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# Executive Orders

## EXECUTIVE ORDER JBE 19-20

Broadband for Everyone in Louisiana Commission  
Amending Executive Order JBE 19-15

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; and

WHEREAS, it is necessary to amend Executive Order Number 19-15.

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 19-15, issued on August 29, 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-three members, including fourteen ex-officio members and nine members appointed by the governor.

SECTION 2: Section 3 of the Executive Order Number JBE 19-15, issued on August 29, 2019, is hereby amended as follows:

There shall be twenty-three (23) members of the Commission. Nine members shall be appointed by and serve at the pleasure of the governor. Of these nine members, two shall be at-large business executive members selected at the Governor’s discretion 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).

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 3rd day of December, 2019.

John Bel Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
R. Kyle Ardoin  
Secretary of State  
1912#079

## EXECUTIVE ORDER JBE 19-21

Flags at Half-Staff—Dr. C.O. Simpkins, Sr.

WHEREAS, Dr. Cuthbert Ormond Simpkins, Sr., a former member of the Louisiana Legislature and a pioneer in the Civil Rights Movement, died at the age of 94, on Wednesday, December 4, 2019;

WHEREAS, Cuthbert Ormond Simpkins was born in Mansfield, Louisiana, on January 13, 1925; following high school, he attended Wiley College in Marshall, Texas, and Tennessee State University, where he received his

undergraduate degrees; following this degree, he earned a Doctorate of Dental Surgery at Meharry Medical College School of Dentistry in Nashville;

WHEREAS, Dr. Simpkins joined the U.S. Air Force where he achieved the rank of captain and was honorably discharged in 1951;

WHEREAS, Dr. Simpkins was a Civil Rights pioneer, who led a successful fight against segregation and voter discrimination in northern Louisiana, having founded the United Christian Movement Conference on Registration and Voting, and served as a founding member of the Southern Christian Leadership Conference along with Dr. Martin Luther King, Jr., never flinching or retreating in the face of terror and threats of violence;

WHEREAS, Dr. Simpkins continued his efforts beyond the State of Louisiana, helping to form and establish York College of the City University of New York in 1966 in Queens, New York, before he returned home to the State of Louisiana;

WHEREAS, Dr. Simpkins further served his community in elected office, representing the Fourth District in the Louisiana House of Representatives from 1992 to 1996;

WHEREAS, he was a founder of the North Louisiana Civil Rights Coalition, to continue and promote the history of the Civil Rights movement in Louisiana;

WHEREAS, his passion for his community led him and his wife to donate the land for a medical center dedicated to delivering affordable and community-based medical services, now known as the Simpkins Community Health and Wellness Center in Shreveport, Louisiana;

WHEREAS, he is survived by his wife, Dr. Elaine Shoemaker Simpkins, and his children, Dr. Cuthbert Ormond Simpkins II, MD, Deborah Simpkins-Savage, Eric Simpkins, Cheri Simpkins Gardner and Alicia Ritchens; and

WHEREAS, Dr. C.O. Simpkins, Sr., lived his life with integrity and honor, setting an example for all with his passionate and tireless activism and public service and 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 Dr. C.O. Simpkins, Sr., the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol until sunset on Friday, December 13, 2019.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, December 13, 2019.

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 11th day of December, 2019.

John Bel Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
R. Kyle Ardoin  
Secretary of State  
1912#080

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Children and Family Services Division of Child Welfare

Adoption Subsidy Program and Adoption Petition Program  
(LAC 67:V.4901, 4903, 5101, 5103, and 5105)

The Department of Children and Family Services (DCFS), Child Welfare, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:V, Subpart 6 Adoptions, Chapter 49 Adoption Subsidy Program, Sections 4901 and 4903 and Chapter 51, Adoption Petition Program, Sections 5101, 5103, and 5105. This declaration is necessary to extend the original Emergency Rule since it is effective for a maximum of 120 days and will expire before the Final Rule takes effect. This Emergency Rule extension is effective on November 25, 2019, and shall remain in effect for a period of 120 days or until the final rule becomes effective.

The department considers emergency action necessary to facilitate the expenditure of IV-E funds for extended foster care services to the estimated 20 children who are currently eligible for these adoption subsidy services initiated after their sixteenth birthday as specified in Act 649 of the Regular Session of the Louisiana Legislature.

#### Title 67

#### SOCIAL SERVICES

#### Part V. Child Welfare

#### Subpart 6. Adoptions

#### Chapter 49. Adoption Subsidy Program

#### §4901. Subsidizing the Adoption of Children with Special Needs

##### A. Overview of Program Purpose

1. The Subsidized Adoption Program enables the Department of Children and Family Services to make payments to adoptive parents on behalf of a child who otherwise might not be adopted because of special needs or circumstances. Subsidy payments shall be limited to a child(ren) for whom adoption is indicated but placement through existing resources is unavailable because of the child's physical or mental condition, race, age, membership in a sibling group which should not be separated, or other serious impediments or special needs. The adoption subsidy applies to a special needs child for whom the Department of Children and Family Services holds full and permanent custody prior to the adoptive placement or to a special needs child, SSI or AFDC eligible, for whom a private nonprofit agency holds custody and to nonrecurring adoption expenses only for special needs children who are adopted independently. The adoption subsidy may be extended for children who were adopted from foster care and initially began receiving the subsidy after age 16, but prior to age 18, if the adoptive parents remain financially responsible for the child, and the child meets the same eligibility criteria as children eligible for the department's Extended Foster Care program. No child may have an adoption subsidy initiated

for the first time after age 18. The adoption laws of the state of Louisiana shall be adhered to, and the granting of a subsidy shall not affect the legal status of the child nor the rights and responsibilities of the adoptive parents.

2. The prospective adoptive family must meet basic adoption eligibility requirements in all respects except for the ability to assume complete financial responsibility for the child's care.

B. Types of Subsidy. The child may be subsidized for the following services up to age 18, or up to age 21 if eligible for an extension of the adoption subsidy.

1. Maintenance. The maintenance subsidy includes basic living expenses such as board, room, clothing, spending money, and ordinary medical and dental costs. The maintenance supplement may be ongoing, but must be renewed on a yearly basis. An extension of an adoption subsidy for youth who have turned 18 must be reviewed quarterly to ensure ongoing eligibility, but only needs to be renewed annually as long as eligibility criteria continue to be met. The amount of payment shall not exceed 80 percent of the state's regular foster care board rate based on the monthly flat rate payments for the corresponding age group. Changes in the maintenance subsidy rate care may occur once a year and the adjustment is made at the time of a change in the child's age group. The monthly maintenance shall not be based on specialized foster care arrangements such as subsidized foster care, alternate family care, or therapeutic foster care.

##### 2. Special Board Rate

a. Foster parents adopting a foster child for whom a special board rate was received may request up to a maximum of 80 percent of the special board rate amount of \$300. This includes adoptive parents who were not previously certified as the child's foster parent(s), if the care and needs of the child in the adoptive home warrant this same special board rate. Therefore, under the Adoption Subsidy Program, the special board component for these type homes shall not exceed \$240. The continued need for the special board rate shall be reviewed at the time of the annual review for children under age 18. At age 18, the extension of an adoption subsidy shall be reviewed a minimum of quarterly.

b. For the child placed in a Subsidized Foster Home, Alternate Family Care facility, or a Therapeutic Family Care facility, the maximum amount of the special board component of the adoption subsidy shall not exceed \$258. This amount equals the Flexible Family Fund (monitored by the Office for Citizens with Developmental Disabilities and the Office of Behavioral Health and administered by the 10 human service districts/authorities) authorized for the care of children with severe emotional disturbance or severe intellectual/developmental disabilities who are in their own homes.

B.3. - B.3.a.i. ...

ii. psychiatric, or psychological expenses, special equipment, prosthetic devices, or speech therapy;

B.3.a.iii. - C. ...

1. Before a child is certified by the Division of Child Welfare as eligible for a subsidy, resources for adoptive placement without such benefits must be explored by the adoption worker. This will include recruitment of adoptive parents, registrations for a reasonable period on state, regional, and/or national adoption resources exchanges, and referral to appropriate specialized adoption agencies.

C.2. - D.1. ...

a. The income scale determining eligibility for the non IV-E maintenance subsidy shall be utilized by the Department of Children and Family Services, Division of Child Welfare to determine eligibility for non IV-E benefits. The scale is based on 60 percent of Louisiana's median income for a family of four, adjusted for family size as published by the U.S. Department of Health and Human Services. Figures in the column on the left refer to the number of family members, including the adoptive child(ren). Figures in the column on the right refer to family gross income. Persons living in the household who are not dependent on the adoptive family's income even though related, are not counted. Families whose income falls below the figures in the right column may apply for subsidy.

b. The Division of Child Welfare, Adoption Subsidy Program, will determine the appropriateness of subsidy benefits, the type of subsidy, and the level of the subsidy. An agreement form between the Division of Child Welfare and the prospective adoptive parents with clearly delineated terms must be signed prior to the granting of the final decree.

c. Income Chart

Family Size	Gross Annual Income
1 person	\$23,371
2 persons	\$30,562
3 persons	\$37,753
4 persons	\$44,944
5 persons	\$52,135
6 persons	\$59,326
7 persons	\$60,674
8 persons	\$62,022
9 persons	\$63,371
10 persons	\$64,719
11 persons	\$66,067
12 persons	\$67,416
13 persons	\$68,764
14 persons	\$70,112

d. For each additional family member six persons, add three percentage points to the percentage for a six-person household (132 percent), and multiply the new percentage by 60 percent of the state's estimated median income for a four-person household.

2. IV-E Placements. Federal regulations prohibit the use of an income eligibility requirement (means test) for prospective adoptive parents in determining the availability of payments or other types of adoption assistance. The eligible child who has met the "special needs" requirements in Section 473(c) of the Social Security Act will be eligible for payments and other types of services and assistance under the Title IV-E Adoption Assistance Program. Parents with whom such a child is placed for adoption are eligible to

receive Title IV-E payments and other assistance on behalf of that child, under an agreement with the state agency.

3. A child adopted from foster care after age 16 but prior to age 18 and receiving an adoption subsidy already may be allowed an extension of the adoption subsidy if requested by the family for the adoptive family to continue receiving the adoption subsidy payments on behalf of the child after the child turns 18 and up to age 21 as long as the family retains financial responsibility for the child, the child meets the same eligibility criteria as children eligible for the department's Extended Foster Care program and all other eligibility criteria for the original subsidy remain in effect. Ongoing eligibility must be reassessed by DCFS/CW quarterly, but renewal of the subsidy only completed annually. If notified by the family the child and family are no longer eligible or interested in receiving the extended subsidy; or, if at reassessment it is determined the child and family are no longer eligible for the extended subsidy, the subsidy shall be ended immediately.

E. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1790-1792 and P.L. 96-272 (Title IV-E).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Human Development, LR 4:388 (October 1978), repealed by the Department of Social Services, Office of Community Services, LR 18:79 (January 1992), promulgated and amended LR 18:966 (September 1992), amended by the Department of Children and Family Services, Division of Child Welfare, LR 46:

**\$4903. Nonrecurring Expenses in Adoptions**

A. The Division of Child Welfare sets forth criteria for reimbursement of nonrecurring expenses associated with the adoption of children with special needs.

1. The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the Division of Child Welfare. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

2. - 3. ...

4. To be eligible, the child must meet the criteria previously established by the Division of Child Welfare to be designated as a "child with special needs". Furthermore, the child must have been placed for adoption in accordance with applicable state laws.

5. - 6. ...

7. Reimbursement is limited to costs incurred by or on behalf of adoptive parents that are not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made directly by the Division of Child Welfare.

8. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 1356, as published in the Federal Register on December 14, 1988, Section 1711 of the Tax Reform Act of 1986 as it relates to the Adoption Assistance Program under Title IV-E, and Act 345 of the 1990 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 17:386 (April 1991), amended by the Department of Children and Family Services, Division of Child Welfare Child Welfare, LR 46:

**Chapter 51. Adoption Petition Program**

**\$5101. Certificate of Adoption in Private Adoptions**

A. - C.2.b. ...

c. Attorneys representing prospective adoptive couples living in Louisiana for private adoptions must

request the court having jurisdiction to order a Louisiana child abuse/neglect records check from the Division of Child Welfare's Regional Office for the parish of residence of the prospective adoptive couple with the results of said check to be submitted in writing to the court. The court order shall be sent to the attention of the Adoption Petition Unit.

d. The mailing addresses of the regional offices of the Division of Child Welfare where this form may be obtained are as follows:

- i. Greater New Orleans;
- (a). Jefferson District, Box 10009, Jefferson, LA, 70181;
- (b). Orleans District, Regional Office, 1450 Poydras Street, Suite 1600, New Orleans, LA, 70112;
- ii. Baton Rouge Regional Office, Box 3318, Baton Rouge, LA 70821;
- iii. Lafayette Regional Office, 825 Kaliste Saloom Rd, Lafayette, LA 70508;
- iv. Lake Charles Regional Office, Box 1486, Lake Charles, LA 70602;
- v. Alexandria Regional Office, Box 8557, Alexandria, LA 71306;
- vi. Shreveport Regional Office, 1525 Fairfield Avenue, Shreveport, LA 71101-4388;
- vii. Monroe Regional Office, Box 3047, Monroe, LA 71210;
- viii. Thibodaux Regional Office, 1416 Tiger Drive, Thibodaux, LA 70301;
- ix. Covington Regional Office, 351 Holiday Blvd., Covington, LA 70433.

e. - f. ...

D. The Department of Children and Family Services, Division of Child Welfare in carrying out the duties as detailed in the Children's Code, Title XII, Chapter 10, Article 1229 (A) shall include in the report to the court a copy of the Certificate of Adoption for the prospective adoptive couple or report to the court in writing that no Certificate of Adoption has been obtained in accordance with the Louisiana Children's Code.

AUTHORITY NOTE: Promulgated in accordance with the Children's Code, Title XII, Chapter 2.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 18:747 (July 1992), amended by the Department of Children and Family Services, Division of Child Welfare, LR 46:

#### **§5103. When the Petitioner Is the Stepparent of the Adoptee**

A. DCFS/CW shall no longer provide a full investigation and court report in stepparent adoptions unless so ordered by the court. Henceforth, adoption petition workers shall investigate stepparent adoptions only to the extent necessary. The investigation shall:

A.1. - B.2.b.vi. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:427.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Human Development, Division of Evaluation and Services, LR 10:342 (April 1984), amended by the Department of Children and Family Services, Division of Child Welfare, LR 46; LR 46:

#### **§5105. Intercountry Adoptions**

A. The Department of Children and Family Services, Division of Child Welfare, hereby adopts Intercountry

Adoptions Policy. This policy authorizes certain consenting licensed private child placing agencies to conduct and certify the validity of home studies; to contract with qualified professionals to complete home studies; and to certify the validity of home studies completed by professionals under contract with them to complete home studies; certifying to the U.S. Immigration and Naturalization Service that the Louisiana prerequisite of a valid home study has been completed as required before an intercountry adoption can be consummated.

AUTHORITY NOTE: Promulgated in accordance with the United States Immigration and Nationality Act of 1952, as amended (Title 8, U.S.C. aliens and nationality).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Human Development, LR 7:408 (August 1981), amended by the Department of Children and Family, Division of Child Welfare, LR 46:

Marketa Garner-Walters  
Secretary

1912#007

## **DECLARATION OF EMERGENCY**

### **Office of the Governor Division of Administration Tax Commission**

Ad Valorem Taxation  
(LAC 61:V.101, 121, 213, 303, 703, 907, 1103,  
1307, 1503, 2503, 2711, 2713, 2717, and 3103)

The Louisiana Tax Commission exercised the provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 47:1837, adopted the following additions, deletions and amendments to the Real/Personal Property Rules and Regulations. This rule is hereby adopted on the day of promulgation.

This Emergency Rule is necessary in order for ad valorem tax assessment tables to be disseminated to property owners and local tax assessors no later than the statutory valuation date of record of January 1, 2020. Cost indexes required to finalize these assessment tables are not available to this office until late October 2019. The effective date of this Emergency Rule is January 1, 2020.

Pursuant to the Administrative Procedure Act, this Emergency Rule shall be in effect for a maximum of one hundred twenty days or until adoption of the Final Rule or another Emergency Rule, whichever occurs first.

#### **Title 61**

### **REVENUE AND TAXATION**

#### **Part V. Ad Valorem Taxation**

### **Chapter 1. Constitutional and Statutory Guides to Property Taxation**

#### **§101. Constitutional Principles for Property Taxation**

A. - F.3.h. ...

G. Special Assessment Level

1. - 1.d. ...

2. Any person or persons shall be prohibited from receiving the special assessment as provided in this Section if such person's or persons' adjusted gross income, for the year prior to the application for the special assessment, exceeds \$77,030 for tax year 2020 (2021 Orleans Parish).



For persons applying for the special assessment whose filing status is married filing separately, the adjusted gross income for purposes of this Section shall be determined by combining the adjusted gross income on both federal tax returns.

3. - 9. ...

**AUTHORITY NOTE:** Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, §18.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 15:1097 (December 1989), amended by the Department of Revenue, Tax Commission, LR 24:477 (March 1998), LR 26:506 (March 2000), LR 31:700 (March 2005), LR 32:425 (March 2006), LR 33:489 (March 2007), LR 34:673 (April 2008), LR 35:492 (March 2009), LR 36:765 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1394 (May 2011), LR 38:799 (March 2012), LR 39:487 (March 2013), LR 40:528 (March 2014), LR 41:671 (April 2015), LR 42:744 (May 2016), LR 43:648 (April 2017), LR 44:577 (March 2018), LR 45:531 (April 2019), LR 46:

### §121. Reappraisal

A. Real property, as defined in R.S. 47:2322, shall be reappraised and reassessed at least every 4 years.

B. - E. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:2331.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:921 (November 1984), LR 15:1097 (December 1989), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 34:677 (March 2008), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 43:649 (April 2017), LR 46:

### §213. Assessment Policies and Procedures

A. - B. ...

C. All property shall be reappraised and valued in accordance with the Constitution at intervals of not more than four years. This quadrennial cycle reappraisal date is determined by the Louisiana Tax Commission.

D. - G.3. ...

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, Section 18, et seq., R.S. 47:1703, R.S. 47:1703.1, R.S. 47:1703.C., R.S. 47:1837, R.S. 47:1951, et seq., R.S. 47:1952, R.S. 47:1953, R.S. 47:1955, R.S. 47:1956, R.S. 47:1957, R.S. 47:1959, R.S. 47:1961, R.S. 47:1971, R.S. 47:1972, R.S. 47:2306, R.S. 47:2323, R.S. 47:2324; R.S. 47:2325, R.S. 47:2329, R.S. 47:2330, and R.S. 47:2331.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue, Tax Commission, LR 31:703 (March 2005), LR 34:678 (March 2008), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 43:649 (April 2017), LR 46:

## Chapter 3. Real and Personal Property

### §303. Real Property

A. - A.2. ...

B. The following procedure shall be used for assessing, listing and placing transferred property and property upon which improvements have been made after the date of the reappraisal as set by the Tax Commission:

1. Improvements shall be added to the rolls based upon the condition of things existing on January 1 of each year (except Orleans Parish). New improvements for Orleans Parish shall be added to the next year's tax roll, based upon the condition of things existing on August 1 of

each year. Value of the improvements will be indexed to the date of the last reappraisal.

2. The assessor may reappraise property based on property transfers more often than every four years, if transfers indicate that property in all or a part of the assessing district, or within a certain classification, was appraised inaccurately or was not uniformly appraised during the prior reappraisal. However, the reappraisal shall not be applied on a parcel by parcel basis, but rather, across the board in a given geographical area. Values determined from recent transfers would then be indexed to the date of the last reappraisal.

C. - E. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

**HISTORICAL NOTE:** Promulgated by the Louisiana Tax Commission, LR 7:44 (February 1981), amended by the Department of Revenue and Taxation, Tax Commission, LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 16:1063 (December 1990), LR 17:611 (June 1991), LR 21:186 (February 1995), amended by the Department of Revenue, Tax Commission, LR 25:312 (February 1999), LR 26:506 (March 2000), LR 29:367 (March 2003), LR 30:487 (March 2004), LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:765 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:799 (March 2012), LR 39:487 (March 2013), LR 42:745 (May 2016), LR 43:650 (April 2017), LR 44:577 (March 2018), LR 45:532 (April 2019), LR 46:

## Chapter 7. Watercraft

### §703. Tables—Watercraft

A. Floating Equipment—Motor Vessels

Table 703.A Floating Equipment—Motor Vessels				
Cost Index (Average)		Average Economic Life 12 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2019	0.993	1	94	.93
2018	1.029	2	87	.90
2017	1.065	3	80	.85
2016	1.086	4	73	.79
2015	1.077	5	66	.71
2014	1.087	6	58	.63
2013	1.101	7	50	.55
2012	1.110	8	43	.48
2011	1.142	9	36	.41
2010	1.178	10	29	.34
2009	1.169	11	24	.28
2008	1.202	12	22	.26
2007	1.250	13	20	.25

B. Floating Equipment—Barges (Non-Motorized)

Table 703.B Floating Equipment—Barges (Non-Motorized)				
Cost Index Average		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2019	0.993	1	97	.96
2018	1.029	2	93	.96
2017	1.065	3	90	.96
2016	1.086	4	86	.93
2015	1.077	5	82	.88
2014	1.087	6	78	.85
2013	1.101	7	74	.81
2012	1.110	8	70	.78

Table 703.B Floating Equipment—Barges (Non-Motorized)				
Cost Index Average		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2011	1.142	9	65	.74
2010	1.178	10	60	.71
2009	1.169	11	55	.64
2008	1.202	12	50	.60
2007	1.250	13	45	.56
2006	1.318	14	40	.53
2005	1.379	15	35	.48
2004	1.483	16	31	.46
2003	1.534	17	27	.41
2002	1.560	18	24	.37
2001	1.570	19	22	.35
2000	1.583	20	21	.33
1999	1.611	21	20	.32

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:924 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:204 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 25:312 (February 1999), LR 26:506 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:487 (March 2004), LR 31:715 (March 2005), LR 32:430 (March 2006), LR 33:490 (March 2007), LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:772 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1394 (May 2011), LR 38:802 (March 2012), LR 39:490 (March 2013), LR 40:530 (March 2014), LR 41:673 (April 2015), LR 42:746 (May 2016), LR 43:652 (April 2017), LR 44:579 (March 2018), LR 45:533 (April 2019), LR 46:

## Chapter 9. Oil and Gas Properties

### §907. Valuation of Oil, Gas, and Other Wells

A. ...

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1. Oil, Gas and Associated Wells; Region 1—North Louisiana

Table 907.A.1 Oil, Gas and Associated Wells; Region 1—North Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	42.38	136.20	6.36	20.43
1,250-2,499 ft.	38.26	100.14	5.74	15.02
2,500-3,749 ft.	30.07	66.33	4.51	9.95
3,750-4,999 ft.	41.60	66.09	6.24	9.91
5,000-7,499 ft.	48.92	64.51	7.34	9.68
7,500-9,999 ft.	107.23	86.95	16.08	13.04
10,000-12,499 ft.	312.69	105.47	46.90	15.82
12,500-14,999 ft.	508.54	159.27	76.28	23.89
15,000-17,499 ft.	650.87	181.61	97.63	27.24
17,500-Deeper ft.	N/A	508.00	N/A	76.20

2. Oil, Gas and Associated Wells; Region 2—South Louisiana

Table 907.A.2 Oil, Gas and Associated Wells; Region 2—South Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	325.86	135.31	48.88	20.30
1,250-2,499 ft.	112.53	224.89	16.88	33.73
2,500-3,749 ft.	109.88	179.30	16.48	26.90
3,750-4,999 ft.	96.86	143.43	14.53	21.51
5,000-7,499 ft.	132.33	162.93	19.85	24.44
7,500-9,999 ft.	180.52	170.59	27.08	25.59
10,000-12,499 ft.	246.15	222.99	36.92	33.45
12,500-14,999 ft.	322.91	288.48	48.44	43.27
15,000-17,499 ft.	523.05	386.24	78.46	57.94
17,500-19,999 ft.	638.62	547.09	95.79	82.06
20,000-Deeper ft.	341.00	821.36	51.15	123.20

3. Oil, Gas and Associated Wells; Region 3—Offshore State Waters

Table 907.A.3 Oil, Gas and Associated Wells; Region 3—Offshore State Waters*				
Producing Depths	Cost—New By Depth, Per Foot		15% Of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0 -1,249 ft.	N/A	N/A	N/A	N/A
1,250 -2,499 ft.	1,633.46	1,095.91	245.02	164.39
2,500 -3,749 ft.	839.95	842.25	125.99	126.34
3,750 -4,999 ft.	1,198.93	772.30	179.84	115.85
5,000 -7,499 ft.	596.65	715.32	89.50	107.30
7,500 -9,999 ft.	756.43	676.90	113.46	101.54
10,000 -12,499 ft.	856.35	686.13	128.45	102.92
12,500 -14,999 ft.	744.78	667.74	111.72	100.16
15,000 -17,499 ft.	513.32	692.85	77.00	103.93
17,500 - 19,999 ft.	255.70	662.38	38.36	99.36
20,000 - Deeper ft.	N/A	1,041.19	N/A	156.18

B. The determination of whether a well is a Region 2 or Region 3 well is ascertained from its onshore/offshore status as designated on the Permit to Drill or Amended Permit to Drill form (Location of Wells Section), located at the Department of Natural Resources as of January 1 of each tax year. Each assessor is required to confirm the onshore/offshore status of wells located within their parish by referring to the Permit to Drill or Amended Permit to Drill form on file at the Department of Natural Resources.

1. Parishes Considered to be Located in Region I

Table 907.B.1 Parishes Considered to be Located in Region 1			
Bienville	DeSoto	Madison	Tensas
Bossier	East Carroll	Morehouse	Union
Caddo	Franklin	Natchitoches	Webster
Caldwell	Grant	Ouachita	West Carroll
Catahoula	Jackson	Red River	Winn
Claiborne	LaSalle	Richland	
Concordia	Lincoln	Sabine	

NOTE: All wells in parishes not listed above are located in Region 2 or Region 3.

## 2. Serial Number to Percent Good Conversion Chart

Table 907.B.2 Serial Number to Percent Good Conversion Chart			
Year	Beginning Serial Number	Ending Serial Number	20 Year Life Percent Good
2019	251497	Higher	97
2018	250707	251496	93
2017	249951	250706	90
2016	249476	249950	86
2015	248832	249475	82
2014	247423	248831	78
2013	245849	247422	74
2012	244268	245848	70
2011	242592	244267	65
2010	240636	242591	60
2009	239277	240635	55
2008	236927	239276	50
2007	234780	236926	45
2006	232639	234779	40
2005	230643	232638	35
2004	229010	230642	31
2003	227742	229009	27
2002	226717	227741	24
2001	225352	226716	22
2000	223899	225351	21
1999	Lower	223898	20 *
VAR.	900000	Higher	50

\*Reflects residual or floor rate.

NOTE: For any serial number categories not listed above, use year well completed to determine appropriate percent good. If spud date is later than year indicated by serial number; or, if serial number is unknown, use spud date to determine appropriate percent good.

C. - C.6. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:480 (March 1998), LR 25:313 (February 1999), LR 26:507 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:488 (March 2004), LR 31:717 (March 2005), LR 32:431 (March 2006), LR 33:492 (March 2007), LR 34:679 (April 2008), LR 35:495 (March 2009), LR 36:773 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1395 (May 2011), LR 38:803 (March 2012), LR 39:490 (March 2013), LR 40:531 (March 2014), LR 41:673 (April 2015), LR 42:746 (May 2016), LR 43:653 (April 2017), LR 44:580 (March 2018), LR 45:534 (April 2019), LR 46:

## Chapter 11. Drilling Rigs and Related Equipment

### \$1103. Drilling Rigs and Related Equipment Tables

#### A. Land Rigs

Table 1103.A Land Rigs		
Depth "0" to 7,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
3,000	275,800	41,400
4,000	357,200	53,600

Table 1103.A Land Rigs		
5,000	397,312	59,600
6,000	456,300	68,400
7,000	568,900	85,300
Depth 8,000 to 10,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
8,000	776,700	116,500
9,000	1,089,100	163,400
10,000	1,498,800	224,800
Depth 11,000 to 15,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
11,000	1,985,600	297,800
12,000	2,519,500	377,900
13,000	3,064,700	459,700
14,000	3,582,300	537,300
15,000	4,034,700	605,200
Depth 16,000 to 20,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
16,000	4,388,200	658,200
17,000	4,617,000	692,600
18,000	4,706,500	706,000
19,000	4,657,000	698,600
20,000	4,486,600	673,000
Depth 21,000 + Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
21,000	4,023,630	603,500
25,000 +	3,372,970	505,900

1. - 2. ...

