.2809.B. The following supplemental information shall be included in a cover letter with any notification submitted under this Clause:

(a). information included in the prior notification of closure as delineated in Subclauses B.8.b.i.(a)-(i) of this Paragraph;

(b). for any container storage being closed in accordance with Clause B.8.d.i of this Paragraph (presumptive demonstration of closure):

(i). a signed statement from the responsible official stating that the closure performance standards have been met through the presumptive demonstration of closure requirements of Clause B.8.d.i of this Paragraph; and

(ii). documentation for any sufficiency demonstrations approved under Subparagraph B.8.e of this Paragraph; and

(c). for any units being closed that are tank systems, containment buildings, or drip pads (or container storage requiring additional demonstration efforts of closure under Subclause B.8.d.ii of this Paragraph), a closure report submitted for approval including:

(i). brief overview of closure activities;

(ii). details of the closure activities including:

[a]. removal of final waste, contaminated debris, and contaminated soil;

[b]. decontamination procedures;

[c]. analytical results of the rinsate compared to potable water standards (i.e., the numerical closure performance standards, available on the department's website); and

[d]. analytical results of the soil (and groundwater, if deemed necessary) compared to the numerical closure performance standards available in guidance on the department's website as delineated below:

[i]. the numerical closure performance standards are the applicable limiting screening option standards as defined by the Risk Evaluation/Corrective Action Program (RECAP) in LAC 33:I.Chapter 13;

[ii]. for soil, the residential screening standard and industrial screening standard with conveyance notice may be used; and

[iii]. in lieu of conducting confirmatory soil sampling (and groundwater sampling, if deemed necessary) during closure, the large quantity generator may state that the closure performance standards for soil and groundwater will be met through RECAP and remedial activities (See Clause B.8.f.ii of this Paragraph for container storage, tank systems, and containment buildings and LAC 33:V.2809.B.2 for drip pads.);

(iii). supporting documentation including:

[a]. sampling and analysis protocol/methods, locations and depths, and borehole logs, as applicable;

[b]. analytical lab data reports; and

[c]. supporting documentation deemed relevant by the large quantity generator (e.g., photographs, manifests, description of any other actions relevant to the closure not otherwise mentioned, etc.);

(iv). documentation for any sufficiency demonstrations approved under Subparagraph B.8.e of this Paragraph; and

(v). a written statement signed by the responsible official stating that the closure performance standards have been met. (The Office of Environmental Services shall review and approve the closure report and notification to ensure that the closure performance standards have been met.)

iii. A large quantity generator may request additional time to close and meet the closure performance standards. The large quantity generator shall notify the Office of Environmental Services using the department's Notification of Hazardous Waste Activity Form (HW-1) within 75 days after the date provided in Clause B.8.b.i of this Paragraph to request an extension and provide an explanation as to why the additional time is required.

c. Closure Performance Standards

i. Closure Performance Standards for Central Accumulation Areas that are Container Storage, Tank Systems, or Containment Buildings

(a). At closure, the large quantity generator shall close the central accumulation area or facility in a manner that:

(i). minimizes the need for further maintenance by controlling, minimizing, or eliminating, to the extent necessary to protect human health and the environment, the post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(ii). removes or decontaminates all contaminated equipment, structures and soil and any remaining hazardous waste residues from the central accumulation area including containment system components (e.g., pads, liners, etc.), contaminated soils and subsoils, bases, and structures and equipment contaminated with waste, unless LAC 33:V.109.Hazardous Waste.5 applies.

(b). Any hazardous waste generated in the process of closing either the large quantity generator's facility or unit(s) accumulating hazardous waste shall be managed in accordance with all applicable standards of LAC 33:V.Subpart 1, including removing any hazardous wastes contained in these units within 90 days of generating it and managing these wastes in a RCRA subtitle C hazardous waste permitted treatment, storage, and disposal facility, or interim status facility.

(c). If the large quantity generator demonstrates that either any contaminated soils and wastes cannot be practicably removed or decontaminated as required in Division B.8.c.i.(a).(ii) of this Paragraph, or that the remaining contaminant levels are not protective of human health and the environment as demonstrated by the confirmatory sampling and analytical results specified in Subdivision B.8.b.ii.(c).(ii).[d] of this Paragraph, or through the use of RECAP and remedial activities under Subparagraph B.8.f of this Paragraph or LAC 33:V.2809.B.2, then the central accumulation area is considered to be a landfill. The large quantity generator shall then close the central accumulation area and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (LAC 33:V.4501.B and D). In addition, for the purposes of closure, post-closure, and financial responsibility, such a central accumulation area is then considered to be a landfill, and the large quantity generator shall meet all of the requirements for landfills specified in LAC 33:V.Chapter 43.Subchapters F and G.

ii. Closure Performance Standards for Central Accumulation Areas that are Drip Pads. At closure, the large quantity generator shall comply with the closure requirements of Subparagraph B.8.b, Division B.8.c.i.(a).(i), and Subclause B.8.c.i.(b) of this Paragraph, and LAC 33:V.2809.A and B.

d. Special Provisions for Closing a Central Accumulation Area Consisting of Container Storage. This Subparagraph is applicable to closure for a central accumulation area consisting of container storage. The container storage may have temporary or long-term (i.e., fixed, immovable) secondary containment.

i. Presumptive Demonstration of Closure. A large quantity generator shall be considered to have performed due diligence in closing container storage (i.e., no additional closure efforts or verification shall be required) and met the closure performance standards of Clause B.8.c.i of this Paragraph provided the following conditions are met.

(a). All information has been placed in the operating record as required by Clause B.8.a.ii of this Paragraph.

(b). All containers were removed from the central accumulation area and were either sent off-site for treatment or disposal or were transferred elsewhere on-site for treatment, storage, or disposal authorized by LAC 33:V.Subpart 1.

(c). Weekly inspection logs, summary, or other information (e.g., photographs, written documentation of spill clean ups, etc.) in the operating record demonstrate during the entirety of the accumulation period that:

(i). there were no spills, leaks, or releases of hazardous waste or hazardous constituents onto the secondary containment or soil immediately surrounding and beneath the unit, or they were properly cleaned up and managed in order to meet the closure performance standards; and

(ii). for container storage with long-term (i.e., fixed, immovable) secondary containment, there were no visible signs of significant cracks, gaps, or deterioration of the secondary containment, or they were properly repaired in a timely manner. (Any sumps or engineered swales serving as a receptacle for drainage in the secondary containment should be clearly mentioned.)

(d). For container storage with long-term (i.e., fixed, immovable) secondary containment, after removal of all waste a final inspection log/report and other information (i.e., photographs, etc.) in the operating record demonstrate that:

(i). there was no significant staining or other signs of contamination from hazardous waste on the secondary containment, including sumps or engineered swales serving as a receptacle for drainage in the secondary containment; and

(ii). there were no visible signs of significant cracks, gaps or deterioration for sumps or engineered swales serving as a receptacle for drainage;

(e). additional demonstration efforts of closure as specified in Clause B.8.d.ii of this Paragraph below are not necessary; and

(f). a signed statement from the responsible official is submitted with the subsequent notification as required by Division B.8.b.ii.(b).(i) of this Paragraph stating the closure performance standards have been met through the presumptive demonstration of closure requirements of this Clause.

ii. Additional Demonstration Efforts of Closure for Container Storage

(a). It is the responsibility of the large quantity generator to be aware of the closure performance standards and to make a good faith effort to demonstrate that the closure performance standards have been met. Additional decontamination procedures and confirmatory sampling of the final rinsate and/or soil (and groundwater, if deemed necessary) shall be required if either:

(i). any of the conditions of Clause B.8.d.i of this Paragraph are not met; or

(ii). the potential future use of the area requires additional efforts to demonstrate that sufficient decontamination has been achieved (e.g., if a secondary containment area has a potential future use for storing food grade products, then decontamination procedures and confirmatory sampling of the final rinsate may be required to verify that it has been adequately decontaminated);

(b). Container storage requiring additional closure efforts shall meet the notification requirements of Subclause B.8.b.i.(k) of this Paragraph (i.e., prior notification) and Subclause B.8.b.ii.(c) of this Paragraph (i.e., closure report for subsequent notification), unless a sufficiency demonstration is approved by the Office of

Environmental Services in accordance with Subparagraph B.8.e of this Paragraph. The Office of Environmental Services shall review and approve the closure report and notification to ensure that the closure performance standards have been met.

e. Sufficiency Demonstration of Closure

i. Prior to, or during closure, the large quantity generator may petition the Office of Environmental Services to meet the closure performance standards through alternate, reduced, or eliminated requirements for closure notifications in Subparagraphs B.8.a and b of this Paragraph. These requirements may include, but are not limited to, documentation, submittal information, decontamination procedures, confirmatory sampling and analysis on the rinsate, and confirmatory sampling and analysis on the soil (and groundwater, if deemed necessary) immediately surrounding and beneath the unit.

ii. A sufficiency demonstration shall not alleviate the large quantity generator's requirement to meet the closure performance standards in Subparagraph B.8.c of this Paragraph, but rather the demonstration of how the closure performance standards have been met.

iii. A sufficiency demonstration will only be approved by the Office of Environmental Services if merited by the supporting information and site-specific conditions.

(a). The following is a partial list of factors the Office of Environmental Services may consider in approving the sufficiency demonstration: accumulation time period; quantity and nature of the hazardous waste; containment design and condition; proper operations and maintenance; any additional protections (e.g., leak detection, etc.); soil and groundwater classification; overall compliance history; existing or future corrective action measures include the central accumulation area and/or the facility (e.g., site-wide corrective action being implemented through an enforceable agreement with the large quantity generator, or an order of the department specifically includes the central accumulation area and/or the facility); and any other relevant information requested by the Office of Environmental Services.

(b). A few example scenarios for a sufficiency demonstration include, but are not limited to: decontamination might not be necessary for a tank system that accumulated diluted wastewater; confirmatory rinsate sampling might not be necessary for a tank system that will receive a hazardous waste permit to manage the same waste; and confirmatory soil (and groundwater, if deemed necessary) sampling might not be required for a tank system that was used for a one-time event.

iv. The Office of Environmental Services' approval of a sufficiency demonstration may require additional or alternate closure efforts or verification from the large quantity generator depending on site-specific conditions.

v. Upon approval by the Office of Environmental Services, the petitioner shall incorporate the relevant information of the sufficiency demonstration into the closure notification requirements of Subparagraphs B.8.a and b of this Paragraph, as applicable. The large quantity generator shall maintain all documentation in support of the sufficiency demonstration.

f. The use of Risk Evaluation/Corrective Action Program (RECAP) and remedial activities for the closure of container storage, tank systems, and containment buildings.

i. If there is suspected or confirmed contamination in the environmental media (i.e., soil or groundwater) immediately surrounding and beneath the unit as demonstrated by the confirmatory sampling and analytical results specified in Subdivision B.8.b.ii.(c).(ii).[d] of this Paragraph or by other evidence, risk evaluation and/or remedial activities may be conducted by the large quantity generator in order to demonstrate that the closure performance standards have been met.

ii. The risk evaluation and/or remedial activities may be conducted, either in addition to, or instead of, the confirmatory sampling and analysis required by Subdivision B.8.b.ii.(c).(ii).[d] of this Paragraph.

iii. The risk evaluation and/or remedial activities shall be:

(a). in accordance with RECAP as referenced in LAC 33:I.Chapter 13 (Risk Evaluation/Corrective Action Program);

(b). under the direction of the Office of Environmental Assessment; and

(c). subject to all cost recovery provisions of the department.

iv. A site investigation work plan shall be submitted to the Office of Environmental Assessment in accordance with Appendix B of RECAP.

v. The risk evaluation must demonstrate that the closure is protective of human health and the environment and that post-closure care is not necessary in order for Subclause B.8.c.i.(c) of this Paragraph (i.e., closure as a landfill) not to apply.

g. Contamination from Other Sources. The Office of Environmental Services may conditionally approve the closure of a central accumulation area whereby the large quantity generator agrees to address contamination remaining in the environmental media (i.e., soil or groundwater) through additional remedial activities under the direction of the Office of Environmental Assessment. The large quantity generator must successfully demonstrate that either:

i. the contamination is from a source other than hazardous waste managed in the unit; or

ii. the contamination caused by the hazardous waste managed in the unit is comingled with contamination caused by another source.

h. Notification of Newly-Identified Release. Any newly identified release of hazardous waste to the environment must be reported either to the Louisiana State Police, Department of Public Safety in accordance with LAC 33:V.105.J.1 (Emergency Conditions) or SPOC in accordance with LAC 33:V.105.J.2 (Nonemergency Conditions).

i. Closure Inspections. The department may inspect the central accumulation area before, during, or after the closure activities have been completed.

j. Closure Guidance. The large quantity generator should review all guidance that may be issued by the department and posted on its website including, but not limited to, guidance on confirmatory sampling for

aboveground structures and environmental media. The purpose of such guidance is to ensure best management practices, promote consistency, and produce technically defensible closures. Any such guidance issued by the department is not regulation and shall not substitute for the requirements of Subparagraph B.8 of this Paragraph. Thus, any guidance does not impose any new requirements. The department shall retain discretion to use approaches on a case-by-case basis that differ from such guidance where appropriate. The department will base decisions regarding closure activities required by Subparagraph B.8 of this Paragraph in accordance with the Act and regulations as applied to the specific facts of the closure. Whether or not the recommendations in any guidance are appropriate in a given situation will depend on site-specific circumstances.

k. Notification Requirements for Closures Initiated Prior to {REGULATION PROMULGATION DATE}.

i. For purposes of this Subparagraph, initiation of closure shall consist of removing the final volume of hazardous waste from the central accumulation area(s) with the intent of no longer using the unit(s) for accumulation of hazardous waste.

ii. A large quantity generator shall meet the closure performance standards of Subparagraph B.8.c of this Paragraph regardless of when closure was initiated.

iii. A large quantity generator that initiated closure prior to {REGULATION PROMULGATION DATE} shall either:

(a). comply with the notification requirements of Subparagraphs B.8.a and b of this Paragraph; or

(b). perform the following:

(i). complete all closure activities and meet the closure performance standards within 180 days of {REGULATION PROMULGATION DATE}, unless such deadline is extended in writing by the Office of Environmental Services upon proper showing by the large quantity generator that such extension is warranted; and

(ii). submit a Certification of No Hazardous Waste Activity form, available on the department's website, to the Office of Environmental Services no later than 30 days after completion of all closure activities. (The department may conduct an inspection of the central accumulation area(s) in order to verify that the closure performance standards were met.)

9. Land Disposal Restrictions. The large quantity generator complies with all applicable requirements under LAC 33:V.Chapter 22.

C. Accumulation Time Limit Extension. A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the applicable requirements of LAC 33:V.Subpart 1, unless granted an extension to the 90-day period. Such extension may be granted by the Office of Environmental Services if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Office of Environmental Services on a case-by-case basis.

D. Accumulation of F006 Waste. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without being subject to LAC 33:V.Subpart 1, provided that it complies with all of the following additional conditions for exemption.

1. The large quantity generator shall implement pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering F006 waste or otherwise released to the environment prior to its recycling.

2. The F006 waste shall be legitimately recycled through metals recovery.

3. No more than 20,000 kilograms of F006 waste shall be accumulated on-site at any one time.

4. The F006 waste shall be managed in accordance with the following.

a. F006 waste shall accumulate in containers, tanks or containment buildings.

i. If the F006 waste is placed in containers, the large quantity generator shall comply with the applicable conditions for exemption in Paragraph B.1 of this Section.

ii. If the F006 waste is placed in tanks, the large quantity generator shall comply with the applicable conditions for exemption of Paragraph B.2 of this Section.

iii. If the F006 waste is placed in containment buildings, the large quantity generator shall comply with LAC 33:V.Chapter 43.Subchapter T. Additionally, the large quantity generator shall place its professional engineer certification that the building complies with the design standards specified in LAC 33:V.4703 in the facility's files prior to operation of the unit. The large quantity generator shall maintain:

(a). a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the large quantity generator is complying with the procedures; or

(b). documentation that the unit is emptied at least once every 180 days.

b. The large quantity generator is exempt from all the requirements in LAC 33.V.Chapter 43.Subchapters F (Closure and Post-Closure) and G (Financial Requirements), except for those referenced in Paragraph B.8 of this Section.

c. The date upon which each period of accumulation begins shall be clearly marked and shall be clearly visible for inspection on each container.

d. While being accumulated on-site, each container and tank shall be labeled or clearly marked with:

i. the words "Hazardous Waste"; and

ii. an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704).

e. The large quantity generator shall comply with the requirements in Paragraphs B.6 and 7 of this Section.

E. F006 Waste Transported Over 200 Miles. A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who transports this waste, or offers this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without being subject to LAC 33:V.Subpart 1 if the large quantity generator complies with all of the conditions for exemption in Paragraphs D.1-4 of this Section.

F. F006 Waste Accumulation Time Extension. A large quantity generator who accumulates F006 waste on-site for more than 180 days, or for more than 270 days if the generator transports the waste, or offers this waste for transportation, over a distance of 200 miles or more, or who accumulates more than 20,000 kilograms of F006 waste on-site, is an operator of a storage facility and is subject to the requirements of LAC 33:V.Subpart 1 unless the generator has been granted an extension to the 180-day, or 270-day if applicable, period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the Office Environmental Services if F006 waste must remain on-site for longer than 180 days, or 270 days if applicable, or if more than the 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Office of Environmental Services on a case-by-case basis.

G. Consolidation of Hazardous Waste Received from Very Small Quantity Generators. Consolidation of hazardous waste received from very small quantity generators shall be in accordance with this Subsection. Large quantity generators may accumulate on-site hazardous waste received from very small quantity generators under control of the same person (as defined in LAC 33:V.109), without a storage permit or interim status and without complying with the requirements of LAC 33:V.Subpart 1 provided that they comply with the following conditions. Control, for the purposes of this Section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to control such generators.

1. The large quantity generator shall notify the Office of Environmental Services at least 30 days prior to receiving the first shipment from a very small quantity generator(s) using the department's Notification of Hazardous Waste Activity Form (HW-1) that:

a. identifies on the form the name(s) and site address(es) for the very small quantity generator(s) as well as the name and business telephone number for a contact person for the very small quantity generator(s); and

b. submits an update of the department's Notification of Hazardous Waste Activity Form (HW-1) within 30 days after a change in the name or site address for the very small quantity generator.

2. The large quantity generator shall maintain records of shipments for three years from the date the hazardous waste was received from the very small quantity generator. These records shall identify the name, site address, and contact information for the very small quantity generator and include a description of the hazardous waste received, including the quantity and the date the waste was received.

3. The large quantity generator shall comply with the independent requirements identified in Subparagraph 1003.A.1.c and the conditions for exemption in this Section for all hazardous waste received from a very small quantity generator. For the purposes of the labeling and marking regulations in Paragraph B.5 of this Section, the large quantity generator shall label the container or unit with the date accumulation started (i.e., the date the hazardous waste was received from the very small quantity generator). If the large quantity generator is consolidating incoming hazardous waste from a very small quantity generator with either its own hazardous waste or with hazardous waste from other very small quantity generators, the large quantity generator shall label each container or unit with the earliest date any hazardous waste in the container was accumulated on-site.

H. Rejected Load. A large quantity generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that waste back as a rejected load or residue in accordance with the manifest discrepancy provisions of LAC 33:V.1516.C or LAC 33:V.4355 may accumulate the returned waste on-site in accordance with Subsections B and C of this Section. Upon receipt of the returned shipment, the generator shall sign:

1. Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

2. Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1017. EPA Identification Numbers and Notification of Hazardous Waste Activities for Generators

A. All generators (i.e., very small quantity generators, small quantity generators and large quantity generators) shall obtain an active EPA identification number by notifying the Office of Environmental Services using the Notification of Hazardous Waste Activity Form (HW-1) within 14 days after first generating any hazardous waste at the location specified in the notification. The assignment of an active EPA identification number shall serve as proof of this notification to the department by the generator. However, as EPA identification numbers are site-specific, if a generator moves to another location, the generator shall obtain a new EPA identification number for the facility. A generator shall notify the Office of Environmental Services within seven days if any information submitted in the notification of hazardous waste activity changes. As stated in LAC 33:V.105.A.9, failure to submit a timely and complete Notification of Hazardous Waste Activity Form (HW-1), obtain an active EPA identification number or notify the department of changes to the notification shall constitute a violation of these regulations and subject the applicant to enforcement action up to and including the assessment of civil penalties.

