

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Performance Testing Notifications and Reports
(LAC 33:III.523, 2107, 2108, 2511, 2521, 2531, and 5113) (AQ294)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.523, 2107, 2108, 2511, 2521, 2531, and 5113 (Log #AQ294).

This rule will amend the variety of timeframes in the regulations for submitting reports of results following the completion of performance testing so that all reports are due 60 days after the completion of testing. The 60-day timeframe is consistent with other state policy testing requirements and with the majority of federal testing requirements. This rule will also require submittal of testing notifications to the department at least 30 days prior to testing, where testing is required in the regulations. This requirement is already located in several places in the regulations and is included as a general condition in all air permits issued by the department. These changes will make the regulations more consistent. Requiring all performance testing reports to be submitted within the same timeframe reduces confusion for the regulated community. Currently, the department receives many requests for extensions to submit test results, especially for test results that are due within 30 days of testing. Thirty days can be a difficult timeframe in which to prepare a report or results, especially for testing that involves several methods or scenarios. Increasing the timeframe will reduce the burden to facilities. Clearly stating that notifications are required where testing is required in the regulations also reduces confusion and makes the regulations more consistent throughout and with air permits issued by the department. The basis and rationale for this rule are to make the regulations more consistent and to incorporate into the regulations a requirement of all air permits issued by the department. This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on July 29, 2008, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ294. Such comments must be received no later than August 5, 2008, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ294. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§523. Procedures for Incorporating Test Results

A. – B.2. ...

3. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

43. Within ~~60~~30 days of test completion, the administrative authority shall be given a report detailing the conditions that were found to exist. If there is to be no permanent change in emissions from pretest conditions, that should be stated.

54. If there is to be a permanent change made ~~which~~that increases emissions, all applicable requirements of this Chapter must be met. If emissions are to be reduced by the modification, the requirements of LAC 33:III.511 are applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2107. Volatile Organic Compounds—Loading

A. – D.4. ...

E. Test Methods:

1. Compliance with Subsection B of this Section shall be determined by applying the following test methods, as appropriate:

~~1.~~ a. Test Methods 1-4 (40 CFR Part 60, Appendix A, as incorporated by reference ~~at~~in LAC 33:III.3003) for determining flow rates, as necessary;

~~2.~~ b. Test Method 18 (40 CFR Part 60, Appendix A, as incorporated by reference ~~at~~in LAC 33:III.3003) for determining gaseous organic compounds emissions by gas chromatography;

~~3.~~ c. Test Method 25 (40 CFR Part 60, Appendix A, as incorporated by reference ~~at~~in LAC 33:III.3003) for determining total gaseous non-methane organic emissions as carbon;

~~4.~~ d. Test Method 25A or 25B (40 CFR Part 60, Appendix A, as incorporated by reference ~~at~~in LAC 33:III.3003) for determining total gaseous organic concentration using flame ionization or nondispersive infrared analysis; and

~~5.~~ e. flaring devices, which shall be designed and operated according to 40 CFR 60.18.

2. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

3. Within 60 days of test completion, a copy of the test results shall be

submitted to the Office of Environmental Assessment for review and approval.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:116 (February 1990), amended by the Office of Air Quality and Radiation Protection, LR 17:360 (April 1991), LR 22:1212 (December 1996), LR 24:20 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1442 (July 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

§2108. Marine Vapor Recovery

A. – E.5. ...

6. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

F. Reporting and Recordkeeping

1. The results of any testing done in accordance with ~~LAC~~ 33:III.2108.Subsection E of this Section shall be reported to the Office of Environmental Assessment within 6045 days of the test.

F.2. – H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 14:704 (October 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:959 (November 1990), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:20 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2452 (November 2000), LR 30:745 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2439 (October 2005), LR 33:2085 (October 2007), LR 34:**.

Chapter 25. Miscellaneous Incineration Rules

Subchapter B. Biomedical Waste Incinerators

§2511. Standards of Performance for Biomedical Waste Incinerators

A. – E.6.e. ...

7. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

87. A copy of all monitoring and tests results shall be submitted to the Office of Environmental Assessment for review and approval within 6045 days of completion of testing.

F. – L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1098 (October 1994), amended LR 21:1081 (October 1995), LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 26:2455 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2442 (October 2005), LR 33:2089 (October 2007), LR 34:**.

Subchapter C. Refuse Incinerators

§2521. Refuse Incinerators

A. – F.9.e. ...

10. At least 30 days prior to performing any emission test, notification of testing shall be made to the Office of Environmental Assessment to afford the department the opportunity to conduct a pretest conference and to have an observer present.

~~1140.~~ A copy of all monitoring and tests results shall be submitted to the Office of Environmental Assessment for review and approval within ~~60~~45 days of completion of testing.

G. – H....

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1100 (October 1994), amended LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2443 (October 2005), LR 33:2089 (October 2007), LR 34:**.

Subchapter D. Crematories

§2531. Standards of Performance for Crematories

A. – I.1.f. ...

2. A copy of all test results shall be submitted to the Office of Environmental Assessment for review and approval within ~~60~~45 days of completion of testing.