#### B. Jack-Ups

Table 1103.B Jack-Ups			
Type	Water Depth Rating	Fair Market Value	Assessment
IC	0-199 FT.	\$ 56,900,000	\$ 8,535,000
	200-299 FT.	113,800,000	17,070,000
	300 FT. and Deeper	227,200,000	34,080,000
IS	0-199 FT.	17,100,000	2,565,000
	200-299 FT.	28,500,000	4,275,000
	300 FT. and Deeper	34,100,000	5,115,000
MC	0-199 FT.	5,700,000	855,000
	200-299 FT.	11,400,000	1,710,000
	300 FT. and Deeper	45,500,000	6,825,000
MS	0-249 FT.	11,900,000	1,785,000
	250 FT. and Deeper	23,500,000	3,525,000

IC - Independent Leg Cantilever

IS - Independent Leg Slot

MC - Mat Cantilever

MS - Mat Slot

#### C. Semisubmersible Rigs

Table 1103.C Semisubmersible Rigs		
Water Depth Rating	Fair Market Value	Assessment
	\$	\$
0- 800 FT.	52,000,000	7,800,000
801-1,800 FT.	93,200,000	13,980,000
1,801-2,500 FT.	170,700,000	25,605,000
2,501 FT. and Deeper	535,700,000	80,355,000

NOTE: The fair market values and assessed values indicated by these tables are based on the current market (sales) appraisal approach and not the cost approach.

C.1. - C.3.b.i. ...

D. Well Service Rigs Land Only

Table 1103.D Well Service Rigs Land Only				
Class	Mast	Engine	Fair Market Value (RCNLD)	Assessment
I	71' X 125M# 71' X 150M# 72' X 125M# 72' X 150M# 75' X 150M#	C-7 50 SERIES 6V71	105,000	15,800
II	96' X 150M# 96' X 180M# 96' X 185M# 96' X 200M# 96' X 205M# 96' X 210M# 96' X 212M# 96' X 215M#	C-11 50 SERIES 8V71	145,000	21,800
III	96' X 240M# 96' X 250M# 96' X 260M# 102' X 215M#	C-11 50 SERIES 8V92	185,000	27,800
IV	102' X 224M# 102' X 250M# 103' X 225M# 103' X 250M# 104' X 250M# 105' X 225M# 105' X 250M#	C-15 60 SERIES 12V71	225,000	33,800
V	105' X 280M# 106' X 250M# 108' X 250M# 108' X 260M# 108' X 268M# 108' X 270M# 108' X 300M#	C-15 60 SERIES 12V71 12V92	265,000	39,800
VI	110' X 250M# 110' X 275M# 112' X 300M# 112' X 350M#	C-15 60 SERIES 12V71 (2) 8V92	315,000	47,300
VII	117' X 215M#	C-15 60 SERIES (2) 8V92 (2) 12V71	375,000	56,300

D.1. - E.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:939 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:487 (March 1998), LR 25:315 (February 1999), LR 26:508 (March 2000), LR 27:426 (March 2001), LR 28:519 (March 2002), LR 30:488 (March 2004), LR 31:718 (March 2005), LR 32:431 (March 2006), LR 33:493 (March 2007), LR 34:683 (April 2008), LR 35:497 (March 2009), LR 36:778 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1399 (May 2011), LR 38:808 (March 2012), LR 39:495 (March 2013), LR 40:536 (March 2014), LR 41:678

(April 2015), LR 42:748 (May 2016), LR 43:654 (April 2017), LR 44:581 (March 2018), LR 45: 535 (April 2019), LR 46:

### Chapter 13. Pipelines

#### §1307. Pipeline Transportation Tables

A. Current Costs for Other Pipelines (Onshore)

Table 1307.A Current Costs for Other Pipelines (Onshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
2	\$ 186,950	\$ 28,040
4	220,560	33,080
6	260,200	39,030
8	306,970	46,050
10	362,150	54,320
12	427,250	64,090
14	504,040	75,610
16	594,640	89,200
18	701,530	105,230
20	827,620	124,140
22	976,390	146,460
24	1,151,890	172,780
26	1,358,940	203,840
28	1,603,200	240,480
30	1,891,370	283,710
32	2,231,340	334,700
34	2,632,420	394,860
36	3,105,590	465,840
38	3,663,810	549,570
40	4,322,370	648,360
42	5,099,300	764,900
44	5,955,730	893,360
46	6,884,310	1,032,650
48	8,038,010	1,205,700

NOTE: Excludes river and canal crossings

B. Current Costs for Other Pipelines (Offshore)

Table 1307.B Current Costs for Other Pipelines (Offshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
2	\$ 1,053,160	\$ 157,970
4	1,057,870	158,680
6	1,063,580	159,540
8	1,081,410	162,210
10	1,103,110	165,470
12	1,134,240	170,140
14	1,169,080	175,360
16	1,213,200	181,980
18	1,266,580	189,990
20	1,329,230	199,380
22	1,401,140	210,170
24	1,482,320	222,350
26	1,572,760	235,910
28	1,672,470	250,870
30	1,781,450	267,220
32	1,899,690	284,950
34	2,027,200	304,080
36	2,163,970	324,600
38	2,310,010	346,500
40	2,452,990	367,950
42	2,603,590	390,540
44	2,761,680	414,250
46	2,927,100	439,070
48	3,099,720	464,960

C. Pipeline Transportation Allowance for Physical Deterioration (Depreciation)

Table 1307.C Pipeline Transportation Allowance for Physical Deterioration (Depreciation)	
Actual Age (Yrs)	26.5 Year Life Percent Good
1	98
2	96
3	94
4	91
5	88
6	86
7	83
8	80
9	77
10	73
11	70
12	67
13	63
14	60
15	56
16	52
17	48
18	44
19	39
20	35
21	33
22	30
23	28
24	26
25	25
26	23
27 and older	20 *

\* Reflects residual or floor rate.

NOTE: See §1305.G (page PL-3) for method of recognizing economic obsolescence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:941 (November 1984), LR 12:36 (January 1986), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 24:489 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:426 (March 2001), LR 31:719 (March 2005), LR 32:432 (March 2006), LR 33:494 (March 2007), LR 34:684 (April 2008), LR 35:499 (March 2009), LR 36:778 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1401 (May 2011), LR 38:809 (March 2012), LR 39:496 (March 2013), LR 40:537 (March 2014), LR 41:680 (April 2015), LR 42:748 (May 2016), LR 43:655 (April 2017), LR 44:582 (March 2018), LR 45:535 (April 2019), LR 46:

## Chapter 15. Aircraft

### §1503. Aircraft (Including Helicopters) Table

#### A. Aircraft (Including Helicopters)

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (20 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2019	0.993	1	97	.96
2018	1.029	2	93	.96
2017	1.065	3	90	.96
2016	1.086	4	86	.93
2015	1.077	5	82	.88

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (20 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2014	1.087	6	78	.85
2013	1.101	7	74	.81
2012	1.110	8	70	.78
2011	1.142	9	65	.74
2010	1.178	10	60	.71
2009	1.169	11	55	.64
2008	1.202	12	50	.60
2007	1.250	13	45	.56
2006	1.318	14	40	.53
2005	1.379	15	35	.48
2004	1.483	16	31	.46
2003	1.534	17	27	.41
2002	1.560	18	24	.37
2001	1.570	19	22	.35
2000	1.583	20	21	.33
1999	1.611	21	20	.32

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:943 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:206 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004), LR 31:719 (March 2005), LR 32:433 (March 2006), LR 33:495 (March 2007), LR 34:685 (April 2008), LR 35:499 (March 2009), LR 36:779 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1401 (May 2011), LR 38:809 (March 2012), LR 39:497 (March 2013), LR 40:538 (March 2014), LR 41:680 (April 2015), LR 42:749 (May 2016), LR 43:656 (April 2017), LR 44:584 (March 2018), LR 45:537 (April 2019), LR 46:

## Chapter 25. General Business Assets

### §2503. Tables Ascertaining Economic Lives, Percent Good and Composite Multipliers of Business and Industrial Personal Property

#### A. - A.1. ...

\* \* \*

#### B. Cost Indices

Table 2503.B Cost Indices			
Year	Age	National Average 1926 = 100	January 1, 2019 = 100*
2019	1	1727.8	0.993
2018	2	1667.7	1.029
2017	3	1612.2	1.065
2016	4	1580.9	1.086
2015	5	1593.7	1.077
2014	6	1578.8	1.087
2013	7	1558.7	1.101
2012	8	1545.9	1.110
2011	9	1503.2	1.142
2010	10	1457.4	1.178
2009	11	1468.6	1.169
2008	12	1427.3	1.202

Table 2503.B Cost Indices			
Year	Age	National Average 1926 = 100	January 1, 2019 = 100*
2007	13	1373.3	1.250
2006	14	1302.3	1.318
2005	15	1244.5	1.379
2004	16	1157.3	1.483
2003	17	1118.6	1.534
2002	18	1100.0	1.560
2001	19	1093.4	1.570
2000	20	1084.3	1.583
1999	21	1065.0	1.611
1998	22	1061.8	1.616
1997	23	1052.7	1.630
1996	24	1036.0	1.657
1995	25	1020.4	1.682
1994	26	985.0	1.742
1993	27	958.0	1.791
1992	28	939.8	1.826
1991	29	928.5	1.848
1990	30	910.2	1.886
1989	31	886.5	1.936

\*Reappraisal Date: January 1, 2019 – 1716.2 (Base Year)

C. ...

\* \* \*

D. Composite Multipliers 2019 (2020 Orleans Parish)

Table 2503.D Composite Multipliers 2020 (2021 Orleans Parish)										
Age	3 Yr	5 Yr	6 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr	30 Yr
1	.70	.84	.86	.89	.91	.93	.94	.96	.97	.97
2	.50	.71	.75	.81	.86	.90	.93	.96	.98	1.00
3	.36	.55	.61	.71	.81	.85	.91	.96	.99	1.01
4	.17	.37	.45	.59	.73	.79	.86	.93	.98	1.01
5		.25	.32	.46	.62	.71	.79	.88	.94	.98
6		.20	.21	.36	.53	.63	.74	.85	.91	.97
7			.20	.29	.43	.55	.68	.81	.89	.95
8				.24	.33	.48	.61	.78	.87	.93
9				.23	.27	.41	.56	.74	.86	.94
10					.25	.34	.51	.71	.84	.93
11					.23	.28	.43	.64	.79	.89
12						.26	.37	.60	.77	.89
13						.25	.33	.56	.75	.89
14							.30	.53	.74	.90
15							.29	.48	.72	.90
16							.30	.46	.71	.90
17								.41	.67	.89
18								.37	.61	.84
19								.35	.53	.80
20								.33	.47	.74
21								.32	.45	.71
22									.42	.65
23									.39	.60
24									.33	.56
25									.34	.52
26									.35	.49
27										.47
28										.42
29										.39
30										.38
31										.39

1. Data sources for tables are:

- Cost Index—Marshall and Swift Publication Co.;
- Percent Good—Marshall and Swift Publication

Co.;

c. Average Economic Life—various.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 10:944 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:207 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:317 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004), LR 31:719 (March 2005), LR 32:433 (March 2006), LR 33:496 (March 2007), LR 34:686 (April 2008), LR 35:500 (March 2009), LR 36:780 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1402 (May 2011), LR 38:810 (March 2012), LR 39:497 (March 2013), LR 40:538 (March 2014), LR 41:681 (April 2015), LR 42:750 (May 2016), LR 43:656 (April 2017), LR 44:584 (March 2018), LR 45:538 (April 2019), LR 46:

## Chapter 27. Guidelines for Application, Classification and Assessment of Land Eligible to be Assessed at Use Value

### §2711. Tables—Agricultural and Horticultural Lands

A. The following table is hereby established as the gross returns, production cost and net income per acre per year of agricultural and horticultural lands.

Table 2711.A Weighted Average Income per Acre 2015-2018				
Commodity	Acres <sup>1</sup>	Percent	Net Income	Weighted Fractional <sup>7</sup>
Beef <sup>2</sup>	2,180,969	35.33	28.15	\$9.94
Soybeans	1,257,500	20.37	32.19	6.56
Cotton	164,500	2.66	(53.67)	-0-
Crawfish <sup>4</sup>	225,117	3.65	302.00	11.01
Rice	418,500	6.78	5.05	0.34
Sugarcane <sup>6</sup>	593,751	9.62	319.23	30.71
Corn	470,000	7.61	37.26	2.84
Idle Cropland <sup>5</sup>	453,380	7.34	-----	-0-
Grain Sorghum	34,750	0.56	(27.68)	-0-
Conservation Reserve <sup>3</sup>	288,546	4.67	84.59	3.95
Dairy <sup>2</sup>	41,473	0.67	(132.76)	-0-
Sweet Potatoes	8,155	0.13	2,234.76	2.95
Watermelon	1,123	0.02	8,082.73	1.47
Southern Peas	822	0.01	1,384.08	0.18
Tomatoes	266	0.00	39,362.59	1.70
Strawberries	325	0.01	19,110.00	1.00
Wheat	33,750	0.55	(60.03)	-0-
Totals	6,172,925	100.000	-----	72.66

Weighted Average Net Income: Sum (Percent x Net Income) = 72.66

<sup>1</sup> Acres used to weight net income projections are harvested acres for agricultural and horticultural crops, as well as, crawfish. Acres for beef and dairy production are acres in beef cattle and dairy operations, respectively.

<sup>2</sup> Acreage for beef and dairy were obtained from the 2017 Census of Agriculture, Volume 1, Louisiana State and Parish Data, Table 48.

<sup>3</sup> Conservation Reserve Program acreage and payments for 2015 - 2018 were taken from the USDA – FSA Conservation Reserve Program Statistics.

<sup>4</sup> Assumes farm-raised crawfish are produced in a mono-crop system (35%) or in a rice-crawfish double-crop field rotation system with rice. Net income is weighted by the percent of crawfish acres produced in each system. Revenues and production costs are included for the crawfish portion only.

<sup>5</sup> Acreage for idle cropland was obtained from the 2017 Census of Agriculture, Volume 1, Louisiana State and Parish Data, Table 8. Includes acreage for cropland idle or used for cover crops or soil-improvement, but not harvested and not pastured or grazed.

<sup>6</sup> Acreage for sugarcane includes fallow/planted acreage. Net income estimated over total farm acres.

<sup>7</sup> By state statute, negative net income for a given commodity is set equal to zero.

## B. Suggested Capitalization Rate for Agricultural and Horticultural Lands

<b>Table 2711.B Suggested Capitalization Rate for Agricultural and Horticultural Lands</b>	
Risk Rate	2.72%
Illiquidity Rate	0.18%
Safe Rate*	4.91%
Capitalization Rate**	7.81%

\*Safe Rate is four year average of 30 year U. S. Treasury securities.

\*\*Statutory minimum capitalization rate of 12 percent used in calculations instead of actual rate as developed above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 17:1213 (December 1991), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 26:511 (March 2000), LR 30:491 (March 2004), LR 34:688 (April 2008), LR 46:

### §2713. Assessment of Timberland

A. Use Value Table 2717.B presents the assessed value of all bona fide timberland.

B. Classification of Timberland. Timberland shall be classified into four categories as follows.

1. Class 1 timberland is timberland capable of producing more than 120 cubic feet of timber per acre per annum.

2. Class 2 timberland is timberland capable of producing more than 85 but less than 120 cubic feet of timber per acre per annum.

3. Class 3 timberland is timberland capable of producing less than 85 cubic feet of timber per acre per annum.

4. Class 4 timberland is timberland capable of producing less than 85 cubic feet of timber per acre per annum and which is subject to periodic overflow from natural or artificial water courses, and which is otherwise considered to be swampland.

C. Range of Productivity of Timberland. The timberland productivity of each of the four classifications of timberland is hereby established to be as follows:

1. class 1 = 86.6 cu. ft. of growth/acre/year;
2. class 2 = 66.8 cu. ft. of growth/acre/year;
3. class 3 = 39.4 cu. ft. of growth/acre/year;
4. class 4 = 38.8 cu. ft. of growth/acre/year.

D. Production Costs of Timberland. The average timberland production costs are hereby established to be \$10.80/acre/year.

E. Gross Returns of Timberland. The gross value per cubic foot of timber production is hereby established to be \$0.59 per cubic foot.

F. Capitalization Rate for Timberland. The capitalization rate for determining use value of timberlands is hereby established to be as follows.

	<b>Timberland Class 1, 2 and 3</b>	<b>Timberland Class 4</b>
Risk Rate	2.30 %	5.30 %
Illiquidity Rate	- 0.09 %	0.85 %
Safe Rate	4.16 %	5.16 %
Other Factors	3.63 %	4.69 %
Capitalization Rate	10.00 %	16.00%

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 14:872 (December 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 26:511 (March 2000), LR 30:492 (March 2004), amended by the Division of Administration, Tax Commission, LR 38:811 (March 2012), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 42:751 (May 2016), LR 46:

### §2717. Tables—Use Value

A. Average Assessed Value per Acre of Agricultural and Horticultural Land, by Class

<b>Table 2717.A Average Assessed Value per Acre of Agricultural and Horticultural Land, by Class</b>		
Class	Assessed Value Per Acre	
	Upper	Lower
Class I	\$42.01	\$35.50
Class II	\$35.25	\$26.49
Class III	\$25.99	\$23.00
Class IV	\$22.48	\$14.97

B. Average Assessed Value per Acre of Timberland, by Class

<b>Table 2717.B Average Assessed Value per Acre of Timberland, by Class</b>	
Class	Assessed Value Per Acre
Class 1	\$40.29
Class 2	\$28.61
Class 3	\$12.45
Class 4	\$ 7.56

C. Average Assessed Value per Acre of Marsh Land, by Class

<b>Table 2717.C.1 Average Assessed Value per Acre of Marshland, by Class West Zone</b>	
Class	Assessed Value Per Acre
Fresh Water Marsh	\$7.00
Brackish Water Marsh	\$6.00
Salt Water Marsh	\$5.00

Table 2717.C.2 Parishes Considered to be Located in the West Zone			
Acadia	Iberia	St. Landry	Vermilion
Calcasieu	Jefferson Davis	St. Martin	
Cameron	Lafayette	St. Mary	

Table 2717.C.3 Average Assessed Value per Acre of Marshland, by Class East Zone	
Class	Assessed Value Per Acre
Fresh Water Marsh	\$ 5.00
Brackish Water Marsh	\$ 4.00
Salt Water Marsh	\$ 3.00

Table 2717.C.4 Parishes Considered to be Located in the East Zone			
Ascension	Lafourche	St. Charles	Terrebonne
Assumption	Livingston	St. James	West Baton Rouge
East Baton Rouge	Orleans	St. John	
Iberville	Plaquemines	St. Tammany	
Jefferson	St. Bernard	Tangipahoa	

NOTE: Only the parishes listed above should have lands classified as marshland. All other parishes should classify such land as all other acreage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 13:764 (December 1987), LR 14:110 (February 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:491 (March 1998), LR 26:511 (March 2000), LR 30:492 (March 2004), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 38:811 (March 2012), LR 42:751 (May 2016), LR 46:

### **Chapter 31 Public Exposure of Assessments; Appeals** **§3103. Appeals to the Louisiana Tax Commission**

A. - X. ...

Y. The word *commission*, as used herein, refers to the chairman and the members or its delegate appointed to conduct the hearing.

Z. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837, R.S. 47:1989 and R.S. 47:1992.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:947 (November 1984), LR 15:1097 (December 1989), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 24:492 (March 1998), LR 25:319 (February 1999), LR 26:512 (March 2000), LR 28:521 (March 2002), LR 31:721 (March 2005), LR 32:436 (March 2006), LR 33:498 (March 2007), LR 34:688 (April 2008), LR 36:782 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 38:811 (March 2012), LR 41:682 (April 2015), LR 42:752 (May 2016), LR 43:658 (April 2017), LR 45:539 (April 2019), LR 46:

Lawrence E. Chehardy  
Chairman

1912#026

## **DECLARATION OF EMERGENCY**

### **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 adopts LAC 48:I.9781 as authorized by R.S. 36:254 and 40:1193.1-1193.11. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, 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.

Act 596 of the 2018 Regular Session of the Louisiana Legislature, hereafter referred to as the Nursing Home Virtual Visitation Act, enacted R.S. 40:1193.1-1193.11 which directed the Department of Health to establish provisions governing nursing facility virtual visitation in order to provide for consent, by a nursing facility resident or a legal representative, relative to the authorization for installation and use of a monitoring device in the room of the resident.

In compliance with the requirements of Act 596, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the licensing of nursing facilities in order to adopt provisions governing virtual visitation and promulgated an accompanying Notice of Intent (*Louisiana Register*, Volume 44, Number 11). Based on comments received, the department has now determined that it is necessary to abandon the November 20, 2018 Notice of Intent, to amend the November 18, 2018 Emergency Rule and to promulgate a new Notice of Intent in order to further clarify the provisions governing virtual visitation. This action is being taken to promote the health and well-being of Louisiana residents in nursing facilities that consent to the authorization for installation and use of a monitoring device in the resident's room.

Effective December 20, 2019, the Department of Health, Bureau of Health Services Financing amends the provisions of the November 20, 2018 Emergency Rule governing the licensing of nursing facilities in order to adopt provisions governing virtual visitation.

#### **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 45:

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 Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1912#066

## DECLARATION OF EMERGENCY

### 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 adopts LAC 48:I.6210 as authorized by R.S. 36:254 and Act 243 of the 2019 Regular Session of the Louisiana Legislature. 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.

Act 243 of the 2019 Regular Session of the Louisiana Legislature requires that licensing standards for therapeutic group homes (TGH) comply with federal guidelines for Bureau of Criminal Identification and Information criminal background checks and Department of Children and Family Services (DCFS) abuse/neglect registry checks to provide criminal history record information for owners, operators, managers or administrators, employees, contractors, or paid

or unpaid volunteers or interns of a TGH that have the potential of providing daily care or supervision to children or youth in the custody, or under the supervision, of any Louisiana state government agency. In compliance with Act 243, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule, which adopted provisions governing the licensing of TGHs in order to comply with federal criminal background check and DCFS abuse/neglect registry check requirements (*Louisiana Register*, Volume 45, Number 10). The department now amends the September 20, 2019 Emergency Rule in order to further clarify the licensing provisions governing TGH background checks. This action is being taken to promote the health and welfare of children and youth receiving therapeutic group homes services.

Effective December 20, 2019, the Department of Health, Bureau of Health Services Financing amends the September 20, 2019 Emergency Rule which adopted licensing provisions governing criminal background checks and abuse/neglect registry checks for therapeutic group homes.

### 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, 14:93.2.1, 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.

a. - c. Repealed.

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 this 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.

a. – c. Repealed.

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:

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 Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH  
Secretary

1912#065

## DECLARATION OF EMERGENCY

### Department of Public Safety and Corrections Manufactured Housing Commission

#### Manufactured Housing Repairs (LAC 55:V.Chapter 5)

The Department of Public Safety and Corrections, Office of State Fire Marshal, Manufactured Housing Commission, hereafter referred to as the "commission", has exercised the emergency provision, in accordance with R.S. 49:953(B) of the Administrative Procedure Act, to amend portions of LAC 55:V.Chapter 5 as authorized by R.S. 51:911.26(E) and (F)(11). On March 25, 2019, the commission adopted an Emergency Rule which became effective for the purpose of creating standards applicable to repairs made to used manufactured homes which are located within the State of Louisiana. In particular, the Emergency Rule, as promulgated in the April 2019 edition of the *Louisiana Register* (Volume 45, No. 04), is applicable to manufactured homes which were constructed during and after January 2006 and built to standards and codes promulgated by the United States Department of Housing and Urban

Development (HUD), under the National Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended. The Emergency Rule adopted LAC 55:V.Chapter 5, Subchapter C., Manufactured Housing (Repairs), which adopted standards to be used in repairing the used manufactured homes. However, the standards failed to adequately address the repairs made to the aforesaid manufactured homes. Therefore, using said standards also failed to restore the damaged portion of the structure that existed prior to the damage.

Specifically, the Emergency Rule stated that the 2015 Wood Frame Construction Manual (WFCM), the plumbing and mechanical portions of the 2015 edition of the International Residential Code (IRC) and the 2014 National Electrical Code (NEC), as applicable, would be the standards used for the repairs made to used manufactured homes built during and after 2006. However, the current edition of the Manufactured Home Construction and Safety Standards, specifically CFR Title 24, Part 3280.4, which is dated April 22, 2019, references only portions of the 2005 NEC. Major provisions are specifically excluded from this, such as arc-fault circuit protection. New manufactured homes, which are built to the CFR, cannot be repaired to all of the standards mandated in the 2014 NEC without replacing most of the electrical system. In addition, several options of standards for wood frame construction are listed for use with new construction, none of which reference the WFCM.

Therefore, the Emergency Rule was amended to address repairs made to homes built after July 15, 1976 that are no longer in compliance with the standards to which they were built. In particular, it addressed the procedures that need to be utilized before local jurisdictions will reinstate services, utilities, and any and all other amenities that were discontinued due to the damage incurred to the manufactured home which prompted the repairs. The amended Emergency Rule was adopted and became effective July 25, 2019. It was published in the August 2019 edition of the *Louisiana Register* (Volume 45, No. 08). In accordance with R.S. 37:45(C)(1), the Emergency Rule was submitted for consideration as a Notice of Intent to the Occupational Licensing Review Commission, hereafter referred to as the “OLRC”. The OLRC placed the proposed rule on the docket for the August 29, 2019 meeting. After review of the proposed rule and witness testimony, the OLRC affirmed the commission’s request to proceed with rulemaking. As a result, the Notice of Intent was published in the October 2019 edition of the *Louisiana Register* (Volume 45, No. 10). There were no public comments, nor was there a public hearing. It is the intent of the commission to submit a final rule for publication upon approval of the OLRC. Therefore, this Emergency Rule is being promulgated in order to continue the provisions of the July 25, 2019 Emergency Rule until the adoption of the final Rule.

The adoption of this Rule on an emergency basis is necessary due to the fact that many home owners lack the resources available to hire individuals, such as architects and engineers, to advise the homeowner on how to restore and repair the damaged manufactured homes. As a result, as seen in the flood of August 2016, many homes are abandoned and become an imminent peril to the public health, safety and

welfare of society. In addition, these abandoned homes become a blight to surrounding property, diminishing property values. Therefore, this becomes a problem for local and parish jurisdictions to address, with many of these jurisdictions not having the financial resources to remove the abandoned homes. The adoption of this Emergency Rule is essential so that owners of manufactured homes have the knowledge required to restore and repair their homes.

This Emergency Rule is effective upon the signature of the agency head, Chief H. “Butch” Browning, Jr., on December 3, 2019. It shall be in effect for the maximum period allowed under the Administrative Procedure Act, 120 days, unless rescinded, renewed or until adoption of the final Rule, whichever occurs first.

## **Title 55**

### **PUBLIC SAFETY**

#### **Part V. Fire Protection**

#### **Chapter 5. Manufacture Housing (Installation)**

##### **Subchapter C. Repairs**

##### **§553. Definitions**

A. When used in these regulations, these terms shall have the following meanings.

*Act*—the National Manufactured Home Construction and Safety Standards Act of 1974, as amended, the Housing and Community Development Act of 1974 (42 U.S.C. 5401 et seq.).

*HUD*—the United States Department of Housing and Urban Development.

*Inspect*—a visual examination of manufactured homes to verify that it appears to be in operating condition and is free of physical damage.

*Local Jurisdiction*—city, town, township, parish, village, or other general purpose political subdivision of the State of Louisiana that has the authority to make legal pronouncements and administer judicial and regulatory enforcement to individuals and companies who are conducting transactions within the given geographical location.

*LSUCCC*—the Louisiana State Uniform Construction Code Council.