B. A generator shall not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an active EPA identification number.

C. A generator shall not offer its hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an active EPA identification number and the required authorization necessary to receive and manage the generator's waste.

D. Renotification by Small Quantity Generators and Large Quantity Generators

1. A small quantity generator shall renotify the Office of Environmental Services starting in the year 2021 and every four years thereafter using the department's Notification of Hazardous Waste Activity Form (HW-1). Small quantity generators with EPA identification numbers ending in:

a. an even number shall submit notification by April 15, 2021, and every four years thereafter; or

b. an odd number shall submit notification by September 1, 2021, and every four years thereafter.

2. A large quantity generator shall renotify the Office of Environmental Services by March 1 of each even-numbered year thereafter using the department's Notification of Hazardous Waste Activity Form (HW-1). A large quantity generator may submit this renotification as part of its annual report required under LAC 33:V.1021.

E. Other significant hazardous waste activities described in this Chapter (i.e., closures for large quantity generators in accordance with Subparagraph 1015.B.8.b, episodic events in accordance with Subchapter C, and large quantity generators consolidating hazardous waste from very small quantity generators in accordance with Paragraph 1015.G.1) shall also require submittal of a Notification of Hazardous Waste Activity to the Office of Environmental Services.

F. Generators shall comply with the general requirements in LAC 33:V.105.A regarding the Notification of Hazardous Waste Activity and for obtaining an EPA identification number.

G. Generators who cease hazardous waste activities or move to another location shall notify the Office of Environmental Services within 30 days using the department's Notification of Hazardous Waste Activity Form (HW-1) or other forms approved by the department in accordance with LAC 33:V.105.A.5.b.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq. HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter B. Recordkeeping and Reporting for Small Quantity Generators and Large Quantity Generators

§1019. Recordkeeping

A. A generator shall keep a copy of each manifest signed in accordance with LAC 33:V.1107.D.1 for three years or until he receives a signed copy from the designated facility which received the waste. The signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

B. A generator shall keep a copy of each annual report and exception report for a period of at least three years from the due date of the report.

C. See LAC 33:V.1005.G for recordkeeping requirements for documenting hazardous waste determinations.

D. The periods of retention referred to in this Subchapter are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1021. Annual Report for Large Quantity Generators

A. A generator who is a large quantity generator for at least one month of the calendar year (reporting year) who ships any hazardous waste off-site to a treatment, storage, or disposal facility within the United States shall complete and submit an annual report to the Office of Environmental Services by March 1 of the following year. The annual report shall be submitted on the form provided by the Office of Environmental Services and it shall cover generator activities during the reporting year. This requirement also applies to large quantity generators that receive hazardous waste from very small quantity generators according to LAC 33:V.1015.G.

B. Any generator who is a large quantity generator for at least one month of the calendar year (reporting year) who disposes, treats, or stores hazardous waste on-site shall complete and submit an annual report to the Office of Environmental Services by March 1 of the following year. Reporting shall be in accordance with the provisions of LAC 33:V.Chapters 3, 5, 7, 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 37, and 43, and shall include total quantity by type of waste handled, and how that waste was disposed, treated, or stored. The annual report shall be on the form provided by the Office of Environmental Services. Generators shall maintain on-site a copy of each report submitted to the department for a period of at least three years from the date of the report. This requirement also applies to large quantity generators that receive hazardous waste from very small quantity generators according to LAC 33:V.1015.G.

C. Exports of hazardous waste to foreign countries are not required to be reported on the annual report. A separate annual report requirement is set forth in LAC 33:V.1113.G for hazardous waste exporters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1023. Exception Reporting

A. A large quantity generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner/operator of the designated facility to determine the status of the hazardous waste.

B. A large quantity generator shall submit an exception report to the Office of Environmental Services if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility

within 45 days of the date the waste was accepted by the initial transporter. The exception report shall include:

1. a legible copy of the manifest for which the generator does not have confirmation of delivery; and

2. a cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

C. A small quantity generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter shall submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Office of Environmental Services. The submission to the Office of Environmental Services need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the returned manifest was not received.

D. For rejected shipments of hazardous waste or container residues contained in nonempty containers that are forwarded to an alternate facility by a designated facility using a new manifest, following the procedures of LAC 33:V.1516.C.5.a.i-vi, the generator shall comply with the requirements of Subsections A or C of this Section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of Subsections A-C of this Section for a shipment forwarding such waste to an alternate facility by a designated facility, the following conditions shall apply.

1. The copy of the manifest received by the generator shall have the handwritten signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility.

2. The 35/45/60-day time frames shall begin the date the waste was accepted by the initial transporter forwarding the hazardous waste from the designated facility to the alternate facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq. HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1025. Additional Reporting

A. The administrative authority, as it deems necessary under the Act, may require generators to furnish additional reports concerning the quantities and disposition of waste identified or listed in LAC 33:V.Chapter 49.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1027. Recordkeeping and Reporting for Small Quantity Generators

A. A small quantity generator is subject only to the following independent requirements in this Subchapter, which include:

1. recordkeeping in §1019.A, 1019.C, and 1019.D of this Part;

2. exception reporting in §1023.C of this Subchapter; and

3. additional reporting in §1025.A of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter C. Alternative Standards for Episodic Generation

§1029. Applicability

A. This Subchapter is applicable to very small quantity generators and small quantity generators as defined in LAC 33:V.109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1031. Definitions for this Subchapter

A. The following definitions apply to this Subchapter:

Episodic Event—an activity or activities, either planned or unplanned, that does not normally occur during generator operations, resulting in an increase in the generation of hazardous wastes that exceeds the calendar month quantity limits for the generator's usual category.

Planned Episodic Event—an episodic event that the generator planned and prepared for, including: regular maintenance, tank cleanouts, short-term projects, and removal of excess chemical inventory.

Unplanned Episodic Event—an episodic event that the generator did not plan or reasonably did not expect to occur, including production process upsets, product recalls, accidental spills, or acts of nature such as tornado, hurricane, or flood.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1033. Conditions for Generators Managing Hazardous Waste from an Episodic Event

A. Very Small Quantity Generator. A very small quantity generator may maintain its existing generator category for hazardous waste generated during an episodic event provided that the generator complies with the following conditions.

1. The very small quantity generator is limited to one episodic event per calendar year, unless a petition is granted under Section 1035 of this Subchapter. Before submittal of a HW-1 notification to the Office of Environmental Services for a second episodic event in a calendar year, the very small quantity generator shall obtain approval of the petition for a second episodic event as required by Section 1035 of this Subchapter.

2. Notification. The very small quantity generator shall notify the Office of Environmental Services no later than 30 calendar days prior to initiating a planned episodic event using the department's Notification of Hazardous Waste Activity Form (HW-1). In the event of an unplanned episodic event, the generator shall notify the Office of Environmental Services within 72 hours of the unplanned event via phone, email, or fax and subsequently submit the department's Notification of Hazardous Waste Activity Form (HW-1). The generator shall include the start date and end date of the episodic event, the reason(s) for the event, types

and estimated quantities of hazardous waste expected to be generated as a result of the episodic event, and shall identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to an emergency in compliance with LAC 33:V.1013.C.9.a.

3. EPA ID Number. The very small quantity generator shall have an EPA identification number or obtain an EPA identification number using the department's Notification of Hazardous Waste Activity Form (HW-1).

4. Accumulation. A very small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste in containers and tanks the following conditions apply.

a. Containers. A very small quantity generator accumulating in containers shall mark or label its containers with the following:

i. the words "Episodic Hazardous Waste";

ii. an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704); and

iii. the date upon which the episodic event began; clearly visible for inspection on each container.

b. Tanks. A very small quantity generator accumulating episodic hazardous waste in tanks shall do the following:

i. mark or label the tank with the words "Episodic Hazardous Waste";

ii. mark or label the tank with an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);

iii. use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

iv. keep inventory logs or records with the above information on-site and readily available for inspection.

c. Hazardous waste shall be managed in a manner that minimizes the possibility of a fire, explosion, or release of hazardous waste or hazardous waste constituents to the air, soil, or water.

i. Containers shall be in good condition and compatible with the hazardous waste being accumulated therein. Containers shall be kept closed except to add or remove waste.

ii. Tanks shall be in good condition and compatible with the hazardous waste accumulated therein. Tanks shall have procedures in place to prevent the overflow (e.g., be equipped with means to stop inflow with systems such as waste feed cutoff systems or bypass systems to a standby tank when hazardous waste is continuously fed into the tank). Tanks shall be inspected at least once each operating day to ensure all applicable discharge control equipment, such as waste feed cutoff systems, bypass systems, and drainage systems are in good working order and to ensure the tank is operated according to its design by reviewing the data gathered from monitoring equipment such as pressure and temperature gauges from the inspection.

5. The very small quantity generator shall comply with the hazardous waste manifest provisions of LAC 33:V.1107 when it sends its episodic event hazardous waste off-site to a *designated facility*, as defined in LAC 33:V.109.

6. The very small quantity generator has up to 60 calendar days from the start of the episodic event to manifest and send its hazardous waste generated from the episodic event to a *designated facility*, as defined in LAC 33:V.109.

7. Very small quantity generators shall maintain the following records for three years from the end date of the episodic event:

a. beginning and ending dates of the episodic event;

b. a description of the episodic event;

c. a description of the types and quantities of hazardous wastes generated during the event;

d. a description of how the hazardous waste was managed as well as the name of the RCRA-designated facility that received the hazardous waste;

e. name(s) of hazardous waste transporters; and

f. an approval letter from the administrative authority if the generator petitioned to conduct one additional episodic event per calendar year.

B. Small Quantity Generator. A small quantity generator may maintain its existing generator category during an episodic event provided that the generator complies with the following conditions.

1. The small quantity generator is limited to one episodic event per calendar year unless a petition is granted under Section 1035 of this Subchapter. Before submittal of a HW-1 notification to the Office of Environmental Services for a second episodic event in a calendar year, the small quantity generator shall obtain approval of the petition for a second episodic event as required by Section 1035 of this Subchapter.

2. Notification. The small quantity generator shall notify the Office of Environmental Services no later than 30 calendar days prior to initiating a planned episodic event using the department's Notification of Hazardous Waste Activity Form (HW-1). In the event of an unplanned episodic event, the small quantity generator shall notify the Office of Environmental Services within 72 hours of the unplanned event via phone, email, or fax, and subsequently submit the department's Notification of Hazardous Waste Activity Form (HW-1). The small quantity generator shall include the start date and end date of the episodic event and the reason(s) for the event, types and estimated quantities of

hazardous waste expected to be generated as a result of the episodic event, and identify a facility contact and emergency coordinator with 24-hour telephone access to discuss the notification submittal or respond to emergency.

3. EPA ID Number. The small quantity generator shall have an EPA identification number or obtain an EPA identification number using the department's Notification of Hazardous Waste Activity Form (HW-1).

4. Accumulation by Small Quantity Generators. A small quantity generator is prohibited from accumulating hazardous waste generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions shall apply.

a. Containers. A small quantity generator accumulating episodic hazardous waste in containers shall meet the standards of LAC 33:V.1013.C.2 and shall mark or label its containers with the following:

i. the words "Episodic Hazardous Waste";

ii. an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704); and

iii. the date upon which the episodic event began, clearly visible for inspection on each container.

b. Tanks. A small quantity generator accumulating episodic hazardous waste in tanks shall meet the standards of LAC 33:V.1013.C.3 and shall:

i. mark or label the tank with the words "Episodic Hazardous Waste";

ii. mark or label the tank with an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association Code 704);

iii. use inventory logs, monitoring equipment or other records to identify the date upon which each period of accumulation begins and ends; and

iv. keep inventory logs or records with the above information on-site and available for inspection.

5. The small quantity generator shall treat hazardous waste generated from an episodic event on-site or manifest and ship such hazardous waste off-site to a designated facility, as defined by LAC 33:V.109, within 60 calendar days from the start of the episodic event.

6. The small quantity generator shall maintain the following records for three years from the end date of the episodic event including:

a. the beginning and end dates of the episodic event;

b. a description of the episodic event;

c. a description of the types and quantities of hazardous waste generated during the event;

d. a description of how the hazardous waste was managed as well as the name of the designated facility (as defined by LAC 33:V.109) that received the hazardous waste;

e. name(s) of hazardous waste transporters: and

f. an approval letter from the administrative authority if the generator petitioned to conduct one additional episodic event per calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1035. Petition to Manage One Additional Episodic Event per Calendar Year

A. A generator may petition the administrative authority for a second episodic event in a calendar year without impacting its generator category under the following conditions. If a very small quantity generator or small quantity generator has already held:

1. a planned episodic event in calendar year, the generator may petition the administrative authority for an additional unplanned episodic event in that calendar year within 72 hours of the unplanned event; or

2. an unplanned episodic event in a calendar year, the generator may petition the administrative authority for an additional planned episodic event in that calendar year.

B. The petition shall include the following:

1. the reason(s) why an additional episodic event is needed and the nature of the episodic event;

2. the estimated amount of hazardous waste to be managed from the event;

3. how the hazardous waste is to be managed;

4. the estimated length of time needed to complete the management of the hazardous waste generated from the episodic event—not to exceed 60 days; and

5. information regarding the previous episodic event managed by the generator, including the nature of the event, whether it was a planned or unplanned event, and how the generator complied with the conditions.

C. The petition shall be made to the administrative authority in writing, either on paper or electronically.

D. If the petition is approved by the administrative authority, the generator shall comply with Section 1033 of this Subchapter when managing the hazardous waste from the second approved episodic event including notifying the Office of Environmental Services using the department's Notification of Hazardous Waste Activity Form (HW-1). A copy of the written approval of the petition shall accompany the HW-1 notification.

E. The generator shall retain written approval in its records for three years from the date the episodic event ended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter D. Preparedness, Prevention and Emergency Procedures for Large Quantity Generators

§1037. Applicability

A. The regulations of this Subchapter apply to those areas of a large quantity generator where hazardous waste is generated or accumulated on-site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1039. Maintenance and Operation of Facility

A. A large quantity generator shall maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1041. Required Equipment

A. All areas deemed applicable by Section 1037 of this Subchapter shall be equipped with the items in Paragraphs A.1-4 of this Section, unless none of the hazards posed by waste handled at the facility could require a particular kind of equipment specified below or the actual hazardous waste generation or accumulation area does not lend itself for safety reasons to have a particular kind of equipment specified below. A large quantity generator may determine the most appropriate locations within its facility to locate the following equipment necessary to prepare for and respond to emergencies including:

1. an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

2. a device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

3. portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

4. water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1043. Testing and Maintenance of Equipment

A. All communication or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to ensure its proper operation in time of emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1045. Access to Communication or Alarm Systems

A. Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access (e.g., direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless a device is not required under Section 1041 of this Subchapter.

B. In the event there is just one employee on the premises while the facility is operating, the employee shall have immediate access (e.g., direct or unimpeded access) to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Section 1041 of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1047. Required Aisle Space

A. The large quantity generator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency, unless aisle space is not needed for any of these purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1049. Arrangements with Local Authorities

A. The large quantity generator shall attempt to make arrangements with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the local emergency planning committee, if it is determined to be the appropriate organization with which to make arrangements.

1. A large quantity generator attempting to make arrangements with its local fire department shall determine the potential need for the services of the local police department, other emergency response teams, emergency response contractors, equipment suppliers and local hospitals.

2. As part of this coordination, the large quantity generator shall attempt to make arrangements, as necessary, to familiarize the above organizations with the layout of the facility, the properties of the hazardous waste handled at the

facility and associated hazards, places where personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes as well as the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

3. Where more than one police or fire department might respond to an emergency, the large quantity generator shall attempt to make arrangements designating primary emergency authority to a specific fire or police department, and arrangements with any others to provide support to the primary emergency authority.

B. The large quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency. This documentation shall include documentation in the operating record that either confirms such arrangements actively exist or in cases where no arrangements exist, confirms that attempts to make such arrangements were made.

C. A facility possessing 24-hour response capabilities may seek a waiver from the authority having jurisdiction (AHJ) over the fire code at the facility's location (i.e., state fire marshal or district fire chief) as far as needing to make arrangements with the local fire department as well as any other organization necessary to respond to an emergency, provided that the waiver is documented in the operating record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1051. Purpose and Implementation of Contingency Plan

A. A large quantity generator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

B. The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1053. Content of Contingency Plan

A. The contingency plan shall describe the actions facility personnel shall take to comply with Sections 1051 and 1061 of this Subchapter in response to fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

B. If the generator has already prepared a spill, prevention, control, and countermeasures (SPCC) plan in accordance with 40 CFR part 112, or some other emergency or contingency plan, it need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the standards of this Chapter. The generator may develop one contingency plan that meets all regulatory standards. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance (i.e., one plan).

C. The plan shall describe arrangements agreed to with the local police department, fire department, other emergency response teams, emergency response contractors, equipment suppliers, local hospitals or, if applicable, the local emergency planning committee, in accordance with Section 1049 of this Subchapter.

D. The plan shall list names and telephone numbers of all persons qualified to act as emergency coordinator (see Section 1059 of this Subchapter), and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they assume responsibility as alternates. In situations where the generator facility has an emergency coordinator continuously on duty because it operates 24 hours per day, every day of the year, the plan may list the staff position (e.g., operations manager, shift coordinator, shift operations supervisor) as well as an emergency telephone number that can be guaranteed to be answered at all times.

E. The plan shall include a list of all emergency equipment at the facility (e.g., fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and physical description of each item on the list, and a brief outline of its capabilities.

F. The plan shall include an evacuation plan for generator personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1055. Copies of Contingency Plan

A. A copy of the contingency plan and all revisions to the plan shall be maintained at the large quantity generator's facility.

B. The large quantity generator shall submit a copy of the contingency plan and all revisions to all local emergency responders (i.e., police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services). This document may also be submitted to the local emergency planning committee, as appropriate.

C. A large quantity generator that first becomes subject to these provisions after {REGULATION PROMULGATION DATE}, or a large quantity generator that is otherwise amending its contingency plan shall at that time submit a quick reference guide of the contingency plan to the local emergency responders identified at Subsection B of this Section or, as appropriate, the local emergency planning committee. The quick reference guide shall include:

1. the types/names of hazardous wastes in layman's terms and the hazard associated with each hazardous waste present at any one time (e.g., toxic paint waste, spent ignitable solvent, corrosive acid);

2. the estimated maximum amount of each hazardous waste that may be present at any one time;

3. the identification of any hazardous waste where exposure would require unique or special treatment by medical or hospital staff;

4. a map of the facility showing areas where hazardous wastes are generated, accumulated and treated and routes for accessing these wastes;

a. in the case of satellite accumulation areas that are designed for managing small quantities of waste at multiple locations throughout a facility, identification of the general waste-generation locations is acceptable;

b. short-term (i.e., temporary) central accumulation units used for no more than 90 days (unless in compliance with the accumulation time limit extension or F006 waste accumulation conditions for exemption in Subsections C through F of LAC 33:V.1015) that are primarily event related (e.g., maintenance events, spill cleanups, etc.) need not be identified in the quick reference guide or contingency plan;

5. a street map of the facility in relation to surrounding businesses, schools, and residential areas to understand how best to get to the facility and also evacuate citizens and workers;

6. the locations of water supply (e.g., fire hydrant and its flow rate);

7. the identification of on-site notification systems (e.g., fire alarm that rings off-site, smoke alarms); and

8. the name of the emergency coordinator(s) and 7/24-hour emergency telephone number(s) or, in the case of a facility where an emergency coordinator is continuously on duty, the emergency telephone number for the emergency coordinator.

D. Generators shall update, if necessary, their quick reference guides, whenever the contingency plan is amended and submit these documents to the local emergency responders identified in Subsection B of this Section or, as appropriate the local emergency planning committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1057. Amendment of Contingency Plan

A. The contingency plan shall be reviewed, and immediately amended, if necessary whenever:

1. applicable regulations are revised;

2. the plan fails in an emergency;

3. the generator facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

4. the list of emergency coordinators changes; or

5. the list of emergency equipment changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1059. Emergency Coordinator

A. At all times, there shall be at least one employee either on the generator's premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures and implementing the necessary emergency procedures outlined in LAC 33:V.1061. Although responsibilities may vary depending on factors such as type and variety of hazardous waste(s) handled by the facility, as well as type and complexity of the facility, this emergency coordinator shall be thoroughly familiar with all aspects of the generator's contingency plan, all operations and activities at the facility, the location and characteristics of hazardous waste handled, the location of all records within the facility, and the facility's layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1061. Emergency Procedures

A. Whenever there is an imminent or actual emergency situation, the emergency coordinator or his designee shall immediately:

1. activate internal facility alarm or communication systems, where applicable, to notify all facility personnel; and

2. notify appropriate state or local agencies with designated response roles if their help is needed.

B. Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of the facility records or manifests and, if necessary, by chemical analysis.

C. Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

D. If the emergency coordinator determines that the facility has had a release, fire, or explosion, which could threaten human health or the environment, outside the facility, the emergency coordinator shall report the findings as follows.

1. If the assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated.

2. Immediate Emergency Notifications

a. Notification to the Louisiana State Police, Department of Public Safety.

i. The emergency coordinator shall immediately, but in no case later than one hour, notify the 24-hour Louisiana Emergency Hazardous Materials Hotline by calling 1-877-922-6595 or 225-925-6595. This notification to the Louisiana State Police, Department of Public Safety shall be in accordance with LAC 33:I.Chapter 39 and shall include the following information:

(a). the name and telephone number, and employer of the contact person;

(b). the company or responsible party's name;

(c). where the incident occurred (mailing address and physical location);

(d). date and time the incident began and ended;

(e). the identity of the hazardous material released or involved (this would include proper chemical name if available, an indication of whether it is an extremely hazardous substance, and whether it is a solid, liquid, or gas);

(f). the actual amount or an estimate of the amount released; or in the absence of quantity data for the hazardous materials released, one of the following incident classifications: unusual event, site emergency, or general emergency;

(g). whether the material released escaped or could reasonably be expected to escape, beyond the site of the facility;

(h). if available, the substance's hazard class and any other identifier (e.g., U.N. number, CHRIS code, etc.);

(i). medium into which the hazardous materials was released (e.g. air, water, land);

(j). whether the release resulted in a fire or explosion;

(k). injury to personnel, or a fatality resulting from the release or incident;

(l). details regarding wind direction, wind speed, temperature, and precipitation;

(m). any need or a recommendation for, an off-site protective action (e.g., road closure, shelter-in-place, evacuation, or none);

(n). details of the release or incident; and

(o). whether other responsible state and local agencies such as the local emergency planning committee have been notified.

ii. Updates During the Incident. The hotline must be immediately notified of any adverse change in the nature or rate of the discharge. Additional notifications must be made for discharges of multiple constituents when they originate from different causes or sources or they are substantially different in nature from the discharges in the initial notification.

b. Emergency Notifications to Other Regulatory Agencies. The large quantity generator should be aware that other federal, state and local agencies may require immediate and/or follow-up notification of an emergency situation under other regulatory authorities, including, but not limited to the:

i. National Response Center by calling their 24-hour toll free number 1-800-424-8802, to the extent that immediate notification is required under 40 CFR 302.6 (exceedance of reportable quantities) or 40 CFR 110.6 (oil spills); and/or

ii. appropriate local emergency planning committee having jurisdiction over the facility to the extent that immediate notification is required under 40 CFR part 355, subpart C or LAC 33:V.Subpart 2.Chapter 101. Contact information for each local emergency planning committee is available on the Louisiana State Police, Department of Public Safety's website.

E. During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur or spread to other hazardous waste at the generator's facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released hazardous waste, and removing or isolating containers.

F. If the generator stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

G. Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the generator can demonstrate, in accordance with LAC 33:V.109.Hazardous Waste.4 or 5, that the recovered material is not a hazardous waste, then it is a newly generated hazardous waste that shall be managed in accordance with all applicable requirements and conditions for exemption in LAC 33:V.Chapters 10, 11, 13, and 43.

H. The emergency coordinator shall ensure the following in the affected area(s) of the facility.

1. No hazardous waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed.

2. All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

I. The generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Written follow-up reports for any unauthorized discharge that requires notification shall be submitted by the large quantity generator to SPOC within seven calendar days of the initial notification in accordance with LAC 33:I.3925 and the Louisiana State Police, Department of Public Safety within five business days of the incident in accordance with LAC 33.V.Subpart 2.10111.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter E. Pre-transportation Requirements for Small Quantity Generators and Large Quantity Generators

§1063. Packaging, Labeling, Marking, and Placarding

A. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the applicable Department of Public Safety regulations and packaging under LAC 33:V.Subpart 2. Chapter 103.

B. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator shall label each package in accordance with the applicable transportation regulations on hazardous materials of the Louisiana Department of Public Safety or its successor agency under LAC 33:V.Subpart 2.Chapter 105.

C. Marking

1. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the Department of Public Safety regulations (see Department of Public Safety regulation LAC 33:V.Subpart 2.Chapter 105).

> Hazardous Waste: Federal and state law prohibits improper disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.
>
> Generator's Name and Address _____
>
> Generator's EPA ID Number _____
>
> Manifest Tracking Number _____
>
> EPA Hazardous Waste Number(s) _____

2. A generator may use a nationally recognized electronic system, such as bar coding, to identify the EPA Hazardous Waste Number(s), as required by Paragraph 1 or 3 of this Subsection.

3. Lab packs that will be incinerated in compliance with LAC 33:V.2227.C are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable.

D. Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall placard, or offer the initial transporter the appropriate placards for, the shipment according to Department of Public Safety regulations for hazardous materials under LAC 33:V.Subpart 2.Chapter 105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1065. Liquids in Landfills Prohibition

A. The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids, whether or not sorbents have been added, in any landfill is prohibited. Prior to disposal in a hazardous waste landfill, liquids shall meet additional requirements as specified in LAC 33:V.2515.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1067. Spills

A. Any spilled material or material trapped in sumps that is a hazardous waste or that will be disposed of as a hazardous waste shall be cleaned up in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 11. Manifest, Import and Export Requirements

Editor's Note: The generator requirements in Chapter 10 et al. were consolidated and reorganized in LAC 33:V.Chapter 10.

Subchapter A. General

§1101. Applicability

Editor's Note: Parts of 1101 were either revised or moved to LAC 33:V.1003 as part of the consolidation and reorganization of the generator requirements in LAC 33:V.Chapter 10.

A. Generators, transporters and treatment, storage, and disposal facilities are subject to the applicable manifesting requirements of Sections 1107 and 1108 of this Chapter when transporting hazardous waste off-site.

B. Any person who exports or imports hazardous waste subject to the manifesting requirements of this Chapter, the export requirements for spent lead-acid battery management standards in LAC 33:V.4145, or subject to the universal waste management standards of LAC 33:V.Chapter 38, to or from the OECD member countries listed in LAC 33:V.1113.I.1.a for recovery shall comply with the applicable requirements of Sections 1113, 1125, and 1127 of this Chapter.

C. Any person who imports hazardous waste from a foreign country into the state of Louisiana must comply with the standards applicable to generators established in LAC 33:V.Chapter 10.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:398 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 22:20 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:660 (April 1998), LR 24:1106 (June 1998), LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:822 (May 2006), LR 38:782 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:40 (January 2018), LR 46:

§1103. Hazardous Waste Determination

Editor's Note: The requirements for hazardous waste determinations in Section 1103 were repromulgated in LAC 33:V.1005.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 17:658 (July 1991), LR 22:818 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), amended by the Office of the Secretary, Legal Division, LR 43:1140 (June 2017), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1105. EPA Identification Numbers

Editor's Note: The requirements for EPA identification numbers in Section 1105 were repromulgated in LAC 33:V.1017.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 10:200 (March 1984), amended LR 17:362 (April 1991), LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2455 (October 2005), LR 33:2101 (October 2007), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1107. Manifest Requirements

A. - A.6. …

7. Generators must get written confirmation of acceptability of the hazardous waste from the operator of the hazardous waste facility before shipping the hazardous waste. The confirmation must be maintained as part of the facility manifest records (see LAC 33:V.1019).

8. The requirements of this Chapter and LAC 33:V.1063.C do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding LAC 33:V.1301.A, the generator or transporter must comply with the requirements for transporters set forth in LAC 33:V.1315 and 1317 in the event of a discharge of hazardous waste on a public or private right-of-way.

A.9. - D.1.b. …

c. retain one copy, in accordance with LAC 33:V.1019.A.

D.2. - E.1. …

2. Reporting and Recordkeeping. Both the generator and disposer shall maintain copies of the manifests and other records as required elsewhere in LAC 33:V.Subpart 1. The generator and disposer shall include all such wastes in the annual report as provided in LAC 33:V.1021.

F. - G.1.b. …

H. Waste Minimization Certification. A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the Uniform Hazardous Waste Manifest.

1. "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me that minimizes the present and future threat to human health and the environment."

2. "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 12:319 (May 1986), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:266, 267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:89 (January 2007), repromulgated LR 33:281 (February 2007), amended LR 33:2101 (October 2007), LR 34:622 (April 2008), LR 38:775 (March 2012), amended by the Office of the Secretary, Legal Division, LR 42:566 (April 2016), LR 43:1140 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1109. Pre-Transport Requirements

Editor's Note: The pretransportation requirements in Section 1109 were repromulgated in LAC 33:V.1063 and 1107.H.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:293 (March 2001), LR 27:709, 716 (May 2001), LR 27:1014 (July 2001), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 31:1571 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:2102 (October 2007), LR 34:622 (April 2008), LR 36:1235 (June 2010), repromulgated LR 36:1536 (July 2010), amended LR 38:776 (March 2012), amended by the Office of the Secretary, Legal Division, LR 43:1140 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:40 (January 2018), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1111. Recordkeeping and Reporting

Editor's Note: The recordkeeping and reporting requirements in Section 1111 were repromulgated in LAC 33:V.Chapter 10.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:220 (March 1990), LR 17:365 (April 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2102 (October 2007), LR 38:776 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:40 (January 2018), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1113. Exports of Hazardous Waste

A. - E.9. …

F. Exception Reports. In lieu of the requirements of LAC 33:V.1023, a primary exporter must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, if any of the following occurs:

F.1. - G.1.d. …

e. except for hazardous waste produced by exporters of greater than 100 kg, but less than 1000 kg, in a

calendar month, unless provided in accordance with LAC 33:V.1021 in even numbered years:

G.1.e.i. - I.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 33:2102 (October 2007), LR 34:72 (January 2008), LR 34:622 (April 2008), LR 38:782 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:40 (January 2018), LR 46:

§1121. Spills

Editor's Note: The spill requirements in Section 1121 were repromulgated in LAC 33:V.1067.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter B. Transboundary Shipments of Hazardous Waste

§1127. Transboundary Shipments of Hazardous Waste for Recovery within the OECD

A. - F.2. …

3. A recognized trader shall not arrange for import or export of hazardous waste without having received an EPA identification number.

G. - G.1.d. …

e. in even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kg but less than 1,000 kg in a calendar month and except for hazardous waste for which information was already provided pursuant to LAC 33:V.1021:

e.i. - f. …

* * *

2. Exception Reports. Any person who meets the definition of primary exporter in LAC 33:V.109 or who initiates the movement document under Subsection D of this Section must file an exception report, in lieu of the requirements of LAC 33:V.1023 (if applicable), with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20560, if any of the following occurs:

G.2.a. - I.4.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:293 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2103 (October 2007), LR 34:72 (January 2008), LR 34:1012 (June 2008), LR 38:783 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1199. Appendix A—Uniform Hazardous Waste Manifest and Instructions (DEQ Form HW-3 and its Instructions)

Editor's Note: Uniform hazardous waste manifest and instructions in Section 1199, Appendix A were removed from the regulations. See LAC 33:V.1107.A for USEPA uniform manifest requirements.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:42 (January 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2103 (October 2007), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 13. Transporters

§1301. Applicability

A. …

B. The regulations set forth in LAC 33:V.Chapters 10, 11 and 13 establish the responsibilities of generators and transporters in the handling, transportation and management of hazardous waste. In these regulations, Louisiana has expressly adopted certain regulations of the Department of Public Safety (DPS). These regulations concern, among other things, labeling, marking, placarding, using proper containers and reporting discharges. The department has adopted these regulations in order to satisfy its statutory obligation to promulgate regulations which are necessary to protect human health and the environment in the transportation of hazardous waste. The department adoption of these DPS regulations ensures consistency with the requirements of DPS and thus avoids the establishment of duplicative or conflicting requirements with respect to these matters.

C. - D.2. …

E. A transporter of hazardous waste must also comply with LAC 33:V.Chapters 10 and 11 if he transports hazardous waste into Louisiana from abroad or mixes hazardous wastes of different United States Department of Transportation shipping descriptions by placing them into a single container.

F. - H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), LR 24:1694 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 38:789 (March 2012), amended by the Office of the Secretary, Legal Division, LR 42:567 (April 2016), amended by

the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1305. Transfer Facility Requirements

A. - B. …

C. A transporter who stores manifested shipments of hazardous waste in containers meeting the independent requirements applicable to the DPS regulations on packaging under LAC 33:V.Subpart 2.Chapter 101 at a transfer facility for a period of 10 days or less is not subject to regulation under LAC 33:V.Chapters 1-7, 15-29, 31-38, and 43 with respect to the storage of those wastes. The transporter shall notify the Office of Environmental Services using the department's Notification of Hazardous Waste Activity Form (HW-1) and obtain written approval by the administrative authority prior to storing waste under Subparagraph C of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), repromulgated LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997), LR 24:1694 (September 1998), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1309. Compliance with the Manifest

A. - B.2. …

C. A transporter shall not transport a shipment of hazardous waste in containers unless each hazardous waste container is marked and labeled as required in LAC 33:V.1063.B and C. If the label is lost or detached, the transporter shall replace it based on the information taken from the manifest for the shipment.

D. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), LR 27:44 (January 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1319. Use of Containers

A. - B.4. …

C. When consolidating the contents of two or more containers with the same hazardous waste into a new container, or when combining and consolidating two different hazardous wastes that are compatible with each other, the transporter shall mark its containers of 119 gallons or less with the:

1. words "Hazardous Waste"; and

2. applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in LAC 33:V.4901 and 4903, or in compliance with LAC 33:V.1063.C.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of the Secretary, Legal Affairs Division, LR 34:73 (January 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 15. Treatment, Storage, and Disposal Facilities

§1501. Applicability

A. - B. …

C. The requirements of this Chapter do not apply to:

1. the owner or operator of a facility permitted, licensed, or registered to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by LAC 33:V.1009;

2. - 3. …

4. a farmer disposing of waste pesticides from his own use as provided in LAC 33:V.1003.C;

5. - 9. …

10. a generator accumulating waste on-site in compliance with LAC 33:V.Chapter 10;

C.11. - G. …

H. The requirements of LAC 33:V.1017, 1503, 1504, 1507, 1509, 1511, 1513, 1515, 1517, 1519, and 3322 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing, or disposing of hazardous wastes that are not remediation wastes. In these cases, LAC 33:V.1509, 1511, 1513, and 3322 do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of LAC 33:V.1509, 1511, and 1513, owners or operators of remediation waste management sites must:

1. …

2. obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store, or dispose of the waste according to LAC 33:V.Chapters 10, 11, 15-29, and 31-37, and must be kept accurate and up to date;

3. - 4. …

5. provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of LAC 33:V.Chapters 10, 11, 15-29, and 31-37, and on how to respond effectively to emergencies;

6. - 13. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 23:565, 568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1106 (June 1998), LR 24:1694, 1759 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:277 (February 2000), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3117 (December 2005), LR 32:606 (April 2006), LR 34:623 (April 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1509. General Inspection Requirements

A.1. - B.3. …

4. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if

the deterioration, a malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in LAC 33:V.1709, 1719, 1721, 1731, 1753, 1755, 1757, 1759, 1761, 1763, 1765, 1907, 1911, 2109, 2309, 2507, 2711, 2907, 3119, and 3205, where applicable. LAC 33:V.517.G requires the inspection schedule to be submitted with Part II of the permit application. The department will evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, the department may modify or amend the schedule as may be necessary.

C. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1695 (September 1998), LR 25:437 (March 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:993 (June 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1513. Contingency Plan and Emergency Procedures

A. - F.4.a. …

b. conduct immediate emergency notifications as stated below.

i. Notification to the Louisiana State Police, Department of Public Safety

(a). The emergency coordinator shall immediately, but in no case later than one hour, notify the 24-hour Louisiana Emergency Hazardous Materials Hotline by calling 1-877-922-6595 or 225-925-6595. This notification to the Louisiana State Police, Department of Public Safety shall be in accordance with LAC 33:I.Chapter 39 and shall include the following information:

(i). the name and telephone number, and employer of the contact person;

(ii). the company or responsible party's name;

(iii). where the incident occurred (mailing address and physical location);

(iv). date and time the incident began and ended;

(v). the identity of the hazardous material released or involved (this would include proper chemical name if available, an indication of whether it is an extremely hazardous substance and whether it is a solid, liquid or gas);

(vi). the actual amount or an estimate of the amount released; or in the absence of quantity data for the hazardous materials released, one of the following incident classifications: unusual event; site emergency; or general emergency;

(vii). whether the material released, escaped, or could reasonably be expected to escape beyond the site of the facility;

(viii). if available, the substance's hazard class and any other identifier (e.g., U.N. number, CHRIS code, etc.);

(ix). medium into which the hazardous materials was released (e.g. air, water, land);

(x). whether the release resulted in a fire or explosion;

(xi). injury to personnel, or a fatality resulting from the release or incident;

(xii). details regarding wind direction, wind speed, temperature, and precipitation;

(xiii). any need or a recommendation for, an off-site protective action (road closure, shelter-in-place, evacuation, or none);

(xiv). details of the release or incident; and

(xv). whether other responsible state and local agencies such as the local emergency planning committee have been notified.

(b). Updates During the Incident. The hotline must be immediately notified of any adverse change in the nature or rate of the discharge. Additional notifications must be made for discharges of multiple constituents when they originate from different causes or sources or they are substantially different in nature from the discharges in the initial notification.

ii. Emergency Notifications to Other Regulatory Agencies. The owner or operator should be aware that other federal, state and local agencies may require immediate and/or follow-up notification of an emergency situation under other regulatory authorities, including, but not limited to, the following:

(a). the National Response Center by calling their 24-hour toll free number 1-800-424-8802, to the extent that immediate notification is required under 40 CFR 302.6 (exceedance of reportable quantities) or 40 CFR 110.6 (oil spills); and/or

(b). the appropriate local emergency planning committee having jurisdiction over the facility to the extent that immediate notification is required under 40 CFR part 355, subpart C or LAC 33:V.Subpart 2.Chapter 101. Contact information for each local emergency planning committee is available on the Louisiana State Police, Department of Public Safety's website.

5. - 8.b.…

9. The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementation of the contingency plan. Written follow-up reports for any unauthorized discharge that requires notification shall be submitted by the owner or operator to SPOC in accordance with LAC 33:I.3925 and the Louisiana State Police, Department of Public Safety in accordance with LAC 33.V.Subpart 2.10111.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2104 (October 2007), LR 34:993 (June 2008), LR 35:1879 (September 2009), LR 38:777 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities

A. - B.2.e. …

3. Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of LAC 33:V.Chapters 10 and 11. The provisions of LAC 33:V.1013, 1015, and 1017 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of LAC 33:V.1013, 1015, and 1017 only apply to owners or operators who are shipping hazardous waste which they generated at that facility or operating as a large quantity generator consolidating hazardous waste from very small quantity generators under LAC 33:V.1015.G.

B.4. - C.6.b. …

c. For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in LAC 33:V.1023.

7. …

D. Unmanifested Waste Report. If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in LAC 33:V.1307.E.2, and if the waste is not excluded from the manifest requirements by LAC 33:V.1009, then the owner or operator must prepare and submit a single copy of a report to the administrative authority within 15 days after receiving the waste. The unmanifested waste report must be submitted to the Office of Environmental Services. The report must be designated "Unmanifested Waste Report" and include the following information:

D.1. - K.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:1012 (June 2008), LR 38:777, 789 (March 2012), amended by the Office of the Secretary, Legal Division, LR 42:568 (April 2016), LR 43:1141 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1529. Operating Record and Reporting Requirements

A. - C.3.…

D. Annual Report. The owner or operator shall complete and submit an annual report to the Office of Environmental Services by March 1 of each year. The annual report shall be submitted on the form provided by the administrative authority and it shall cover activities during the previous calendar (reporting) year. Information submitted on a more frequent basis may be included by reference or in synopsis form where it is not pertinent to reporting under LAC 33:V.1516 or monitoring reporting under LAC 33:V.3317. It shall include monitoring data where required.