J. – J.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1107 (October 1994), amended LR 22:1127 (November 1996), LR 22:1212 (December 1996), LR 23:1509 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2443 (October 2005), LR 33:2089 (October 2007), LR 34:**.

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5113. Notification of Start-Up, Testing, and Monitoring

A. – A.2. ...

B. Emission Tests and Waiver of Emission Tests

1. The department may require any owner or operator to conduct tests to determine the emission of toxic air pollutants from any source whenever the department has reason to believe that an emission in excess of those allowed by this Subchapter is occurring. The department may specify testing methods to be used in accordance with good professional practice. The department may observe the testing. The Office of Environmental Assessment shall

be notified at least 30 days prior to testing to afford the department the opportunity to conduct a pretest conference and to have an observer present. All tests shall be conducted by qualified personnel. The Office of Environmental Assessment shall be given a copy of the test results in writing signed by the person responsible for the tests within ~~60~~45 days after completion of the test.

2. – 4.e. ...

5. Unless otherwise specified, samples shall be analyzed and emissions determined within 30 days after each emission test has been completed. The owner or operator shall report the determinations of the emission test to the Office of Environmental Assessment by a certified letter sent before the close of business on the ~~sixtieth~~forty-fifth day following the completion of the emission test.

B.6. – C.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1364 (December 1992), LR 23:59 (January 1997), LR 23:1658 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2461 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 33:2094 (October 2007), LR 34:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
 FOR ADMINISTRATIVE RULES LOG #: AQ294

Person Preparing Statement: Gerri Garwood Dept.: Environmental Quality
 Phone: 225-219-3490 Office: Environmental Assessment
 Return Address: Air Quality Assessment Division Rule Title: Performance Testing Notifications and Reports (LAC 33:III.523, 2107, 2108, 2511, 2521, 2531, and 5113)
P.O. Box 4314
Baton Rouge, LA 70821-4314
 Date Rule Takes Effect: Upon promulgation

SUMMARY
 (Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated cost or savings to state or local governmental units to implement this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of state or local governmental units as a result of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There is no estimated cost or economic benefits to directly affected persons or non-governmental groups as a result of this rule. Performance test notifications and reports are already required by regulation and permit. This rule clarifies the requirement for notification where the requirement is not specifically stated. Even when the regulation does not expressly state that a notification of performance testing is required, all air permits issued by DEQ require notification prior to testing. Additionally, this rule makes the timeframe for submitting test results consistent. The requirement for submittal of performance test results currently varies between 30, 45, and 60 days. This rule will make all performance test results due within 60 days, which is consistent with EPA's requirement under 40 CFR 63.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment as a result of this rule.

Signature of Agency Head or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Legislative Fiscal Officer or Designee

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

Currently, LAC 33:III provides a variety of timeframes for submitting reports of results following the completion of performance testing. This rule will amend the timeframes in the regulations so that all reports are due 60 days after the completion of testing. This timeframe is consistent with other state policy testing requirements and with the majority of federal testing requirements.

This rule will also require the submittal of testing notifications to the Office of Environmental Assessment at least 30 days prior to testing in the regulations that require testing. This requirement is already located in several places in the air regulations and is included as a general condition in all air permits issued by the department.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This rule is being initiated in order to make the regulations more consistent. Requiring all performance testing reports to be submitted within the same timeframe reduces confusion for the regulated community. Clearly stating that notifications are required for each regulation that requires testing also reduces confusion and makes the regulations more consistent throughout and with air permits issued by the department.

Currently, the department receives many requests for extensions to submit test results, especially for test results that are due within 30 days of testing. Thirty days can be a difficult timeframe in which to prepare a report of the results, especially for testing that involves several methods or scenarios. It is necessary to increase this timeframe in order to reduce the burden on facilities and the department.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

This rule will not result in an increase in the expenditure of funds. The requirements are existing requirements.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ___ Yes. If yes, attach documentation.

(b) ___ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

There is no anticipated increase (decrease) in costs to implement the proposed rule.

COSTS	FY07-08	FY08-09	FY09-10
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR			
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

This item is not applicable.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY07-08	FY08-09	FY09-10
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The department has sufficient funds to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There is no anticipated impact of the proposed action on local governmental units.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This item is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

No increase (decrease) in revenues is anticipated from the proposed action.

REVENUE INCREASE/DECREASE	FY07-08	FY08-09	FY09-10
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

This item is not applicable.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

There is no estimated cost or economic benefits to directly affected persons or non-governmental groups as a result of this rule. Performance test notifications and reports are already required by regulation and permit. This rule clarifies the requirement for notification where the requirement is not specifically stated. Even when the regulation does not expressly state that a notification of performance testing is required, all air permits issued by DEQ require notification prior to testing. Additionally, this rule makes the timeframe for submitting test results consistent. The requirement for submittal of performance test results currently varies between 30, 45, and 60 days. This rule will make all performance test results due within 60 days, which is consistent with EPA's requirement under 40 CFR 63.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will be no impact on receipts and/or income resulting from the proposed rule.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no impact on competition or employment in the public or private sector resulting from the proposed rule.