*Manufactured home and manufactured housing*—a prefabricated, factory built home built on a permanent chassis which can be transported in one or more sections and is typically used as a permanent residential dwelling unit. Homes built since 1976 are constructed to standards and codes, as promulgated by the United States Department of Housing and Urban Development (HUD), under the National Manufactured Home Construction and Safety Standards Act of 1974, as amended, the Housing and Community Development Act of 1974, 42 U.S.C. 5401 et seq., as amended. Further, the terms “manufactured home” and “manufactured housing” may be used interchangeably and apply to structures bearing the permanently affixed seal of the United States Department of Housing and Urban Development.

*Public Entity*—the state and any of its branches, departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, employees, and political subdivisions and the departments, offices, agencies, boards, commissions, instrumentalities, officers, officials and employees of such political subdivision.

*Standards*—the federal manufactured housing construction and safety standards promulgated under Section 604 of the Act, 42 U.S.C. 5403, Part 3280.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.26(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Fire Marshal, LR 46:

#### **§555. Repair Requirements**

A. All repairs made to used manufactured homes constructed after July 15, 1976 that are no longer in compliance with the standards to which they were built or standards and codes, as promulgated by the United States Department of Housing and Urban Development (HUD), under the National Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended, shall be in accordance with the standards incorporated by reference in the most current edition of the National Manufactured Home Construction and Safety Standards, specifically CFR Title 24, Part 3280.4.

B. Pursuant to R.S. 40:1730.23(B), repairs to driveways, steps, decks, or other similar accessory or work, not including any additional living area or other type of heated and cooled space outside of the original footprint of the manufactured home, shall be performed in accordance with the standards referenced herein.

C. The Office of State Fire Marshal shall use employees that are registered with the LSUCCC as Building Officials to oversee inspection of all repairs, not to include repairs which are performed under warranty and/or repairs pursuant to installations and set ups of manufactured homes. Upon completion of a final, approved inspection, the Office of State Fire Marshal shall provide all applicable reports to the local governing authority, which may utilize the report in determining the reinstatement of services, utilities, and any and all other amenities that were discontinued due to the damage incurred to the manufactured home which prompted the repairs.

D. Inspections shall be limited to that which is visible and accessible without requiring deconstruction or destructive testing.

E. The owner of a structure shall employ an electrician that is licensed in the state of Louisiana to perform any needed repairs to the electrical system. Upon the letterhead of the licensed electrician, it shall state the address of the location of the manufactured home where the work was executed, the date that the work was completed, the scope of the work performed and the standards applied to the scope of work. It shall also contain a statement that the work has been completed in accordance with the referenced standards.

F. In the absence of the availability of the employees of the Office of State Fire Marshal who are registered Building Officials, the Office of State Fire Marshal shall give written notification to the local jurisdictions to conduct said inspections.

G. Pursuant to R.S. 9:2798.1, liability shall not be imposed on public entities or their officers or employees based upon the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties. These provisions are not applicable:

1. to acts or omissions which are not reasonably related to the legitimate governmental objective for which the policymaking or discretionary power exists; or

2. to acts or omissions which constitute criminal, fraudulent, malicious, intentional, willful, outrageous, reckless, or flagrant misconducts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.26(E), R.S. 51:911.26(F)(11) and R.S. 40:1730.23(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Fire Marshal, LR 46:

Chief H. “Butch” Browning, Jr.  
State Fire Marshal

1912#020

## **DECLARATION OF EMERGENCY**

### **Department of Public Safety and Corrections Office of the State Fire Marshal Uniform Construction Code Council**

State Uniform Construction Code  
(LAC 17:I.111)

The Department of Public Safety and Corrections, Office of State Fire Marshal, Louisiana State Uniform Construction Code Council, hereafter referred to as the “LSUCCC” or the “council”, has exercised the emergency provision in accordance with R.S. 49:953(B) of the Administrative Procedure Act, to amend LAC 17:I.Chapter 1 in the state Uniform Construction Code as authorized by R.S.40:1730.28. Furthermore, the LSUCCC has found an immediate need to adopt amendments of the current State Uniform Construction Code, 2015 *International Plumbing Code*, Section 422.11, Handwashing Facilities. A letter from Dr. Jimmy Guidry, State Health Officer, Department of Health, was received by the LSUCCC requesting an amendment be adopted by the Council. This amendment will serve to better protect the public and to follow national guidelines from the Center for Disease Control (CDC).

In Dr. Guidry’s letter, he states the following: “In the absence of nationally mandated requirements or guidelines regarding handwashing facilities in medical office exam rooms, I’ve considered the minimum indications for handwashing and antisepsis, as accepted by the Center for Disease Control (CDC). The CDC recognizes hand hygiene in health-care settings, based on the recommendations of the Healthcare Infection Control Practices Advisory Council. It is my recommendation that the following language be added as an exception to the referred to section above as an Emergency Rule Amendment. This should only be acceptable in lieu of handwashing facilities alone, in a healthcare setting such as doctor’s offices and clinics where there is no reasonably anticipated exposure to blood or other potentially infectious materials (OPIM).”

The LSUCCC is promulgating this Emergency Rule to provide greater health and safety for the public and for those providing medical care to patients. This rule was first adopted and published in the January 20, 2018 edition of the *Louisiana Register* (Vol. 44, No. 1). The rule became effective on February 1, 2018. This Emergency Rule is being

promulgated to amend those provisions. It was favorably voted on by the LSUCCC on November 20, 2019. By the signature of the agency head, Chief H. “Butch” Browning, Jr., it was adopted and became effective on December 3, 2019. It shall be in effect for the maximum period allowed under the Act (120 days) or until adoption of the final Rule, whichever occurs first. The public welfare dictates that these changes be implemented immediately through the adoption of the Emergency Rule to promote greater access to safer hygiene practices and to insure safety to existing facilities undergoing renovations and for new proposed facilities.

**Title 17**  
**CONSTRUCTION**  
**Part I. Uniform Construction Code**  
**Chapter 1. Adoption of the Louisiana State Uniform Construction Code**  
**§111. The International Plumbing Code (Formerly LAC 55:VI.301.A.5)**

A. The *International Plumbing Code*, 2015 Edition. The appendices of that code may be adopted as needed, but the specific appendix or appendices shall be referenced by name or letter designation at the time of adoption (per R.S. 40:1730.28, eff. 1/1/16).

***		
Amend	Chapter 4	
***		
Adopt	Section 422.11, Handwashing Facilities.	Medical facilities, including doctor’s office and clinics, shall be provided with hand washing facilities within each patient examination and treatment room. The hand wash facility shall be provided with hot and cold water delivered via a mixing faucet.
Amend	Exception	1. In healthcare setting such as doctor’s offices and clinics where there is no reasonably anticipated exposure to blood or other potentially infectious materials (OPIM), where hands are not expected to be visibly soiled and clinical situations described in items 1C-J (IA) (74,93,166,169,283,294,312,398) are followed, use of an alcohol-based hand rub for routinely decontaminating hands shall be allowed in lieu of handwashing facilities. The design professional shall provide documentation to the building official specifying the anticipated exposure.
* * *		

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1) and Act 836 of the 2014 of the Regular Louisiana Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshall, LR 41:2386 (November 2015), amended by the Department of Public Safety and Corrections, Office of State Fire Marshall, Uniform Construction Code Council, LR 42:1672 (October 2016), LR 44:81 (January 2018), repromulgated LR 45:919 (July 2019), amended LR 46:

Chief H. “Butch” Browning, Jr.  
State Fire Marshal

1912#021

**DECLARATION OF EMERGENCY**  
**Department of Public Safety and Corrections**  
**Uniform Construction Code Council**

Uniform Construction Code—Storm Shelters  
(LAC 17:I.101)

The Department of Public Safety and Corrections, Office of the State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC) has exercised the emergency provision in accordance with R.S. 49:953(B), of the Administrative Procedure Act, to amend LAC 17:I.Chapter 1 in the state Uniform Construction Code as authorized by R.S. 40:1730.26 and R.S. 40:1730.28. Furthermore, the LSUCCC has found an immediate need to amend the current building provisions in the *International Building Code* regarding health and safety for the public.

The LSUCCC is promulgating this Rule adoption and amendments to provide greater health and safety for the public and those providing installation of storm shelters. This Emergency Rule was first adopted and published in the

January 2018 edition of the *Louisiana Register* (Vol. 44, No. 01). This Emergency Rule is being promulgated to continue those provisions. It was favorably voted on by the Uniform Construction Code Council on March 12, 2019. By signature of the agency head, Chief H. "Butch" Browning, Jr., it was adopted and became effective March 26, 2019. It was last published in the August edition of the *Louisiana Register* (Vol. 45, No. 08) and made effective for the maximum period allowed under the Act (120 days). The LSUCCC is re-promulgating and re-adopting this Emergency Rule by signature of the agency head, effective December 6, 2019, for publication in the December edition of the *Louisiana Register* (Vol. 45, No. 12). It shall be in effect for the maximum period allowed under the Act (120 days) or until adoption of the final Rule, whichever occurs first.

The adoption of the 2015 *International Building Code*, Section 423 provides for Storm Shelter Requirements in specific parishes in the northern region of the state. These requirements include new or additions to facilities for schools, and essential services such as fire, police, EMS, and 911 call centers. Many design professionals, school boards, and essential services agencies were unaware of this requirement. They secured funding with proposed budgets without this requirement being addressed in the plans and specifications. Bonds were secured for funding based on the older edition of the code without the increased cost for Storm Shelters factored in to equation. Due to the increased cost not being provided for in budgeting new schools and essential services projects were being canceled or placed on indefinite hold until new funding could be secured. This Emergency Rule addresses this requirement by providing for a delay in the effective date for enforcement. This delay also allows for more public input into the implementation timeline and any needed amendments to this section of the *International Building Code*.

The public welfare dictates that these changes be implemented immediately through the adoption of the Emergency Rule to promote greater safety to existing facilities undergoing renovations and for new proposed facilities to include these storm shelter requirements in securing funding. The public welfare further dictates that these changes are implemented immediately through the adoption of the Emergency Rule because of the health risks these amendments address. Adoption of this emergency rule will allow owners and developers to immediately use these new standards in expanding existing facilities or constructing new facilities.

Adoption of this Emergency Rule will also provide proven methods for storm shelters and new technology which will ensure the health, safety and welfare of not only school age children but for the public as well.

#### **Title 17**

### **CONSTRUCTION**

#### **Part I. Uniform Construction Code**

#### **Chapter 1. Uniform Construction Code**

#### **§101. Louisiana State Uniform Construction Code (Formerly LAC 55:VI.301.A)**

A. In accordance with the requirements set forth in R.S. 40:1730.28, effective February 1, 2018 the following is hereby adopted as an amendment to the *Louisiana State Uniform Construction Code*.

1. Projects submitted for permitting prior to January 1, 2020 shall not be required to comply with the 2015 IBC Section 423 Storm Shelters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 41:2380 (November 2015), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 42:1672 (October 2016), LR 44:75 (January 2018), LR 46:

Chief H. "Butch" Browning, Jr.  
State Fire Marshal

1912#029

### **DECLARATION OF EMERGENCY**

#### **Department of Revenue Office of Alcohol and Tobacco Control**

#### **CBD Product Public Safety Regulations (LAC 55:VII.Chapter 6)**

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, pursuant to the emergency rulemaking authority granted by R.S. 49:953(B) of the Administrative Procedure Act (R.S. 49:950, et seq.) and the specific rule making authority granted by R.S. 3:1483, hereby adopts the following Emergency Rule for the protection of public health. The effective date of this Rule is upon signature.

These third revised CBD Product Public Safety Regulations replace the prior Declaration of Emergency, CBD Product Public Safety Regulations that were promulgated on September 11, 2019. These revisions simply add §601 to the prior Rule to address the House Ways and Means Committee Report of November 8, 2019 which stipulates that the phrase "that contains CBD intended for consumption or topical use" in the act modifies the entire the entire definition of "industrial hemp-derived CBD product" so that the Office of Alcohol and Tobacco Control's regulatory authority encompasses (1) industrial hemp-derived products that contain CBD intended for consumption and topical use and (2) hemp-derived products that contain CBD intended for consumption or topical use. The report further stated that the Office of Alcohol and Tobacco Control's regulatory authority was not intended to include industrial hemp-derived products alone.

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, finds it necessary to make immediate changes to the Louisiana Administrative Code given the need for regulation of industrial hemp-derived CBD



products for consumption and topical use as defined under the provisions of Act No. 164 of the 2019 Louisiana Legislature. The following regulations will give the ATC the ability to properly license and regulate the retail sale of industrial hemp-derived CBD products for consumption and topical use, which will affect the health of Louisiana citizens and give the commissioner of the Office of Alcohol and Tobacco Control the ability to make critical decisions that protect human health. This Rule creates §603 through §621 to address retail CBD licensure, permitting, and related matters since this is not addressed otherwise by existing law or regulation.

This Rule shall have the force and effect of law upon signature and will remain in effect 120 days, unless renewed by the commissioner of alcohol and tobacco control or until permanent rules are promulgated in accordance with law.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part VII. Alcohol and Tobacco Control**

#### **Chapter 6. CBD Product Public Safety Regulations**

#### **§601. Clarification on Scope**

A. As used in this Chapter, the term “industrial hemp-derived product or hemp-derived product that contains CBD intended for consumption or topical use” does not include industrial hemp-derived products alone. The Office of Alcohol and Tobacco Control does not directly regulate industrial hemp-derived products that do not contain CBD.

#### **§603. CBD Retail and Retail/Wholesale Permits**

A.1. In this Chapter, a *CBD dealer* means any person, who as a business, sells, offers for sale, solicits orders for the sale of, or distributes any industrial hemp-derived product or hemp-derived product that contains CBD intended for consumption or topical to the general public or other sellers.

2. Each person or business who solicits, sells, or is about to engage in the business of selling any industrial hemp-derived product or hemp-derived product that contains CBD intended for consumption or topical use as defined in R.S. 3:1481(5) shall first apply for and obtain a CBD dealer permit for each physical place of business from the Office of Alcohol and Tobacco Control. Online retail sales of industrial hemp-derived CBD products intended for consumption or topical use shall be allowed with a CBD dealer permit and physical place of business within the state. Any industrial hemp-derived product or hemp seed incapable of germination that has been approved by the United States Food and Drug Administration and does not contain any amount of cannabidiol shall not fall under the regulations of this Chapter.

3. The commissioner of the Office of Alcohol and Tobacco Control shall have the authority to issue permanent and temporary CBD dealer permits which shall authorize the storage and retail and/or wholesale sale of industrial hemp-derived CBD products to take place at each physical place of business. CBD dealer permit holders may ship industrial hemp-derived CBD products via common carrier from a licensed physical location directly to a consumer and those who further designate their desire to also engage in wholesale sales shall also be allowed to deliver industrial hemp-derived CBD products using their own W-2 employees and vehicles to a licensed retailer or use a common carrier to deliver same to a licensed retailer.

a. Existing retail businesses that desire to have industrial hemp-derived CBD products on their premises for sale to consumers shall have until September 1, 2019 to apply for a temporary CBD dealer permit with the Office of Alcohol and Tobacco Control.

b. Initial applications for CBD dealer permits received by the Office of Alcohol and Tobacco Control shall receive a temporary permit and have until January 31, 2020 to ensure that the industrial hemp-derived CBD products they are carrying have been registered by the manufacturer with the Louisiana Department of Health and until February 28, 2020 to ensure that the CBD products they are carrying have had their labels approved by the Louisiana Department of Health.

c. All industrial hemp-derived CBD products which are required to be registered with the Louisiana Department of Health and which have not been registered by a manufacturer with the Louisiana Department of Health by January 31, 2020 shall be removed from dealer premises. All industrial hemp-derived CBD products which are required to have their labels approved by the Louisiana Department of Health and which have not received label approval from the Louisiana Department of Health by February 28, 2020 shall be removed from dealer premises.

d. A temporary CBD dealer permit holder carrying only hemp-derived CBD products that have been properly registered by the manufacturer with the Louisiana Department of Health and have labels approved by the Louisiana Department of Health, may apply for a permanent CBD dealer permit with the Office of Alcohol and Tobacco Control.

e. Permanent CBD dealer permit holders may not possess, store, display, offer for sale, or sell CBD products which have not been registered with and had their labels approved by the Louisiana Department of Health, if same are required to be registered and approved by the Louisiana Department of Health.

4. The CBD dealer permit shall not authorize the permittee to sell or offer for sale any industrial hemp-derived CBD product that:

- a. is derived from any source that is not hemp;
- b. contains a tetrahydrocannabinol (THC) concentration of more than 0.3 percent on a dry weight basis;
- c. is intended for inhalation;
- d. is an alcoholic beverage containing CBD or hemp;
- e. is marketed as a dietary supplement, unless approved by the United States Food and Drug Administration;
- f. is a food product or beverage containing CBD or hemp, unless the United States Food and Drug Administration approves CBD and/or hemp as a food additive.
- g. contains a medical claim, unless approved by the United States Food and Drug Administration;

5. The CBD dealer permit shall only authorize the permittee to sell or offer for sale an industrial hemp-derived CBD products that is:

- a. produced from hemp grown by a licensee authorized to grow hemp by the United States Department of

Agriculture or under an approved state plan pursuant to the Agriculture Improvement Act of 2018, P.L. 115-334, or under an authorized state pilot program pursuant to the Agriculture Act of 2014, P.L. 113-79;

b. registered with the Louisiana Department of Health in accordance with the State Food, Drug, and Cosmetic Law (R.S. 40:601 et seq.); and

c. labeled in accordance with the State Food, Drug, and Cosmetic Law (R.S. 40:601 et seq.) and approved by the Louisiana Department of Health. The label shall have:

i. the following words printed clearly on its label: "This product has not been evaluated by the Food and Drug Administration and is not intended to diagnose, treat, cure, or prevent any disease", unless approved by the United States Food and Drug Administration; and

ii. a scannable bar code, QR code, or web address linked to a document or website that contains a certificate of analysis as required by R.S. 3:1482(D).

6. If the permit holder is a corporation or limited liability company, the permit holder shall notify the Office of Alcohol and Tobacco Control in its initial application and renewal applications of all officers, directors, managers, shareholders, members, or persons qualified to conduct or manage the business and same shall meet the qualification requirements of an applicant.

7. The CBD dealer permits shall be considered a privilege and is not transferrable, assignable, or heritable. The permit must be returned to the Office of Alcohol and Tobacco Control or surrendered to an agent of the commissioner within five days of permit closure, when the ownership of the business is transferred, or the business is terminated. When the ownership of the business is transferred, the new owner shall be allowed to continue to operate using the transferor's permit until a new permit is issued or denied, only if the new owner notifies the Office of Alcohol and Tobacco Control of the transfer within five days of the transfer and applies for a new CBD dealer permit within fifteen days of the transfer of ownership. If the permit holder is a corporation or limited liability company, the permit holder shall notify the Office of Alcohol and Tobacco Control of any changes in the officers, directors, managers, shareholders, members, or persons previously qualified to conduct or manage the business within 15 days of the date of such changes. The notification shall include the suitability documents and information for each new individual required to possess the qualifications of the applicants. However, in the event of the dissolution of a partnership by death, the surviving partner or partners may operate under the partnership permit.

8. Receivers and trustees in bankruptcy may operate under the permit of the person succeeded.

9. When the location of a place of business is proposed to be changed, the proposal shall be received and must be approved by the issuing authority before such action is taken. The change of location shall be noted on the permit by the issuing authority and the permit shall be invalid unless the notation is made.

10. The permit, in addition to any other permit required to be displayed, shall be posted in a conspicuous place on the licensed premises, so as to be easily seen and read by the

public. No other signs or notices, except those required by state or federal law, shall be required to be displayed by the CBD dealer.

11. A partnership may include a surviving spouse not separate in community and that spouse may operate under the partnership permit for the remainder of the term.

12. A partnership, corporation, or any other authorized legal entity recognized under the laws of the state of Louisiana may include a spouse who has a regime of separation of property, pursuant to Civil Code Article 2370, and may include a spouse who owns the interest in the partnership, corporation, or other legal entity as that spouse's separate property, pursuant to Civil Code Article 2341, and that spouse may operate under the permit of the partnership, corporation, or other legal entity for the remainder of the term after final conviction of the other spouse for any felony that is not directly related to the CBD dealer permit.

13. The failure of a dealer to publicly display his permits, as required by Paragraph 5 above, shall be grounds for the withholding, suspension, or revocation of the CBD dealer permit.

B.1. The commissioner shall collect an initial and annual licensure permit fee in the amount of \$175 per year for CBD dealer permits.

2. Initially, the commissioner shall issue temporary CBD dealer permits that shall expire March 31, 2020.

3. The expiration of CBD dealer permits shall be on March 31 of each year and permit holders shall renew their permit prior to that date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

#### **§605. Submission of Applications**

A. All applications for CBD dealer permits shall be mailed or delivered to the commissioner in Baton Rouge, Louisiana, unless additional methods are made available by the commissioner. All applications for local permits (if required) shall be mailed or delivered to the respective local authorities, unless additional methods are made available by the local governing authority. An applicant shall mail or deliver both her applications for state and local permits (if required) within 24 hours of each other. If she fails to do so, her state application may be withheld and the permits denied. Upon receipt of an application, the commissioner or the local authorities, as the case may be, shall stamp the day, month, and year received, and the commissioner may verify that the applicant does not owe the state or the political subdivision in which the business is located any delinquent sales taxes, penalties, or interest, excluding items under formal appeal pursuant to the applicable statutes. The commissioner and officers or employees specifically so authorized by the commissioner and local authorities may issue the permits immediately after proper investigation but, for a period of 35 days after issuance, such permits shall operate on a probationary basis subject to final action on or withholding of the permits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

### §607. Qualifications

A. Upon application for initial permit licensure or annual permit license renewal for a CBD dealer permit, the applicant may be required to submit to a criminal background check. The applicant may be required to submit fingerprints and other identifying information to the Agency along with an application to the Louisiana Bureau of Criminal Identification and Information, who shall forward results of the criminal background check to the Office of Alcohol and Tobacco Control. The costs of providing the criminal background check shall be assessed by the bureau, as specified in R.S. 15:587(B), and paid by the applicant. Information obtained from the criminal background check may be used by the Office of Alcohol and Tobacco Control to determine the applicant's eligibility for a CBD dealer permit and/or renewal pursuant to this Chapter.

B. No person shall be eligible to obtain or hold a permit if:

1. convicted of a felony crime under federal or state law as defined in R.S. 14:2(B) or drug related distribution within 10 years immediately preceding the date of application;

2. convicted of a felony not defined in Paragraph B.1, until two years after the completion of the final sentence.

C. Failure to meet or maintain qualifications is a ground for the denial, withholding, suspension, or revocation of a CBD dealer permit.

D. The applicant is responsible for any employee working under the applicant's license and CBD dealer permit holders shall maintain a record containing the name, date of hire, social security number, and date of employment termination for every employee.

E. Applicants for CBD dealer permits shall:

1. be a person of good character and reputation and over 18 years of age. In considering a person's good character or reputation, the commissioner may consider a person's arrests in determining suitability;

2. be a citizen of the United States and the state of Louisiana and a resident of the state of Louisiana continuously for a period of not less than two years next preceding the date of the filing of the application;

3. be the owner of the place of business or have a bona fide written lease therefor for the place of business wherein the storage and retail/wholesale sales of industrial hemp-derived CBD products intended for consumption or topical use shall take place;

4. have not had a license or permit to sell or deal in CBD or hemp, issued by the United States, any state, or by any political subdivision of a state authorized to issue permits or licenses, revoked within two years prior to the application;

5. have not been adjudged by the commissioner, or convicted by a court of violating any of the provisions of this Chapter. If the applicant has been so convicted, the granting of a permit or of a renewal shall be within the discretion of the commissioner;

6. not owe the state or the local governmental subdivisions in which the application is made any delinquent taxes, penalties, or interest, excluding items under formal appeal pursuant to applicable statutes;

7. not be the spouse of a person who does not meet the requirements of Paragraphs 1 and 4-6 of this Subsection;

however, in such cases the age of the ineligible spouse shall be immaterial. For purposes of this Paragraph, the term "spouse" shall also include persons who are considered married outside of the United States, persons who ordinarily hold themselves out as husband and wife, or persons who file their state and federal income tax returns as either "married filing jointly" or "married filing separate".

F. If the applicant is a partnership recognized by Louisiana law, or anyone in such partnership with or financed by another, all members of such partnership, or all the persons furnishing the money shall also possess the qualifications required of an applicant. The application shall name all partners or financial backers and furnish their social security numbers and proper addresses. If a partner of a partnership applying for dealer permits is a corporation or limited liability company, the requirements as to citizenship and residence shall not apply to officers, directors, and stockholders of the corporation or members of the limited liability company. The corporation or limited liability company shall either be organized under the laws of the state of Louisiana or qualified to do business within the state of Louisiana.

G.1. If the applicant is a corporation or a limited liability company, all officers and directors and all stockholders or members owning in the aggregate more than five percent of the stock or of the membership interest in a limited liability company and the person or persons who shall conduct or manage the business shall possess the qualifications required of an applicant and shall furnish their federal identification number, their Louisiana Department of Revenue business account number, their social security number, and their correct home address. The requirements as to citizenship and residence do not apply to either the officers, directors, or stockholders of corporations, or the officers, managers, or members of limited liability companies. The corporation or limited liability company shall be either organized under the laws of the state of Louisiana or qualified to do business within the state of Louisiana.

2. Notwithstanding any other provisions of law to the contrary, the commissioner may accept from a publicly traded or other corporation or entity, the necessary documentation of those persons described in Subsection H of this Section and three officers of the corporation in full satisfaction of the requirements of this Section.

H. Notwithstanding the provisions of Subsection B, the commissioner may grant or continue a permit with respect to an applicant, even though the applicant's spouse has been convicted of a felony, if the applicant:

1. had state and local permits prior to the spouse's felony conviction; and

- 2.a. has a regime of separation of property, pursuant to Civil Code Article 2370, and is the owner of the premises or has a bona fide written lease therefor; or

- b. owns the permitted premises as the applicant's separate property, pursuant to Civil Code Article 2341.

I. In order to determine suitability, members of a partnership recognized by Louisiana law, the officers and directors of a corporation, the stockholders of a corporation, and members of a limited liability company owning more than five percent of such a corporation or company may be required to submit fingerprints and other identifying information to the agency along with an application to the

Louisiana Bureau of Criminal Identification, who shall forward results of the criminal background check to the Office of Alcohol and Tobacco Control. The costs of providing the criminal background check shall be assessed by the bureau, as specified in R.S. 15:587(B), and paid by the applicant.

J. All licensees and persons required to be qualified pursuant to the provisions of this Chapter shall have a continuing duty to inform the commissioner of any action which they believe would constitute a violation of this Chapter. No person who so informs the commissioner shall be discriminated against by an applicant or licensee because of supplying such information.

K. All licensees and any other persons who have been found suitable in accordance with the provisions of this Section shall maintain suitability throughout the term of the license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

#### **§609. Misstatement or Suppression of Fact**

A. Any misstatement or suppression of fact in an application for an initial permit, application for renewal of a permit, special event permit, or any accompanying affidavit to the Office of Alcohol and Tobacco Control is ground for the denial, withholding, suspension, or revocation of a permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

#### **§611. Inspection and Examination**

A. The commissioner or her agent may inspect any place of business where industrial hemp-derived CBD products are stored, offered for retail sale, or offered for wholesale. She or her agent may examine, at all reasonable hours, the books, records, and other documents of all CBD dealer permit holders.

B. No person shall refuse to allow, on demand, the commissioner or her agent to make a full inspection of a place of business where industrial hemp-derived CBD products are stored, offered for retail sale, offered for wholesale sale, nor shall any person refuse to allow, on demand, the commissioner or her agent to examine and audit the books and records of any business where industrial hemp-derived CBD products are stored, offered for retail sale, offered for wholesale sale, nor shall any person in any way hinder or prevent such an inspection or audit.

C. Any refusal by a CBD dealer permit holder to allow the commissioner or her agent to inspect the permitted place of business or to examine and audit the books and records of the permitted business as provided within this Section is grounds for the suspension of a permit, in addition to other penalties provided in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

#### **§613. Prohibition on Sales to Minors**

A. No person holding a CBD dealer permit and no servant, agent, or employee of the permittee shall sell any

industrial hemp-derived CBD product to any person under the age of 18 years of age.