E. - E.3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1695 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:278 (February 2000), LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:827 (May 2006), LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:993 (June 2008), LR 34:1895 (September 2008), LR 35:1879 (September 2009), amended by the Office of the Secretary, Legal Division, LR 43:1141 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 17. Air Emission Standards

Subchapter A. Process Vents

§1705. Applicability

A. - A.1.a. …

b. a unit (including a hazardous waste recycling unit) that is not exempt from the permitting requirements under LAC 33:V.1015 (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located on a hazardous waste management facility otherwise subject to the permitting requirements of LAC 33:V.Chapter 3, 5, 7, or 43; or

c. a unit that is exempt from permitting under the provisions of LAC 33:V.1015 (i.e., a 90-day tank or container) and is not a recycling unit under the provisions of LAC 33:V.4105.

2. - 3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 18:723 (July 1992), LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1698 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:294 (March 2001), amended by the Office of Environmental Assessment, LR 31:1572 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:606 (April 2006), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1709. Standards: Closed-Vent Systems and Control Devices

A. - I. …

J. Alternative Control Device: Documentation. An owner or operator of an affected facility seeking to comply with the provisions of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37 by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

K. - O.2.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1698 (September 1998), LR 25:438 (March 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1895 (September 2008),

amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1713. Recordkeeping Requirements

A. - B.4.f. …

C. Design: Documentation, Monitoring, Operating, and Inspection. Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37 shall be recorded and kept up-to-date in the facility operating record. The information shall include:

C.1. - F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 18:723 (July 1992), LR 20:1000 (September 1994), LR 22:818 (September 1996), amended by the Office Of Waste Services, Hazardous Waste Division, LR 24:1700 (September 1998), LR 25:438 (March 1999), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter B. Equipment Leaks

§1717. Applicability

A. - B.1.…

2. a unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of LAC 33:V.1015 (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of LAC 33:V.Chapter 3, 5, 7, or 43; or

3. a unit that is exempt from permitting under the provisions of LAC 33:V.1015 (i.e., a 90-day tank or container) and is not a recycling unit under the provisions of LAC 33:V.4105.

C. - G. …

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1700 (September 1998), LR 25:438 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:294 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 32:607 (April 2006), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 18. Containment Buildings

§1802. Design and Operating Standards

A. - C.3.c. …

4. inspect and record in the facility operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

D. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2106 (October 2007), LR 34:624 (April 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 19. Tanks

§1901. Applicability

A. - D. …

E. See LAC 33:V.1013.C.3 for applicable requirements for small quantity generators accumulating hazardous waste in tanks. See LAC 33:V.1015.B.2 for applicable requirements for large quantity generators accumulating hazardous waste in tanks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1375 (December 1992), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1107 (June 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1013 (June 2008), LR 36:1235 (June 2010), repromulgated LR 36:1536 (July 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:41 (January 2018), LR 46:

§1903. Assessment of Existing Tank System's Integrity

A. For each existing tank system that does not have secondary containment meeting the requirements of LAC 33:V.1907.B-I, the owner or operator shall determine that the tank system is not leaking or is fit for use. Except as provided in Subsection C of this Section, the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified professional engineer, in accordance with LAC 33:V.513, that attests to the tank system's integrity by November 20, 1988. Tanks excluded from permitting requirements under LAC 33:V.1015.B.2 must have an assessment as described in this Section by November 20, 1990.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:994 (June 2008), amended by the Office of the Secretary, Legal Division, LR 43:1142 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1905. Design and Installation of New Tank Systems or Components

A. - G. …

H. Owners or operators of new tanks systems or components subject to the accumulation time exclusion of LAC 33:V.1015.B must obtain and submit to the Office of Environmental Services, prior to placing the tank system in service, a written assessment, reviewed and certified by an independent registered professional engineer, in accordance

with LAC 33:V.513, attesting that the tank system has sufficient structural integrity and is acceptable for storing or treating hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed, and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. The assessment, which will be used by the administrative authority to review the acceptability of the tank system design, must include at a minimum the requirements specified in LAC 33:V.1905.A.1-5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 16:683 (August 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2107 (October 2007), LR 34:995 (June 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1907. Containment and Detection of Releases

A. - C.4. …

NOTE: If the collected material is a *hazardous waste* as defined in LAC 33:V.109, it is subject to management as a hazardous waste in accordance with all applicable requirements of LAC 33:V.Chapters 10, 11, 13, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 33, 35, 37, and 43. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of Sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of Section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR Part 302.

D. - K.1.…

a. one year from June 20, 2010, for tanks meeting the requirements for the accumulation time exclusion of LAC 33:V.305.C.2 and 1015.B; and

1.b. - 2.…

a. within one year from June 20, 2010, for tanks existing prior to this date and that meet the requirements for the accumulation time exclusion of LAC 33:V.305.C.2 and 1015.B;

b. …

c. prior to tank installation, for tanks and/or tank systems installed after June 20, 2010, that meet the requirements for the accumulation time exclusion of LAC 33:V.305.C.2 and 1015.B;

d. - e. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 14:790 (November 1988), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of Environmental Assessment, LR 31:1572 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2107 (October 2007), LR 34:624 (April 2008), LR 34:995 (June 2008), LR 34:1896 (September 2008), LR 36:1235 (June 2010), repromulgated LR 36:1536 (July 2010), amended by the Office of the Secretary, Legal Division, LR 38:2756 (November 2012), LR 43:1142 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2138 (November 2017), LR 46:

§1909. General Operating Requirements

A. - C. …

D. Owners or operators must provide documentation, maintained on-site, that batch tanks subject to the accumulation time exclusions of LAC 33:V.1013.C and 1015.B have been emptied and cleaned of all residues and/or sludges at least once in each 90-day period for large quantity generators and at least once in each 180-day period for small quantity generators.

1. - 1.b.…

2. Notwithstanding the provisions of Paragraph D.1 of this Section, except to the extent otherwise approved by the administrative authority, batch tanks subject to the accumulation time exclusions of LAC 33:V.1013.C and 1015.B must be completely emptied and cleaned once per year to a level sufficient to allow visual inspection of all tank interior surfaces.

E. Owners or operators must provide documentation, maintained on-site, that continuous-flow tanks subject to the accumulation time exclusions of LAC 33:V.1013.C and 1015.B have been emptied at least once in each 90-day period for large quantity generators and once in each 180-day period for small quantity generators.

1. A continuous-flow tank is deemed emptied if the owner or operator can demonstrate, via a mass balance approach and appropriate documentation or methodology, that hazardous waste has not been stored therein for more than the accumulation time limits. The key parameters in the mass balance approach are the volume of the tank, the daily throughput of the hazardous waste, and the time period the hazardous waste "resides" in the tank. As an example, in the case of a large quantity generator with a 6,000 gallon tank and daily throughput of 300 gallons per day, the hazardous waste would have a residence time of 20 days (i.e., 6,000 gallons/300 gallons per day) and would meet the requirements of LAC 33:V.1015.B since the hazardous waste has been in the tank for less than 90 days.

2. …

3. A continuous-flow tank in which a significant amount of residue or sludge is accumulated may not qualify for the accumulation time exclusions of LAC 33:V.1013.C and 1015.B. Therefore, the owner or operator of a continuous-flow tank for which that exclusion is claimed must ensure that significant accumulation of residue or sludge does not occur in the tank by satisfying the requirements either of Subsection D of this Section (in which case the words "continuous-flow tank" shall be substituted for the words "batch tank" in each instance where "batch tank" appears in that Subsection), or of Paragraph E.4 of this Section.

4. The owner or operator must provide documentation, maintained on-site, establishing that significant accumulations of residue or sludge do not occur within the tank; i.e., almost all residues or sludges in the tank at the beginning of the 90-day or 180-day accumulation period have been removed (or displaced by incoming waste or newly-formed residues or sludges) by the end of the 90-day or 180-day accumulation period. The determination of

what constitutes "significant accumulation of residue or sludge" shall be made on a case-by-case basis. However, no significant accumulation of residues or sludges shall be deemed to have occurred if the residues or sludges that accumulate in the tank constitute less than 5 percent by volume of the total tank capacity. To the extent that there is no significant accumulation of residue or sludge in the tank, the one-year storage prohibition under LAC 33:V.2205 shall not apply to any residue or sludge contained therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1804 (October 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 36:1237 (June 2010), repromulgated LR 36:1538 (July 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§1915. Closure and Post-Closure Care

A. - C.5. …

D. Owners or operators of tanks subject to the accumulation exclusion of LAC 33:V.1015.B are exempt from the requirements of LAC 33:V.Chapters 35 and 37, except for LAC 33:V.3507.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 13:651 (November 1987), amended LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997), amended by the Office of the Secretary, LR 24:2245 (December 1998), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 21. Containers

§2101. Applicability

A. The regulations in this Chapter apply to owners and operators of all hazardous waste facilities that store hazardous waste in containers, except as otherwise provided in LAC 33:V.1501. Under the definition of *empty container* in LAC 33:V.109 and 4901.D.3, if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container meets the definition of *empty container* as defined in LAC 33:V.109. In that event, management of the container is exempt from the requirements of this Chapter.

B. Containers not exempted from these regulations shall be considered hazardous and shall be disposed of or treated by an acceptable waste disposal or treatment method.

C. If a hazardous waste is emptied from a container, the residue remaining in the container is not considered a hazardous waste if the container is empty as defined in LAC 33:V.109. In that event, management of the container is exempt from the requirements of this Chapter.

D. Empty containers sent to a reclaimer are considered product, and thus are not subject to these rules and regulations. Residue from the reclaimer's operations must be disposed of in a permitted facility.

E. The storage of hazardous waste prohibited from land disposal must also be in accordance with the requirements of LAC 33:V.2205.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1107 (June 1998), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§2109. Inspections

A. At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. Remedial action as described in LAC 33:V.1509.C and 2103 shall be taken if deterioration or leaks are detected.

B. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), repromulgated LR 18:1256 (November 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:996 (June 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§2117. Closure

A. At closure, all hazardous waste and hazardous waste residues must be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues must be decontaminated or removed. At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with LAC 33:V.109.Hazardous Waste.6 that the solid waste removed from the containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of LAC 33:V.Chapters 10-43.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 22. Prohibitions on Land Disposal

Subchapter A. Land Disposal Restrictions

§2201. Purpose, Scope, and Applicability

A. - I. …

1. waste pesticides that a farmer disposes of in accordance with LAC 33:V.1003.C;

2. - 3. …

4. waste generated by *very small quantity generators*, as defined in LAC 33:V.1009;

5. - 5.f. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:398 (May 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:300

(February 1998), LR 24:666 (April 1998), LR 24:1107 (June 1998), LR 24:1724 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3117 (December 2005), amended by the Office of the Secretary, Legal Division, LR 43:1142 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§2205. Storage of Prohibited Wastes

A. …

1. A generator may store such wastes in tanks, containers, or containment buildings on-site solely for the purpose of accumulating such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements of LAC 33:V.1013, 1015, Chapters 10, 11, 15, 17, 18, 19, 21, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 35, 37, 43, and 51.

2. An owner/operator of a hazardous waste treatment, storage, or disposal facility may store such wastes in tanks, containers, or containment buildings solely for the purpose of accumulating such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal provided that:

a. each container is clearly marked to identify its contents and with:

i. the words “Hazardous Waste”;

ii. the applicable EPA hazardous waste number(s) (EPA hazardous waste codes) in LAC 33:V.4901 and 4903; or use a nationally recognized electronic system, such as bar coding, to identify the EPA hazardous waste number(s);

iii. an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the U.S. Department of Transportation requirements at 49 CFR part 172 subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the U.S. Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); and

iv. the date each period of accumulation begins; and

b. each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received, and the date each period of accumulation begins, or such information for each tank is recorded and maintained in the operating record at that facility. Regardless of whether the tank itself is marked, an owner/operator must comply with the operating record requirements specified in LAC 33:V.1529 or 4357.

A.3. - H.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:220 (March 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1724 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:280 (February 2000), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:827 (May 2006), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§2245. Generators' Waste Analysis, Recordkeeping, and Notice Requirements

A. Requirements for Generators. A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in LAC 33:V.2223, 2230, or 2236. This determination can be made concurrently with the hazardous waste determination required in LAC 33:V.1005 in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using Test Method 1311 in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of LAC 33:V.1519 and 2247.A. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed, and some soils are contaminated by such hazardous wastes. These treatment standards are also found in LAC 33:V.2223, and are described in detail in LAC 33:V.2299.Appendix, Table 3. These wastes, and soils contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste, or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of LAC 33:V.2246 in addition to any applicable requirements in this Section.

B. - D. …

* * *

E. If a generator is managing and treating a prohibited waste or contaminated soil in tanks, containers, or containment buildings regulated under LAC 33:V.1011, 1013, or 1015 to meet applicable LDR treatment standards found in LAC 33:V.2223, the generator must develop and follow a written waste analysis plan that describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of LAC 33:V.2299.Appendix, Table 8, however, are not subject to these waste analysis requirements.) The plan must be kept on-site in the generator's records, and the following requirements must be met.

E.1. - L. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266, 267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January

1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1728 (September 1998), LR 25:447 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:281 (February 2000), LR 26:2478 (November 2000), LR 27:295 (March 2001), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 33:2109 (October 2007), LR 34:996 (June 2008), amended by the Office of the Secretary, Legal Division, LR 43:1144 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:41 (January 2018), LR 46:

§2246. Special Rules Regarding Wastes That Exhibit a Characteristic

A. The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under this Chapter. This determination may be made concurrently with the hazardous waste determination required in LAC 33:V.1005. For purposes of this Chapter, the waste will carry the waste code for any applicable listing under LAC 33:V.4901. In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (LAC 33:V.4903), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in Subsection B of this Section. If the generator determines that his waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, or POLYM of LAC 33:V.2299.Appendix, Table 3), the generator must determine the *underlying hazardous constituents* (as defined in LAC 33:V.2203.A), in the characteristic waste.

B. - F.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1730 (September 1998), LR 25:449 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:281 (February 2000), LR 26:2478 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 33:2109 (October 2007), LR 34:997 (June 2008), LR 34:1897 (September 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter B. Hazardous Waste Injection Restrictions

§2249. Purpose, Scope, and Applicability

A. - C.2. …

3. if the waste is generated by a very small quantity generator, as defined in LAC 33:V.1009.

D. - D.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:22 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1800 (October 1999), LR 27:712 (May 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 23. Waste Piles

§2317. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027

A. Hazardous wastes F020, F021, F022, F023, F026, and F027 must not be placed in waste piles that are not enclosed (as defined in LAC 33:V.2301.C) unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the administrative authority pursuant to the standards set out in this Subsection, and in accord with all other applicable requirements of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37. The factors to be considered are:

A.1. - B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:220 (March 1990), amended LR 20:1000 (September 1994), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 25. Landfills

§2523. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027

A. Hazardous Wastes F020, F021, F022, F023, F026, and F027 must not be placed in a landfill unless the owner or operator operates the landfill in accordance with a management plan for these wastes which is approved by the administrative authority pursuant to the standards set out in this Subsection, and in accordance with all other applicable requirements of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37. The factors to be considered are:

A.1. - B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:220 (March 1990), amended LR 20:1000 (September 1994), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 26. Corrective Action Management Units and Special Provisions for Cleanup

§2604. Temporary Units (TU)

A. For temporary tanks and container storage areas used to treat or store hazardous remediation wastes during remedial activities required under LAC 33:V.3322 or RCRA Section 3008(h), or at a permitted facility that is not subject to LAC 33:V.3322, the administrative authority may designate a unit at the facility as a temporary unit. A temporary unit must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the temporary unit originated. For temporary units, the administrative authority may replace the design, operating, or closure standard applicable to these units under LAC 33:V.Chapters 10, 11, 15-21, 23-29, 31-37, and 43 with alternative requirements which protect human health and the environment.

B. - G. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR

21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:285 (February 2000), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 27. Land Treatment

§2723. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026 and F027

A. Hazardous Wastes F020, F021, F022, F023, F026, and F027 must not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the administrative authority pursuant to the standards set out in this Subsection, and in accordance with all other applicable requirements of the LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37. The factors to be considered are:

A.1. - B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:220 (March 1990), amended LR 20:1000 (September 1994), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 28. Drip Pads

§2805. Design and Operating Requirements

Owners and operators of drip pads must ensure that the pads are designed, installed, and operated in accordance with Subsection A or C of this Section.

A. - I. …

J. The drip pad surface must be cleaned thoroughly at least once every seven days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner/operator must determine if the residues are hazardous in accordance with LAC 33:V.1005 and if so must manage them in accordance with LAC 33:V.Subpart 1.

K. - P. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2482 (November 2000), LR 30:1674 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2462 (October 2005), LR 33:2113 (October 2007), LR 34:627 (April 2008), LR 34:999 (June 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 29. Surface Impoundments

§2917. Special Requirements for Hazardous Wastes F020, F021, F022, F023, F026, and F027

A. Hazardous wastes F020, F021, F022, F023, F026, and F027 must not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the administrative authority pursuant to the standards set out in this Subsection, and in accordance with all other applicable requirements of LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37. The factors to be considered are:

A.1. - B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:220 (March 1990), amended LR 20:1000 (September 1994), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3001. Applicability

A. - C.2. …

3. hazardous wastes that are exempt from regulation under LAC 33:V.105.D and 4105.A.1.c-d.iii, and hazardous wastes that are subject to the special requirements for very small quantity generators under LAC 33:V.1007 and 1009; and

C.4. - H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:821, 835 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 27:297 (March 2001), LR 27:712 (May 2001), LR 29:323 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:607 (April 2006), LR 34:628 (April 2008), LR 34:1014 (June 2008), amended by the Office of the Secretary, Legal Division, LR 43:1145 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§3003. Management Prior to Burning

A. Standards for Generators. Generators of hazardous waste burned in a boiler or industrial furnace are subject to LAC 33:V.Chapters 10 and 11.

B. - C. …

1. Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provision of LAC 33:V.Chapters 1, 3, 5, 10, 11, 15, 19, 21, 23, 25, 29, 33, 35, 37 and 43, except as provided by LAC 33:V.3003.C.2. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

2. Owners or operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulation under the small quantity burner provisions of LAC 33:V.3017, hazardous waste that they generate are exempt from regulation under LAC 33:V.Chapters 1, 3, 5, 10, 11, 15, 19, 21, 23, 25, 29, 33, 35, 37, and 43 with respect to the storage of mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in LAC 33:V.3003.C.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:299 (March 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§3017. Small Quantity On-Site Burner Exemption

A. - C. …

* * *

NOTE: Hazardous wastes that are subject to the special requirements for very small quantity generators under LAC 33:V.1009 may be burned in an off-site device under the exemption provided by LAC 33:V.3017, but must be included in the quantity determination for the exemption.

D. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:712 (May 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 31. Incinerators

§3121. Closure

A. At closure the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the incinerator site. At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with LAC 33:V.109.Hazardous Waste.6, that the residue removed from the incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with applicable requirements of LAC 33:V.Chapters 10-43.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 35. Closure and Post-Closure

Subchapter A. Closure Requirements

§3513. Closure; Time Allowed for Closure

A. - D.1.b. …

c. the nonhazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, and 37;

D.1.d. - E.7.e. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 17:478 (May 1991), LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2486 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2466 (October 2005), LR 33:2117 (October 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§3515. Disposal or Decontamination of Equipment, Structures and Soils

A. During the partial and final closure periods, all contaminated equipment, structures, and soils must be properly disposed of or decontaminated, unless otherwise specified in LAC 33:V.1803, 1915, 2315, 2521, 2719, 2809, and 2911, or under the authority of LAC 33:V.3203 and 3207. By removing any hazardous waste or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of LAC 33:V.Chapters 10 and 11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), LR 16:614 (July 1990), amended by the Office of the Secretary, LR 24:2248 (December 1998), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 38. Universal Wastes

Subchapter A. General

§3801. Scope and Applicability

A. - B. …

C. Very small quantity generator wastes that are regulated under LAC 33:V.1009 and are also of the same type as the universal wastes defined in LAC 33:V.3813 may, at the generator's option, manage these wastes under the requirements of this Chapter.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1108 (June 1998), LR 24:1496 (August 1998), LR 24:1759 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:712 (May 2001), repromulgated LR 27:1518 (September 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3117 (December 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§3805. Applicability—Pesticides

A. - B. …

1. recalled pesticides described in Paragraph A.1 of this Section, and unused pesticide products described in Paragraph A.2 of this Section, that are managed by farmers in compliance with LAC 33:V.1003.C (LAC 33:V.1003.C addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with the definition of *empty container* under LAC 33:V.109);

B.2. - D.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 23:569 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1108 (June 1998), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter B. Standards for Small Quantity Handlers of Universal Waste

§3821. Waste Management

A. - A.3. …

a. if the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of these regulations. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to LAC 33:V.Chapters 10 and 11;

A.3.b. - C.2.b. …

c. ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of LAC 33:V.1013.C.2.a or 1015.B.1.b;

d. immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of LAC 33:V.1013.C.2.a or 1015.B.1.b;

2.e. - 3.…

a. If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of these regulations. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage it subject to LAC 33:V.Chapters 10 and 11.