B. To ensure that no industrial hemp-derived CBD product is sold to a person under the age of 18 years of age, a CBD dealer permit holder and their servants, agents, and employees may require all persons attempting to purchase CBD products at retail to produce for inspection either:

1. a valid, current, Louisiana driver's license that contains a photograph of the person presenting the driver's license;

2. a valid, current, driver's license of another state that contains a photograph of the person and birth date of the person submitting the driver's license;

3. a valid, current, special identification card issued by the state of Louisiana pursuant to R.S. 40:1321 containing a photograph of the person submitting the identification card;

4. a valid, current, passport or visa issued by the federal government or another country or nation, that contains a permanently attached photograph of the person and the date of birth of the person submitting the passport or visa;

5. a valid, current, military or federal identification card issued by the federal government containing a photograph of the person and date of birth of the person submitting the identification card;

6. a valid, current, special identification card of another state which contains a photograph of the person and birth date of the person submitting the identification card;

7. any digitized identification approved by the commissioner may be accepted by CBD retailers and retail/wholesalers. CBD dealers may choose to accept digitized identification or they may still require a physical identification when checking identification. CBD dealers whom the agency has required to utilize scanners shall still be required to request and scan a physical identification and may not accept digitized identification. Digitized identification may be accepted by establishments provided that all employees have been properly trained prior to acceptance in accordance with the requirements of LAC 55:VII.401.D.

C. Each form of identification listed above must on its face establish the age of the person as 18 years or older, and there must be no reason to doubt the authenticity or correctness of the identification. No form of identification mentioned above shall be accepted as proof of age if it is expired, defaced, mutilated, or altered. If the state identification card or lawful identification submitted is a duplicate, the person shall submit additional information which contains the name, date of birth, and picture of the person. A duplicate driver's license shall be considered lawful identification for the purposes of this Paragraph, and a person shall not be required to submit additional information containing the name, date of birth, and picture of the person. In addition, an educational institution identification card, check cashing identification card, or employee identification card shall not be considered as lawful identification for the purposes of this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

### **§615. Administrative Hearings and Penalties**

A. Any person who violates any of the provisions of this Chapter or the provisions of R.S. 3:1483 or who alters, forges, or counterfeits, or uses without authority any permit, license, or other document provided for in this Chapter, who operates without a permit, or who fails to collect or to timely pay the assessments and fees due or assessed pursuant to this Chapter or R.S. 3:1483 shall be subject effective January 1, 2020, in addition to any unpaid assessments, late fees, or collection costs, to the following criminal penalties, wherein each day on which a violation occurs shall constitute a separate offense.

1. On a first conviction, the offender shall be fined not more than \$300.

2. On a second conviction, the offender shall be fined not more than \$1,000.

3. On a third or subsequent conviction, the offender shall be sentenced to imprisonment, with or without hard labor, for not more than two years and shall be fined not more than \$5,000.

B. In addition to the criminal penalties provided for by R.S. 3:1484 and above, any licensee who violates any of the provisions of this Chapter shall be subject to having her permit suspended or revoked.

C. The procedure for the suspension or revocation of permits shall be substantially as follows:

1. The commissioner shall have periodic examinations made of the business of all persons holding permits under this Chapter. If a violation of any provision of this Chapter or of the law is observed, the commissioner may give the permittee a written warning. If the permittee has been previously warned or if the violation is of a sufficiently serious nature, the commissioner may instruct any agent or employee of the commissioner to prepare and file, upon information and belief based upon the facts in hand, a petition for suspension or revocation of the permit, setting forth the facts and circumstances of the violation, and shall thereupon summon the permittee to appear and show cause why the permit should not be suspended or revoked.

2. The secretary of the Department of Revenue, municipal authorities, sheriffs, and other law enforcing officers may have periodic investigations made of the business of all permittees within their respective jurisdictions. If any violation of any provision of this Chapter or of any law is observed, such authorities may give the permittee a written warning. If the permittee has been previously warned or if the violation is of a sufficiently serious nature, they shall file an affidavit with the commissioner, setting forth the facts and circumstances of the violation. Thereupon, the commissioner shall summon the permittee to appear and show cause why his permit should not be suspended or revoked.

3. Any person may file with the commissioner or with the municipal officers or parish authorities a sworn petition requesting that a permit be suspended or revoked. If the petition is filed with the local authorities, they shall immediately transmit it to the commissioner. When such a petition is received by the commissioner, she shall summon the permittee to appear and show cause why her permit should not be suspended or revoked.

4. No such petition shall be considered by the commissioner unless sworn to by the petitioner in an

affidavit which also affirms that the petitioner, together with witnesses, if any, will appear at the hearing to establish the allegations of the petition, and unless the petition sets forth facts constituting a cause or causes enumerated in or authorized by this Chapter for the suspension or revocation of a permit.

5. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

D. If a person holds more than one permit and any one of them is suspended or revoked, the commissioner may suspend or revoke all of his permits.

E. Conviction by a court of a violation of the provisions of this Chapter is not an automatic condition precedent to the refusal, suspension, or revocation of a permit under this Chapter for a violation of any of the provisions of this Chapter or the law. When there has been a previous criminal prosecution for the same or similar act upon which the refusal, suspension, or revocation of a permit is being considered, evidence of a conviction or an acquittal in a court of competent jurisdiction shall be admissible in a proceeding before the commissioner. The commissioner shall withhold, suspend, or revoke permits for violations of this Chapter, regardless of any prosecution in a court or of the result of any such prosecution.

F. When a permit is revoked for any legal cause, the commissioner may, at the same time, order that no state or local permit shall be issued covering the same premises until two years after the date of revocation.

G. Whenever the commissioner is to hold a hearing pursuant to the provisions of this Chapter, she shall issue a written summons or notice thereof to the applicant or permittee, directing her to show cause why her permit should not be suspended or revoked. The notice or summons shall state the time, place, and hour of the hearing, which shall be not less than ten nor more than 30 calendar days from the date of the notice. The notice or summons shall enumerate the cause or causes alleged for suspending or revoking the permit. All notices or summonses shall be either delivered to the applicant or permittee in person or sent by certified mail to the applicant or permittee and directed to him at the mailing address as given in his last application for the permit. When so addressed and mailed, notices or summonses shall be conclusively presumed to have been received by the applicant or permittee.

H. Hearings by the commissioner shall, in her discretion, be held either at the agency headquarters in Baton Rouge, the agencies New Orleans' office, in the parish in which the licensed premises in question is located, or at another location designated by the commissioner.

I. To the extent practicable, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing pursuant to the following requirements:

1. Prior to authorizing the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing, the commissioner shall provide the permittee with written notice of his intent to do

so. The notice shall be sent by certified mail to the permittee at the address of his place of business as given in his application for the permit and shall be sent not less than ten nor more than thirty calendar days from the scheduled hearing date. When so addressed and mailed, the notice shall be conclusively presumed to have been received by the permittee.

2. Any party objecting to the commissioner's authorization of the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any authorized hearing shall provide the commissioner with written notification of the objection at least five days prior to the scheduled hearing date. Upon receipt of any objection, the commissioner shall not allow the use of teleconference, video link, or other visual remote communications technology to conduct any portion of the hearing for which a proper objection was raised. Failure of a permittee to object in writing within at least five calendar days prior to the scheduled hearing date shall conclusively constitute a waiver of any objections.

3. Any use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing shall be done in real-time.

J. Hearings may be held by the commissioner or by any person designated and authorized by the commissioner. If the hearing is to be held by a person designated by the commissioner, that person shall take an oath for the faithful performance of her duties. The oath may be administered by anyone qualified by law to administer oaths in this state. The commissioner, or the person designated to hold a hearing, may administer oaths, issue subpoenas for the attendance of witnesses and the production of books, papers, accounts, and documents, and examine witnesses and receive testimony at the hearing.

K. If a person fails to comply with a subpoena issued by the commissioner or by any duly authorized person holding the hearing or if a witness refuses to testify in any matter regarding which he may be lawfully interrogated, the person conducting the hearing shall adjudge him guilty of contempt and may fine him not more than \$100 or imprison him for not more than 30 days, or both. The sheriff of the parish in which the hearing is held shall execute the judgment of contempt.

L. If a permittee or applicant who has been notified of a hearing does not appear, the hearing may proceed without her and the commissioner may consider and dispose of the case, but in all cases the commissioner, upon application or *ex propria motu*, may grant continuances from time to time. If the continuance be granted to a fixed future date by written consent or in the presence of the permittee, applicant, or his counsel, no further notice of the hearing date need be given. In all other cases the same notice of hearing as in original hearings shall be given.

M. In determining cases involving the suspension or revocation of permits, if the commissioner finds that the violation is of a minor nature, or that there are extenuating circumstances, or that there are reasonable grounds to expect that the permittee will not again violate any of the provisions of this Chapter, the commissioner may suspend the permit for such time as she thinks proper. If the permittee has previously been fined or had a permit suspended or revoked, or if the violation is flagrant or serious, the commissioner

may revoke the permit or permits and shall immediately notify the state and local authorities of this action. When the commissioner either suspends or revokes a permit, all permits to deal in industrial hemp-derived CBD products as herein defined and all similar local permits are *ipso facto* suspended or revoked without action on the part of state or local governing authorities. The commissioner shall retain jurisdiction to re-open cases at any time upon petition or *ex propria motu*, and for good cause shown may modify, revise, or reverse her former findings and decisions, and all such re-opened cases shall be heard and determined under the same rules of procedure as original cases.

N. In hearings of the commissioner which finally result in withholding the issuance of a permit or in suspending or revoking a permit, the commissioner shall assess the costs of the hearing to the applicant or permittee. The costs are recoverable by the commissioner in any appellate proceeding instituted by the applicant or permittee or in any other judicial proceeding.

O. Decisions of the commissioner in withholding, suspending, or revoking permits and of local authorities in withholding permits are final and binding on all parties unless appealed in the manner provided in Section R below and finally reversed by the courts.

P. Any party aggrieved by a decision of the commissioner to withhold, suspend, or revoke a permit or of the local authorities to withhold a permit may, within ten days of the notification of the decision, take a devolutive appeal to the district court having jurisdiction of the applicant's or permittee's place of business, proposed or actual as the case may be. Such appeals shall be filed in the district courts in the same manner as original suits are instituted therein. The appeals shall be tried *de novo*. Either party may amend and supplement her pleadings and additional witnesses may be called and heard. When there has been a previous criminal prosecution for the same or similar act upon which the refusal, suspension, or revocation of a permit is being considered, evidence of a conviction or an acquittal in a court of competent jurisdiction is admissible in the trial of the appeal. Within 10 calendar days of the signing of the judgment by the district court in any such appeal case, the commissioner or the applicant for a permit or permittee, as the case may be, may devolutively appeal the judgment to the appellate court of proper jurisdiction. These appeals shall be perfected in the manner provided for in civil cases and shall be devolutive only. If the district court determines that the decision of the commissioner or of the local authorities in withholding, suspending, or revoking the permit was in error, the decision of the commissioner or local authorities shall not be voided if the commissioner or local authorities take an appeal to the court of appeals in the time provided for suspensive appeals.

Q. All proceedings in the district and appellate courts arising under this Part are civil in nature and shall be heard summarily by the court, without a jury, shall take precedence over other civil cases, and shall be tried in chambers or in open court, in or out of term.

R. The courts of this state shall have jurisdiction to issue restraining orders and writs of injunction restraining the commissioner as provided in the constitution, but no writ or order shall issue before a decision has been made by the commissioner either withholding the application for a

permit, or suspending or revoking a permit under the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

#### **§617. CBD Owner Training**

A. CBD dealer permittees must complete the free ATC online CBD education training course within 30 days after receiving their CBD dealer permit. All individuals completing CBD education training shall receive a certificate of completion evidencing their training which shall be valid for two years. CBD dealer permittee employees who may be called upon to sell or serve industrial hemp-derived CBD products to consumers at retail may voluntarily complete the ATC online CBD education training. Individuals who maintain current valid non-expired certificate of CBD education training and the permittee they are employed by may receive a warning in lieu of penalties for a first offense violation of a CBD/hemp product sale to a minor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

#### **§619. CBD Special Event Permits**

A. For purposes of this regulation, *special events* are defined as events, held at any location, where industrial hemp-derived CBD products are sold as an incidental part of the event for payment rendered or are supplied as part of a general admission or other type fee.

B. For such events, this office may issue a special temporary CBD special event permit to existing CBD dealer permit holders authorizing the sale of industrial hemp-derived CBD products that have been registered and had their labels approved by the Louisiana Department of Health at the special event for a maximum duration of three consecutive days only, but wholesalers may deliver products to the event up to two days prior to the effective date of the permit.

C. The commissioner shall collect special event licensure permit fee for each CBD special event permit in the amount of \$100.

D. No industrial hemp-derived CBD product intended for consumption or topical use shall be given away free of charge at a special event, even by a special event permit holder, unless authorized in writing by the Louisiana Office of Alcohol and Tobacco Control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

#### **§621. No Donations or Free CBD Products**

A. No industrial hemp-derived CBD product shall be donated or given away free of charge outside the confines of a CBD dealer's permitted place of business, nor shall same be sold through a vending machine, unless authorized in writing by the Louisiana Office of Alcohol and Tobacco Control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

Juana Marine-Lombard  
Commissioner

1912#005

## **DECLARATION OF EMERGENCY**

### **Department of Revenue Office of Alcohol and Tobacco Control**

#### **Direct Delivery of Alcohol Public Safety Regulations (LAC 55:VII.Chapter 8)**

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, pursuant to the emergency rulemaking authority granted by R.S. 49:953(B) of the Administrative Procedure Act (R.S. 49:950, et seq.) and the specific rule making authority granted by R.S. 26:153(D), R.S. 26:307(E), R.S. 26:271.2(2)(b), R.S. 26:271.4, and 26:309(I), hereby adopts the following Emergency Rule for the protection of public health. The effective date of this Rule is upon signature.

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, finds it necessary to make immediate changes to the Louisiana Administrative Code given the need for regulation of the direct delivery of alcohol. The following regulations will give the ATC the ability to properly license and regulate the direct delivery of alcohol, which will affect the health of Louisiana citizens and give the commissioner of the Office of Alcohol and Tobacco Control the ability to make critical decisions that protect human health. This Rule creates §801 through §807 to address direct delivery matters not otherwise addressed by existing law or regulation and to resolve differences where the provisions of Act 433 and Act 436 of the 2019 Regular Session either overlap or conflict.

This Rule shall have the force and effect of law upon signature and will remain in effect 120 days, unless renewed by the commissioner of the Office of Alcohol and Tobacco Control or until permanent rules are promulgated in accordance with law.

### **Title 55**

### **PUBLIC SAFETY**

### **Part VII. Alcohol and Tobacco Control**

### **Chapter 8. Direct Delivery of Alcohol Public Safety Regulations**

#### **§801. General Direct Delivery Requirements**

A. Prior to any alcohol retailer or third party alcohol delivery service engaging in the delivery of alcoholic beverages, same shall obtain an alcoholic beverage delivery permit from the commissioner of the Office of Alcohol and Tobacco Control and shall adhere to the following requirements.

1. Only alcoholic beverages intended for personal consumption and delivered in a manufacturer sealed container may be offered for delivery. *Manufacturer sealed container* as used in this Chapter shall mean the original sealed container that is filled with the alcoholic beverage at

the permitted facility by the manufacturer as defined in R.S. 26:2(12) and 241(10). The delivery of an *open alcoholic beverage container* as defined by R.S. 32:300 is prohibited.

2. Delivery shall be permitted only in those areas where the sale of alcoholic beverages are permitted. Delivery shall be prohibited in any area where it has been prohibited by a referendum vote or the local governing authority.

3. Delivery by a retailer shall not extend past the boundaries of the parish where the retailer's permitted establishment is located and shall be made only to a residential or commercial address. Third Party Alcohol Delivery Service permittees shall be allowed to deliver within 10 miles from the place of purchase, irrespective of parish boundaries.

4. Orders for alcohol delivery of any type may only be accepted and processed if the permitted premises receiving the order has actual physical possession of the alcoholic beverage being ordered on the physical premises at the time the order is accepted and can fulfill the order from stock on-hand.

5. The alcoholic beverages of all deliveries which are refused by a third party or incapable of being delivered for any reason shall be returned to the place of purchase.

6. Alcohol beverage delivery permit holders must verify that a consumer placing an order for alcohol delivery is of legal drinking age.

7. Alcoholic beverages shall not be delivered:

a. to an address on the campus of any elementary school, secondary school, university, college, technical college, or institute;

b. to any public playground or building used primarily as a church, synagogue, mosque, or public library.

c. outside of the hours that the retailers physical premises is open to the public;

d. without verifying that the recipient is not visibly intoxicated;

e. without obtaining the signature of the recipient verifying receipt of the delivery of alcohol and their age.

8. Alcoholic beverage delivery permit holders shall keep and retain a record of all deliveries of alcoholic beverages for a period three years from the date of delivery and shall make such records available to the commissioner of the Office of Alcohol and Tobacco Control, and her agents and assigns, upon request. The record of each delivery shall include:

a. the retail dealers name, address, and permit number;

b. the name of the person who placed the order and the date, time, and method of order;

c. the name of the employee making the delivery and the date, time, and address of the delivery;

d. the type, brand, and quantity of each alcoholic beverage delivered; and

e. the name, date of birth, and signature of the person that received the delivery.

9. Parishes and municipalities may require and issue local direct delivery of alcohol permits similar to those issued by the commissioner of the Office of Alcohol and Tobacco Control.

10. All persons delivering alcoholic beverages under an alcoholic beverage delivery permit shall be 18 years of age

or older, be the permittee or a W-2 employee of the delivery permit holder, and possess a valid server permit as provided in R.S. 26:931 et seq.

11. Persons delivering alcoholic beverages under an alcoholic beverage delivery permit shall refuse delivery and return the alcoholic beverages to the place of purchase if:

a. the recipient does not produce a valid and current form of identification as identified in Subparagraph 7.e of this Subsection;

b. there is reason to doubt the authenticity or correctness of the recipient's identification;

c. the recipient refuses to sign for the receipt of the delivery; or

d. the recipient is intoxicated.

12. If an alcohol retailer's alcohol permit is revoked, suspended, or lapsed, then that retailer's alcoholic beverage delivery permit shall also be considered to be revoked, suspended, or lapsed and delivery of alcoholic beverages shall immediately cease.

13. They shall maintain a commercial general liability insurance policy with a minimum coverage amount of \$1,000 for the duration of the alcoholic beverage delivery permit and they shall provide proof of coverage to the commissioner of the Office of Alcohol and Tobacco Control upon request.

14. They shall require all delivery drivers to maintain vehicle general liability insurance on any and all vehicles they may use for deliveries as required by state law for the duration of the alcoholic beverage delivery permit and they shall provide proof of coverage to the commissioner of the Office of Alcohol and Tobacco Control upon request.

15. Class B and Class AR retailers who engage the services of a third party alcohol delivery service to deliver alcohol for them, must notify the commissioner of the Office of Alcohol and Tobacco Control in writing within 10 days of executing or terminating an agreement with a third party alcohol delivery service to deliver alcohol by providing her with a copy of the agreement and/or termination notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

### **§803. Package Store Retail Alcohol Delivery Permit**

A. Retailers holding a valid class B retail liquor permit, retailers holding a valid class C retail liquor permit, and retailers holding a valid retail liquor permit that allows for off-premises consumption shall be allowed to apply for, obtain, and maintain a class P retail alcohol delivery permit pursuant to this particular regulation (§803) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this Chapter:

1. the commissioner of Alcohol and Tobacco shall collect an initial and annual licensure fee for class P retail alcohol delivery permits in the amount of \$250 and no cents and same shall expire and be renewable at the same time as the holder's alcohol permit;

2. each and every order for the delivery of alcoholic beverages received by a class P retail alcohol delivery permit holder shall include food with each order.

3. all alcohol delivery transactions initiated by a consumer shall be processed, assembled, packaged, and fulfilled at the retailer's permitted physical premises wherein



the order was received by the permittee or a W-2 employee of the permittee.

4. deliveries to consumers shall only be made by the permittee or a W-2 employee of the retailer;

5. alcoholic beverages shall not be delivered without verifying the identity and age of the recipient by reading a valid state-issued photo identification card, valid military identification card, valid passport of the person, or through the use of a real-time electronic age verification device or application that shall be approved by the commissioner of the Office of Alcohol and Tobacco Control; and

6. notwithstanding any law, rule, or regulation to the contrary, the permittee may use electronic means to market, receive, and process orders for alcohol products;

7. the permittee may market, receive, and process orders for alcohol products using electronic means owned, operated, and maintained by a third party, provided that:

a. the permittee maintains ultimate control and responsibility over the sales transaction, the transfer of the physical possession of the alcoholic beverages, and the collection and remittance of all applicable state and local taxes;

b. the permittee retains the sole discretion to determine whether to accept and complete an order or reject it and the permittee, or a W-2 employee of the permittee, reviews and accepts or rejects each order;

c. the permittee retains the independence to determine which alcoholic beverages are made available through electronic means and which alcoholic beverages are made available for delivery to the consumer either at their licensed physical premises itself or at another address designated by the consumer;

d. the permittee independently sets the price of alcoholic beverages being offered for delivery;

e. any credit or debit card information provided by a consumer to the third party for the purpose of transacting a purchase is automatically directed to the permittee such that the transaction takes place between the consumer and the permittee and the permittee appears as the retail dealer at the time of purchase and on the receipt;

f. the permittee, or a W-2 employee of the permittee, processes at the physical premises that accepted the order all payments initiated by a consumer and assembles, packages, and fulfills each order at the same physical premises;

g. deliveries to consumers shall be made by the permittee or a W-2 employee of the permittee;

h. the relationship between the permittee and the third party shall be one of independent contractors and neither party shall be deemed the employee, agent, or joint venture of the other party under any circumstances or for any purposes;

i. the third party shall not deal, handle, sell, offer for sale, or possess for sale alcoholic beverages or process payments for the sale of alcoholic beverages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

#### **§805. Restaurant Retail Alcohol Delivery Permit**

A. Retailers holding a class AR retail liquor permit shall be allowed to apply for and obtain a class R retail alcohol delivery permit pursuant to this particular regulation (§805)

and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this Chapter.

1. The commissioner of the Office of Alcohol and Tobacco Control shall collect an initial and annual licensure fee for class R retail alcohol delivery permits in the amount of \$250 and no cents and same shall expire and be renewable at the same time as the holder's alcohol permit.

2. Only beer, wine, and sparkling wine alcoholic beverages may be offered for delivery, no alcohol shall be delivered more than ten miles from the place of purchase, no alcoholic beverages shall be offered for curbside pickup, and each and every order for the delivery of alcoholic beverages shall be composed of at least a 30 percent food as computed from total cost paid. Alcohol and food purchased from a class AR retailer for delivery shall be included in its gross average monthly sales figures for purposes ensuring that an AR retailer meets its 60 percent food or food items requirement under R.S. 26:73(H). However, pursuant to R.S. 26:73(B)(2), sparkling or still wine delivered by the bottle in conjunction with food shall not be considered an alcoholic beverage when determining gross revenue for purposes of R.S. 26:73(H).

3. All alcohol delivery transactions initiated by a consumer shall be processed, assembled, packaged, and fulfilled at the retailer's permitted physical premises wherein the order was received by the permittee or a W-2 employee of the permittee.

4. Deliveries to consumers shall only be made by the permittee or a W-2 employee of the retailer.

5. At the time of delivery of alcoholic beverages, the permittee shall obtain the recipient's signature and verify the age of the recipient through the use of an electronic age verification device or combination of devices that shall be approved by the commissioner of the Office of Alcohol and Tobacco Control. Such devices shall be capable of all of the following:

a. verifying proof of age through technology of a magnetic card reader or an alternative technology capable of verifying proof of age;

b. reading a valid state-issued driver's license, a valid state-issued identification card, a valid military identification card, or a valid passport;

c. storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was scanned.

6. Notwithstanding any law, rule, or regulation to the contrary, the permittee may use electronic means to market, receive, and process orders for alcohol products.

7. The permittee may market, receive, and process orders for alcohol products using electronic means owned, operated, and maintained by a third party, provided that:

a. the permittee maintains ultimate control and responsibility over the sales transaction, the transfer of the physical possession of the alcoholic beverages, and the collection and remittance of all applicable state and local taxes;

b. the permittee retains the sole discretion to determine whether to accept and complete an order or reject it and the permittee, or a W-2 employee of the permittee, shall review and accept or reject each order;

c. the permittee retains the independence to determine which alcoholic beverages are made available through electronic means and which alcoholic beverages are made available for delivery to the consumer at the licensed physical premises itself or at another address designated by the consumer;

d. the permittee independently sets the price of alcoholic beverages being offered for delivery;

e. any credit or debit card information provided by a consumer to the third party for the purpose of transacting a purchase is automatically directed to the permittee such that the transaction takes place between the consumer and the permittee and the permittee appears as the retail dealer at the time of purchase and on the receipt;

f. the permittee, or a W-2 employee of the permittee, processes at the physical premises that accepted the order, all payments initiated by a consumer and assembles, packages, and fulfills each order at the same physical premises;

g. deliveries to consumers shall be made by the permittee or a W-2 employee of the permittee;

h. the relationship between the permittee and the third party shall be one of independent contractors and neither party shall be deemed the employee, agent, or joint venture of the other party under any circumstances or for any purposes; and

i. the third party shall not deal, handle, sell, offer for sale, or possess for sale alcoholic beverages or process payments for the sale of alcoholic beverages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

#### **§807. Third Party Alcohol Delivery Service Permit**

A. Third party alcohol delivery service companies desiring to deliver alcohol to consumers in connection with a delivery agreement with a retail dealer possessing valid class AR or B retail permits shall first apply for and obtain a class T third party alcohol delivery service permit pursuant to this particular regulation (§807) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this Chapter.

1. The commissioner of Alcohol and Tobacco Control shall collect an initial and annual licensure fee for third party alcohol delivery service permits in the amount of \$1500 and same shall expire and be renewable annually from date of first issuance.

2. They may enter into third party alcoholic beverage service delivery agreements with retail dealers possessing valid class AR or B retail permits with the Office of Alcohol and Tobacco Control that provide for the use by the retailer of an internet or mobile application or similar technology platform to facilitate the sale of alcoholic beverages for delivery to consumers for personal consumption and the third party alcohol delivery service permittee may deliver the alcoholic beverages so facilitated to the consumer.

3. Only beer, wine, and sparkling wine alcoholic beverages provided by the retail dealer may be offered for delivery, no alcohol shall be delivered more than 10 miles from the place of purchase, and each and every order for the delivery of alcoholic beverages shall be composed of at least 30 percent food as computed from total cost paid for each class AR retailer order and each class B

retailer order shall contain food. Alcohol and food purchased from a class AR retailer for delivery shall be included in its gross average monthly sales figures for purposes ensuring that an AR retailer meets its 60 percent food or food items requirement under R.S. 26:73(H). However, pursuant to R.S. 26:73(B)(2), sparkling or still wine delivered by the bottle in conjunction with food shall not be considered an alcoholic beverage when determining gross revenue for purposes of R.S. 26:73(H).

4. They shall be licensed to do business in the state of Louisiana, use their own W-2 employees for delivery, be able to monitor the routes of their employees during deliveries, and conduct an interview and background check of all employees that will deliver alcoholic beverages.

5. They shall maintain a general liability insurance policy with a liquor liability endorsement in an amount not less than \$1,000,000 per occurrence for the duration of every agreement they maintain with a retail dealer and they shall provide proof of coverage to every retail dealer with whom they have an agreement and notice to the retail dealer and the commissioner of the Office of Alcohol and Tobacco Control if the coverage lapses or is cancelled.

6. The retail dealer shall manage and control the sale of alcoholic beverages and shall accept or reject all orders placed for alcoholic beverages through the third party delivery service permittee's internet or mobile application or similar technology, collect and remit all applicable state and local taxes, determine the alcoholic beverages offered for sale through the third party delivery service permittee's internet or mobile application or similar technology, and determine the price at which alcoholic beverages are offered for sale or sold through the third party delivery service permittee's internet or mobile application or similar technology.

7. The third party alcohol delivery service permittee may charge retailer dealers a reasonable delivery fee for the orders delivered by the third party and may act as an agent for the retail dealer in the collection of payments from the sale of alcoholic beverages, but the full amount of each order must be handled in a manner that gives the retail dealer control over the ultimate receipt of the payment from the consumer.