C.3.b. - F.4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:571 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1760 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:302 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3118 (December 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§3829. Response to Releases

A. …

B. A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of these regulations. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with LAC 33:V.Chapters 10 and 11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:573 (May 1997), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter C. Standards for Large Quantity Handlers of Universal Waste

§3843. Waste Management

A. - A.3. …

a. if the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of these regulations. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to LAC 33:V.Chapters 10 and 11;

A.3.b. - C.2.b. …

c. ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of LAC 33:V.1013.C.2.a or 1015.B.1.b;

d. immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of LAC 33:V.1013.C.2.a or 1015.B.1.b;

2.e. - 3.…

a. If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of these regulations. The handler is considered the generator of the mercury, residues, and/or other waste and is subject to LAC 33:V.Chapters 10 and 11.

C.3.b. - F.4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:574 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1761 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:303 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3120 (December 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§3851. Response to Releases

A. …

B. A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of these regulations. The handler is considered the generator of the material resulting from the release, and is subject to LAC 33:V.Chapters 10 and 11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:576 (May 1997), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter D. Standards for Universal Waste Transporters

§3867. Response to Releases

A. …

B. A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of these regulations. If the waste is determined to be a hazardous waste, the transporter is subject to LAC 33:V.Chapters 10 and 11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:577 (May 1997), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter E. Standards for Destination Facilities

§3873. Applicability

A. The owner or operator of a *destination facility* (as defined in LAC 33:V.3813) is subject to all applicable requirements of LAC 33:V.Chapters 3, 5, 10, 11, 15, 17, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 37, 41, and 43, and the notification requirement under LAC 33:V.105.A.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:578 (May 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 32:607 (April 2006), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter G. Petition to Include Other Wastes under This Chapter

§3883. Factors for Petitions to Include Other Wastes under This Chapter

A. - A.1. …

2. the waste or category of waste is not exclusive to a specific industry or group of industries and is commonly generated by a wide variety of types of establishments including, for example, households, retail and commercial businesses, office complexes, very small quantity generators, small businesses, and government organizations, as well as large industrial facilities;

3. - 8. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:320 (February 1998), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 40. Used Oil

Subchapter A. Materials Regulated as Used Oil

§4003. Applicability

This Section identifies those materials that are subject to regulation as used oil under this Chapter. This Section also identifies some materials that are not subject to regulation as used oil under this Chapter and indicates whether these materials may be subject to regulation as hazardous waste under this Subpart.

A. - B.2.c. …

3. Very Small Quantity Generator Hazardous Waste. Mixtures of used oil and very small quantity generator hazardous waste regulated under LAC 33:V.1009 are subject to regulation as used oil under this Chapter.

C. - I. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:828, 836 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1108 (June 1998), LR 25:481 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 34:631 (April 2008), LR 34:1017 (June 2008), LR 34:1899 (September 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§4007. Prohibitions

A. Surface Impoundment Prohibition. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

B. - C.3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter B. Standards for Use Oil Generators

§4013. Used Oil Storage

A. …

B. Storage Units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

C. - E.4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:481 (March 1999), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter D. Standards for Used Oil Transporter and Transfer Facilities

§4035. Used Oil Storage at Transfer Facilities

A. Used oil transporters are subject to all applicable spill prevention, control, and countermeasures (40 CFR Part 112) in addition to the requirements of this Subchapter. Used oil transporters are also subject to the Underground Storage Tanks (LAC 33:XI) standards for used oil stored in underground tanks, whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter. Used oil transfer facility status is contingent upon approval of the administrative authority.

B. Applicability. This Section applies to used oil transfer facilities. Used oil transfer facilities are transportation-related facilities, including loading docks, parking areas, storage areas, and other areas, where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation under LAC 33:V.Chapter 40.Subchapter E.

C. Storage Units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

D. Condition of Units. Containers and aboveground tanks used to store used oil at transfer facilities must:

1. be in good condition (no severe rusting, apparent structural defects or deterioration); and

2. not be leaking (no visible leaks).

E. Secondary Containment for Containers. Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

a. dikes, berms, or retaining walls; and

b. a floor. The floor must cover the entire area within the dikes, berms, or retaining walls; or

c. an equivalent secondary containment system.

2. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil which is released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

F. Secondary Containment for Existing Aboveground Tanks. Existing aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

a. dikes, berms, or retaining walls; and

b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

c. an equivalent secondary containment system.

2. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil which is released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

G. Secondary Containment for New Aboveground Tanks. New aboveground tanks used to store used oil at transfer facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

a. dikes, berms, or retaining walls; and

b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

c. an equivalent secondary containment system.

2. The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil which is released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

H. Labels

1. Containers and aboveground tanks used to store used oil at transfer facilities must be labeled or marked clearly with the words "Used Oil."

2. Fill pipes used to transfer used oil into underground storage tanks at transfer facilities must be labeled or marked clearly with the words "Used Oil."

I. Response to Releases. Upon detection of a release of used oil to the environment which is not subject to the requirements of LAC 33:XI.715 and which occurred after the effective date of the recycled used oil management program in effect in the state in which the release is located, the owner/operator of a transfer facility must perform the following cleanup steps:

1. stop the release;

2. contain the released used oil;

3. clean up and manage properly the released used oil and other materials; and

4. if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266, 267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:481 (March 1999), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter E. Standards for Used Oil Processors and Re-Refiners

§4049. Used Oil Management

A. Used oil processors/re-refiners are subject to all applicable Spill Prevention, Control, and Countermeasures (40 CFR Part 112) in addition to the requirements of this Subchapter. Used oil processors/re-refiners are also subject to the Underground Storage Tanks (LAC 33:XI) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter.

B. Management Units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

C. Condition of Units. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must:

1. be in good condition (no severe rusting, apparent structural defects or deterioration); and

2. not be leaking (no visible leaks).

D. Secondary Containment for Containers. Containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

a. dikes, berms, or retaining walls; and

b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

c. an equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

E. Secondary Containment for Existing Aboveground Tanks. Existing aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

a. dikes, berms, or retaining walls; and

b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

c. an equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

F. Secondary Containment for New Aboveground Tanks. New aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

a. dikes, berms, or retaining walls; and

b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

c. an equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

G. Labels

1. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."

2. Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities must be labeled or marked clearly with the words "Used Oil."

H. Response to Releases. Upon detection of a release of used oil to the environment not subject to the requirements of LAC 33:XI.715 which has occurred after the effective date of the recycled used oil management program in effect in the state in which the release is located, an owner/operator must perform the following cleanup steps:

1. stop the release;

2. contain the released used oil;

3. clean up and manage properly the released used oil and other materials; and

4. if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

I. Closure

1. Aboveground Tanks. Owners and operators who store or process used oil in aboveground tanks must comply with the following requirements:

a. at closure of a tank system, the owner or operator must remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under LAC 33:V.Subpart 1; and

b. if the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in LAC 33:V.4049.I.1.a, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills (LAC 33:V.4501).

2. Containers. Owners and operators who store used oil in containers must comply with the following requirements:

a. at closure, containers holding used oils or residues of used oil must be removed from the site; and

b. the owner or operator must remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil and manage them as hazardous waste, unless the materials are not hazardous waste under LAC 33:V.Chapters 1, 31, 41, and 49.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:482 (March 1999), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter F. Standards for Used Oil Burners that Burn Off-Specification Used Oil for Energy Recovery

§4069. Used Oil Storage

A. Used oil burners are subject to all applicable Spill Prevention, Control, and Countermeasures (40 CFR Part 112) in addition to the requirements of this Subchapter. Used oil burners are also subject to the Underground Storage Tank (LAC 33:XI) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this Subchapter.

B. Storage Units. Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under LAC 33:V.Chapters 10, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

C. Condition of Units. Containers and aboveground tanks used to store oil at burner facilities must:

1. be in good condition (no severe rusting, apparent structural defects or deterioration); and

2. not be leaking (no visible leaks).

D. Secondary Containment for Containers. Containers used to store used oil at burner facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

a. dikes, berms, or retaining walls; and

b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

E. Secondary Containment for Existing Aboveground Tanks. Existing aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

a. dikes, berms, or retaining walls; and

b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall except areas where existing portions of the tank meet the ground; or

c. an equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

F. Secondary Containment for New Aboveground Tanks. New aboveground tanks used to store used oil at burner facilities must be equipped with a secondary containment system.

1. The secondary containment system must consist of, at a minimum:

a. dikes, berms, or retaining walls; and

b. a floor. The floor must cover the entire area within the dike, berm, or retaining wall; or

c. an equivalent secondary containment system.

2. The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

G. Labels

1. Containers and aboveground tanks used to store used oil at burner facilities must be labeled or marked clearly with the words "Used Oil."

2. Fill pipes used to transfer used oil into underground storage tanks at burner facilities must be labeled or marked clearly with the words "Used Oil."

H. Response to Releases. Upon detection of a release of used oil to the environment not subject to the requirements of LAC 33:XI.715 which has occurred after the effective date of the recycled used oil management program in effect for the state in which the release is located, a burner must perform the following cleanup steps:

1. stop the release;

2. contain the released used oil;

3. clean up and manage properly the released used oil and other materials; and

4. if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:482 (March 1999), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 41. Recyclable Materials

§4105. Requirements for Recyclable Material

A. - A.4. …

B. Generators and transporters of recyclable materials are subject to the applicable requirements of LAC 33:V.Chapters 10, 11 and 13 and the notification requirements of LAC 33:V.105, except as provided in Paragraph A.1 of this Section.

C. Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of LAC 33:V.Chapters 3, 5, 10, 11, 15, 19, 21, 22, 23, 29, 33, 35, and 37, and Chapter 43.Subchapters A-K; and the notification requirements of LAC 33:V.105.A, except as provided in Subsection A of this Section. The recycling process itself is exempt from regulation, except as provided in Subsection E of this Section.

D. - D.1. …

2. LAC 33:V.1516.B and C, dealing with the use of manifest and manifest discrepancies;

3. Subsection E of this Section; and

4. LAC 33:V.1529.D (Annual Report).

E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998), LR 24:1108 (June 1998), LR 24:1742 (September 1998), LR 25:482 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:608 (April 2006), LR 38:779 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:42 (January 2018), LR 46:

§4141. General Requirements for Recyclable Materials Used in a Manner Constituting Disposal

A. Generators and transporters of materials that are used in a manner that constitutes disposal are subject to all the requirements of LAC 33:V.Chapters 10, 11 and 13, and the notification requirements under Section 3010 of RCRA and LAC 33:V.1017.

B. Owners and operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of LAC 33:V.Chapters 3, 5, 7, 10, 11, 15, 19, 21, 23, 29, 33, 35, and 37, and the notification requirements of Section 3010 of RCRA and LAC 33:V.1017.

C. Owners and operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of LAC 33:V.Chapters 3, 5, 7, 10, 11, 15, 19, 21, 22, 23, 25, 27, 29, 31, 33, 35, and 37, and the notification requirements of Section 3010 of RCRA and LAC 33:V.1017. These requirements do not apply to products that contain these recyclable materials under the provisions of LAC 33:V.4139.B.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs

Division, LR 32:610 (April 2006), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§4143. Recyclable Materials Utilized for Precious Metal Recovery

A. - B.1. …

2. generators shall operate in accordance with LAC 33:V.1107 and 1108;

B.3. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:611 (April 2006), LR 36:2554 (November 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§4145. Spent Lead-Acid Batteries Being Reclaimed

A. …

If Your Batteries:	And If You:	Then You:	And You:
1. will be reclaimed through regeneration (such as by electrolyte replacement);		are exempt from LAC 33:V. Subpart 1 except for LAC 33:V. Chapters 1 and 49, and LAC 33:V.1005 and 3105, Table 1, and the notification requirements at Section 3010 of RCRA and LAC 33:V.105;	are subject to LAC 33:V. Chapters 1 and 49 and LAC 33:V.1005 and 3105, Table 1.
2. will be reclaimed other than through regeneration;	generate, collect, and/or transport these batteries;	are exempt from LAC 33:V. Subpart 1 except for LAC 33:V.Chapters 1 and 49, and LAC 33:V.1005 and 3105, Table 1, and the notification requirements at Section 3010 of RCRA and LAC 33:V.105;	are subject to LAC 33:V. Chapters 1 and 49 and LAC 33:V.1005 and 3105, Table 1, and applicable provisions under LAC 33:V.Chapter 22.
3. will be reclaimed other than through regeneration;	store these batteries, but you aren't the reclaimer;	are exempt from LAC 33:V. Subpart 1 except for LAC 33:V.Chapters 1 and 49, and LAC 33:V.1005 and 3105, Table 1, and the notification requirements at Section 3010 of RCRA and LAC 33:V.105;	are subject to LAC 33:V. Chapters 1 and 49 and LAC 33:V.1005 and 3105, Table 1, and applicable provisions under LAC 33:V.Chapter 22.
4. will be reclaimed other than through regeneration;	store these batteries before you reclaim them;	must comply with LAC 33:V.4145.B and, as appropriate, other regulatory provisions described in LAC 33:V.4145.B;	are subject to LAC 33:V. Chapter 49 and LAC 33:V.1005 and 3105, Table 1, and applicable provisions under LAC 33:V.Chapter 22.
5. will be reclaimed other than through regeneration;	don't store these batteries before you reclaim them;	are exempt from LAC 33:V. Subpart 1 except for LAC 33:V. Chapters 1 and 49 and LAC 33:V.1005 and 3105, Table 1, and the notification requirements at Section 3010 of RCRA and LAC 33:V.105;	are subject to LAC 33:V. Chapter 49 and LAC 33:V.1005 and 3105, Table 1, and applicable provisions under LAC 33:V.Chapter 22.

If Your Batteries:	And If You:	Then You:	And You:
6. will be reclaimed through regeneration or any other means.	export these batteries for reclamation in a foreign country.	are exempt from LAC 33:V.Chapters 3, 5, 7, 13, 15, 17,19, 21, 22, 23, 25, 27, 28, 29, 30, 32, 33, 35, 37, and 43, and the notification requirements at section 3010 of RCRA. You are also exempt from LAC 33:V.Chapters 10 and 11, except for LAC 33:V.1005, and except for the applicable requirements in either: (a) LAC 33:V.1125; or (b) LAC 33:V.1113.D "Notification of Intent to Export", LAC 33:V.1113.G.1.a-d, f and G.2 "Annual Reports", and LAC 33:V.1113.H "Recordkeeping".	are subject to LAC 33:V.Chapters 1, 31, 39, 41, and 49 as applicable and LAC 33:V.1005, and either must comply with LAC 33:V.1125.A (if shipping to one of the OECD countries specified in LAC 33:V.1113.I.1.a), or shall: (a) comply with the requirements applicable to a primary exporter in LAC 33:V.1113.D, G.1.a-d, G.2, and H. b) export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in LAC 33:V.1113.A-I.2; and (c) provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.
7. will be reclaimed through regeneration or any other means.	transport these batteries in the U. S. to export them for reclamation in a foreign country.	are exempt from LAC 33:V.Chapters 3, 5, 7, 13, 15, 17,19, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 37, 41, and 43, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in LAC 33:V.1125 (if shipping to one of the OECD countries specified in LAC 33:V.1113.I.1.a, or must comply with the following: (a) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgement of Consent; (b) you must ensure that a copy of the EPA Acknowledgement of Consent accompanies the shipment; and (c) you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

B. - B.2.d. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 13:237 (April 1987), LR 23:579 (May 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:287 (February 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:611 (April 2006), LR 32:830 (May 2006), LR 38:790 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 42. Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation, and Disposal

§4217. When is your LLMW no longer eligible for the storage and treatment conditional exemption?

A. When your LLMW has met the requirements of your department, NRC, or NRC agreement state license for decay-in-storage and can be disposed of as nonradioactive waste, then the conditional exemption for storage no longer applies. On that date your waste is subject to hazardous waste regulation under the relevant sections, and the time period for accumulation of a hazardous waste, as specified in LAC 33:V.1013 or 1015, begins.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1006 (May 2002), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 43. Interim Status

§4301. Purpose and Applicability

A. - D.2. …

COMMENT: The owner or operator of a facility under Paragraphs D.1 and 2 of this Section is subject to the requirements of LAC 33:V.Chapters 10, 11, 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 35, and-37 to the extent they are included in a permit by rule granted to such a person under 40 CFR 122 and by 144.14.

3. - 3.b.…

4. the owner or operator of a facility permitted, licensed, or registered by the state to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by LAC 33:V.1009;

5. …

6. a generator accumulating waste on-site in compliance with LAC 33:V.Chapter 10, except to the extent the requirements are included in LAC 33:V.Chapter 10;

7. a farmer disposing of waste pesticides from his own use in compliance with LAC 33:V.1003.C;

8. - 10.d. …

11. a transporter storing manifested shipments of hazardous waste in containers meeting the requirements of LAC 33:V.1063.A at a transfer facility for a period of 10 days or less;

D.12. - J. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1743 (September 1998), LR 25:482 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:2498 (November 2000), LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2474 (October 2005), LR 31:3121 (December 2005), LR 32:612 (April 2006), LR 33:2126 (October 2007), LR 34:632 (April 2008), amended by the Office of the Secretary, Legal Division, LR 43:1146 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:42 (January 2018), LR 46:

Subchapter A. General Facility Standards

§4317. General Inspection Requirements

A. - B.2. …

3. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in LAC 33:V.4425, 4437, 4440, 4455, 4470, 4485, 4502, 4519, 4529, 4541, 4555, 4565, 4567, 4577, and 4727-4739, where applicable.

C. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1744 (September 1998), LR 25:484 (March 1999), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter F. Closure and Post-Closure

§4385. Disposal or Decontamination of Equipment, Structures and Soils

A. During the partial and final closure periods, all contaminated equipment, structures, and soil must be properly disposed of, or decontaminated unless specified otherwise in LAC 33:V.4442, 4457, 4475, 4489, 4501, 4601, or 4705. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of LAC 33:V.Chapters 10 and 11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:614 (July 1990), amended by the Office of the Secretary, LR 24:2248 (December 1998), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter I. Tanks

§4438. Special Requirements for Generators of between 100 and 1,000 kg/month That Accumulate Hazardous Waste in Tanks

Editor's Note: The special requirements for small quantity generators accumulating hazardous waste in tanks in Section 4438 were repromulgated in LAC 33:V.1013.C.3 et al.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:714 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1005 (June 2008), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter M. Landfills

§4501. Closure and Post-Closure

A. - D.1. …

2. maintain and monitor the leachate collection, removal, and treatment system (if there is one present in the landfill) to prevent excess accumulation of leachate in the system. If the collected leachate is a hazardous waste under LAC 33:V.Chapter 49, it must be managed as a hazardous waste in accordance with all applicable requirements of LAC 33:V.Chapters 10, 11, 13 and 43. If the collected leachate is discharged through a point source to waters of the United States, it is subject to the requirements of Section 402 of the Clean Water Act, as amended;

3. - 8. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1627 (August 2007), amended by the Office of the Secretary, Legal Division, LR 43:1149 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter Q. Air Emission Standards for Process Vents

§4549. Applicability

A. - B.1. …

2. a unit (including a hazardous waste recycling unit) that is not exempt from permitting under LAC 33:V.1015 (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of LAC 33:V.Chapters 3, 5, 7, 27, 31, and 43; or

3. a unit that is exempt from permitting under the provisions of LAC 33:V.1015 (i.e., a 90-day tank or container) and is not a recycling unit under the requirements of LAC 33:V.4105.

* * *

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 18:723 (July 1992), LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1745 (September 1998), LR 25:486 (March 1999), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Subchapter R. Air Emission Standards for Equipment Leaks

§4561. Applicability

A. - B.1. …

2. a unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of LAC 33:V.1015 (i.e., a hazardous waste recycling unit that is not a 90-day tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of LAC 33:V.Chapters 3, 5, 7, 27, 31, and 43; or

3. a unit that is exempt from permitting under the provisions of LAC 33:V.1015 (i.e., a 90-day tank or container) and is not a recycling unit under the provisions of LAC 33:V.4105.

C. - F. …

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:658 (July 1991), amended LR 20:1000 (September 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1745 (September 1998), LR 25:486 (March 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2541 (October 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 49. Lists of Hazardous Wastes

Editor's Note: Chapter 49 is divided into two Sections: category I hazardous wastes, which consist of hazardous wastes from nonspecific and specific sources (F and K wastes), acute hazardous wastes (P wastes), and toxic wastes (U wastes) (LAC 33:V.4901); and category II hazardous wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).

§4901. Category I Hazardous Wastes

A. - A.1. …

2. The following hazardous wastes listed in LAC 33:V.4901.B are subject to the exclusion limits for acutely hazardous wastes established in LAC 33:V.1007: EPA Hazardous Wastes Numbers F020, F021, F022, F023, F026, and F027.

B. - D.4. …

* * *

E. The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates referred to in Paragraphs D.1-4 of this Section are identified as acute hazardous wastes (H).

* * *

F. The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in Paragraphs D.1-4 of this Section are identified as toxic wastes (T) unless otherwise designated.

* * *

G. …

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829, 840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006), LR 33:1627 (August 2007), LR 34:635 (April 2008), LR 34:1020 (June 2008), LR 34:2392 (November 2008), LR 36:2555 (November 2010), LR 38:780 (March 2012), amended by the Office of the Secretary, Legal Division, LR 39:2492 (September 2013), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§4907. Criteria for Listing Hazardous Waste

A. - B. …

C. The administrative authority shall use the criteria for listing specified in this Chapter to establish the exclusion limits referred to in LAC 33:V.1007.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 17:478 (May 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:715 (May 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 51. Fee Schedules

§5101. Applicability

A. The regulations in this Chapter apply to generators of hazardous waste as well as treaters, storers, and disposers of

hazardous waste except as provided in LAC 33:V.1003 and LAC 33:V.1501.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 18:724 (July 1992), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

§5121. Generators and Transporters of Hazardous Waste

A. - B.1.b. …

2. 90-day Storage Extension. Application for 30-day Extension of Accumulation Time Limit in LAC 33:V.1013.E and LAC 33:V.1015.C. All requests for extension of accumulation time limit shall be accompanied by a $500 application fee.

C. - C.1.b. …

2. Very Small Quantity Generators (VSQG). Very small quantity generators (see LAC 33:V.1009) shall pay a fee of $83 per year to the department.

3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 14:621 (September 1988), amended by the Office of the Secretary, Legal Division, LR 43:944 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Chapter 53. Military Munitions

§5307. Standards Applicable to Emergency Responses

A. Explosives and munitions emergencies involving military munitions or explosives are subject to LAC 33:V.1003.F, 1301.G, 1501.7.a, and 4307, or alternatively to LAC 33:V.701.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1757 (September 1998), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule may have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has been prepared.

Small Business Statement

Pursuant to R.S. 49:965.6, this Small Business Economic Impact Statement has been prepared:

The existing regulations and proposed Rule contain three increasing levels of compliance requirements for facilities that generate different volumes of hazardous waste (i.e., very small, small, and large quantity generators). A small business may fall into any of the three levels. The proposed Rule contains requirements for generators in all three levels that are more stringent, less stringent, and equally stringent, as compared to the current regulations. The more stringent requirements, which must be adopted by Louisiana, are expected to cause a small increase in paperwork and cost of compliance for impacted small businesses. However, the equally stringent requirements will make the regulatory requirements clearer, more user-friendly, and flexible for small businesses. The less stringent requirements will offer facilities, including small businesses, additional flexibility in managing their hazardous waste including: very small quantity generators being able to send their hazardous waste to affiliate large quantity generators under the control of the same person; very small and small quantity generators being allowed to exceed their regulatory limits up to twice a year; and large quantity generators being allowed to seek a waiver of a buffer zone requirement for storage of reactive or ignitable waste.

The proposed Rule must reflect new EPA federal requirements pertaining to hazardous waste generators; thus there are no alternative methods available other than those equally and less stringent requirements within the proposed Rule.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW 124. Such comments must be received no later than May 5, 2020, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to DEQ.Reg.Dev. Comments@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW 124. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on April 28, 2020, 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 Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street,

Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Hazardous Waste Generator Improvements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be an increase in expenditures of the Department of Environmental Quality (DEQ) as a result of the proposed rule amending the Hazardous Waste Regulations (HW124).

The proposed rule adopts the federal Generator Improvements Rule (GIR) which amends the hazardous waste (HW) program relating to generators in Louisiana. The HW regulations contain three increasing levels of compliance requirements for facilities depending on the amount of generated HW. The proposed rule contains changes that are less stringent, equally stringent, and more stringent compared to current regulations. The equally and less stringent requirements reorganize; make technical corrections; clarify; and provide greater flexibility for HW management. The more stringent requirements address gaps in the regulation to strengthen environmental protection and safety to employees; emergency responders; and the general public. Additional requirements include further emergency response planning; identification of associated hazards along with labeling requirements; closure notifications; and added notification and reporting requirements.

The proposed rule changes will result in increased expenditures of DEQ's statutory dedicated funds (Environmental Trust Fund). The regulations will require additional work for several divisions within DEQ: Public Participation and Permits Support Division; Waste Permits Division, Surveillance Division, and Enforcement Division. In anticipation of the rule change, DEQ requested four new classified positions for the Office of Environmental Services. The full annual cost of these requested positions, including overhead, is estimated at $623,305. There will likely be slight increases in these expenditures annually based on salary increases, changes in retirement costs, and changes in insurance costs. For FY20, these positions will be hired in the last quarter of the year, and the total cost, including overhead, is projected at $155,839. These costs will be absorbed within the agency's existing operating budget.

As DEQ moves forward with the implementation of this rule, additional staff will be added in the other divisions mentioned above to address the workload. By FY22, DEQ estimates an additional six classified positions will be necessary. The total for these ten new positions, including overhead, is $1,558,263 annually. DEQ plans to seek additional fee authority to cover the new expenditures; however, if it is not approved, then DEQ will have to identify existing resources to cover the new expenditures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is currently no impact on revenues of DEQ. There is no revenue mechanism provided for in the enabling legislation for these regulations. However, the agency anticipates proposing an increase to fees for HW generators during the 2020 Regular Legislative Session in order to fund the new positions required at DEQ. Potential revenue increases will depend upon any authority granted.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will cause some increase in net costs to regulated entities, primarily to large and small businesses that generate hazardous waste that must be properly stored, labeled, manifested, and shipped for proper disposal. Utilizing a recent North Carolina economic impact study regarding the implementation of the same rule, DEQ estimates an overall net cost of approximately $625,494 per year for Louisiana businesses to meet the new Federal requirements of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition or employment in the public and private sectors. These changes are mandatory statewide and will impact all hazardous waste generators in a similar manner.

Herman Robinson	Evan Brasseaux
General Counsel	Staff Director
2003#009	Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs and Criminal Investigations Division

Written Notification Procedures
(LAC 33:I.3925)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.3925. (OS098)

The proposed Rule adds an additional method of submittal of written reports for any unauthorized discharge that requires notification under LAC 33: I.3915.A, 3917, 3919, or 3923. LAC 33:I.3925.A.1 and 2 currently allow written notifications to be delivered via U.S. Mail, courier service, or other means. This Rule adds e-mail as an additional submittal method for written notifications to the department. The basis and rationale for this Rule are to allow the public an additional method for notification to the department. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part I. Office of the Secretary
Subpart 2. Notification
Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges
Subchapter D. Procedures for Notifying the Department
§3925. Written Notification Procedures

A. - B.1. …

2. the time and date of prompt notification, the state official contacted when reporting, the name of the person making that notification, identification of the site or facility, vessel, transport vehicle, or storage area from which the

unauthorized discharge occurred, and the location where the incident occurred;

3. - 16. …

C. Written notification reports shall be submitted to SPOC by mail or email. The transmittal envelope and report or email subject line and report should be clearly marked "UNAUTHORIZED DISCHARGE NOTIFICATION REPORT." The email address can be found on the LDEQ webpage at the Single Point of Contact page under Written Notification Procedures: (LAC 33:I.3926) section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1669 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 33:2080 (October 2007), LR 33:2628 (December 2007), LR 36:1240 (June 2010), LR 36:2553 (November 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

This Rule has no known impact on small business as described in R.S. 49:965.2 - 965.8.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS098. Such comments must be received no later than May 5, 2020, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to DEQ.Reg.Dev.Comments@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS098. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on April 28, 2020, 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 Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Written Notification Procedures

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no impact on expenditures of the Department of Environmental Quality as a result of the proposed rule change providing for an additional submittal method (via email) for written notifications to the department of any unauthorized discharge under Louisiana Administrative Code (LAC) 33:I.3915 A, 3917, 3919, or 3923.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated increase or decrease in revenues anticipated from the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is a benefit to directly affected persons/small businesses in the reduced cost of delivery via US Mail Service or Courier Delivery Service as a result of the proposed rule. However, such benefit is not anticipated to be material.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson	Evan Brasseaux
General Counsel	Staff Director
2003#008	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Facility Need Review
Relocation of Nursing Facility Beds
(LAC 48:I.12529)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.12529 as authorized by R.S. 36:254 and 40:2116. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the facility need review (FNR) process in order to allow the department to approve a one-time partial relocation/transfer

of a nursing facility's Medicaid FNR approvals to another licensed, certified, and operational nursing facility within the same parish under certain conditions.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 5. Health Planning
Chapter 125. Facility Need Review
Subchapter D. Relocation of Nursing Facility Beds
§12529. General Provisions

A. A nursing facility's approved beds (Medicaid facility need review approvals) cannot be relocated to a different service area, subject to the exception in Section 12529.C below.

B. - B.6.g. ...

C. In addition to Subsection B, approved beds may be relocated in the same service district or same parish under the following conditions.

1. The department may approve a one-time partial relocation/transfer of a nursing facility's Medicaid facility need review (FNR) approvals to another licensed, certified, operational nursing facility in the same parish, provided that all of the following provisions are met:

a. The transferring nursing facility shall send a written request to the department's licensing section at least 30 days before the proposed transfer, for the department's review and approval.

b. The transferring nursing facility may relocate/transfer Medicaid FNR approvals to another nursing facility pursuant to Section 12529.C only once.

c. The transferring nursing facility and the receiving nursing facility shall be related companies which are under "common ownership."

i. For purposes of this Subsection, "common ownership" is defined as the same persons or entities owning at least 80 percent of both companies.

ii. For purposes of this Subsection, ownership includes, but is not limited to, shares in a corporation, membership in a limited liability company, or partnership interest in a partnership or limited liability partnership.

d. The transferring nursing facility may not relocate/transfer less than 10 Medicaid FNR approvals to another nursing facility.

e. A transferring nursing facility may not relocate/transfer more than 25 percent of its Medicaid FNR approvals to another facility.

f. The Medicaid FNR approvals relocated/transferred become Medicaid FNR approvals of the receiving nursing facility, and the transferring nursing facility relinquishes all rights in those Medicaid FNR approvals, but may retain licensure of the licensed nursing facility beds.

g. At the time of the relocation/transfer of the Medicaid FNR approvals, the receiving facility shall have more licensed nursing facility beds than it has Medicaid FNR approvals. The number of Medicaid FNR approvals transferred shall not exceed the number of licensed-only beds (licensed nursing facility beds not having Medicaid FNR approval) at the receiving nursing facility; the receiving nursing facility is prohibited from receiving more Medicaid FNR approvals than can be utilized for the receiving nursing facility's current licensed bed capacity. Under no circumstances shall a receiving facility license additional beds in order to accommodate the relocated Medicaid FNR approvals. After the relocation, the receiving nursing facility shall have the same number of licensed beds as prior to the relocation.

h. All relocated Medicaid FNR approvals are subject to state and federal bed change guidelines and procedures.

i. The provisions of Section 12529.C pertaining to the transfer of Medicaid FNR approvals shall sunset in 24 months from the date of the promulgation of the final Rule implementing Section 12529.C and shall have no effect henceforth.

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 34:2619 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1009 (May 2010), amended by the Department of Health, Bureau of Health Services Financing LR 46:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on April 29, 2020.

Public Hearing

The department will conduct a public hearing at 9:30 a.m. on April 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. Parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen R. Russo, JD
Interim Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Facility Need Review
Relocation of Nursing Facility Beds

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 19-20, as the rule will not result in an increase in licensed nursing home beds and will not result in an increase in Medicaid Facility Need Review Approvals. It is anticipated that $756 will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections since the licensing fees, in the same amounts, will continue to be collected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing the facility need review (FNR) process in order to allow the department to approve a one-time partial relocation/transfer of a nursing facility's Medicaid FNR approvals to another licensed, certified, and operational nursing facility within the same parish under certain conditions. Implementation of this proposed Rule will be beneficial to nursing facility providers by ensuring that the requirements for the partial relocation of approved beds are clearly and accurately reflected in the Louisiana Administrative Code. It is anticipated that the implementation of this proposed rule will have no costs to nursing facility providers and no impact on small businesses in FY 19-20, FY 20-21 and FY 21-22, as the rule will not result in an increase in licensed nursing home beds and will not result in an increase in Medicaid Facility Need Review Approvals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Cecile Castello, BSN, RN
Deputy Assistant Secretary
2003#048

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Hospital Licensing Standards
Obstetrical and Newborn Services
(LAC 48:I.9505)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.9505 as authorized by R.S. 36:254 and 40:2109. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of hospitals in order to allow an exception to the requirement that the level of care on the neonatal intensive care unit match or exceed the level of obstetrical care for each level of obstetric service for any hospital which has a current cooperative endeavor agreement linking the hospital to a public–private partnership with the state.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 93
Subchapter S. Obstetrical and Newborn Services (Optional)
§9505. General Provisions

A. This Subchapter S requires that the level of care on the neonatal intensive care unit shall match or exceed the level of obstetrical care for each level of obstetric service, except for free standing children's hospitals and for any hospital which has a current cooperative endeavor agreement linking the hospital to a public-private partnership with the state. All hospitals with existing obstetrical and neonatal services shall be in compliance with this Subchapter S within one year of the promulgation date of this Rule. All new providers of obstetrical and neonatal services shall be required to be in compliance with this Subchapter S immediately upon promulgation.

* * *

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 33:284 (February 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 43:75 (January 2017), LR 46:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on April 29, 2020.

Public Hearing

The department will conduct a public hearing at 9:30 a.m. on April 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. Parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen R. Russo, JD
Interim Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Hospital Licensing Standards Obstetrical and Newborn Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will increase state costs by an indeterminable amount for FY 19-20, FY 20-21 and FY 21-22 due to the potential for increased reimbursement to a hospital which has a current cooperative endeavor agreement linking the hospital to a public-private partnership with the state. It is anticipated that $432 will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections since the licensing fees, in the same amounts, will continue to be collected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing the licensing of hospitals in order to allow an exception to the requirement that the level of care on the neonatal intensive care unit (NICU) match or exceed the level of obstetrical care for each level of obstetric service for any hospital which has a current cooperative endeavor agreement (CEA) linking the hospital to a public–private partnership with the state. Currently this exclusion only applies to free standing children's hospitals. Implementation of this proposed Rule will be beneficial to hospitals with current CEAs by excluding these providers from NICU level of care requirements as well. It is anticipated that the implementation of this proposed rule will not impact small businesses in FY 19-20, FY 20-21 and FY 21-22; however, there is a potential for increased reimbursement to a hospital which has a current cooperative endeavor agreement linking the hospital to a public-private partnership with the state.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Cecile Castello, BSN, RN
Deputy Assistant Secretary
2003#049

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing
Office of Behavioral Health

Children and Adult Mental Health Services
(LAC 50:XXXIII.2501, 2701, 6103, 6303, 6305, 6307, 6501, and 6701)

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to adopt LAC 50:XXXIII.§2501, §2701, §6103, §6303, §6305, §6307, §6501, and §6701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend the provisions governing children and adult mental health services in order to update the Rule language to reflect current terminology and practices and to change the treatment plan review requirement.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXXIII. Behavioral Health Services
Subpart 3. Children's Mental Health Services
Chapter 25. Provider Participation
§2501. Provider Responsibilities

A. Each provider of specialized behavioral health services shall enter into a contract with one or more of the

managed care organizations (MCOs) and with the coordinated system of care (CSoC) contractor for youth enrolled in the Coordinated System of Care program in order to receive reimbursement for Medicaid covered services.

B. Providers shall deliver all services in accordance with their license and scope of practice, federal and state laws and regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department. The provider shall create and maintain documents to substantiate that all requirements are met.

C. - D.6. 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 38:364 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2359 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1893 (October 2018), LR 46:

Chapter 27. Reimbursement

§2701. General Provisions

A. For recipients enrolled with one of the managed care organizations (MCOs) or coordinated system of care (CSoC) contractor, the department or its fiscal intermediary shall make monthly capitation payments to the MCOs or the CSoC contractor.

1. - 2.a….

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 38:365 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 39:317 (February 2013), LR 41:2359 (November 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1893 (October 2018), LR 46:

Subpart 7. Adult Mental Health Services

Chapter 61. General Provisions

§6103. Recipient Qualifications

A. Individuals, 21 years of age and older, who meet Medicaid eligibility, shall qualify to receive adult mental health services referenced in LAC 50:XXXIII.6307 if medically necessary in accordance with LAC 50:I.1101, if the recipient presents with mental health symptoms that are consistent with a diagnosable mental disorder, and the services are therapeutically appropriate and most beneficial to the recipient.

B. Additional Recipient Eligibility Criteria for Community Psychiatric Support and Treatment (CPST) and Psychosocial Rehabilitation (PSR)

1. Members must meet the Substance Abuse and Mental Health Services Administration (SAMHSA) definition of, serious mental illness (SMI). In addition to having a diagnosable mental disorder, the condition must substantially interfere with, or limit, one or more major life activities, such as:

a. ...

b. instrumental living (for example, taking prescribed medications or getting around the community); or

1.c. - 2….

3. Recipients receiving CPST and/or PSR shall have at least a level of care score of three on the LOCUS.

4. An adult with longstanding deficits who does not experience any acute changes in their status and has previously met the criteria stated in LAC 50:XXXIII.6103.B.2.-3, but who now meets a level of care score of two or lower, and needs subsequent medically necessary services for stabilization and maintenance at a lower intensity, may continue to receive CPST services and/or PSR, if deemed medically necessary.

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:358 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:60 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1014 (June 2018), LR 46:

Chapter 63. Services

§6303. Assessments

A. Assessments shall be performed by a licensed mental health practitioner (LMHP).

B. Assessments for community psychiatric support and treatment (CPST) and psychosocial rehabilitation (PSR) must be performed at least once every 365 days or any time there is significant change to the enrollee's circumstances.

C. 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 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:60 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1014 (June 2018), amended LR 46:

§6305. Treatment Plan

A. Each enrollee who receives community psychiatric support and treatment (CPST) and psychosocial rehabilitation (PSR) services shall have a treatment plan developed based upon the assessment.

B. ...

1. The treatment plan shall be reviewed at least once every 180 days or when there is a significant change in the individual's circumstances.

C. The treatment plan shall be developed by the licensed mental health practitioner (LMHP) or physician in collaboration with direct care staff, the recipient, family and natural supports.

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 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 42:60 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1014 (June 2018), LR 46:

§6307. Covered Services

A. The following mental health services shall be reimbursed under the Medicaid Program:

1. therapeutic services, including diagnosis and treatment delivered by licensed mental health practitioners (LMHPs) and physicians;

2. rehabilitation services, including community psychiatric support and treatment (CPST) and psychosocial rehabilitation (PSR); and

3. crisis intervention.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1015 (June 2018), LR 46:

Chapter 65. Provider Participation

§6501. Provider Responsibilities

A. Each provider of adult mental health services shall enter into a contract with one or more of the managed care organizations (MCOs) in order to receive reimbursement for Medicaid covered services.

B. Providers shall deliver all services in accordance their license and scope of practice, with federal and state laws and regulations, the provisions of this Rule, the provider manual and other notices or directives issued by the department. The provider shall create and maintain documents to substantiate that all requirements are met.

C. - D.9. 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 38:360 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:378 (February 2015), LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1015 (June 2018), LR 46:

Chapter 67. Reimbursement

§6701. Reimbursement Methodology

A. Effective for dates of service on or after December 1, 2015, the department, or its fiscal intermediary, shall make monthly capitation payments to the managed care organizations (MCOs).