8. The third party alcohol delivery service permittee may receive orders and accept payment via the internet or through a mobile application or similar technology.

9. At the time of delivery of alcoholic beverages, the third party alcohol delivery service permittee shall obtain the recipient's signature and verify the age of the recipient through the use of an electronic age verification device or combination of devices that shall be approved by the commissioner of Alcohol and Tobacco Control. Such devices shall be capable of all of the following:

a. verifying proof of age through technology of a magnetic card reader or an alternative technology capable of verifying proof of age;

b. reading a valid state-issued driver's license, a valid state-issued identification card, a valid military identification card, or a valid passport;

c. storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was scanned.

10. A third party alcohol delivery service permittee who delivers alcoholic beverages, but fails to comply with the provisions of Paragraph I immediately above or §801(K) and any other applicable rules contained in this Chapter, shall be vicariously liable for damages incurred as a result of the failure to comply.

11. Third party alcohol delivery service permittees must maintain and provide the commissioner of the Office of Alcohol and Tobacco Control with a list of retailers they have entered into agreements with within 60 days of receiving their permit and at each renewal. An up-to-date version of the retailer list shall be made available upon demand by the commissioner or her agents and assigns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

Interested persons may submit written comments to Commissioner Juana Marine-Lombard, Office of Alcohol and Tobacco Control, P.O. Box 66404, Baton Rouge, LA 70896 or at [legal.department@atc.la.gov](mailto:legal.department@atc.la.gov).

Juana Marine-Lombard  
Commissioner

1911#009

## DECLARATION OF EMERGENCY

### Department of Revenue Office of Alcohol and Tobacco Control

#### Vapor Products Public Safety Regulations (LAC 55:VII.Chapter 32)

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, pursuant to the emergency rulemaking authority granted by R.S. 49:953(B) of the Administrative Procedure Act (R.S. 49:950, et seq.) and the specific rule making authority granted by R.S. 3:1483, hereby adopts the following Emergency Rule for the protection of public health. The effective date of this Rule is upon signature.

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, finds it necessary to make immediate changes to the Louisiana Administrative Code given the need for regulation of alternative nicotine and vapor products under the provisions of Act No. 424 of the 2019 Louisiana Legislature. The following regulations will give the ATC the ability to properly permit, authorize, and regulate the retail sale and distribution of alternative nicotine and vapor products, which will affect the health of Louisiana citizens and give the commissioner of the Office of Alcohol and Tobacco Control the ability to make critical decisions that protect human health. This Rule creates §3201 through §3215 to address retail sale and distribution of alternative nicotine and vapor products and related matters since this is not addressed otherwise by existing law or regulation.

This Rule shall have the force and effect of law upon signature and will remain in effect 120 days, unless renewed by the commissioner of the Office of Alcohol and Tobacco Control or until permanent rules are promulgated in accordance with law.

## Title 55

### PUBLIC SAFETY

#### Part VII. Alcohol and Tobacco Control

#### Chapter 32. Alternative Nicotine and Vapor Products Public Safety Regulations

##### §3201. Definitions

A. As used in this Chapter, the following terms have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise.

*E-Liquid*—a substance that does not include cannabis or CBD as defined under the laws of this state and the laws of the United State and which meets all of the following criteria:

- may or may not contain nicotine;
- is intended to be vaporized and inhaled using a vaporized and inhaled using a vapor product;
- is a legal substance under the laws of this state and the laws of the United States.

*Manufacturer*—anyone engaged in the manufacture, production, or foreign importation of tobacco products, vapor products, and alternative nicotine who sells to wholesalers.

*Retail Dealer*—includes every dealer other than a wholesale dealer, or manufacturer who sells or offers for sale cigars, cigarettes, other tobacco products, alternative nicotine products, or vapor products, irrespective of quantity or the number of sales. If any person is engaged in the business of making sales both at retail and wholesale, *retailer* shall apply only to the retail portion of the business.

*Tamper-Evident Package*—a package having at least one indicator or barrier to entry that, if breached or missing, can reasonably be expected to provide visible evidence to consumer that tampering has occurred.

*Wholesale Dealer*—a dealer whose principal business is that of a wholesaler, who sells cigarettes, cigars, or other tobacco products to retail dealers for purpose of resale, who is a bona fide wholesaler, and 50 percent of whose total tobacco sales are to retail stores other than its own or those of its subsidiaries or parent companies within Louisiana. Wholesaler dealer shall include any person in the state who acquires cigarettes solely for the purpose of resale in vending machines, provided such person services fifty or more cigarette vending machines in Louisiana other than his own, and a Louisiana dealer who was affixing cigarette and tobacco stamps as of January 1, 1974. If any person is engaged in the business of making sales at both wholesale and retail, *wholesaler* shall apply only to the wholesale portion of the business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

##### §3203. General Requirements

A. Every person who sells or is about to engage in the business of selling at retail, at wholesale, or by vending machine, or is about to engage in the business of receiving unstamped and/or non-tax paid tobacco products, vapor products, or alternative nicotine products or who is engaged in the business of receiving stamped cigarettes at wholesale or any or all of the articles taxed in accordance with Title 47

of the Louisiana Revised Statutes of 1950, shall first apply to and obtain from the office a permit for each place of business and each vending machine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

### **§3205. Acts Prohibited**

A.1. No retail dealer shall purchase tobacco products or resale except from a wholesaler dealer operating with a valid unsuspended wholesale dealer permit, except as provided for in this Chapter.

2. No vapor retail dealer shall purchase alternative nicotine products or vapor products for resale except from a manufacturer of those products or a wholesale dealer operating with a valid unsuspended Louisiana wholesale dealer permit, except as provided for in this Chapter.

B. No wholesale dealer shall sell tobacco products, alternative nicotine products, or vapor products for resale except to a retail dealer operating with either a valid registration certificate or a valid unsuspended permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

### **§3207. Inspection and Examination**

A. The commissioner or her agent may inspect any place of business where alternative nicotine or vapor products are stored, offered for retail sale, or offered for wholesale. She or her agent may examine at all reasonable hours, the books records, and other documents of all retail dealer permit holders.

B. No person shall refuse to allow, on demand, the commissioner or her agent to make a full inspection of a place of business where alternative nicotine or vapor products are offered for wholesale and/or sale to the public, nor shall any person refuse to allow, on demand, the commissioner or her agent to examine and audit the books and records of any business where alternative nicotine or vapor products are offered for wholesale and/or sale to the public, nor shall any person in any way hinder or prevent such an inspection or audit.

C. Any refusal by a retail permit dealer permit holder to allow the commissioner or her agent to inspect the permitted place of business or to examine and audit the books and records of the permitted business as provided within this section is grounds for the suspension of a permit, in addition to other penalties provided in this chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

### **§3209. Manufacturer Authorization**

A. Manufacturers of vapor products shall not sell vapor products in this state without authorization from the office of alcohol and tobacco control. The request for authorization shall include:

1. the name, telephone number of the applicant;
2. the name, telephone number, and address of the manufacturing facility;
3. the name, telephone number, title, and address of the person responsible for the manufacturing facility;

4. verification that the facility will comply with applicable tobacco products good manufacturing practices pursuant to 21 U.S.C. 387f(e) of the Federal Food, Drug, and Cosmetic Act;

5. verification that the manufacturer will comply with the applicable ingredient listing required by 21 U.S.C. 387d(A)(1) of the Federal Food, Drug, and Cosmetic Act.

B. Authorization forms shall be mailed or delivered to the commissioner in Baton Rouge, Louisiana, unless other additional methods are made available by the commissioner.

C. Authorization forms will be processed at the Office of Alcohol and Tobacco Control at no cost to applicant.

D. Authorization forms will be valid for a period of one year.

E. Manufacturer authorizations shall be considered a privilege and is not transferrable, assignable, or heritable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

### **§3211. Safety Requirements**

A. All manufacturers and wholesalers shall comply with the following:

1. any alternative nicotine or vapor product must use a child proof cap that has a child resistant effectiveness set forth in the federal poison prevention packaging standards, 16 CFR 1700.1(b)(1);

2. any alternative nicotine or vapor product must use tamper-evident packaging. The tamper-evident packaging feature must be designed to and remain intact when handled in a reasonable manner.

B. Any manufacturer or wholesaler who violates the safety requirement provisions of this chapter shall be subject to having their permit suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

### **§3213. Age Verification**

A. For all online sales manufacturers and wholesalers must perform an age verification process through an independent, third party age verification service that compares information from public records to the personal information entered by the purchaser during the ordering process that establishes the person is of legal age or older.

B. Persons accepting purchase orders for delivery sales may request that prospective consumers provide their email addresses.

C. No retailer may sell or deliver alternative nicotine or vapor products of any kind in a retail establishment to any person through any unattended or self-service checkout counter or mechanical device unless the customer submits to a clerk a valid driver's license, selective service card, or other lawful identification that on its face establishes the age of the person as 18 years or older and there is no reason to doubt the authenticity and correctness of the identification prior to approaching the self-checkout counter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

### **§3215. Prohibition Sales to Minors**

A. No person holding a retail dealer permit and no servant, agent, or employee of the permittee shall sell any alternative nicotine or vapor products to any person under the age of 18 years of age. To ensure that no alternative nicotine or vapor products are sold to a person under the age of 18 years of age, a retail dealer permit holder and their servants, agents, and employees may require all persons attempting to purchase alternative nicotine or vapor products at retail to produce for inspection either:

1. a valid, current, Louisiana driver's license which contains a photograph of the person presenting the driver's license;

2. a valid, current, driver's license of another state which contains a photograph of the person and birth date of the person submitting the driver's license;

3. a valid, current, special identification card issued by the state of Louisiana pursuant to R.S. 40:1321 containing a photograph of the person submitting the identification card;

4. a valid, current, passport or visa issued by the federal government or another country or nation, that contains a permanently attached photograph of the person and the date of birth of the person submitting the passport or visa;

5. a valid, current, military or federal identification issued by the federal government containing a photograph of the person and date of birth of the person submitting the identification card;

6. a valid, current, special identification card of another state which contains a photograph of the person and birth date of the person submitting the identification card;

7. any digitized identification approved by the commissioner may be accepted by a retail dealer. Retail dealers may choose to accept digitized identification or they may still require a physical identification when checking identification. Retail dealers whom the agency has required to utilize scanners shall still be required to request and scan a physical identification and may not accept digitized identification. Digitized identification may be accepted by establishments provided that all employees have been properly trained prior to acceptance in accordance with the requirements of LAC 55:VII.401.D.

C. Each form of identification listed above must on its face establish the age of the person as 18 years or older, and there must be no reason to doubt the authenticity or correctness of the identification. No form of identification mentioned above shall be accepted as proof of age if it is expired, defaced, mutilated, or altered. If the state identification card or lawful identification submitted is a duplicate, the person shall submit additional information which contains the name, date of birth, and picture of the person. A duplicate driver's license shall be considered lawful identification for the purposes of this Subsection, and a person shall not be required to submit additional information containing the name, date of birth, and picture

of the person. In addition, an educational institution identification card, check cashing identification card, or employee identification card shall not be considered as lawful identification for the purpose of this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control LR 46:

Juana Marine-Lombard  
Commissioner

1912#006

## **DECLARATION OF EMERGENCY**

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

#### **2019 Commercial Gray Triggerfish Season Closure**

Louisiana's commercial gray triggerfish season was previously open from January 1, 2019 through May 31, 2019 with a seasonal closure from June 1 through July 31 of each year. The commercial season reopens on August 1 of each year. The regional administrator of NOAA Fisheries has informed the secretary that the 2019 commercial season for the harvest of gray triggerfish in the federal waters of the Gulf of Mexico will close November 26, 2019. Data indicate that the 2019 commercial annual catch target of 60,298 pounds is projected to be met. Compatible season regulations in state waters are preferable to provide effective rules and efficient enforcement for the fishery, and to prevent overfishing of the species in the long term.

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary by the commission in LAC 76.VII.335.G.5 to modify opening and closing dates of any commercial or recreational reef fish seasons in Louisiana state waters when he is informed by the regional administrator of NOAA fisheries that the seasons have been closed in adjacent federal waters, the secretary hereby declares:

The season for the commercial harvest of gray triggerfish in Louisiana state waters shall close at 12:01 a.m. on November 27, 2019 and shall remain closed until the start of the 2020 commercial season, currently scheduled to open on January 1, 2020. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell gray triggerfish whether within or without Louisiana waters. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing gray triggerfish taken legally prior to the closure shall

maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Jack Montoucet  
Secretary

1912#001

## **DECLARATION OF EMERGENCY**

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

#### **Closure of Sister Lake Public Oyster Seed Reservation**

In accordance with the emergency provisions of Louisiana Revised Statutes (R.S.) 49:953, under the authority of R.S. 56:433, and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on August 1, 2019, which authorized the secretary of the Department of Wildlife and Fisheries to take emergency action if oyster resources and/or reefs are being adversely impacted, notice is hereby given that the secretary does hereby declare that the harvest of oysters from the Sister Lake Public Oyster Seed Reservation shall close at one half hour after sunset on Monday, November 25, 2019.

The oyster population in the public oyster seed grounds has been in decline for several years and the recommended threshold in the Sister Lake public oyster seed grounds has been met. The closure is also necessary to protect undersized oysters, allowing growth for future harvest opportunities. Continued commercial harvest might threaten the long-term sustainability of remaining oyster resources in these areas. Protection of these remaining oyster resources from injury is in the best interest of this public oyster seed reservation.

Notice of any opening, delaying, or closing of a season will be provided by public notice at least 72 hours prior to such action, unless such closure is ordered by the Louisiana Department of Health for public health concerns.

Jack Montoucet  
Secretary

1912#003

## **DECLARATION OF EMERGENCY**

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

#### **Modification of the 2019 Private Recreational Red Snapper Season**

Louisiana's private recreational red snapper season was previously set by the Wildlife and Fisheries Commission at its regular meeting on May 2, 2019, to be open on weekends only (Friday, Saturday, and Sunday) including the Monday of Memorial Day and the fourth of July beginning on May 24, 2019. The recreational season was further modified to include the Monday of Labor Day (September 2, 2019) and closed on September 3, 2019. The season was then modified again to reopen on September 27, 2019, for weekends only, including Veterans Day, and remain open until further notice. LA Creel data indicate that harvest rates are such that the state recreational allocation may not be met during the previously announced weekends only season and a modification to a seven day per week season is warranted.

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary by the commission at its regular meeting on May 2, 2019, the secretary hereby declares:

The season for the private recreational harvest of red snapper in federal and state waters off Louisiana, previously opened on weekends only (Friday, Saturday, and Sunday) until further notice, is modified by opening on a seven day per week basis, beginning at 12:01 a.m. on Thursday, November 28, 2019 until 11:59 p.m. on December 31, 2019, or when LA Creel harvest estimates indicate the recreational red snapper quota is met or projected to be met.

Any closure shall prohibit the possession and/or landing of red snapper in Louisiana waters, except for federally permitted charter boats or commercial Individual Fishing Quota holders operating under federal law during federally established seasons and rules for those vessels.

Jack Montoucet  
Secretary

1912#002

# Rules

## RULE

### Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Urgent and Comprehensive Interventions (LAC 28:X1.911)

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:X1, *Bulletin 111—The Louisiana School, District, and State Accountability System*. The amendments require that academic improvement plans for schools identified as "urgent intervention required" or "comprehensive intervention required" be developed in consultation with parents of students enrolled in such schools and be presented to parents within the first 60 days of the school year, pursuant to Act 236 of the 2019 Regular Legislative Session. This Rule is hereby adopted on the day of promulgation.

#### Title 28

#### EDUCATION

##### Part XI. Accountability/Testing

##### Subpart 1. Bulletin 111—The Louisiana School, District, and State Accountability System

##### Chapter 9. Urgent Intervention and Comprehensive Intervention

##### §911. Required Interventions

A. In accordance with Louisiana's approved consolidated State plan under the Every Student Succeeds Act (ESSA), each LEA shall develop a plan that describes the goals, strategies, and monitoring processes that will be used to address the challenges of each school labeled "urgent intervention required" or "comprehensive intervention required" for approval according to timelines and procedures developed by the LDE. Such plan shall be developed in consultation with parents of students enrolled in such schools and shall remain in effect until such time as the school achieves established exit criteria set forth in §907 and §909 of this Part, or until an amended plan is required.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:457 (March 2018), amended LR 45:1744 (December 2019).

Shan N. Davis  
Executive Director

1912#036

## RULE

### Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices—LEAP 2025—Science and Biology (LAC 28:X1.6115 and 6813)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 118—Statewide Assessment Standards and Practices*. The revisions provide performance level cut scores for five achievement levels for the LEAP 2025 science assessments in grades 3-8 and high school biology assessments. Results will be incorporated into the 2018-2019 school performance scores, which will be released this fall. This Rule is hereby adopted on the day of promulgation.

#### Title 28

#### EDUCATION

##### Part XI. Accountability/Testing

##### Subpart 3. Bulletin 118—Statewide Assessment Standards and Practices

##### Chapter 61. Louisiana Educational Assessment Program 2025 (LEAP 2025)

##### Subchapter B. Achievement Levels and Performance Scores

##### §6115. Performance Standards

[Formerly LAC 28:CXI.1115]

A. Performance standards for LEAP English language arts, mathematics, science, and social studies tests are finalized in scaled-score form. The scaled scores range between 650 and 850 for English language arts, mathematics, science, and social studies.

##### 1. English Language Arts

English Language Arts						
Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8
Advanced	810-850	790-850	799-850	790-850	785-850	794-850
Mastery	750-809	750-789	750-798	750-789	750-784	750-793
Basic	725-749					
Approaching Basic	700-724					
Unsatisfactory	650-699					

##### 2. Mathematics

Mathematics						
Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8
Advanced	790-850	796-850	790-850	788-850	786-850	801-850
Mastery	750-789	750-795	750-789	750-787	750-785	750-800
Basic	725-749					
Approaching Basic	700-724					
Unsatisfactory	650-699					

### 3. Science

Science						
Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8
Advanced	773-850	778-850	781-850	782-850	790-850	782-850
Mastery	750-772	750-777	750-780	750-781	750-789	750-781
Basic	725-749	725-749	725-749	725-749	725-749	725-749
Approaching Basic	698-724	704-724	698-724	701-724	702-724	694-724
Unsatisfactory	650-697	650-703	650-697	650-700	650-701	650-693

### 4. Social Studies

Social Studies						
Achievement Level	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8
Advanced	777-850	783-850	782-850	773-850	777-850	780-850
Mastery	750-776	750-782	750-781	750-772	750-776	750-779
Basic	725-749	725-749	725-749	725-749	725-749	725-749
Approaching Basic	695-724	696-724	700-724	698-724	704-724	700-724
Unsatisfactory	650-694	650-695	650-699	650-697	650-703	650-699

#### B. - C.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:391.4(A).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1536 (July 2005), amended LR 32:235 (February 2006), LR 42:225 (February 2016), LR 43:2475 (December 2017), LR 44:468 (March 2018), repromulgated LR 44:1424 (August 2018), amended LR 45:1744 (December 2019).

#### Chapter 68. LEAP 2025 Assessments for High School Subchapter B. Achievement Levels and Performance Standards

##### §6813. Performance Standards [Formerly LAC 28:CXL1813]

#### A. - B.4. ...

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### 5. Biology Scaled-Score Ranges

Biology	
Achievement Level	Scale Score Ranges
Advanced	772-850
Mastery	750-771
Basic	725-749
Approaching Basic	707-724
Unsatisfactory	650-706

### 6. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:215 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:35 (January 2012), LR 39:76 (January 2013), LR 39:2444 (September 2013), LR 44:470 (March 2018), LR 44:2129 (December 2018), LR 45:1745 (December 2019).

Shan N. Davis  
Executive Director

1912#035

## RULE

### Board of Elementary and Secondary Education

#### Bulletin 139—Louisiana Child Care and Development Fund Programs—CCAP Household Eligibility (LAC 28:CLXV.319 and 515)

In accordance with R.S. 17:6 and R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 139—Louisiana Child Care and Development Fund Programs*. The amendments add an exception to the existing prohibition for caregivers to receive CCAP payments for children in their custody for a caregiver who serves as an eligible CCAP provider, in order for such provider to receive CCAP payments for the foster child who is cared for through the program. The amendments also establish separate rates for the care of infants and toddlers, recognizing increased costs for infant care, and provide for a special needs rate above the base rate. This Rule is hereby adopted on the day of promulgation.

#### Title 28

#### EDUCATION

#### Part CLXV. Bulletin 139—Louisiana Child Care and Development Fund Programs

##### Chapter 3. CCAP Provider Certification

##### §319. Caregiver's Ineligibility for CCAP Payments

A. A caregiver, even if certified to receive CCAP, may not receive CCAP payments for the caregiver's own children or other children in the caregiver's custody.

1. Exception. A caregiver may receive CCAP payments for foster children in the caregiver's custody.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR part 98 and R.S. 17:6 and 17:407.26.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2114 (October 2015), amended LR 45:1745 (December 2019).

##### Chapter 5. CCAP Household Eligibility

##### §515. Payments Made on Behalf of Households

A. The state maximum daily rates for CCAP care are as follows.

Child Care Provider Type	Regular Care	Regular Care for Toddlers	Regular Care for Infants	Special Needs Care Incentive	Special Needs Care Incentive for Toddlers	Special Needs Care Incentive for Infants
Type III Early Learning Center	\$22.00	\$23.75	\$25.00	\$27.72	\$29.93	\$31.50
School Child Care Center	\$16.50	\$16.50	\$16.50	\$20.79	\$20.79	\$20.79
Family Child Care Provider	\$17.00	\$18.00	\$18.00	\$21.42	\$22.68	\$22.68
In-Home Provider	\$17.50	\$17.50	\$17.50	\$22.05	\$22.05	\$22.05
Military Child Care Centers	\$22.00	\$23.75	\$25.00	\$27.72	\$29.93	\$31.50



B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR parts 98 and 99 and R.S. 17:6 and 17:407.28.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2116 (October 2015), amended LR 42:44 (January 2016), LR 42:1870 (November 2016), LR 44:801 (April 2018), LR 45:1745 (December 2019).

Shan N. Davis  
Executive Director

1912#033

## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—High School Crisis Management and Response Plans; Suicide Prevention; and Student Financial Management  
(LAC 28: CXV.339, 1127, 2305, and 2319)

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*. The amendments require student input in the annual review of high school crisis management and response plans in accordance with Act 44 of the 2019 Regular Legislative Session; update suicide prevention training requirements for school teachers, school counselors, principals, and other school administrators, in accordance with Act 93 of the 2019 Regular Legislative Session; require information relative to student borrowing for postsecondary education as a required component of instruction in personal financial management, in accordance with Act 116 of the 2019 Regular Legislative Session; and make technical edits to policy approved by BESE in June 2019 to career diploma and TOPS university diploma. The Rule is hereby adopted on the day of promulgation.

## Title 28 EDUCATION

### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 3. Operation and Administration §339. Emergency Planning and Procedures

A. Each public school principal or school leader shall have written policies and procedures developed jointly with local law enforcement, fire, public safety, and emergency preparedness officials, that address the immediate response to emergency situations that may develop in the schools and comply with the requirements in R.S. 17:416.16. The principal or school leader shall:

1. ...
2. annually review and possibly revise the crisis management and response plan:
  - a. when conducting the annual review of the crisis management and response plan for a high school, the school principal shall seek and consider input from the students enrolled in the school who shall be represented by either the president of the senior class or the president of the student council and at least one other responsible student selected by the principal; and

3. within 30 days of each school year, conduct a safety drill to rehearse the plan.

B. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:154.1, and 17:416.16.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1262 (June 2005), amended LR 39:3258 (December 2013), LR 41:372 (February 2015), LR 45:36 (January 2019), LR 45:1746 (December 2019).

### Chapter 11. Student Services

#### §1127. Preventive Programs

A. - C. ...

D. Teachers, school counselors, principals and certain other school administrators in public elementary and secondary schools shall receive two hours of annual in-service training in suicide prevention. The training shall address the following:

1. increasing awareness of risk factors, including, but not limited to the following:
  - a. mental health and substance abuse conditions;
  - b. childhood abuse, neglect, and trauma;
  - c. potential causes of stress, such as bullying, harassment, and relationship problems;
  - d. secondary trauma from a suicide or sensationalized or graphic accounts of suicide in media; and
  - e. history of suicide attempts and related family history;
2. responding to suspicious behavior or warning signs exhibited by students;
3. responding to crisis situations in which a student is an imminent danger to himself;
4. policies and protocol for communication with parents, including specifications for circumstances in which parental notification is not in the best interest of the student;
5. counseling services available within the school for students and their families related to suicide prevention;
6. information concerning crisis intervention, suicide prevention, and mental health services in the community for students and their families and school employees;
7. community organizations and agencies for referral of students to health, mental health, substance abuse, and social support services, including development of at least one memorandum of understanding between the school system and such an entity in the community or region.

E. By no later than the 2020-2021 school year, the governing authority of each public secondary school that issues student identification cards shall have printed on the cards the following information:

1. the National Suicide Prevention Lifeline hotline number; and
2. a local suicide prevention hotline number, if available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:13.1, 17:283, and 17:403.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1278 (June 2005), amended LR 39:2208 (August 2013), LR 45:1746 (December 2019).

### Chapter 23. Curriculum and Instruction

#### Subchapter A. Standards and Curricula

#### §2305. Ancillary Areas of Instruction

A. ...

B. Each public school student shall receive age- and grade-appropriate instruction in personal financial management based on the concept of achieving financial literacy through the teaching of personal management skills and the basic principles involved with income, money management, spending and credit, saving and investing, and the process and responsibilities, including repayment and default, of borrowing money to fund postsecondary education opportunities. Such instruction may be integrated into an existing course of study.

C. - M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:81, 17:154, 17:261 et seq., 17:263, 17:270, 17:280, 17:281 et seq., 17:404, and 17:405 et seq., and 36 USC 106.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1288 (June 2005), amended LR 33:2353 (November 2007), LR 39:2214 (August 2013), LR 39:3259 (December 2013), LR 40:2531 (December 2014), LR 44:1443 (August 2018), LR 44:1868 (October 2018), LR 45:36 (January 2019), LR 45:1746 (December 2019).

### **§2319. The Career Diploma**

A. - C.1.h. ...

2. The minimum course requirements for a career diploma for incoming freshmen in 2014-2015 and beyond shall be the following:

- a. English—4 units:
  - i. one of the following:
    - (a). English I;
    - (b). English language part 1: Cambridge IGCSE; or
    - (c). English literature part 1: Cambridge IGCSE.
  - ii. one of the following:
    - (a). English II;
    - (b). English language part 2: Cambridge IGCSE; or
    - (c). English literature part 2: Cambridge IGCSE.
  - iii. the remaining units shall come from the following:
    - (a). - (c). ...
    - (d). English language part 1: Cambridge AICE—AS (honors);
    - (e). literature in English part 1: Cambridge AICE—AS (honors);
    - (f). English IV;
    - (g). any AP or IB English course;
    - (h). English language part 2: Cambridge AICE—AS (honors);
    - (i). Literature in English part 1: Cambridge AICE—AS (honors); or
    - (j). comparable Louisiana technical college courses offered by Jump Start regional teams as approved by BESE;
- b. - b.ii.(n). ...
  - (o). additional math—Cambridge IGCSE; or
  - (p). math 1 (pure math): Cambridge AICE—AS (honors);
- c. - c.ii.(e). ...
  - (f). PLTW principles of engineering;
  - (g). any AP or IB science course;
  - (h). physics I: Cambridge IGCSE;
  - (i). biology II: Cambridge AICE—AS (honors);
  - (j). chemistry II: AICE—AS (honors); or
  - (k). physics II: Cambridge AICE—AS (honors);
- 2.d. - 4....

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:24.4, 17:183.2, 17:183.3, 17:274, 17:274.1, and 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (July 2009), LR 35:1876 (September 2009), LR 35:2321 (November 2009), LR 35:2750 (December 2009), LR 36:1490 (July 2010), LR 37:548 (February 2011), LR 37:1130 (April 2011), LR 37:2130 (July 2011), LR 37:3197 (November 2011), LR 38:761 (March 2012), LR 38:1005 (April 2012), LR 40:2522 (December 2014), LR 41:1482 (August 2015), LR 41:2594 (December 2015), LR 42:232 (February 2016), LR 43:1287 (July 2017), LR 43:2132 (November 2017), LR 43:2484 (December 2017), LR 44:1868 (October 2018), LR 45:1747 (December 2019).