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:360 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 42:61 (January 2016), LR 46:

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Erin Campbell, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Ms. Campbell is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on April 29, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on April 9, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on April 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after April 9, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen R. Russo, JD
Interim Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Office of Behavioral Health
Children and Adult Mental Health Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 19-20. It is anticipated that $1,296 ($648 SGF and $648 FED) will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 19-20. It is anticipated that $648 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing children and adult mental health services in order to update the Rule language to reflect current terminology and practices and to change the treatment plan review requirement from 365 to 180 days. This Rule is anticipated to have no impact on small businesses. It is anticipated that implementation of this proposed Rule will not result in any increase or decrease in payments to behavioral health providers in FY 19-20, FY 20-21, and FY 21-22 but will be beneficial by ensuring that the provisions are accurately promulgated in the Louisiana Administrative Code.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Erin Campbell	Evan Brasseaux
Acting Medicaid Director	Staff Director
2003#047	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Routine Patient Care and Clinical Trials
(LAC 50:I.305)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:I.305 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to adopt provisions governing routine care for recipients in clinical trials in order to clarify the requirements for reimbursement for medically necessary non-experimental/investigational treatments that recipients participating in clinical trials would otherwise receive under the Louisiana Medicaid program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 1. General Provisions
Chapter 3. Experimental Procedures
§305. Routine Care for Recipients in Clinical Trials

A. This rule applies to any person or entity prescribing or reviewing a request for Louisiana Medicaid covered services and to all providers of these services who are enrolled in, or registered with, the Louisiana Medicaid program.

B. Definitions

Clinical Trials—biomedical or behavioral research studies on human participants designed to answer specific questions about biomedical or behavioral interventions, including new treatments and known interventions that warrant further study and comparison.

C. Coverage. Louisiana Medicaid reimburses for services as a result of a recipient participating in a clinical trial in accordance with the service-specific coverage policy when the services:

1. would otherwise be provided to a recipient who is not participating in a clinical trial;
2. are not unique to the experimental or investigational treatment; and
3. are not covered by the clinical trial sponsor.

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, Bureau of Health Services Financing, LR 46:

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service,

no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Erin Campbell, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Ms. Campbell is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on April 29, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on April 9, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on April 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after April 9, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen R. Russo, JD
Interim Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Routine Patient Care and Clinical Trials

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 19-20. It is anticipated that $540 ($270 SGF and $270 FED) will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 19-20. It is anticipated that $270 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule adopts provisions governing routine care for recipients in clinical trials in order to clarify the requirements for reimbursement for medically necessary non-experimental/investigational treatments that recipients participating in clinical trials would otherwise receive under the Louisiana Medicaid program. Although these treatments are currently reimbursed by Louisiana Medicaid, the language in the current administrative Rule is unclear. This proposed Rule is necessary in order to promulgate the provisions governing these services clearly in the Louisiana Administrative Code and to ensure that the language in the administrative Rule reflects current practices. Recipients and providers will benefit from clarification that these covered services are already reimbursable for participants in clinical trials. It is anticipated that implementation of this proposed Rule will not result in any economic impact to Medicaid providers or small businesses in FY 19-20, FY 20-21, and FY 21-22.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Erin Campbell	Evan Brasseaux
Acting Medicaid Director	Staff Director
2003#050	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Telemedicine
(LAC 50:I.501)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing telemedicine in order to clarify that there are no limitations as to the telemedicine originating site.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 1. General Provisions
Chapter 5. Telemedicine
§501. Introduction

A. Telemedicine is the use of an interactive audio and video telecommunications system to permit real time communication between a distant site health care practitioner and the recipient. There is no restriction on the originating site (i.e., where the recipient is located) and it can include, but is not limited to, healthcare facility, school, or the recipient's home.

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 31:2032 (August 2005), amended by the Department of Health, Bureau of Health Services Financing, LR 46:

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Erin Campbell, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Ms. Campbell is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on April 29, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on April 9, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on April 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after April 9, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen R. Russo, JD
Interim Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Telemedicine

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 19-20. It is anticipated that $432 ($216 SGF and $216 FED) will be expended in FY 19-20 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 19-20. It is anticipated that $216 will be collected in FY 19-20 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing telemedicine in order to clarify that there are no limitations as to the telemedicine originating site. Louisiana Medicaid currently reimburses for telemedicine services regardless of the originating sites which may include, but are not limited to, healthcare facilities, schools, or recipients' homes. Implementation of this proposed Rule is necessary in order to ensure that this is clearly reflected in the administrative Rule governing telemedicine services. This proposed Rule will be beneficial to Medicaid recipients and providers by providing clarification in the administrative rule language that there are no restrictions on the originating site of telemedicine services. This Rule is anticipated to have no impact on small businesses. It is anticipated that implementation of this proposed Rule will not result in any cost to providers of telemedicine services in FY 19-20, FY 20-21 and FY 21-22.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Erin Campbell	Evan Brasseaux
Acting Medicaid Director	Staff Director
2003#051	Legislative Fiscal Office

NOTICE OF INTENT

Department of State
Business Services Division

Business Entities
(LAC 19:V.Chapters 1-13)

The Department of State, Business Services Division, pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under the authority of R.S. 49:222 and R.S. 36:742 is proposing to adopt a rule to authorize the use of an optional commercial application programming interface (API), which will allow customers, such as banks, service companies and government agencies doing enforcement activities to subscribe to a API subscription service that will allow them to search for business entity filings using their back-end systems.

Title 19
CORPORATIONS AND BUSINESS
Part V. Secretary of State
Chapter 1. Domestic Corporations
§102. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API Subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:

Chapter 5. Nonprofit Corporations
§502. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API Subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:

Chapter 7. Foreign Corporations
§702. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:

Chapter 9. Special Corporations
§902. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API Subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to

search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:

Chapter 11. Limited Liability Companies

§1102. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:

Chapter 13. Partnerships

§1302. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account, without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:

Family Impact Analysis

The proposed Rule cited in LAC 19:V. Chapters 1-13 regarding the optional Commercial API subscription enrollment and renewal for geauxBiz should not have any known or foreseeable impact on any family as defined by R.S. 49:927 or on family formation, stability and autonomy. Specifically there should be no impact on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and

6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Analysis

The proposed Rule cited in LAC 19:V. Chapters 1-13 regarding the optional Commercial API subscription enrollment and renewal for geauxBiz should not have any known or foreseeable impact on poverty as defined by R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The proposed Rule is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

Provider Impact Analysis

The proposed Rule does not have any known or unforeseeable impact on providers as defined by HRC 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect of staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments or a request for a public hearing to Steve Hawkland, Deputy General Counsel, Legal Division, Department of State, P.O. BOX 94125, Baton Rouge, LA. 70804-9125. The deadline for the Department of State to receive public comments or a request for a public hearing will be no later than 4:30 p.m. on Thursday, April 9, 2020.

Public Hearing

If requested, a public hearing on the proposed Rule will be scheduled for Thursday, April 24, 2020 at 1 p.m. in the Auditorium at the State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time, all interested persons will be afforded to opportunity to submit data, views, or arguments either orally or in writing.

Steve Hawkland
Deputy General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Business Entities

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule is anticipated to increase SGR expenditures in the Business Division by $96,000 in FY 19-20 for software development. Additionally, the Business Division will realize an estimated SGR cost of $7,680 in FY 20-21, FY 21-22, and each subsequent year thereafter for software maintenance. The proposed rule enacts LAC 19:V, Sections 102, 502, 702, 902, 1102 and 1302 that authorize the use of an optional Commercial Application Programming Interface (API) service, which allows customers such as banks, service companies and government agencies doing enforcement activities to search for business entity filings using their back-end computer systems. Customers can enroll in the optional Commercial API service for an annual subscription fee of $500.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is projected to increase SGR collections by $10,931 in FY 19-20, $18,291 in FY 20-21, $25,506 in FY 21-22, $32,794 in FY 22-23, and $40,081 in FY 23-24. The exact revenue increase depends upon the number of businesses choosing to subscribe to the optional Commercial API. The Secretary of State anticipates funds from the $500 per year annual subscription fee will recover the development and maintenance costs at the end of the fifth year. To the extent fewer businesses enroll than projected, the department anticipates using SGR from other sources to fully fund the system.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule is an optional service designed to allow customers to search for business entity filings using their back-end computer systems. This will allow the customer to integrate validation of business information into their processes without having to conduct a manual search of the SOS website. Customers could populate data from the business information that the Secretary of State has on file into fields in their application. Also, the Commercial API service will allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have any effect on competition and employment.

Shanda R. Jones	Evan Brasseaux
Undersecretary	Staff Director
2003#012	Legislative Fiscal Officer

NOTICE OF INTENT

Department of Treasury
Board of Trustees for the State Police Retirement System

Compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Participation in Group Trusts (LAC 58:IX.103 and 206)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Trustees for the Louisiana State Police Retirement System has approved for advertisement these rules necessary for compliance with the federal law pertaining to the purchase of service credit for military service and LSPRS participation in group trusts. The proposed Rule is being adopted pursuant to R.S.11:152.1 and 11:1302.1, which provides that the board of trustees shall promulgate rules in accordance with federal law. This intended action by the

Louisiana State Police Retirement System complies with statutory law administered by the agency.

Title 58
RETIREMENT
Part IX. State Police Retirement System
Chapter 1. Service Credit
§103. Compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA)

A. A sworn, commissioned law enforcement officer of the office of state police in any office, section, agency, commission, or branch of the Department of Public Safety and Corrections as defined in Title 36 of the Louisiana Revised Statutes of 1950 and member of this system (an employee), who was granted a leave of absence in order to join the uniformed services [as defined in 20 C.F.R. 1002.5(o)] shall be given service credit for the full time he or she was on such leave of absence, provided that he or she returns to the employment of his or her pre-service employer (the employer) within five years (unless a different time period would apply under the federal laws governing veteran's reemployment rights), and provided such employee returns to the service as an employee within the applicable periods of time as specified in the following Paragraphs 1 through 4 of this Subsection after a separation from the military service in the uniformed services (unless federal law provides for a shorter or longer time period):

1. If the individual was in the uniformed services less than 31 days, he or she must report to the employer:

a. not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the individual from the place of that service to the individual's residence; or

b. as soon as possible after the expiration of the eight-hour period referred to in Subparagraph a of this Paragraph, if reporting within the period referred to in such subsection is impossible or unreasonable through no fault of the individual.

2. In the case of an individual who is absent from the pre-service employer for a period of any length for the purpose of an examination to determine the person's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in Paragraph 1 of this Subsection.

3. In the case of an individual whose period of service in the uniformed services was for more than 30 days but less than 181 days, by submitting an application for reemployment with the employer not later than 14 days after the completion of the period of service, or, if submitting such application within such period is impossible or unreasonable through no fault of the individual, the next first full calendar day when submission of such application becomes possible.

4. In the case of an individual whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the employer not later than 90 days after completion of the period of service in the uniformed services.

B. In order to obtain service credit under this Section, an employee shall be required to make a contribution to the system of the amount he or she would have paid as an active employee. The employee shall be required to contribute that portion of his or her average salary attributable to the period of time for which the employee will receive credit under this Section, multiplied by the applicable rate set forth in R.S. 11:62(10) in effect at the time of leave. Average salary, for this purpose, shall be the average salary, as defined in R.S. 11:1310, that the employee was receiving from the employer prior to commencing the leave of absence in order to join the uniformed services. The employee shall not be required to pay any interest on the employee's contribution made pursuant to this Section.

C. The employee contribution required in Subsection B of this Section must be made within the time period starting with the employee's date of re-employment and continuing for up to three times the length of the employee's immediate past period of service in the uniformed services, with the repayment period not to exceed five years. If the contribution is not made within the applicable time period specified in this Subsection, no service credit shall be given under this Section, but an employee may be able to purchase service credit pursuant to R.S. 11:153 after the applicable time period has expired.

D. If the employee has met all the terms and conditions of this Section, the employee's service while in the uniformed services shall for all purposes be considered as continuous and uninterrupted service credit with the employer.

E. To the extent not set forth herein, the system shall comply with the requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA, 38 U.S.C. §§ 4301, et seq.) as well as rules and regulations issued by the United States Department of Labor relating to USERRA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:152.1 and 11:1302.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Louisiana State Police Retirement System, LR 46:

Chapter 2. Participation in Group Trusts
§206. Participation in Group Trusts.

A. To the extent it does not affect the tax qualified status of the retirement system, and is permitted by United States Internal Revenue Service Revenue Ruling 81-100, 1981-1 CB 326 (as clarified and modified by Revenue Ruling 2004-67, 2004-2 CB 28, and modified by Revenue Ruling 2011-1, 2011-2 IRB 251, or any subsequent guidance), the board of trustees is authorized to:

1. for investment purposes, transfer assets of the retirement system to, and pool such assets in, one or more group trust(s); and

2. adopt one or more group trust(s), and/or the terms of such group trust(s), as part of the retirement system to the extent necessary to meet the requirements of applicable law, by executing appropriate participation and/or adoption agreements with the trustee(s) of the group trust(s).

B. For purposes of transferring assets of the retirement system to a trustee(s) of any current or future group trust(s), by the execution of such group trust's participation

agreement(s), the board of trustees specifically adopts the trustee's declaration of the group trust as part the retirement system to the extent of its interest in the group trust, or as is required by applicable law, for the purposes of such investment and compliance with Revenue Ruling 81-100, 1981-1 CB 326 (as clarified and modified by Revenue Ruling 2004-67, 2004-2 CB 28, and modified by Revenue Ruling 2011-1, 2011-2 IRB 251, or any subsequent guidance).

C. For purposes of valuation, the value of the interest maintained by the retirement system in a group trust shall be determined in accordance with the governing instrument of the group trust to determine the fair market value of the portion of the group trust held for the retirement system, determined in accordance with generally recognized valuation procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Louisiana State Police Retirement System, LR 46:

Family Impact Statement

This proposed Rule for the purchase of military service credit and participation in group trusts within the Louisiana State Police Retirement System should not have any known or foreseeable impact on any family as defined by R.S. 49:972 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget (other than providing to the member the opportunity to utilize some of his family earnings from the Department of Public Safety towards purchase of additional retirement service credit);
5. the behavior and personal responsibility of children; or
6. the ability of the family or a local government to perform the function as contained in the proposed Rules.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of the proposed Rule has been considered. It is anticipated that the proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. household income, assets, and financial security (other than the recognition of the right under USERRA to convert assets to future monthly income by purchase of military service credit).
2. early childhood development and preschool through postsecondary education development.
3. employment and workforce development.
4. taxes and tax credits.
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

In accordance with R.S. 49:965.6, the Board of Trustee for the State Police Retirement System has conducted a Regulatory Flexibility Analysis and found that the proposed amending of this Rule will have negligible impact on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of the proposed rules has been considered. It is anticipated that the proposed rules will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Any interested person may submit written data, views, arguments or comments regarding these proposed rules to Kim Gann, Assistant Director of the Louisiana State Police Retirement System by mail to Louisiana State Police Retirement System, 9224 Jefferson Hwy., Baton Rouge, LA 70809. All comments must be received no later than June 18, 2020.

Kevin P. Reed
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Compliance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Participation in Group Trusts

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation costs to state or local governmental units. The proposed change updates the administrative rules to reflect federal law, which is already the current practice of LSPRS. Specifically, the rule codifies the existing policy related to the purchase of military service credit and participation in group trusts.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed changes will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

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)

The proposed changes have no known effect on competition and employment.

Kevin P. Reed
Executive Director
2003#058

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Workforce Commission
Office of Workers' Compensation Administration

Medical Treatment Guidelines
(LAC 40:I.2111)

The Louisiana Workforce Commission does hereby give notice of its intent to amend certain portions of the Medical Guidelines contained in the Louisiana Administrative Code, Title 40, Labor and Employment, Part I, Workers' Compensation Administration, Subpart 2, Medical Guidelines, Chapter 21, Section 2111 regarding chronic pain guidelines. This Rule is promulgated by the authority vested in the director of the Office of Workers' Compensation found in R.S. 23:1291 and R.S. 23:1310.1(C).

Title 40
LABOR AND EMPLOYMENT
Part I. Workers' Compensation Administration
Subpart 2. Medical Guidelines
Chapter 21. Pain Medical Treatment Guidelines
Subchapter A. Chronic Pain Disorder Medical Treatment Guidelines

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2111. Therapeutic Procedures—Non-Operative

A. - B.4. …

C. The following procedures are listed in alphabetical order.

1. - 14.f. …

15. Personality/Psychological/Psychosocial Intervention

a. - f. …

g. If a diagnosis consistent with the standards of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) or most current ICD has been determined, the patient should be evaluated for the potential need for psychiatric medications. Use of any medication to treat a diagnosed condition may be ordered by an authorized treating physician or by either the consulting psychiatrist or medical psychologist. Visits for management of psychiatric medications are medical in nature and are not a component of psychosocial treatment. Therefore, separate visits for medication management may be necessary, depending on the patient and medications selected.

15.h. - 19.c.xvi.(a). …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1692 (June 2011). amended LR 46:000 (February 2020), repromulgated LR 46:000 (March 2020).

Family Impact Statement

This amendment to Title 40 should have no impact on families.

Poverty Impact Statement

This amendment to Title 40 should have no impact on poverty or family income.

Small Business Impact Statement

This Rule should have no impact on small businesses.

Provider Impact Statement

1. This Rule should have no impact on the staffing level of the Office of Workers' Compensation as adequate staff already exists to handle the procedural changes.

2. This Rule should create no additional cost to providers or payers.

3. This Rule should have no impact on ability of the provider to provide the same level of service that it currently provides.

Public Comments

All interested persons are invited to submit written comments or hearing request on the proposed Rule. Such comments or request should be sent to Sheral Kellar, OWC-Administration, 1001 North 23rd Street, Baton Rouge, LA 70802. Such comments should be received by 5 p.m. on April 10, 2020.

Ava Dejoie
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Medical Treatment Guidelines

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules will have no fiscal impact on state or local government units, other than the publication fees associated with the proposed rule change.

LA R.S. 23:1203.1 requires the Office of Workers' Compensation Administration (OWCA) assistant secretary, with the assistance of the medical advisory council, to review and update the medical treatment schedule a minimum of once every two years. In accordance with LA R.S. 23:1203.1, the proposed rule amends the medical guidelines for evaluating chronic pain disorder as contained in Title 40, Labor and Employment, Part I, Workers' Compensation Administration, Subpart 2, Medical Guidelines, Chapter 21, Section 2111. Specifically, the rule adds medical psychologists to the list of providers that may prescribe medications to patients with a diagnosed mental health disorder.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed change will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that the proposed change will provide an indirect benefit to injured workers, employers, and insurers by providing better medical treatment to injured workers, thus facilitating their recovery and return to work.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed change has no known effect on competition and employment.

Sheral Kellar
Assistant Secretary
2003#029

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Workforce Commission
Office of Workers' Compensation Administration

Prescription; Filing Procedure
(LAC 40:I.5701)

The Louisiana Workforce Commission does hereby give notice of its intent to amend certain portions of the Louisiana Administrative Code, Title 40, Labor and Employment, Part I, Workers' Compensation Administration, Subpart 3, Hearing Rules, Chapter 57, Subchapter A, Section 5701. This Rule is promulgated by the authority vested in the director of the Office of Workers' Compensation found in R.S. 23:1291 and R.S. 23:1310.1(C).

Title 40
LABOR AND EMPLOYMENT
Part I. Workers' Compensation Administration
Subpart 3. Hearing Rules
Chapter 57. Actions
Subchapter A. General Provisions
§5701. Prescription; Filing Procedure

A. - B. …

C.1. Within seven days, exclusive of legal holidays, after the district office or the records management division has received a facsimile transmission, the party filing the document shall forward the following to the district office or records manager:

a. the original signed document;

b. the applicable filing fee, if any per Hearing Rule 6605; and

c. a transmission fee of $5 in addition to $5 for the first 5 pages and $2.50 for each page thereafter.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:267 (February 1999), amended LR 25:1862 (October 1999), LR 33:654 (April 2007), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:1627 (June 2011), LR 46:

Family Impact Statement

This amendment to Title 40 should have no impact on families.

Poverty Impact Statement

This amendment to Title 40 should have no impact on poverty or family income.

Small Business Impact Statement

This Rule should have no impact on small businesses.

Provider Impact Statement

1. This Rule should have no impact on the staffing level of the Office of Workers' Compensation as adequate staff already exists to handle the procedural changes.

2. This Rule should create an increase to providers or payers.

3. This Rule should have no substantial impact on ability of the provider to provide the same level of service that it currently provides.

Public Comments

All interested persons are invited to submit written comments or hearing request on the proposed Rule. Such comments or request should be sent to Sheral Kellar, OWC-Administration, 1001 North 23rd Street, Baton Rouge, LA 70802. Such comments should be received by 5 p.m. on April 10, 2020.

Ava Dejoie
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Prescription; Filing Procedure

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules will have no fiscal impact on state or local government units, other than the publication fees associated with the proposed rule change.

This proposed rule clarifies that the fee for facsimile transmission of workers' compensations disputes is $5 transmission fee per hearing rule in addition to $5 for the first 5 pages and $2.50 for each page thereafter. It is the current practice of the department to charge this fee as it is already provided in Title 40 – Labor and Employment, Part I. Subpart 3, Chapter 66, Section 6605. However, the fee is not reflected correctly in Chapter 57, Section 5701; therefore, this change is to ensure that Chapter 57, Section 5701 conforms to Chapter 66, Section 6605. Additionally, in compliance with RS 13:850, this rule increases the time limit for submitting the original of a facsimile transmission from 5 days to 7 days.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is not anticipated to have an effect on revenue collections. The OWC currently charges this fee. This change is only to ensure that the fee is reflected correctly throughout all sections of the administrative code.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule is not anticipated to have a cost and/or economic benefit to directly affected persons, small businesses, or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed change has no known effect on competition and employment.

Sheral Kellar
Assistant Secretary
2003#027

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Office of the Governor
Coastal Protection and Restoration Authority

Notice of Availability of the *Deepwater Horizon* Oil Spill Louisiana Trustee Implementation Group Draft Phase II Restoration Plan and Environmental Assessment #3.3: Large-Scale Barataria Marsh Creation: Upper Barataria Component

Action: Notice of Availability.

Summary: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), and the Consent Decree, the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (LA TIG) have prepared the Louisiana Trustee Implementation Group (Louisiana TIG) Draft Phase II Restoration Plan 3.3 and Environmental Assessment (Draft RP/EA #3.3) which describes and proposes restoration project alternatives considered by the Louisiana TIG to restore natural resources and ecological services injured or lost as a result of the Deepwater Horizon oil spill. The purpose of this notice is to inform the public of the availability of the Draft RP/EA #3.3 and to seek public comments on the document.

On March 20, 2018, the Louisiana TIG completed its Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin, Louisiana (SRP/EA #3). In addition to identifying a restoration strategy for the Barataria Basin and confirming its 2018 decision to move forward the Spanish Pass Increment of the Barataria Basin Ridge and Marsh Creation project, SRP/EA #3 also advanced the Mid-Barataria Sediment Diversion and Large Scale Marsh Creation: Component E in northern Barataria Basin for further evaluation and planning in a future Phase II restoration plan. After approval of the SRP/EA #3, engineering and design was initiated for the Large Scale Marsh Creation: Component E. Tiering from the SRP/EA #3, the Louisiana TIG is proposing in RP/EA #3.3 implementation of the Large-Scale Barataria Marsh Creation: Upper Barataria Component Restoration project.

The Draft RP/EA #3.3 focuses on an area in the upper Barataria Basin, 15 miles (24 km) south of New Orleans, in Jefferson and Plaquemines Parishes, Louisiana, from approximately 5.4 miles (8.7km) west of the Mississippi River to the Mississippi River between river miles 64 and 67. In the Draft RP/EA #3.3, the Louisiana TIG proposes a preferred design alternative for the Large-Scale Marsh Creation Project: Component E in Upper Barataria, to be funded under the DWH Louisiana Restoration Area Wetlands, Coastal and Nearshore Habitats restoration type allocation. The preferred alternative would include filling of a combination of marsh creation areas for the creation of approximately 1,207 acres (12.1 $km^{2)}$ of intertidal marsh platform with a design life of 20 years with an estimated total project cost of approximately $172 million, inclusive of Phase I design, construction, contingency, project management, and monitoring & adaptive management.

Dates: The Louisiana TIG will consider public comments received on or before April 20, 2020.

Public Webinar: The Louisiana TIG will conduct a public webinar on April 2, 2020, at 4:00 p.m. CST. The public may register for the webinar at https://attendee.gotowebinar.com/register/851376447936188428

After registering, participants will receive a confirmation email with instructions for joining the webinar. The presentation slides will be posted on the web shortly after the webinar is completed. Comments will also be taken through submission online or through U.S. mail (see Submitting Comments below).

Addresses: Obtaining Documents: You may download the Draft RP/EA #3.3 at: http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana. Alternatively, you may request a CD of the Draft RP/EA #3.3 (see FOR FURTHER INFORMATION CONTACT below). Also, you may view the document at any of the public facilities listed in Appendix A of the Draft RP/EA #3.3.

Submitting Comments: You may submit comments on the draft Phase 2 RP/EA #3.3 by one of the following methods:

- Via the Web: www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana
- Via U.S. Mail: U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. To be considered, mailed comments must be postmarked on or before the comment deadline.
- During the public webinar: Written comments may be provided by the public during the webinar.

For Further Information Contact: Beth Golden, CPRA, 225-342-7308

Administrative Record

The documents comprising the Administrative Record for the Draft RP/EA #3.3 can be viewed electronically at http://www.doi.gov/deepwaterhorizon/adminrecord.

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), its implementing NRDA regulations found at 15 CFR Part 990, the Louisiana Oil Spill Prevention and Response Act (R.S. 30:2451 et seq.), the implementing Natural Resource Damage Assessment Regulations found at LAC 43:101 et seq., and NEPA (42 U.S.C. 4321 et seq.).

Lawrence B. Haase
Executive Director

2003#019

POTPOURRI

Office of the Governor
Coastal Protection and Restoration Authority

Notice of Availability of the *Deepwater Horizon* Oil Spill Louisiana Trustee Implementation Group Draft Restoration Plan/Environmental Assessment #5: Living Coastal and Marine Resources—Marine Mammals and Oysters

Action: Notice of Availability.

Summary: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), and the Consent Decree, the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (LA TIG) have prepared the Draft Phase I Restoration Plan/Environmental Assessment (RP/EA) #5: Living Coastal and Marine Resources—Marine Mammals and Oysters - which proposes restoration project considered by the Louisiana TIG to restore natural resources and ecological services injured or lost as a result of the *Deepwater Horizon* oil spill. For the Draft RP/EA, the Louisiana TIG assembled a list of 193 project alternatives for the restoration of marine mammals and 36 project alternatives for the restoration of oysters. All alternatives underwent a step-wise screening process based on criteria established by OPA and the Louisiana TIG which resulted in two action alternatives for marine mammals and four action alternatives for oysters, each of which are evaluated in the Draft RP/EA. The purpose of this notice is to inform the public of the availability of the Draft RP/EA and to seek public comments on the document.

Dates: The Louisiana TIG will consider public comments received on or before April 20, 2020.

Public Webinar: The Louisiana TIG will conduct a public webinar on April 8, 2020, at 4:00 p.m. CST. The public may register for the webinar at: https://attendee.gotowebinar.com/register/4511405465865527821

After registering, participants will receive a confirmation email with instructions for joining the webinar. The presentation slides will be posted on the web shortly after the webinar is completed. Comments will also be taken through submission online or through U.S. mail (see *Submitting Comments* below).

Addresses: *Obtaining Documents*: You may download the Draft RP/EA at: http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana. Alternatively, you may request a CD of the Draft RP/EA (see FOR FURTHER INFORMATION CONTACT below). Also, you may view the document at any of the public facilities listed in Appendix A of the Draft RP/EA.

Submitting Comments: You may submit comments on the Draft RP/EA by one of the following methods:

- Via the Web: www.gulfspillrestoration.noaa.gov/*restoration-areas/louisiana*
- *Via U.S. Mail*: U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. Please note that mailed comments must be postmarked on or before the comment deadline.

During the public webinar: Written comments may be provided by the public during the webinar.

For Further Information Contact: Beth Golden, CPRA, 225-342-7308

Administrative Record

The documents comprising the Administrative Record for the Draft RP/EA #5 can be viewed electronically at *http://www.doi.gov/deepwaterhorizon/adminrecord*.

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), its implementing NRDA regulations found at 15 CFR Part 990, the Louisiana Oil Spill Prevention and Response Act (R.S. 30:2451 et seq.), the implementing Natural Resource Damage Assessment Regulations found at LAC 43:101 et seq., and NEPA (42 U.S.C. 4321 et seq.)

Lawrence B. Haase
Executive Director

2003#020

POTPOURRI

Department of Health
Board of Pharmacy

Notice of Public Hearing
Substantive Change to Notice of Intent for Proposed Rule
Drug Disposal by Pharmacies (LAC 46:LIII.2749)

The Board of Pharmacy published a Notice of Intent to amend its rules relative to drug disposal by pharmacies in the November 20, 2019 edition of the *Louisiana Register*. Pursuant to the Board's consideration of comments and testimony received during the December 27, 2019 public hearing, the Board proposes to amend one section of the original Notice of Intent relative to the disposal of previously dispensed controlled substances by pharmacies. The proposed amendment will remove the requirement for pharmacies to accept returns of controlled substances for disposal in favor of an allowance for pharmacies to accept such drugs for disposal and a requirement for pharmacies to advise patients or their designees of their drug disposal options.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 27. Controlled Dangerous Substances
§2749. Disposal of Controlled Substances

A. - C. …

D. When a patient or his designee wishes to return previously dispensed controlled dangerous substances to a pharmacy for disposal, the pharmacy shall inform the patient or his designee of the disposal mechanisms available to him. In the event the pharmacy elects to accept such previously dispensed products for disposal, the pharmacy shall comply with the following requirements:

1. From the time of receipt of such products until the time of disposal, the pharmacy shall quarantine such products to keep them separate from its active dispensing stock and shall take appropriate security measures to prevent the theft or diversion of such products.

2. The pharmacy shall comply with the provisions of 21 CFR §1317 or its successor for the pharmacy's disposal of controlled substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 34:2157 (October 2008), amended by the Department of Health, Board of Pharmacy, LR 46:

Public Comments

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to Malcolm J Broussard, Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendment.

Public Hearing

A public hearing to solicit comments and testimony on the proposed Rule amendment is scheduled for 9 a.m. on Monday, April 27, 2020. During the hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 p.m. noon that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225-925-6496.

Malcolm J Broussard
Executive Director

2003#010

POTPOURRI

Department of Health
Bureau of Health Services Financing

2020 Third Quarter Hospital Stabilization Assessment

In compliance with House Concurrent Resolution (HCR) 51 of the 2016 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing amended the provisions governing provider fees to establish hospital assessment fees and related matters (*Louisiana Register*, Volume 42, Volume 11).

House Concurrent Resolution 5 of the 2019 Regular Session of the Louisiana Legislature enacted an annual hospital stabilization formula and directed the Department of Health to calculate, levy and collect an assessment for each assessed hospital.

The Department of Health shall calculate, levy and collect a hospital stabilization assessment in accordance with HCR 5. For the quarter January 1, 2020 through March 31, 2020, the quarterly assessment amount to all hospitals will be $29,169,604. This amounts to 0.25709 percent of total inpatient and outpatient hospital net patient revenue of the assessed hospitals.

Stephen R. Russo, JD
Interim Secretary

2003#052

POTPOURRI

Department of Health
Emergency Response Network Board

Public Comment—Substantive Changes to Proposed Rule: Stroke Center Recognition (LAC 48:I.18708)

Notice of Intent concerning the above referenced proposed Rule was originally published by the Louisiana Emergency Response Network Board on January 20, 2020, in the *Louisiana Register* (See LR 46:98-100) relative to revision of requirements for stroke center recognition, attestation for stroke center requirements, stroke center data requirements, and failure to submit stroke data to the Louisiana Emergency Response Network Board. Public comments were invited, and one comment was received and considered. No public hearing was held as not required by R.S. 49:953(A)(2). The one comment suggested substantive changes. In consideration of such comment the board proposes to amend LAC 48:I.18708 of the proposed Rule by specifying that the consequences for failure to submit stroke data to the Louisiana Emergency Response Network Board apply only to acute stroke ready hospitals. Accordingly, the board proposes to amend the proposed rule as follows.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 15. Louisiana Emergency Response Network Board
Chapter 187. Requirements for Louisiana Stroke Center Recognition
§18708. Failure to Submit Stroke Data to LERN

A. Acute stroke ready hospitals not submitting data for one quarter or not submitting the required action plan and/or mock code, if applicable, will result in automatic probation, which will generate a warning letter to the CEO. The letter will communicate LERN board expectation for data and (action plan and/or mock code, if applicable) submission for the missed quarter and the following quarter.

B. For an ASRH not submitting data to the board for two consecutive quarters, the hospital will automatically be demoted to a stroke bypass hospital.

C. Once an ASRH demotes to a stroke bypass hospital for non-adherence with submission requirement, the hospital CEO cannot re-attest until the hospital has submitted two consecutive quarters of data meeting standards.

D. If an ASRH fails to meet the performance metrics after two quarters of participation in data review, the board appointed stroke subcommittee will present the blinded data to the board for a vote on demotion to stroke bypass hospital versus continued remediation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2846(A) and 48:2845(A)(7).

HISTORICAL NOTE: Promulgated by the Department of Health, Emergency Response Network LR 46:

Public Hearing

As such changes may be considered substantive by parties affected by the Proposed Rule, notice is hereby given in accordance with the Administrative Procedure Act,

specifically R.S. 49:968H(2), that a public hearing on the substantive change will be held by the Board on April 23, 2020, at 11:00 a.m. at the offices of the Louisiana Emergency Response Network Board, 14141 Airline Hwy., Building 1, Suite B, Baton Rouge, LA 70817. All interested persons are invited to submit written comments concerning the proposed substantive change to Paige Hargrove, Executive Director, Louisiana Emergency Response Network, 14141 Airline Hwy., Building 1, Suite B, Baton Rouge, LA 70817, or via email to paige.hargrove@la.gov. Written comments will be accepted until 11 a.m., April 23, 2020.

Paige Hargrove
Executive Director

2002#024

POTPOURRI

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Public Hearing—Substantive Changes to Notice of Intent
2020-2022 Hunting Regulations and Seasons
(LAC 76:XIX.Chapter 1)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission published a Notice of Intent to amend its rules in the January 20, 2020 edition of the *Louisiana Register*. The Wildlife and Fisheries Commission proposes to amend the original Notice of Intent to prohibit the sale of natural deer urine or other bodily fluids; include the use of UTV's on ATV trails for physically challenged persons and change the dove season dates for the south zone only.

Title 76
WILDLIFE AND FISHERIES
Part XIX. Hunting and WMA Regulations
Chapter 1. Resident Game Hunting Season
§111. General and Wildlife Management Area Hunting Rules and Regulations

A. - E.10. …

11. It is unlawful to import, sell, use or possess scents or lures that contain natural deer urine or other bodily fluids, except natural deer urine products produced by manufacturers or entities that are actively enrolled and participating in the Archery Trade Association Deer Protection Program, which has been tested using real-time quaking induced conversion (RT-QuIC) and certified that no detectable levels of Chronic Wasting Disease (CWD) are present and is clearly labeled as such.

E.12. - G.9.i. …

j. Use of special ATV/UTV trails for physically challenged persons is restricted to ATV/UTV physically challenged permittees. Physically challenged ATV/UTV permittees are restricted to physically challenged ATV/UTV trails or other ATV/UTV trails only as indicated on WMA maps or as marked by sign and/or paint. Persons 60 years of age and older, with proof of age, are also allowed to use special physically challenged trails and need not obtain a permit. However, these persons must abide by all rules in place for these trails. Physically challenged persons under the age of 60 must apply for and obtain a physically challenged hunter program permit from the LDWF.

k. Entrances to ATV trails will be marked with peach colored paint. Entrances to physically challenged-only ATV/UTV trails will be marked with blue colored paint. Entrances to ATV/UTV trails that are open year round will be marked with purple paint. The end of all ATV/UTV trails will be marked by red paint. WMA maps serve only as a general guide to the route of most ATV/UTV trails, therefore all signage and paint marking as previously described will be used to determine compliance.

9.l. - 18.a.i.(a). …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115 and R.S. 56:116.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:1279 (July 1999), amended LR 26:1494 (July 2000), LR 27:1049 (July 2001), LR 28:1603 (July 2002), LR 29:1124 (July 2003), repromulgated LR 29:1522 (August 2003), amended LR 30:1495 (July 2004), LR 31:1611 (July 2005), LR 32:1251 (July 2006), LR 33:1382 (July 2007), LR 34:1429 (July 2008), LR 35:1264 (July 2009), LR 36:1566 (July 2010), LR 37:2190 (July 2011), LR 38:1732 (July 2012), LR 39:2292 (August 2013), LR 40:1540 (August 2014), LR 41:963 (May 2015), LR 42:1112 (July 2016), LR 43:1423 (July 2017), LR 44:1277 (July 2018), LR 45:938 (July 2019), LR 46:

§117. Migratory Bird Seasons, Regulations, and Bag Limits

A. Seasons and Bag Limits

Species	Season Dates	Daily Bag Limit	Possession Limit
Mourning and White Winged Doves and fully-dressed Eurasian and Collared Doves	South Zone: Sept. 5-Sept. 16 Oct. 17-Nov. 29 Dec. 19-Jan. 21 North Zone: Sept. 5-Sept. 27 Oct. 10-Nov. 15 Dec. 26-Jan. 24	15 (in aggregate)	45 (in aggregate)
Woodcock	Dec. 18-Jan. 31	3	9
Teal (Blue-winged, Green-winged and Cinnamon)	Sept. 12-Sept. 27	6	18
King and Clapper Rails	Sept. 12-Sept. 27 Nov. 14-Jan. 6	15 (in aggregate)	45 (in aggregate)
Sora and Virginia Rails	Sept. 12-Sept. 27 Nov. 14-Jan. 6	25 (in aggregate)	75 (in aggregate)
Gallinules	Sept. 12-Sept. 27 Nov. 14-Jan. 6	15	45
Snipe	Coastal Zone: Nov. 2-Dec. 6 Dec. 19-Feb. 28 West Zone: Nov. 2-Dec. 6 Dec. 19-Feb. 28 East Zone: Nov. 2-Dec. 6 Dec. 19-Feb. 28	8	24

Species	Season Dates	Daily Bag Limit	Possession Limit
Ducks, Coots and Mergansers	Coastal Zone: Nov. 7-8 (youth only) Nov. 14-Dec. 6 Dec. 19-Jan. 24 Jan. 30-31 (veterans only) West Zone: Nov. 7 (youth only) Nov. 8 (veterans only) Nov. 14-Dec. 6 Dec. 19-Jan. 24 Jan. 30 (youth only) Jan. 31 (veterans only) East Zone: Nov. 14 (youth only) Nov. 15 (veterans only) Nov. 21-Dec. 6 Dec. 19-Jan. 31 Feb. 6 (youth only) Feb. 7 (veterans only)	Daily bag limit on ducks is 6 and may include no more than 4 mallards (no more than 2 females), 3 wood ducks, 2 canvasbacks, 2 redheads, 1 mottled duck, 1 black duck and 1 pintail. Only 1 scaup may be taken for the first 15 days of the season with 2 per day allowed for the remainder. Daily bag limit on coots is 15. Mergansers-The daily bag limit for mergansers is 5, only 2 of which may be hooded mergansers, in addition to the daily bag limit for ducks.	Three times the daily bag limit.

Species	Season Dates	Daily Bag Limit	Possession Limit
Light Geese (Snow, Blue, and Ross') and White-Fronted Geese	North Zone: Nov. 7-Dec. 6 Dec. 19-Jan. 31 South Zone: Nov.14-Dec. 6 Dec. 19-Feb. 7	Daily bag limit on Light Geese (snow, blue, and ross') is 20. Daily bag limit on White-Fronted Geese is 3.	No possession limit on Light Geese (snow, blue, and ross') Possession limit on White-Fronted Geese is 9.
Canada Geese	North Zone: Nov. 7-Dec. 6 Dec. 19-Jan. 31 South Zone: Nov. 14-Dec. 6 Dec. 19-Feb. 7	1	3

B. - H. …

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 42:1130 (July 2016), amended LR 43:1427 (July 2017), LR 44:1306 (July 2018), LR 45:966 (July 2019), LR 46:

Public Hearing

In accordance with R.S. 49:968(H)(2), a public hearing on proposed substantive changes will be held by the Department of Wildlife and Fisheries on April 20, 2020 at 10 a.m. in the Joe L. Herring Louisiana Room of the Wildlife and Fisheries Headquarters Building, 2000 Quail Drive, Baton Rouge, LA, 70808.

William Hogan
Chairman

2003#021

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