Shan N. Davis  
Executive Director

1912#034

## **RULE**

### **Board of Elementary and Secondary Education**

Bulletin 741 (Nonpublic)—Louisiana Handbook for  
Nonpublic School Administrators  
Suicide Prevention (LAC 28:LXXIX.1309)

Under the authority granted in R.S. 17:6 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators*. The amendments update suicide prevention training requirements for school teachers, school counselors, principals, and other school administrators, in accordance with Act 93 of the 2019 Regular Legislative Session. This Rule is hereby adopted on the day promulgation.

## **Title 28**

## **EDUCATION**

### **Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for**

### **Nonpublic School Administrators**

### **Chapter 13. Preventive Programs**

### **§1309. Suicide Prevention**

A. Teachers, school counselors, principals and certain other school administrators in approved nonpublic elementary and secondary schools will receive two hours of annual in-service training in suicide prevention. Instruction may be provided by self-review of suitable materials. The training shall address the following:

1. increasing awareness of risk factors, including, but not limited to the following:

- a. mental health and substance abuse conditions;
- b. childhood abuse, neglect, and trauma;
- c. potential causes of stress, such as bullying, harassment, and relationship problems;
- d. secondary trauma from a suicide or sensationalized or graphic accounts of suicide in media; and

e. history of suicide attempts and related family history;

2. responding to suspicious behavior or warning signs exhibited by students;

3. responding to crisis situations in which a student is an imminent danger to himself;

4. policies and protocol for communication with parents, including specifications for circumstances in which parental notification is not in the best interest of the student;

5. counseling services available within the school for students and their families related to suicide prevention;

6. information concerning crisis intervention, suicide prevention, and mental health services in the community for students and their families and school employees;

7. community organizations and agencies for referral of students to health, mental health, substance abuse, and social support services, including development of at least one memorandum of understanding between the school system and such an entity in the community or region.

B. By no later than the 2020-2021 school year, the governing authority of each public secondary school that issues student identification cards shall have printed on the cards the following information:

1. the National Suicide Prevention Lifeline hotline number; and

2. a local suicide prevention hotline number, if available.

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, 17:411, and 17:437.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 45:38 (January 2019), amended LR 45:1747 (December 2019).

Shan N. Davis  
Executive Director

1912#032

## RULE

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Certifications and Endorsements  
(LAC 28:CXXXI.Chapter 3, 803, and 904)

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:CXXXI, *Bulletin 746—Louisiana Standards for State Certification of School Personnel*. The amendments update requirements for certification, hiring, and dismissal of teacher and other school employees with respect to criminal history determinations, in accordance with Act 387 of the 2019 Regular Legislative Session. The amendments also update certification requirements for applicants who complete an approved teacher education program in Louisiana, in accordance with Act 388 of the 2019 Regular Legislative Session. This Rule is hereby adopted on the day of promulgation.

## Title 28

## EDUCATION

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

#### Chapter 3. Teaching Authorizations and Certifications

##### Subchapter A. Standard Teaching Authorizations

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.

##### §305. Professional Level Certificates

A. - A.1.a.i.(a). ...

(b). have a minimum 2.50 undergraduate grade point average (GPA) on a 4.00 scale;

(c). an applicant who does not meet the requirement of Subparagraph b of this Paragraph may be certified if he meets the following requirements in an alternate teacher preparation program:

i. satisfactorily complete a personal interview by the program's admissions officer;

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program;

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice;

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation;

(d). present appropriate scores on the NTE core battery (common exams) or the corresponding Praxis exams (core academic skills for educators in reading, writing, and mathematics); the principles of learning and teaching (PLT) or other pedagogy exam required for the area(s) of certification as specified in §203 of this Part; and the specialty area exam in the certification area in which the teacher preparation program was completed or in which the initial certificate was; and

(e). be recommended by a state-approved university or private program provider for certification;

A.1.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 45:1748 (December 2019).

##### §313. Practitioner Licenses

A. - B.1.a. ...

b. 2.50 or higher undergraduate grade point average (GPA) on a 4.00 scale to enter a non-university provider program; or a 2.20 or higher undergraduate grade point

average (GPA) on a 4.00 scale to enter a college or university program; or be granted conditional admittance into an alternate teacher preparation program following a satisfactory personal interview by the program admission officer; and

1.c. - 4.b. ...

c. an applicant who does not meet the requirement of Subparagraph b of this Paragraph may be certified if he meets the following requirements in an alternate teacher preparation program:

i. satisfactory completion a personal interview by the program admissions officer;

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program;

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice;

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation;

d. demonstrated proficiency in reading and literacy competencies through successfully completing the required number of credit or contact hours in reading and literacy as specified in LAC 28:XLV (Bulletin 996) or passing a reading competency assessment. The reading competency assessment for early childhood PK-3, elementary 1-5, and special education candidates is the Praxis teaching reading exam (#0206 or #5206). The current required score is 156. (Middle grades 4-8 and secondary grades 6-12 will be required to take the required reading course credit hours or equivalent contact hours until an appropriate reading competency assessment is developed and adopted.); and

e. completed prescriptive plans, if need was determined by the preparation provider.

C. - C.1.a. ...

b. 2.50 or higher grade point average (GPA) on a 4.00 scale to enter a non-university provider program; or a 2.20 or higher grade point average (GPA) on a 4.00 scale to enter a college or university program; or be granted conditional admittance into a preparation program following a satisfactory personal interview by the program admission officer; and

1.c. - 4.b. ...

c. an applicant who does not meet the requirement of Subparagraph b of this Paragraph may be certified if he meets the following requirements in an alternate teacher preparation program:

i. satisfactory completion a personal interview by the program admissions officer;

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program;

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school

system in which the applicant completes required clinical practice;

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation;

d. demonstrated proficiency in reading and literacy competencies through successfully completing the required number of credit or contact hours in reading and literacy as specified in LAC 28:XLV (Bulletin 996) or passing a reading competency assessment. The reading competency assessment for early childhood PK-3, elementary 1-5, and special education candidates is the Praxis Teaching Reading exam (#0206 or #5206). The current required score is 156 (Middle grades 4-8 and secondary grades 6-12 will be required to take the required reading course credit hours or equivalent contact hours until an appropriate reading competency assessment is developed and adopted.);

D. - D.1.a. ...

b. 2.50 GPA on a 4.00 scale or be granted conditional admittance into a preparation program following a satisfactory personal interview by the program's admission officer; and

1.b. - 4.b. ...

c. an applicant who does not meet the requirement of subparagraph (b) of this paragraph may be certified if he meets the following requirements in an alternate teacher preparation program:

i. satisfactory completion a personal interview by the program admissions officer.

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program.

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice.

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation.

d. demonstrated proficiency in reading and literacy competencies through successfully completing the required number of credit or contact hours in reading and literacy as specified in LAC 28:XLV (Bulletin 996) or passing a reading competency assessment. The reading competency assessment for early childhood PK-3, elementary 1-5, and special education candidates is the Praxis teaching reading exam #0206 or #5206). The current required score is 156. (Middle grades 4-8 and secondary grades 6-12 will be required to take the required reading course credit hours or equivalent contact hours until an appropriate reading competency assessment is developed and adopted.)

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).

## Subchapter B. Nonstandard Teaching Authorizations

### §323. Temporary Authority to Teach (TAT)

A. - B.3.a. ...

4. The applicant must have at least a 2.20 GPA.

C. - D.1.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 32:1803 (October 2006), amended LR 36:2547 (November 2010), LR 40:280 (February 2014), LR 44:2000 (November 2018), LR 45:1750 (December 2019).

## Chapter 8. Certification Appeal Process

### §803. Appeal Process

A. - A.3.a. ...

b. lack a minimum grade point average of 2.50 for initial certification and who did not meet the conditional admittance and program requirements as outlined in R.S. 17:7.1(A)(3); or

A.3.c. - A.4. ...

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 32:1829 (October 2006), amended LR 36:487 (March 2010), LR 38:3140 (December 2012), LR 43:1314 (July 2017), LR 44:2002 (November 2018), LR 45:1750 (December 2019).

## Chapter 9. Actions Related to the Suspension/Denial and Revocation of Louisiana Certificates

### §904. Criminal History Reporting [Formerly §903.B-C]

A. - A.1. ...

2. misdemeanor and felony offenses which include, but are not limited to, offenses defined in the following table;

Criminal Offenses	
R.S. 40:966(A)	Penalty for Distribution or Possession with intent to Distribute Narcotic Drugs Listed in Schedule I; Manufacture; Distribution
R.S. 40:967(A)	Prohibited Acts; Schedule II, Penalties; Manufacture; Distribution
R.S. 40:968(A)	Prohibited Acts; Schedule III; Penalties; Manufacture; Distribution
R.S. 40:969(A)	Prohibited Acts; Schedule IV; Penalties; Manufacture; Distribution
R.S. 40:970(A)	Prohibited Acts; Schedule V; Penalties; Manufacture; Distribution

3. misdemeanor and felony offenses which include, but are not limited to, offenses defined in the following table, for which issuance or reinstatement of a certificate will never be considered;

Prohibited Criminal Offenses	
R.S. 14:2(B)	Crimes of Violence
R.S. 14:30	First Degree Murder
R.S. 14:30.1	Second Degree Murder
R.S. 14:31	Manslaughter
R.S. 14:32.6	First Degree Feticide
R.S. 14:32.7	Second Degree Feticide
R.S. 14:32.8	Third Degree Feticide
R.S. 14:41	Rape
R.S. 14:42	1st Degree Rape
R.S. 14:42.1	2nd Degree Rape

Prohibited Criminal Offenses	
R.S. 14:43	3rd Degree Rape
R.S. 14:43.1	Sexual battery
R.S. 14:43.1.1	Misdemeanor Sexual Battery
R.S. 14:43.2	2nd degree Sexual Battery
R.S. 14:43.3	Oral Sexual Battery
R.S. 14:43.4	Female Genital Mutilation
R.S. 14:43.5	Intentional Exposure to the AIDS Virus
R.S. 14:44	Aggravated Kidnapping
R.S. 14:44.1	Second Degree Kidnapping
R.S. 14:44.2	Aggravated Kidnapping of a Child
R.S. 14:45	Simple Kidnapping
R.S. 14:46.2	Human Trafficking
R.S. 14:46.3	Trafficking of Children for Sexual Purposes
R.S. 14:46.4	Rehoming of a Child
R.S. 14:74	Criminal Neglect of Family
R.S. 14:79.1	Criminal Abandonment
R.S. 14:80	Felony Carnal Knowledge of a Juvenile
R.S. 14:80.1	Misdemeanor Carnal Knowledge of a Juvenile
R.S. 14:81	Indecent Behavior with a Juvenile
R.S. 14:81.1	Pornography Involving Juveniles
R.S. 14:81.2	Molestation of a Juvenile or a Person with a Physical or Mental Disability
R.S. 14:81.3	Computer-aided Solicitation of a Minor
R.S. 14:81.4	Prohibited Sexual Conduct between Educator and Student
R.S. 14:82	Prostitution
R.S. 14:82.1	Prostitution; Persons under 17; Additional Offenses
R.S. 14:82.1.1	Sexting
R.S. 14:82.2	Purchase of Commercial Sexual Activity
R.S. 14:83	Soliciting for Prostitutes
R.S. 14:83.1	Inciting Prostitution
R.S. 14:83.2	Promoting Prostitution
R.S. 14:83.3	Prostitution by Massage
R.S. 14:83.4	Massage; sexual Content Prohibited
R.S. 14:84	Pandering
R.S. 14:85	Letting Premises for Prostitution
R.S. 14:86	Enticing Persons into Prostitution
R.S. 14:89	Crime Against Nature
R.S. 14:89.1	Aggravated Crime against Nature
R.S. 14:89.2	Crime against Nature by Solicitation
R.S. 14:92	Contributing to the Delinquency of Juveniles
R.S. 14:93	Cruelty to Juveniles
R.S. 14:93.2.1	Child Desertion
R.S. 14:93.3	Cruelty to the Infirm
R.S. 14:93.5	Sexual Battery of Persons with Infirmities
R.S. 14:106	Obscenity
R.S. 14:282	Operation of Places of Prostitution
R.S. 14:283	Video Voyeurism
R.S. 14:283.1	Voyeurism
R.S. 14:284	Peeping Tom
R.S. 14:286	Sale of Minor Children
R.S. 15:541	Sex Offenses

4. in accordance with R.S. 17:7, certification issuance or reinstatement may be considered, where not prohibited in other statute, for a person who was employed as a school administrator, teacher, or substitute teacher and whose final conviction or plea of *nolo contendere* to any misdemeanor or felony offense provided in the following table occurred on or before August 1, 2019.

Criminal Offenses	
R.S. 14:2(B)	Crimes of Violence
R.S. 14:74	Criminal Neglect of Family
R.S. 14:79.1	Criminal Abandonment
R.S. 14:82.1.1	Sexting
R.S. 14:82.2	Purchase of Commercial Sexual Activity
R.S. 14:83	Soliciting for Prostitutes
R.S. 14:83.1	Inciting Prostitution

Criminal Offenses	
R.S. 14:83.2	Promoting Prostitution
R.S. 14:83.3	Prostitution by Massage
R.S. 14:83.4	Massage; sexual Content Prohibited
R.S. 14:85	Letting Premises for Prostitution
R.S. 14:89.2	Crime against Nature by Solicitation
R.S. 14:93.2.1	Child Desertion
R.S. 14:282	Operation of Places of Prostitution
R.S. 14:283.1	Voyeurism
R.S. 14:284	Peeping Tom
R.S. 15:541	Sex Offenses

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.1, 17:6, and 17:15.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 45:1750 (August 2019), amended LR 45:1750 (December 2019).

Shan N. Davis  
Executive Director

1912#031

## RULE

### Board of Elementary and Secondary Education

Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs  
Quality Rating Calculation (LAC 28:XLV.745)

Under the authority granted in R.S. 17:6 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs*. The amendments update certification requirements for applicants who complete an approved teacher education program in Louisiana, in accordance with Act 388 of the 2019 Regular Legislative Session. 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. - E.3. ...

F. To be admitted into an alternate teacher preparation program, candidates must meet the following requirements:

1. possess a non-education baccalaureate degree from a regionally-accredited university;
2. meet minimum GPA requirements:
  - a. 2.50 or higher undergraduate grade point average (GPA) on a 4.00 scale to enter a non-university program;
  - b. 2.20 or higher undergraduate GPA on a 4.00 scale to enter a college or university program;
  - c. an applicant who does not meet the requirements of Subparagraph a or b of this Paragraph may be certified if

he meets the following requirements in an alternate teacher preparation program:

i. satisfactory completion a personal interview by the program admissions officer;

ii. if the program awards credit hours, the applicant shall achieve a minimum grade point average (GPA) of 3.00 in alternate teacher preparation program courses by the end of the first 12 credit hours and successfully complete the program;

iii. if the program does not award credit hours, the applicant shall demonstrate mastery of competencies as required by the program administrator and by the school system in which the applicant completes required clinical practice;

iv. satisfactory completion all program requirements as set forth by BESE, including any requirements for clinical practice, at graduation;

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).

Shan N. Davis  
Executive Director

1912#030

## RULE

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

Industrial Radiography  
(LAC 33:XV.102, and Chapter 5)(RP063)

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 Radiation Protection regulations, LAC 33:XV.102. 503, 542, 547, 550, 551, 573, 575, 576, 579, 587, 588, 590, and 599 (RP063).

This Rule makes revisions to the industrial radiographer regulations. Presently, the department lists industrial radiographer instructors on each radioactive materials license issued. The revisions will allow the department to issue industrial radiographer cards, which indicate instructor status on the card. This revision will negate the requirement to amend a license every time a radiographer attains instructor status. These revisions will be made to more closely align Louisiana with the Nuclear Regulatory Commission regulations. These changes were prompted by informal requests received from the industrial radiography industry. The basis and rationale for this Rule are to enable the state to issue industrial radiographer instructor cards and maintain an adequate agreement state program. 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 XV. Radiation Protection**

**Chapter 1. General Provisions**

**§102. Definitions and Abbreviations**

A. As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain chapter may be found in that Chapter.

\* \* \*

*Sealed Source*—any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

\* \* \*

*Sievert (Sv)*—the SI unit of any of the quantities expressed as dose equivalent; it is equal to one Joule per kilogram. One Rem is equal to 0.01 Sievert. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems).

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), LR 24:2089 (November 1998), repromulgated LR 24:2242 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2563 (November 2000), LR 26:2767 (December 2000), LR 30:1171, 1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:811 (May 2006), LR 32:1853 (October 2006), LR 33:1016 (June 2007), LR 33:2175 (October 2007), LR 34:982 (June 2008), LR 36:1771 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:283 (February 2014), LR 40:1338 (July 2014), LR 40:1926 (October 2014), LR 41:1276 (July 2015), LR 41:2321 (November 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:2137 (December 2018), LR 45:1752 (December 2019).

**Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations**

**§501. Purpose**

A. The regulations in this Chapter establish radiation safety requirements for persons utilizing sources of radiation for industrial radiography. The requirements of this Chapter are in addition to, and not in substitution for, applicable requirements of LAC 33:XV.Chapters 1, 2, 3, 4, 10, 15, and 16.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1752 (December 2019).

**§503. Definitions**

A. As used in this Chapter, the following definitions apply.

\* \* \*

*Collimator*—a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is cranked into position to make a radiographic exposure.

\* \* \*

*Industrial Radiography*—the examination of the structure of materials by nondestructive methods utilizing ionizing radiation to produce radiographic images.

\* \* \*

*Radiographer*—any individual who performs or who, in attendance at the site where the sealed source or sources are being used, is responsible to the licensee for assuring compliance with the requirements of the department's regulations and the conditions of the license, and has successfully completed the training, testing, and documentation requirements contained in LAC 33:XV.575.A.

*Radiographer Certification*—written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety, testing, and experience criteria.

\* \* \*

*Shielded Position*—the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement.

\* \* \*

*Storage Container*—a container in which one or more sealed sources are secured and stored.

*Temporary Job Site*—any location where radiographic operations are conducted and where licensed material may be stored other than those location(s) of use authorized on the license or registration certificate for non-licensed sources of radiation.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2581 (November 2000), LR 26:2772 (December 2000), LR 27:1231 (August 2001), LR 29:34 (January 2003), LR 30:1189 (June 2004), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1752 (December 2019).

**Subchapter A. Equipment Control**

**§542. Storage and Transportation Precautions**

A. ...

B. The licensee may not use a source changer or a container to store licensed material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional

colors, (i.e., magenta, purple, or black on a yellow background) having a minimum diameter of 25 mm, and the wording

CAUTION\*  
RADIOACTIVE MATERIAL  
NOTIFY CIVIL AUTHORITIES (or "NAME OF COMPANY")  
\* \_\_\_\_\_ or "DANGER".

Radiographic exposure devices, source changers, or transport containers that contain radioactive material shall not be stored in residential locations. This requirement does not apply to storage of radioactive material in a vehicle in transit for use at temporary job sites, if the licensee complies with Subsection C of this Section, and if the vehicle does not constitute a permanent storage location as described in Subsection D of this Section.

C. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1232 (August 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1752 (December 2019).

**§547. Inspection and Maintenance of Radiographic Exposure Devices and Storage Containers**

A. The licensee or registrant shall perform visual and operability checks on survey meters, radiation machines, radiographic exposure devices, transport and storage containers, source changers, and associated equipment prior to each day's use, or work shift, to ensure that:

1. the equipment is in good working condition;
2. - 3. ...

B. Each licensee or registrant shall have written procedures for and perform inspections at intervals not to exceed three months, or before first use thereafter, and routine maintenance of radiation machines, radiographic exposure devices, source changers, transport and storage containers, and associated equipment to ensure proper functioning of components important to safety. All appropriate parts shall be maintained in accordance with manufacturer's specifications. The licensee's inspection and maintenance program must include procedures to ensure that Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.

C. ...

D. Survey instrument operability shall be performed using check sources or other appropriate means. If equipment problems are found, the equipment shall be removed from service until repaired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2582 (November 2000), LR 27:1234 (August 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1753 (December 2019).

**§550. Performance Requirements for Radiography Equipment**

A. Equipment serviced, maintained, or repaired by a licensee or registrant or used in industrial radiographic operations shall meet the following minimum criteria:

1. each radiographic exposure device, source assembly, or sealed source, and all associated equipment shall meet the requirements specified in American National Standard Institute (ANSI) N432-1980 Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography, (published as *NBS Handbook 136*, issued January 1981). This publication has been approved for incorporation by reference by the director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This publication may be purchased from the American National Standards Institute, Inc., 25 West 43rd Street, New York, New York 10036; telephone: (212) 642-4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission Library, 11545 Rockville Pike, Rockville, Maryland 20852. A copy of the document is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Engineering analyses may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the department may find this an acceptable alternative to actual testing of the component in accordance with the referenced standard;

2. in addition to the requirements specified in Paragraph A.1 of this Section, the following requirements apply to radiographic exposure devices, source changers, source assemblies, associated equipment, and sealed sources:

a. the licensee shall ensure that each radiographic exposure device has attached to it, a durable, legible, clearly visible label bearing the following:

- i. - ii. ...
- iii. model number (or product code) and serial number of the sealed source;
- iv. manufacturer's identity of the sealed source; and

v. ...

b. radiographic exposure devices intended for use as Type B transport containers shall meet the applicable requirements of LAC 33:XV.Chapter 15; and

c. modification of radiographic exposure devices, source changers, source assemblies, and associated equipment is prohibited, unless the design of any replacement component, including source holder, source assembly, controls, or guide tubes would not compromise the design safety features of the system;

3. in addition to the requirements specified in Paragraphs A.1 and 2 of this Section, the following requirements apply to radiographic exposure devices, source assemblies, and associated equipment that allow the source to be moved out of the device for radiographic operations or to source changers:



a. the coupling between the source assembly and the control cable shall be designed in such a manner that the source assembly will not become disconnected if extended outside the guide tube. The coupling shall be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions;

b. the device shall automatically secure the source assembly when it is retracted back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device;

c. the outlet fittings, lock box, and drive cable fittings on each radiographic exposure device shall be equipped with safety plugs or covers which shall be installed during storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter;

d. each sealed source or source assembly shall have attached to it or engraved on it, a durable, legible, visible label with the words: "DANGER-RADIOACTIVE." The label shall not interfere with the safe operation of the exposure device or associated equipment;

e. the guide tube must have passed the crushing tests for the control tube as specified in ANSI N432 and shall be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces likely to be encountered during use;

f. guide tubes shall be used when moving the source out of the device;

g. an exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube shall be attached to the outermost end of the guide tube during industrial radiographic operations;

h. the guide tube exposure head connection shall be able to withstand the tensile test for control units specified in ANSI N432-1980;

i. source changers shall provide a system for ensuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly;

j. - k. ...

4. all newly manufactured radiographic exposure devices and associated equipment acquired by licensees or registrants after the effective date of these regulations shall comply with the requirements of LAC 33:XV.550; and

5. all radiographic exposure devices and associated equipment in use after January 10, 1996, shall comply with the requirements of LAC 33:XV.550.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 21:554 (June 1995), LR 23:1138 (September 1997), LR 24:2100 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), amended by the Office of the Secretary, Legal Division, LR 40:1928 (October 2014), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1753 (December 2019).

## **§551. Notifications**

A. Each licensee or registrant shall provide a written report to the Office of Environmental Compliance within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

1. unintentional disconnection of the source assembly from the control cable;

2. inability to retract the source assembly to its fully shielded position and secure it in this position; or

3. failure of any component (critical to safe operation of the device) to properly perform its intended function.

B. The licensee or registrant shall include the following information in each report required by Subsection D of this Section and in each report of overexposure submitted under LAC 33:XV.487 that involves failure of safety components of radiography equipment:

1. a description of the equipment problem;

2. cause of each incident, if known;

3. manufacturer and model number of equipment involved in the incident;

4. place, time, and date of the incident;

5. actions taken to establish normal operations;

6. corrective actions taken or planned to prevent recurrence; and

7. qualifications of personnel involved in the incident.

C. Any licensee conducting radiographic operations or storing radioactive material at any location not listed on the license for a period in excess of 180 days in a calendar year, shall notify the Office of Environmental Compliance prior to exceeding the 180 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1754 (December 2019).

## **Subchapter B. Personal Radiation Safety Requirements for Radiographers**

### **§573. Conducting Industrial Radiographic Operations**

A. - D. ...

E. A radiation safety officer (RSO) shall be designated for every industrial radiography license and certificate of registration, or license condition specifying such, issued by the department. The RSO's minimum qualifications, training, and experience shall include:

1. ...

2. completion of the training and testing requirements of LAC 33:XV.575;

3. two years of documented radiation protection experience, including knowledge of industrial radiographic operations, with at least 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

4. formal training in the establishment and maintenance of a radiation protection program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:1234 (August 2001), amended LR 28:1951 (September 2002), LR 29:34 (January 2003), amended by the Office of the Secretary, Legal Division, LR

40:1342 (July 2014), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1754 (December 2019).

## **§575. Training and Testing**

A. ...

1. The individual shall receive training in the subjects outlined in LAC 33:XV.599.Appendix A, in addition to a minimum of two months of on-the-job training, and shall be certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in LAC 33:XV.599.Appendices A, B, and C.

2. The individual shall demonstrate understanding of the licensee's license, and operating and emergency procedures by successful completion of a written or oral examination covering this material.

a. The hours of on-the-job training do not include safety meetings or classroom training or the use of a cabinet X-ray unit.

b. The current Form DRC-20, available from the department or the department's website, must be submitted to the Office of Environmental Compliance documenting the on-the-job training.

3. The individual shall receive copies of and instruction in the regulations contained in this Chapter and the applicable sections of LAC 33:XV.Chapters 4, 10, 15, and 16, the license(s) under which the radiographer will perform industrial radiography, and the licensee's or registrant's operating and emergency procedures.

4. The individual shall receive training in the use of the licensee's radiographic exposure devices, sealed sources, and radiation survey instruments, and in the daily inspection of devices and associated equipment that may be employed in his assignment.

5. The individual shall demonstrate understanding of the use of radiographic exposure devices, sources, survey instruments, and associated equipment described in Paragraphs A.3 and 4 of this Section by successful completion of a practical examination covering this material.

6. ...

7. The individual shall have in his or her possession a valid radiographer certification card issued by the department, another agreement state, the U.S. Nuclear Regulatory Commission, or the American Society of Non-Destructive Testing (ASNT).

B. ...

1. The individual shall receive:

a. copies of and instruction in the regulations contained in this Chapter and the applicable sections of LAC 33:XV.Chapters 4, 10, 15, and 16;

b. the license(s) under which the radiographer trainee will perform industrial radiography; and

c. the licensee's or registrant's operating and emergency procedures.

2. The individual shall develop competence to use, under the personal supervision of the radiographer instructor:

a. the radiographic exposure devices;

b. sealed sources, associated equipment; and

c. radiation survey instruments that may be employed in his assignment.

3. The individual shall demonstrate understanding of the instructions provided under Paragraph B.1 of this Section

by successfully completing a company-specific written examination on the subjects, and shall demonstrate competence in the use of hardware described in Paragraph B.2 of this Section by successful completion of a practical examination on the use of such hardware.

4. The current Form DRC-20, available from the department or the department's website, must be submitted to the Office of Environmental Compliance documenting the on-the-job training, instruction in the subjects outlined in Appendix A in this Chapter, and successful completion of a company-specific written examination.

5. The individual shall have in his or her possession, a valid radiographer trainee certification card issued by the department or equivalent certification recognized by another agreement state or the U.S. Nuclear Regulatory Commission.

6. Each radiographer trainee certification card does not expire, unless revoked or suspended in accordance with LAC 33:XV.579.

C. Each licensee or registrant shall maintain, for inspection by the department, the following records for three years for each radiographer and radiographer trainee.

1. - 2. ...

D. Each licensee or registrant shall conduct a program of internal audits, not to exceed every six months, to ensure that the Radiation Protection Regulations (LAC 33:XV), Louisiana radioactive material license conditions, and the licensee's or registrant's operating and emergency procedures are followed by each radiographer and radiographer trainee. Records of internal audits shall be maintained for review by the department for two consecutive years from the date of the audit. The internal audit program shall include observation of the performance of each radiographer and radiographer trainee during actual industrial radiographic operations at intervals not to exceed six months and provide that, if a radiographer or a radiographer trainee has not participated in an industrial radiographic operation for more than six months since the last inspection, the radiographer shall demonstrate knowledge of the training requirements of LAC 33:XV.575.A.4 and the radiographer trainee shall redemonstrate knowledge of the training requirements of LAC 33:XV.575.B.2 by a practical examination before these individuals can next participate in a radiographic operation. The department may consider alternatives in those situations where the individual serves as both radiographer and RSO. (e.g., in those operations where a single individual serves as both radiographer and RSO, and performs all radiography operations, an internal audit program is not required.)

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 20:999 (September 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 27:1235 (August 2001), LR 28:1951 (September 2002), LR 29:34 (January 2003), LR 29:1470 (August 2003), amended by the Office of Environmental Assessment, LR 30:2029 (September 2004), LR 31:54 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2531 (October 2005), LR

33:2183 (October 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1755 (December 2019).

#### **§576. Operating and Emergency Procedures**

A. ...

1. the handling and use of licensed sealed sources and radiographic exposure devices to be employed such that no individual is likely to be exposed to radiation doses in excess of the limits established in LAC 33:XV.Chapter 4;

2. – 3. ...

4. methods and occasions for locking and securing radiographic exposure devices, transport and storage containers, and sealed sources;

5. ...

6. transportation of sealed sources to field locations, including packing of radiographic exposure devices and storage containers in the vehicles, placarding of vehicles when needed, and control of sealed sources during transportation (See 49 CFR Part 171-3);

7. – 9. ...

10. the daily inspection, maintenance, and operability checks of radiographic exposure devices, radiation machines, associated equipment, survey meters, transport containers, storage containers, and personnel monitoring devices; and

A.11. – B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1235 (August 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1756 (December 2019).

#### **§579. Certification Cards for Radiographers or Radiographer Trainees**

A. Issuance

1. An industrial radiographer or industrial radiographer trainee certification card shall be issued to each person who successfully completes the requirements of LAC 33:XV.575.A or B, respectively.

2. An industrial radiographer certification card shall contain the radiographer's photograph. The department will take the photograph at the time the examination is administered. The radiographer trainee certification card does not require a photograph.

3. A certification card remains the property of the state of Louisiana and may be revoked or suspended under the provisions of this Section.

4. Any individual who wishes to replace his/her certification card shall submit to the Office of Environmental Compliance a written request for a replacement certification card, stating the reason a replacement certification card is needed. A non-refundable fee of \$29 shall be paid to the department for each replacement of an certification card. The prescribed fee shall be submitted with the written request for a replacement certification card. The individual shall maintain a copy of the request in his/her possession while performing industrial radiographic operations until a replacement certification card is received from the department.

B. Expiration of Certification Card. Each industrial radiographer certification card is valid for a period of five years, unless revoked or suspended in accordance with LAC 33:XV.579. Each industrial radiographer certification card expires at the end of the day indicated on the certification card.

C. Renewal of a Radiographer Certification Card

1. Applications for examination to renew an industrial radiographer certification card shall be filed in accordance with LAC 33:XV.575.A.

2. The examination for renewal of an industrial radiographer certification card shall be administered in accordance with LAC 33:XV.575.

3. A renewal industrial radiographer certification card shall be issued in accordance with this Section.

D. Revocation or Suspension of a Certification Card

1. Any radiographer or radiographer trainee who violates these Rules may be required to show cause at a formal hearing why his or her certification card should not be revoked or suspended in accordance with these regulations.

2. When a department order has been issued for an industrial radiographer or radiographer trainee to cease and desist from the use of sources of radiation or the department revokes or suspends his or her certification card, the industrial radiographer or radiographer trainee shall surrender the certification card to the department until the order is changed or the suspension expires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 29:36 (January 2003), LR 29:691 (May 2003), LR 29:2053 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2531 (October 2005), LR 33:2184 (October 2007), amended by the Office of the Secretary, Legal Division, LR 43:951 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1756 (December 2019).

#### **Subchapter C. Precautionary Procedures in Radiographic Operations**

#### **§587. Radiation Surveys and Survey Records**

A. ...

B. A physical radiation survey shall be made after each radiographic exposure utilizing radiation machines or sealed sources to determine that the machine is "off" or that the sealed source has been returned to its shielded position immediately upon completion of exposure and before exchanging films, repositioning the exposure head, or dismantling equipment. The entire circumference or perimeter of the radiographic exposure device shall be surveyed. If the radiographic exposure device has a source guide tube, the survey shall also include the entire length of the guide tube.

C. – E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and

Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 27:1236 (August 2001), LR 28:1952 (September 2002), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1756 (December 2019).

**§588. Documents and Records Required at Temporary Job Sites and Applicable Field Stations**

A. Each licensee or registrant shall maintain copies of records required by this Chapter at the location specified in LAC 33:XV.326.E.1.k. Also, each licensee or registrant conducting industrial radiography at a temporary job site or applicable field station shall have the following documents and records available at that job site or field station for inspection by the department:

1. - 6. ...

7. a copy of the card issued by the department granting radiographer trainee status to any radiographer trainee performing industrial radiography at the temporary job site;

8. a copy of the card issued by the department granting radiographer instructor status to any radiographer instructor performing industrial radiography at the temporary job site;

9. a copy of the current Form DRC-20 for persons possessing industrial radiographer cards indicating instructor or trainer status issued from an agreement state, the NRC, or an independent certifying organization;

10. records of equipment problems identified in daily checks of equipment as required in LAC 33:XV.577;

11. records of alarm system and entrance control checks required by LAC 33:XV.548.A.2;

12. utilization records for each radiographic exposure device dispatched from that location as required by LAC 33:XV.546;

13. evidence of the latest calibration of alarming ratemeters and operability checks of dosimeters as required by LAC 33:XV.577;

14. the shipping papers for the transportation of radioactive materials as required by LAC 33:XV.1502; and

15. when operating under reciprocity in accordance with LAC 33:XV.390, a copy of the applicable state license or registration or Nuclear Regulatory Commission license authorizing the use of sources of radiation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2772 (December 2000), LR 27:1236 (August 2001), LR 28:1952 (September 2002), amended by the Office of Environmental Assessment, LR 31:54 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 36:2555 (November 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1757 (December 2019).

**§590. Specific Requirements for Radiographic Personnel Performing Industrial Radiography**

A. - E.2....

3. has been issued a radiographer certification card with instructor status by the department.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 23:1139 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 27:1237 (August 2001), LR 28:1952 (September 2002), LR 29:36 (January 2003), LR 29:1816 (September 2003), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1757 (December 2019).

**§599. Appendices A, B, and C**

**Appendix A**

**Subjects to be Covered during the Instruction of Radiographers**

A. Training provided to qualify individuals as radiographers in compliance with LAC 33:XV.575.A shall be presented on a formal basis. Subjects to be covered during instruction shall include the following topics.

1. Fundamentals of Radiation Safety
  - a. Characteristics of radiation, especially gamma radiation
  - b. Units of radiation dose and quantity of radioactivity
  - c. Significance of radiation dose and hazards of exposure to radiation
    - i. Radiation protection standards
    - ii. Biological effects of radiation dose
    - iii. Case histories of radiography accidents
  - d. Levels of radiation from licensed material
  - e. Methods of controlling radiation dose
    - i. Working time
    - ii. Working distances
    - iii. Shielding
2. Radiation Detection Instrumentation to be Used
  - a. Use of radiation survey instruments
    - i. Operation and daily inspection
    - ii. Calibration
    - iii. Limitations
  - b. Survey techniques
  - c. Use of personnel monitoring equipment
    - i. Film badges
    - ii. Thermoluminescent dosimeters (TLD)
    - iii. Pocket dosimeters
    - iv. Alarm ratemeters
3. Requirements of Pertinent Federal and State Regulations
4. Licensee's or Registrant's Written Operating and Emergency Procedures
5. Radiographic Equipment to be Used
  - a. Inspection and maintenance of equipment
  - b. Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed)
    - c. Storage, control, and disposal of licensed material
    - d. Operation and control of X-ray equipment
    - e. Collimators

\* \* \*

**Appendix C**

**Requirements for an Independent Certifying Organization**

A. An independent certifying organization shall:

1. be an organization such as a society or association, whose members participate in, or have an interest in, the fields of industrial radiography;
2. make its membership available to the general public nationwide that is not restricted because of race, color, religion, sex, age, national origin, or disability;
3. have a certification program open to nonmembers, as well as members;
4. be an incorporated, nationally recognized organization, that is involved in setting national standards of practice within its fields of expertise;
5. have an adequate staff, a viable system for financing its operations, and a policy and decision making review board;

6. have a set of written organizational bylaws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those bylaws and policies;

7. have a committee, whose members can carry out their responsibilities impartially, to review and approve the certification guidelines and procedures, and to advise the organization's staff in implementing the certification program;

8. have a committee, whose members can carry out their responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions;

9. have written procedures describing all aspects of its certification program;

10. maintain records of the current status of each individual's certification and the administration of its certification program;

11. have procedures to ensure that certified individuals are provided due process with respect to the administration of its certification program, including the process of becoming certified and any sanctions imposed against certified individuals;

12. have procedures for proctoring examinations, including qualifications for proctors. These procedures shall ensure that the individuals proctoring each examination are not employed by the same company, corporation, or a wholly-owned subsidiary of such company or corporation as any of the examinees;

13. exchange information about certified individuals with the Nuclear Regulatory Commission and other independent certifying organizations and/or agreement states and allow periodic review of its certification program and related records; and

14. provide a description to the Nuclear Regulatory Commission of its procedures for choosing examination sites and for providing an appropriate examination environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1237 (August 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1757 (December 2019).

Herman Robinson  
General Counsel

1912#051

## RULE

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

#### Medical Event Reporting (LAC 33:XV.613)(RP066)

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 radiation protection regulations, LAC 33:XV.613.A.2 (RP066).

This Rule makes corrections to the medical event reporting regulations. Dose limits are being corrected in the regulations to lessen the burden on the regulated community and the department. The changes in the state regulations were prompted by mistakes made by the department when promulgating the original Rule, RP064. Immediate action is

being taken to rectify these errors. The basis and rationale for this Rule are to enable the state to provide clarification to the medical community on when they need to report medical events 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. This Rule is hereby adopted on the day of promulgation.

## Title 33

### ENVIRONMENTAL QUALITY

#### Part XV. Radiation Protection

#### Chapter 6. X-Rays in the Healing Arts

#### §613. Notifications, Reports, and Records of Medical Events

A. - A.2. ...

a. five times the facility's established protocol, and  
> 0.5 Gy (50 rad) to any organ, or

b. five times the facility's established protocol, and  
> 0.02 Sv (2 rem) effective dose;

A.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:751 (June 2019), LR 45:1758 (December 2019).

Herman Robinson  
General Counsel

1912#052

## RULE

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

#### Regulatory Permit for Boilers and Process Heaters (LAC 33:III.323)(AQ383)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.323 (AQ383).

This Rule establishes a regulatory permit which can be used to authorize the construction and operation of certain boilers and process heaters. Authorization to construct and operate a boiler or process heater eligible for coverage under the regulatory permit shall become effective only upon notification by the department that the application required by the regulatory permit has been determined complete.

R.S. 30:2054(B)(9)(a) allows LDEQ to develop regulatory permits for certain sources of air emissions provided the conditions in R.S. 30:2054(B)(9)(b) are satisfied. A regulatory permit is a permit that is incorporated into the regulations in the form of a rule.

Pursuant to R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019. Promulgation of rules and regulations (i.e., the Administrative Procedure Act, R.S. 49:950 et seq.). The basis and rationale for this Rule are to

establish a regulatory permit for boilers and process heaters. 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 III. Air**

#### **Chapter 3. Regulatory Permits**

#### **§323. Regulatory Permit for Boilers and Process Heaters**

##### **A. Applicability**

1. This regulatory permit authorizes the construction and use of boilers and process heaters, subject to the requirements established herein, upon notification by the department that the application (i.e., notification form) submitted in accordance with Subsection I of this Section has been determined to be complete.

2. This regulatory permit shall not apply to boilers and process heaters:

a. deemed insignificant in accordance with item A.1, A.5, or B.32 of the insignificant activities list in LAC 33:III.501.B.5.Table 1;

b. that combust fuels other than natural gas, refinery gas, *other gas 1 fuel* as defined in 40 CFR 63.7575, or *ultra low sulfur liquid fuel* as defined in 40 CFR 63.7575; or

c. subject to federal regulations not identified in Subsection D of this Section.

3. This regulatory permit shall not be used to authorize a boiler or process heater that, when considering potential emissions from it and potential emissions from the remainder of the stationary source, would result in the creation of a major source of criteria pollutants, hazardous air pollutants, or toxic air pollutants.

##### **B. Definitions**

*Boiler*—as defined in 40 CFR 63.7575.

*Process Heater*—as defined in 40 CFR 63.7575.

##### **C. Emission Limitations**

1. Emission limitations for the boiler or process heater shall be established by the application (i.e., notification form) submitted in accordance with Subsection I of this Section.

a. The limitations shall be enforceable by the department.

b. If actual emissions exceed these limitations for any reason other than as described in LAC 33:III.501.C.12, the permittee shall notify the Office of Environmental Compliance in accordance with Louisiana General Condition XI of LAC 33:III.537.A. For Part 70 sources, the reports required by Paragraph C.2 of this Section shall satisfy this requirement.

2. The permittee shall address each boiler or process heater located at a Part 70 source in the submittals required by Part 70 General Conditions K, M, and R of LAC 33:III.535.A. Deviations from the terms and conditions of this regulatory permit, including the standards identified in Subsection D of this Section, shall not be considered violations of the stationary source's Part 70 permit.

D. Boiler and Process Heater Standards. The permittee shall comply with the provisions of the following federal and state regulations pertaining to boilers and process heaters, as applicable:

1. LAC 33:III.2201;

2. 40 CFR 60, subpart Db or Dc; and

3. 40 CFR 63, subparts DDDDD or JJJJJ.

##### **E. Opacity**

1. Smoke. The emission of smoke shall be controlled so that the shade or appearance of the emission is not darker than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one six-minute period in any 60 consecutive minutes.

##### **2. Monitoring, Recordkeeping, and Reporting**

a. The permittee shall inspect each boiler or process heater's stack for visible emissions on a daily basis. If visible emissions are not detected during the initial six minutes of the inspection, the inspection may be concluded. If visible emissions are detected, the inspection period shall be extended to one hour (60 consecutive minutes).

b. If visible emissions are detected for more than one six-minute period over the 60 consecutive minute test period, the permittee shall conduct a six-minute opacity reading in accordance with Method 9 of 40 CFR 60, Appendix A, within 24 hours.

c. The permittee shall notify the Office of Environmental Compliance no later than 30 calendar days after any Method 9 reading in excess of 20 percent average opacity or, for *Part 70 sources*, as defined in LAC 33:III.502.A, in accordance with Part 70 General Condition R of LAC 33:III.535.A.

d. Records of visible emissions checks shall be kept on-site for at least five years and shall be made available for inspection by the Office of Environmental Compliance. These records shall include:

i. the boiler or process heater's ID number;

ii. a record if visible emissions were detected during the initial six minutes of the inspection;

iii. a record if visible emissions were detected for more than one six-minute period over the 60 consecutive minute test period, if required; and

iv. a record and the results of any Method 9 testing conducted.

##### **3. Alternatives**

a. As an alternative to the requirement to conduct Method 9 testing, the permittee may assume that any visible emissions detected constitute opacity greater than 20 percent. In this case, no visible emissions detected shall be considered opacity less than or equal to 20 percent, even if a qualitative assessment suggests otherwise.

b. The permittee may determine opacity via any federally-approved alternative to Method 9 (e.g., Method ALT-082).

c. In lieu of performing daily visual inspections, the permittee may immediately perform a six-minute opacity reading in accordance with Method 9.

d. The inspection of each boiler or process heater's stack for visible emissions may be made using a video

camera, provided the camera is capable of capturing images of the stack and a reasonable distance above the stack and it set at an angle for visible emissions observations.

4. When the presence of uncombined water is the only reason for failure of an emission to meet the requirements of this Subsection, this Subsection shall not apply.

5. This subsection shall not apply to boilers or process heaters described in LAC 33:III.1107.B.1.

F. Particulate Matter. No person shall cause, suffer, allow or permit the emission of particulate matter to the atmosphere in excess of 0.6 pounds per 10<sup>6</sup> Btu of heat input.

G. Performance Testing. The following performance testing requirements shall apply to boilers and process heaters that have the potential to emit more than 40 tons per year of nitrogen oxides (NO<sub>x</sub>) or more than 100 tons per year of carbon monoxide (CO).

1. No later than 180 days after the boiler or process heater commences operation, the permittee shall conduct a performance test to determine NO<sub>x</sub> and CO emissions using Methods 7E (Determination of Nitrogen Oxides Emissions from Stationary Sources) and 10 (Determination of Carbon Monoxide Emissions from Stationary Sources) of 40 CFR 60, Appendix A. Each test run shall be conducted within 80 percent of the boiler or process heater's maximum rated capacity or within 10 percent of the maximum achievable load. Alternate stack test methods may be used with the prior approval of the Office of Environmental Assessment.

a. The permittee shall notify the Office of Environmental Assessment at least 30 days prior to the performance test in order to provide the department with the opportunity to conduct a pretest meeting and/or observe the test.

b. The permittee shall submit the performance test results to the Office of Environmental Assessment no later than 60 days after completion of the test.

2. This Subsection shall not apply to boilers or process heaters that remain at a stationary source for less than 12 consecutive months.

3. This Subsection shall not apply to boilers or process heaters that must conduct a performance test in accordance with applicable federal requirements as described in LAC 33:III.323.D. If a performance test is required for only NO<sub>x</sub> or CO, but not both, a performance test for the other pollutant shall be conducted during the performance test required by 40 CFR 60.8 and/or CFR 63.7.

H. Emissions Inventory. Each stationary source subject to LAC 33:III.919 shall include emissions from each boiler or process heater authorized by this regulatory permit in its annual emissions inventory.

#### I. Notification Requirements

1. Written notification describing the boiler or process heater shall be submitted to the Office of Environmental Services using the appropriate form provided by the department.

2. A separate notification shall be submitted for each boiler or process heater.

J. Fees. Fees for this regulatory permit shall be as prescribed by fee number 1540 or 1550, as applicable, of LAC 33:III.223, Table 1, or the applicable major or minor modification fee for the stationary source as determined in accordance with LAC 33:III.211.B, whichever is lower.

Applicable surcharges as described in LAC 33:III.211.A shall also be assessed.

K. Boilers and process heaters authorized by this regulatory permit shall be included in the next application to renew or modify the stationary source's existing permit.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1759 (December 2019).

Herman Robinson  
General Counsel

1912#049

## RULE

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

#### Regulatory Permit for Cooling Towers (LAC 33:III.325)(AQ384)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the air regulations, LAC 33:III.325 (AQ384).

This Rule establishes a regulatory permit which can be used to authorize the construction and operation of certain cooling towers. Authorization to construct and operate a cooling tower eligible for coverage under the regulatory permit shall become effective only upon notification by the department that the application required by the regulatory permit has been determined complete.

R.S. 30:2054(B)(9)(a) allows LDEQ to develop regulatory permits for certain sources of air emissions provided the conditions in R.S. 30:2054(B)(9)(b) are satisfied. A regulatory permit is a permit that is incorporated into the regulations in the form of a rule.

Pursuant to R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019-Promulgation of rules and regulations (i.e., the Administrative Procedure Act, R.S. 49:950 et seq.). This basis and rationale for this Rule are to establish a regulatory permit for cooling towers. 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 III. Air

#### Chapter 3. Regulatory Permits

#### §325. Regulatory Permit for Cooling Towers

##### A. Applicability

1. This regulatory permit authorizes the construction and use of cooling towers, subject to the requirements established herein, upon notification by the department that the application (i.e., notification form) submitted in

accordance with Subsection G of this Section has been determined to be complete.

2. This regulatory permit shall not apply to cooling towers:

a. deemed insignificant in accordance with item A.12 of the insignificant activities list in LAC 33:III.501.B.5.Table 1;

b. subject to federal regulations not identified in Subsection D of this Section.

3. This regulatory permit shall not be used to authorize a cooling tower that, when considering potential emissions from it and potential emissions from the remainder of the stationary source, would result in the creation of a major source of criteria pollutants, hazardous air pollutants, or toxic air pollutants.

#### B. Definitions

*Cooling Tower*—an open water recirculating device that uses fans or natural draft to draw or force ambient air through the device to cool warm water by direct contact.

#### C. Emission Limitations

1. Emission limitations for the cooling tower shall be established by the application (i.e., notification form) submitted in accordance with Subsection G of this Section.

a. The limitations shall be enforceable by the department.

b. If actual emissions exceed these limitations for any reason other than as described in LAC 33:III.501.C.12, the permittee shall notify the Office of Environmental Compliance in accordance with Louisiana General Condition XI of LAC 33:III.537.A. For Part 70 sources, the reports required by Paragraph C.2 of this Section shall satisfy this requirement.

2. The permittee shall address each cooling tower located at a Part 70 source in the submittals required by Part 70 General Conditions K, M, and R of LAC 33:III.535.A. Deviations from the terms and conditions of this regulatory permit, including the standards identified in Subsection D of this Section, shall not be considered violations of the stationary source's Part 70 permit.

D. Cooling Tower Standards. The permittee shall comply with the provisions of 40 CFR 63, subparts F, U, CC, XX, JJ, OOO, PPP, FFFF, HHHHH, VVVVVV, or HHHHHHH, as applicable.

E. Total dissolved solids (TDS). The permittee shall determine and record the concentration of TDS in the cooling water at least once per quarter using Standard Method 2540C or EPA Method 160.1. Alternate methods may be used with the prior approval of the department. The permittee shall average all recorded TDS concentrations and utilize the drift rate provided by the manufacturer and the design recirculation rate of the cooling water pump(s) to determine compliance with the particulate matter emission limitations for the cooling tower.

F. Emissions Inventory. Each stationary source subject to LAC 33:III.919 shall include emissions from each cooling tower authorized by this regulatory permit in its annual emissions inventory.

#### G. Notification Requirements

1. Written notification describing the cooling tower shall be submitted to the Office of Environmental Services using the appropriate form provided by the department.

2. A separate notification shall be submitted for each cooling tower.

H. Fees. Fees for this regulatory permit shall be the applicable major or minor modification fee for the stationary source as determined in accordance with LAC 33:III.211.B. Applicable surcharges as described in LAC 33:III.211.A shall also be assessed.

I. Cooling towers authorized by this regulatory permit shall be included in the next application to renew or modify the stationary source's existing permit.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1760 (December 2019).

Herman Robinson  
General Counsel

1912#050

### RULE

#### Department of Health Board of Dentistry

Anesthesia/Analgesia Administration  
(LAC 46:XXXIII.1503)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760 (8), the Department of Health and Hospitals, Board of Dentistry amended LAC 46:XXXIII.1503. This Rule is hereby adopted on the day of promulgation.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Profession Chapter 15. Anesthesia/Analgesia Administration §1503. Personal Permits for Sedation/Anesthesia

A. - B. ...

1. In order to receive personal permit to administer nitrous oxide sedation, the dentist must show proof to the board of completion of a course on nitrous oxide sedation that consists of a minimum of 14 hours of didactic instruction, plus six clinically-oriented experiences during which competency in nitrous oxide sedation techniques is demonstrated.

B.2. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:53 (January 2016), amended by the Department of Health, Board of Dentistry, LR 43:955 (May 2017), LR 45:1761 (December 2019).

Arthur Hickham, Jr.  
Executive Director

1912#010



## **RULE**

### **Department of Health Board of Dentistry**

#### **Continuing Education Requirements (LAC 46:XXXIII.1607)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760 (8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.1607. This Rule is hereby adopted on the day of promulgation.

## **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XXXIII. Dental Health Profession**

#### **Chapter 16. Continuing Education Requirements**

##### **§1607. Exemptions**

A. Continuing education requirements, other than the three-hour opioid management course listed in §1611.A.3 and the cardiopulmonary resuscitation course listed in §1611.F, shall not apply to:

1. - 2. ...
3. dentists renewing their license for the first time;
4. dental hygienists renewing their license for the first time.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 24:1117 (June 1998), LR 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 41:1284 (July 2015), amended by the Department of Health, Board of Dentistry, LR 44:46 (January 2018), LR 45:1762 (December 2019).

Arthur Hickham, Jr.  
Executive Director

1912#012

## **RULE**

### **Department of Health Board of Dentistry**

#### **Continuing Education Requirements (LAC 46:XXXIII.1615)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department has amended LAC 46:XXXIII.1615. This Rule is hereby adopted on the day of promulgation.

## **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XXXIII. Dental Health Profession**

#### **Chapter 16. Continuing Education Requirements**

##### **§1615. Approved Courses**

A.1. - A.3. ...

4. American Academy of Dental Hygiene courses when set forth on official documentation;

5. National Dental Association and its affiliate societies;

6. colleges and universities with dental programs which are accredited by the Commission on Dental Accreditation of the American Dental Association when continuing education courses are held under their auspices;

7. armed services and veterans administration dental departments;

8. national, state and district associations and/or societies of all specialties in dentistry recognized by the board, and study clubs approved by said specialty societies;

9. American Heart Association as a provider of cardiopulmonary resuscitation courses (Course "C" Basic Life Support for the Health Care Provider);

10. the American Red Cross as a provider of the cardiopulmonary resuscitation course Red Cross professional rescue course;

11. the Accreditation Council for Continuing Medical Education (ACCME).

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8), and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:662 (June 1994), amended LR 22:24 (January 1996), LR 24:1118 (June 1998), LR 35:1238 (July 2009), LR 38:817 (March 2012), LR 45:1762 (December 2019).

Arthur Hickham, Jr.  
Executive Director

1912#011

## **RULE**

### **Department of Health Bureau of Health Services Financing**

#### **Disproportionate Share Hospital Payments Major Medical Centers (LAC 50:V.2503 and 2719)**

The Department of Health, Bureau of Health Services Financing has amended LAC 50:V.2503 and adopted §2719 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 V. Hospital Services**

#### **Subpart 3. Disproportionate Share Hospital Payments**

#### **Chapter 25. Disproportionate Share Hospital Payment Methodologies**

##### **§2503. Disproportionate Share Hospital Qualifications**

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

1. - 9. ...

10. effective June 29, 2016, be a major medical center located in the central and northern areas of the state as defined in §2715.A;

11. be a major medical center with a specialized care unit located in the southwestern area of the state as defined in §2717.A;

12. be a major medical center located in the southeastern area of the state as defined in §2719.A; and

13. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3294 (December 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 43:962 (May 2017), LR 45:1763 (December 2019).

#### **Chapter 27. Qualifying Hospitals**

##### **§2719. Major Medical Centers Located in the Southeastern Area of the State**

A. Effective for dates of service on or after January 1, 2020, hospitals qualifying for payments as major medical centers located in the southeastern area of the state shall meet the following criteria:

1. be a private, non-rural hospital located in Department of Health administrative region 1;

2. have at least 175 inpatient beds as reported on the Medicare/Medicaid cost report, Worksheet S-3, column 2, lines 1-18, for the state fiscal year ending June 30, 2018. For qualification purposes, inpatient beds shall exclude nursery and Medicare-designated distinct part psychiatric unit beds;

3. is certified as an advanced comprehensive stroke center by the Joint Commission as of June 30, 2018;

4. does not qualify as a Louisiana low-income academic hospital under the provisions of §3101; and

5. does not qualify as a party to a low income and needy care collaboration agreement with the Department of Health under the provisions of §2713.

B. Payment Methodology. Effective for dates of service on or after January 1, 2020, each qualifying hospital shall be paid a DSH adjustment payment which is the pro rata amount calculated by dividing their hospital specific allowable uncompensated care costs by the total allowable uncompensated care costs for all hospitals qualifying under this category and multiplying by the funding appropriated by the Louisiana Legislature in the applicable state fiscal year for this category of hospitals.

1. Costs, patient specific data and documentation that qualifying criteria is met shall be submitted in a format specified by the department.

2. Reported uncompensated care costs shall be reviewed by the department to ensure compliance with the reasonable costs definition in the Medicare Provider Reimbursement Manual, Part 1, Chapter 21, Section 2102.1, Revision 454. Allowable uncompensated care costs must be calculated using the Medicare/Medicaid cost report methodology.

3. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit.

4. A pro rata decrease, necessitated by conditions specified in §2501.B.1 above for hospitals described in this Section, will be calculated based on the ratio determined by dividing the hospital's uncompensated costs by the uncompensated costs for all of the qualifying hospitals described in this Section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment.

a. If additional payments or recoupments are required based on the results of the mandated DSH audit report, they shall may be made within one year after the final report for the state fiscal year is submitted to the Centers for Medicare and Medicaid Services (CMS).

b. Additional payments shall be limited to the aggregate amount recouped from the qualifying hospitals described in this section, based on the reported DSH audit results.

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 45:1763 (December 2019).

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.

Rebekah E. Gee MD, MPH  
Secretary

1912#073

## **RULE**

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

Home and Community-Based Services Waivers  
Residential Options Waiver  
(LAC 50:XXI.Chapters 161, 163, and §16901)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have amended LAC 50:Chapters 161, 163 and §16901 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 XXI. Home and Community Based Services**

##### **Waivers**

##### **Subpart 13. Residential Options Waiver**

##### **Chapter 161. General Provisions**

##### **§16101. Introduction**

A. ...

B. The goal of the Residential Options Waiver is to promote independence through strengthening the individual's capacity for self-care, self-sufficiency and community integration utilizing a wide array of services, supports and residential options, which best meets the individual's needs and preferences, while supporting the dignity, quality of life, and security in the everyday life of the individual as he/she is a member of his/her community.

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 for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2154 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1764 (December 2019).

##### **§16103. Program Description**

A. The ROW is designed to utilize the principles of self-determination and to supplement the family and/or community supports that are available to maintain the individual in the community and are designed to allow an individual experience that mirrors the experiences of individuals without disabilities. These services are not to be restrictive, but liberating, by empowering individuals to experience life in the most fulfilling manner as defined by the individual while still assuring health and safety. In keeping with the principles of self-determination, ROW includes a self-direction option, which allows for greater flexibility in hiring, training and general service delivery issues. ROW services are meant to enhance, not replace existing informal networks.

B. ROW offers an alternative to institutional care that:

1. utilizes a wide array of services, supports and residential options, which best meet the individual's needs and preferences;

B.2. - D. ...

E. The total expenditures available for each waiver participant is established through an assessment of individual support needs and may not exceed the approved ICF/ID ICAP rate/ROW budget level established for that individual except as approved by Office for Citizens with Developmental Disabilities' (OCDD's) assistant secretary, deputy assistant secretary or his/her designee to prevent institutionalization.

1. When the department determines that it is necessary to adjust the ICF/ID ICAP rate, each waiver participant's annual service budget may be adjusted to ensure that the

participant's total available expenditures do not exceed the approved ICAP rate.

F. ...

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 for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2154 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1764 (December 2019).

##### **§16104. Settings for Home and Community Based Services**

A. ROW participants are expected to be integrated in and have full access to the greater community while receiving services, to the same extent as individuals without disabilities. Providers shall meet the requirements of the Centers for Medicare and Medicaid Services (CMS) home and community-based setting requirements for home and community-based services (HCBS) waivers as delineated in LAC 50:XXI, Subpart 1 or any subsequent rule.

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 and the Office for Citizens with Developmental Disabilities, LR 45:1764 (December 2019).

##### **§16105. Participant Qualifications**

A. In order to qualify for Residential Options Waiver (ROW), individuals of all ages must meet all of the following criteria:

1. - 8. ...

B. Individuals age 18 through 20 may be offered a funded ROW opportunity if the results of the uniform needs-based assessment and person-centered planning discussion determine that the ROW is the most appropriate waiver. These offers are subject to the approval of the OCDD assistant secretary/designee.

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, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2155 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2530 (December 2017), LR 45:1764 (December 2019).

##### **§16107. Programmatic Allocation of Waiver Opportunities**

A. - B.2. ...

3. Individuals on the registry who have the highest level of need and the earliest registry date shall be notified in writing when a funded OCDD waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver assignment. Participants shall have justification, based on a uniform needs-based assessment and a person-centered planning discussion that the ROW is the OCDD waiver that will meet the needs of the individual.

B.4. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2155 (October 2015), LR 42:62 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2530 (December 2017), LR 45:1764 (December 2019).

#### **§16109. Admission, Denial or Discharge Criteria**

A. Admission to the ROW Program shall be denied if one of the following criteria is met.

1. - 7. ...

8. The individual does not have justification, based on a uniform needs-based assessment and a person-centered planning discussion that the ROW is the OCDD waiver that will meet the needs of the individual.

B. - B.10. ...

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 for Citizens with Developmental Disabilities, LR 33:2443 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2156 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1765 (December 2019).

#### **Chapter 163. Covered Services**

##### **§16303. Community Living Supports**

A. - E.6. ...

7. Community living supports services are not available to individuals receiving the following services:

- a. ...
- b. host home;
- c. companion care; or
- d. monitored in-home caregiving.

8. Community living supports cannot be billed or provided for during the same hours on the same day that the participant is receiving the following services:

- a. - c. ...
- d. respite out-of-home services;
- e. transportation-community access;
- f. monitored in-home caregiving; or
- g. adult day health care.

F. - F.1. ...

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 for Citizens with Developmental Disabilities, LR 33:2443 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2157 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1765 (December 2019).

##### **§16305. Companion Care**

A. - F. ...

1. Companion care is not available to individuals receiving the following services:

a. - b. ...

- c. community living supports;
- d. host home; or
- e. monitored in-home caregiving.

G. ...

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 for Citizens with Developmental Disabilities, LR 33:2444 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2158 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1765 (December 2019).

##### **§16307. Day Habilitation Services**

A. - A.3. ...

B. Day habilitation services shall:

1. - 3. ...

4. be furnished on a regularly scheduled basis for one or more days per week;

- a. services are based on a 15 minute unit of service and on time spent at the service site by the participant;
- b. services shall not exceed 32 units of service on any given day or 160 units in any given week in a plan of care;
- c. any time less than the 15 minute unit of service is not billable or payable; and
- d. no rounding up of hours is allowed.
- e. Repealed.

C. - E.2. ...

3. Day habilitation services cannot be billed or provided during the same hours on the same day as any of the following services:

- a. ...
- b. professional services, except those direct contacts needed to develop a behavioral management plan or any other type of specialized assessment/plan;
- c. respite care services—out of home;
- d. adult day health care; or
- e. monitored in-home caregiving.

F. ...

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 for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2158 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1765 (December 2019).

##### **§16313. Host Home**

A. - I.1. ...

2. Separate payment will not be made for the following residential service models if the participant is receiving host home services:

- a. - b. ...
- c. shared living-conversion;
- d. companion care; or
- e. monitored in-home caregiving.

I.3. - J.2....

3. Agencies serving adults must be licensed by the Department of Health as a provider of substitute family care services.

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 for Citizens with Developmental Disabilities, LR 33:2447 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2160 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1765 (December 2019).

#### **§16319. One Time Transitional Services**

A. One-time transitional services are one-time, set-up services to assist individuals in making the transition from an institution to their own home or apartment in the community of their choice.

B. - E. ...

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 for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2162 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1766 (December 2019).

#### **§16323. Prevocational Services**

A. Prevocational services are time limited with employment at the individual's highest level of work in the most integrated community setting, with the job matched to the individual's interests, strengths, priorities, abilities and capabilities, with integrated competitive employment as the optimal outcome. Individuals receiving prevocational services may choose to pursue employment opportunities at any time. Career planning must be a major component of prevocational services.

1. - 2.b. Repealed.

B. Prevocational services are to be provided in a variety of locations in the community and are not to be limited to a fixed site facility. Activities associated with prevocational services should be focused on preparing the participant for paid employment or a volunteer opportunity in the community. These services are operated through a provider agency that is licensed by the appropriate state licensing agency. Services are furnished one or more hours per day on a regularly scheduled basis for one or more days per week.

1. - 1.c. Repealed.

C. Participants receiving services must have an employment related goal in their plan of care, and the general habilitation activities must be designed to support such employment goals. Prevocational services are designed to create a path to integrated community-based employment for which a participant is compensated at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

1. Repealed.

D. Prevocational services can include assistance in personal care and with activities of daily living. Choice of

this service and staff ratio needed to support the participant must be documented on the plan of care.

1. - 3. Repealed.

E. All transportation costs are included in the reimbursement for prevocational services. The participant must be present to receive this service. If a participant needs transportation, the provider must physically provide, arrange, or pay for appropriate transport to and from a central location that is convenient for the participant and agreed upon by the team. The participant's transportation needs and this central location shall be documented in the plan of care.

1. - 5. Repealed.

#### **F. Service Limitations**

1. Services shall not exceed 8,320 units of service in a plan of care.

2. Prevocational services are not available to participants who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

3. Multiple vocational/habilitative services cannot be provided or billed for during the same hours on the same day as the following services:

- a. community living supports;
- b. professional services, except those direct contacts needed to develop a behavioral management plan or other type of specialized assessment/plan;
- c. respite care services—out of home;
- d. adult day healthcare; or
- e. monitored-in-home caregiving.

4. Transportation to and from the service site is only payable when a vocational/habilitative service is provided on the same day.

a. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

b. During travel training, providers must not also bill for the transportation component as this is included in the rate for the number of service hours provided.

c. Transportation-community access shall not be used to transport ROW participants to any prevocational services

#### **G. Restrictions**

1. Participants receiving prevocational services may also receive day habilitation or individualized supported employment services, but these services cannot be provided during the same time period of the day and cannot total more than five hours combined in the same service day. Group supported employment services cannot be provided on the same day, but can be utilized on a different service day.

H. There must be documentation in the participant's file that this service is not available from programs funded under section 110 of the Rehabilitation Act of 1973 or sections 602 (16) or (17) of the Individuals with Disabilities Education Act [230 U.S.C. 1401 (16 and 71)] and those covered under the state plan.

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 for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2162 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1766 (December 2019).

#### **§16327. Respite Care Services—Out of Home**

A. - C.1. ...

2. Respite care services-out of home may not be billed for participants receiving the following services:

- a. ...
- b. companion care;
- c. host home; or
- d. monitored in-home caregiving.

D. ...

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 for Citizens with Developmental Disabilities, LR 33:2451 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2164 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1767 (December 2019).

#### **§16329. Shared Living Services**

A. - D.5. ...

6. The following services are not available to participants receiving shared living services:

- a. - c. ...
- d. host home;
- e. personal emergency response system; or
- f. monitored in-home caregiving.

E. ...

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 for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2164 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1767 (December 2019).

#### **§16335. Supported Employment**

A. Supported employment services consists of intensive, ongoing supports and services necessary for a participant to achieve the desired outcome of employment in a community setting in the state of Louisiana where a majority of the persons employed are without disabilities. Participants utilizing these services may need long-term supports for the life of their employment due the nature of their disability, and natural supports would not meet this need.

B. Supported employment services provide supports in the following areas:

1. individual job, group employment or self-employment;
2. job assessment, discovery and development; and
  - a. - a.iv. Repealed.
3. initial job support and job retention, including assistance in personal care with activities of daily living in the supported employment setting and follow-along.
4. - 5. Repealed.

C. When supported employment services are provided at a work site where a majority of the persons employed are without disabilities, payment is only made for the adaptations, supervision and training required by participants receiving the service as a result of their disabilities. It does not include payment for the supervisory activities rendered as a normal part of the business setting.

1. - 4. Repealed.

D. Transportation is included in supported employment services, but whenever possible, family, neighbors, friends, coworkers or community resources that can provide needed transportation without charge should be utilized.

1. - 8. Repealed.

E. These services are also available to those participants who are self-employed. Funds for self-employment may not be used to defray any expenses associated with setting up or operating a business.

F. Supported employment services may be furnished by a coworker or other job-site personnel under the following circumstances:

1. the services furnished are not part of the normal duties of the coworker or other job-site personnel; and
2. these individuals meet the pertinent qualifications for the providers of service.

G. Service Limits. Participants may receive more than one vocational or habilitative service per day as long as the service and billing requirements for each service are met.

1. Services for individual/micro-enterprise job assessment, discovery and development in individual jobs and self-employment shall not exceed 2,880 units of service in a plan of care year.

2. Services for group job assessment, discovery and development in group employment shall not exceed 480 units of service in a plan of care year.

3. Services for initial job support, job retention and follow-along for individual/micro-enterprise shall not exceed 1280 quarter hour units of service in a plan of care year.

4. Services for initial job support, job retention and follow-along in group employment shall not exceed 8,320 quarter hour units of service in a plan of care year.

H. Service Exclusions/Restrictions. Participants receiving individual supported employment services may also receive prevocational or day habilitation services. However, these services cannot be provided during the same service hours and cannot total more than five hours of services in the same day. Participants receiving group supported employment services may also receive prevocational or day habilitation services; however, these services cannot be provided in the same service day.

1. Payment will only be made for the adaptations, supervision and training required by individuals receiving waiver services, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

2. Any time less than one hour for individual placement and micro-enterprise is not billable or payable.

3. Supported employment services cannot be billed for the same time as any of the following services:

- a. community living supports;
- b. professional services except direct contacts needed to develop a behavioral management plan; or
- c. respite care services—out of home,;

- d. adult day health care; or
  - e. monitored in-home caregiving.
4. Any time less than fifteen minutes for enclaves and mobile crews is not billable or payable.

5. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. Travel training for the purpose of teaching the participant how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the POC.

6. The following incentive payments, subsidies or unrelated vocational training expenses are excluded from coverage in supported employment services:

- a. incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;
- b. payments that are passed through to users of supported employment programs; or
- c. payments for vocational training that is not directly related to an individual's supported employment program.

7. There must be documentation in the participant's file that these services are not available from programs funded under the Rehabilitation Act of 1973 or sections 602 (16) or (17) of the Individuals with Disabilities Education Act [230 U.S.C. 1401 (16 and 17)] and those covered under the State Plan.

8. No rounding up of service units is allowed.

I. Provider Qualifications. In order to enroll in the Medicaid Program, providers must have a compliance certificate from the Louisiana Rehabilitation Services as a community rehabilitation program or a current, valid license as an adult day care center.

F. Choice of this service and staff ratio needed to support the participant must be documented on the plan of care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2166 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1767 (December 2019).

### **§16337. Transportation-Community Access**

A. - C.1. ...

2. Separate payment will not be made for transportation-community access and the following services:

- a. shared living services;
- b. community living services;
- c. companion care;
- d. adult day health care; or
- e. monitored in-home caregiving.

C.3. - E. ...

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 for Citizens with Developmental Disabilities, LR 33:2454 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 41:2166 (October 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1768 (December 2019).

### **§16343. Adult Day Health Care Services**

A. ...

B. ADHC services include those core service requirements identified in the ADHC licensing standards (LAC 48.I.4243), in addition to:

- 1. medical care management;
- 2. transportation between the participant's place of residence and the ADHC (if the participant is accompanied by the ADHC staff);
- 3. assistance with activities of daily living;
- 4. health and nutrition counseling;
- 5. an individualized exercise program;
- 6. an individualized goal-directed recreation program;
- 7. health education;
- 8. individualized health/nursing services; and
- 9. meals.

B.9.a. - E. ...

F. The following services are not available to AFDC recipients:

- 1. respite care services-out of home;
- 2. shared living;
- 3. companion care, or
- 4. monitored in-home caregiving.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 42:62 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:1768 (December 2019).

### **§16345. Monitored In-Home Caregiving Services**

A. Monitored in-home caregiving (MIHC) services are provided by a principal caregiver to a participant who lives in a private unlicensed residence. The principal caregiver shall be contracted by the licensed HCBS provider having a MIHC service module. The principal caregiver shall reside with the participant. Professional staff employed by the HCBS provider shall provide oversight, support and monitoring of the principal caregiver, service delivery, and participant outcomes through on-site visits, training, and daily, web-based electronic information exchange.

B. The principal caregiver is responsible for supporting the participant to maximize the highest level of independence possible by providing necessary care and supports that may include:

- 1. supervision or assistance in performing activities of daily living;
- 2. supervision or assistance in performing instrumental activities of daily living;
- 3. protective supervision provided solely to assure the health and welfare of a participant;

4. supervision or assistance with health related tasks (any health related procedures governed under the Nurse Practice Act) in accordance with applicable laws governing the delegation of medical tasks/medication administration;

5. supervision or assistance while escorting/accompanying the individual outside of the home to perform tasks, including instrumental activities of daily living, health maintenance or other needs as identified in the plan of care and to provide the same supervision or assistance as would be rendered in the home; and

6. extension of therapy services to maximize independence when the caregiver has been instructed in the performance of the activities by a licensed therapist or registered nurse.

C. Unless the individual is also the spouse of the participant, the following individuals are prohibited from being paid as a monitored in-home caregiving principal caregiver:

1. the participant's curator;
2. the participant's tutor;
3. the participant's legal guardian;
4. the participant's responsible representative; or
5. the person to whom the participant has given

representative and mandate authority (also known as power of attorney).

D. Participants electing monitored in-home caregiving services shall not receive the following Residential Options Waiver services during the period of time that the participant is receiving monitored in-home caregiving services:

1. community living supports;
2. companion care;
3. host home;
4. shared living (conversion or non-conversion); or
5. adult day health care services.

E. Monitored in-home caregiving providers must be licensed HCBS providers with a monitored in-home caregiving module who employ professional staff, including a registered nurse and a care manager, to support principal caregivers to perform the direct care activities performed in the home. The agency provider must assess and approve the home in which services will be provided, and shall enter into contractual agreements with caregivers who the agency has approved and trained. The agency provider will pay per diem stipends to caregivers.

F. The MIHC provider must use secure, web-based information collection from principal caregivers for the purposes of monitoring participant health and caregiver performance. All protected health information must be transferred, stored, and otherwise utilized in compliance with applicable federal and state privacy laws. Providers must sign, maintain on file, and comply with the LDH HIPAA business associate addendum.

G. The department shall reimburse for monitored in-home caregiving services based upon a two-tiered model which is designed to address the participant's ROW acuity level.

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 and the Office for Citizens with Developmental Disabilities, LR 45:1768 (December 2019).

## **Chapter 169. Reimbursement**

### **§16901. Unit of Reimbursement**

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the waiver participant. One quarter hour (15 minutes) is the standard unit of service and reimbursement shall not be made for less than one quarter hour of service. This covers both the service provision and administrative costs for these services:

1. - 4.b....
5. professional services furnished by a/an:
  - a. - d. ...
  - e. social worker;
  - f. ...
6. supported employment;
  - a. individual placement;
  - b. micro-enterprise;
7. adult day health care;
8. pre-vocational service; and
9. day habilitation.

\* \* \*

B. - B.2. ...

C. The following services are reimbursed at a per diem rate:

1. ...
2. companion care services;
3. shared living services;
  - a. per diem rates are established based on the number of individuals sharing the living service module for both shared living non-conversion and shared living conversion services; and
4. monitored in-home caregiving services.

a. The per diem rate for monitored in-home caregiving services does not include payment for room and board, and federal financial participation is not claimed for room and board.

D. The reimbursement for transportation services is a flat fee based on a capitated rate.

1. - 3.b. Repealed.

E. Nursing services are reimbursed at either an hourly or per visit rate for the allowable procedure codes.

F. Installation of a personal emergency response system (PERS) is reimbursed at a one-time fixed rate and maintenance of the PERS is reimbursed at a monthly rate.

G. Transition expenses from an ICF/ID or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a lifetime maximum rate of \$3,000.

H. Dental services are reimbursed at the Medicaid fee-for-service rate.

I. The assessment performed by the monitored in-home caregiving provider shall be reimbursed at the authorized rate or approved amount of the assessment when the service has been prior authorized by the plan of care.

J. ...

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 for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services



Financing and the Office for Citizens with Developmental Disabilities, LR 39:1049 (April 2013), LR 41:2168, 2170 (October 2015), LR 42:63 (January 2016), LR 42:900 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 43:2530 (December 2017), LR 45:1769 (December 2019).

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.

Rebekah E. Gee MD, MPH  
Secretary

1912#074

## **RULE**

### **Department of Health Bureau of Health Services Financing**

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Reimbursement Rate Adjustment  
(LAC 50:V.Chapters 5 and 9)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:V.Chapters 5 and 9 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 V. Hospitals**

##### **Subpart 1. Inpatient Hospital Services**

##### **Chapter 5. State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

##### **§551. Acute Care Hospitals**

A. - F.2. ...

G. Effective for dates of service on or after January 1, 2020, the inpatient per diem rate paid to state-owned acute care hospitals, excluding inpatient psychiatric services, shall be calculated based on allowable costs per the latest filed cost report. Final reimbursement determined based on the allowable costs per the finalized Medicare/Medicaid cost report.

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 38:1241 (May 2012), amended LR 38:2772 (November 2012), LR 40:312 (February 2014), LR 40:1941 (October 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1770 (December 2019).

##### **§553. Inpatient Psychiatric Services for State Owned Hospitals**

A. Effective for dates of service on or after January 1, 2020, the prospective per diem rate paid to state owned free-standing psychiatric hospitals, and distinct part psychiatric units within state owned acute care hospitals, shall be increased by indexing to 32 percent of the small rural

hospital prospective per diem rate in effect on January 1, 2019.

1. Psychiatric hospitals and units whose per diem rates as of January 1, 2019, excluding the graduate medical education portion of the per diem, are greater than 32 percent of the January 1, 2019 small rural hospital rate shall not be increased.

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 45:1770 (December 2019).

## **Chapter 9. Non-Rural, Non-State Hospitals**

### **Subchapter B. Reimbursement Methodology**

### **§953. Acute Care Hospitals**

A. - V.2. ...

W. Effective for dates of service on or after January 1, 2020, the inpatient per diem rate paid to acute care hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2019.

1. Small rural hospitals as defined in R.S. 40:1300 and public-private partnership hospitals as defined in LAC 50:V.1701-1703 shall be exempt from this rate increase.

2. Carve-out specialty units, nursery boarder, and well-baby services are included in these rate increases.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895, 1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:2161 (July 2011), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), repromulgated LR 40:1939, 1940 (October 2014), LR 41:133 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1389 (July 2017), repromulgated LR 43:1757 (September 2017), amended LR 43:2533 (December 2017), repromulgated LR 44:1445 (August 2018), amended LR 45:1770 (December 2019).

### **§955. Long-Term Hospitals**

A. - L. ...

M. Effective for dates of service on or after January 1, 2020, the inpatient per diem rate paid to long-term acute hospitals shall be increased by indexing to 45 percent of the small rural hospital prospective per diem rate in effect on January 1, 2019. Long-term hospitals whose per diem rates as of January 1, 2019, excluding the graduate medical education portion of the per diem, are greater than 45 percent of the January 1, 2019 small rural hospital rate shall not be increased.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended by the Department of Health, Bureau of

Health Services Financing, LR 43:964 (May 2017), LR 43:2533 (December 2017), repromulgated LR 44:1445 (August 2018), amended LR 45:1770 (December 2019).

#### **§959. Inpatient Psychiatric Hospital Services**

A. - N.2. ...

O. Effective for dates of service on or after January 1, 2020, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals, and distinct part psychiatric units within non-rural, non-state acute care hospitals, shall be increased by indexing to 32 percent of the small rural hospital prospective per diem rate in effect on January 1, 2019.

1. Psychiatric hospitals and units whose per diem rates as of January 1, 2019, excluding the graduate medical education portion of the per diem, are greater than 32 percent of the January 1, 2019 small rural hospital rate shall not be increased.

2. Inpatient hospital psychiatric services provided under a public-private partnership as defined in §959.L of this Chapter, LAC 50:V.1701 and LAC 50:V.2901 shall be exempt from this rate increase.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 39:94 (January 2013), LR 39:323 (February 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2533 (December 2017), amended LR 44:1446 (August 2018), LR 45:1771 (December 2019).

#### **§961. Inpatient Rehabilitation Hospital Services**

A. ...

\* \* \*

B. - B.2. ...

3. Effective for dates of service on or after January 1, 2020, the prospective per diem rate paid to non-rural, non-state free-standing rehabilitation hospitals shall be indexed to 37 percent of the small rural hospital prospective per diem rate in effect on January 1, 2019.

4. Rehabilitation hospitals whose per diem rates as of January 1, 2019, excluding the graduate medical education portion of the per diem, are greater than 37 percent of the January 1, 2019 small rural hospital rate shall not be increased.

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 43:2533 (December 2017), amended LR 44:1446 (August 2018), LR 45:1771 (December 2019).

#### **§967. Children's Specialty Hospitals**

A. - M. ...

N. Effective for dates of service on or after January 1, 2020, the inpatient per diem rates paid to children's specialty hospitals for acute, neonatal intensive care units, pediatric intensive care units and burn units' services shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2019.

O. Effective for dates of service on or after January 1, 2020, the prospective per diem rate paid to distinct part

psychiatric units within children's specialty hospitals shall be increased by indexing to 32 percent of the small rural hospital prospective per diem rate in effect on January 1, 2019.

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 36:2562 (November 2010), amended LR 37:2162, 2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended LR 40:1941 (October 2014), LR 42:275 (February 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 45:1771 (December 2019).

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.

Rebekah E. Gee MD, MPH  
Secretary

1912#075

### **RULE**

#### **Department of Health Bureau of Health Services Financing**

Managed Care for Physical and Behavioral Health  
Reimbursement Methodology  
Kick and Lump Sum Payments (LAC 50:I.3509)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:I.3509 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 I. Administration**

##### **Subpart 3. Managed Care for Physical and Behavioral Health**

##### **Chapter 35. Managed Care Organization Participation Criteria**

##### **§3509. Reimbursement Methodology**

A. ...

1. The department will establish monthly capitation rates within an actuarially sound rate range certified by its actuaries. Consistent with all applicable federal rules and regulations, the rate range will initially be developed using fee-for-service claims data, Bayou Health shared savings claims data, Bayou Health managed care organization encounter data, Louisiana Behavioral Health Partnership (LBHP) encounter data, financial data reported by Bayou Health managed care organizations and the LBHP statewide management organization, supplemental ad hoc data, and actuarial analyses with appropriate adjustments.

2. As the Bayou Health managed care program matures and fee-for-service, shared savings and LBHP data are no longer available, there will be increasing reliance on

Bayou Health managed care organization encounter data and/or financial data to set future rates, subject to comparable adjustments.

3. - 4.d....

5. Kick Payments. MCOs may be reimbursed a one-time supplemental lump sum payment, hereafter referred to as a “kick payment”, for the provision of certain services that meet specific conditions, in an amount determined by the department’s actuaries.

a. The kick payment is intended to cover the cost of a specific care event or treatment. Payment will be made to the MCO upon submission of satisfactory evidence of the event or treatment.

b. Only one kick payment will be made per event or treatment.

c. Repealed.

6. ...

7. The department, or its fiscal intermediary, may reimburse an MCO’s monthly capitation payments or kick payments in the aggregate on a lump sum basis when administratively necessary.

B. - M.1. ...

2. If three attempts to contract with the provider prior to the delivery of the medically necessary service have not been documented, the MCO shall reimburse the provider the published Medicaid fee-for-service rate in effect on the date of service.

M.3. - N.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 37:1587 (June 2011), amended LR 39:92 (January 2013), LR 41:937 (May 2015), LR 41:2367 (November 2015), LR 42:755 (May 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1771 (December 2019).

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.

Rebekah E. Gee MD, MPH  
Secretary

1912#076

## **RULE**

### **Department of Health Bureau of Health Services Financing**

Medicaid Eligibility  
Medicare Savings Programs  
(LAC 50:III.10703 and 10705)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:III.10703 and §10705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This

Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part III. Eligibility**

##### **Subpart 5. Financial Eligibility**

#### **Chapter 107. Resources**

##### **§10703. General Provisions**

A. - C.1.b. ...

2. - 2.a. 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 36:2867 (December 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1772 (December 2019).

##### **§10705. Resource Disregards**

A. - B.1. ...

C. All resources shall be disregarded in eligibility determinations for all Medicare Savings Programs.

1. - 2. Repealed.

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1899 (September 2009), amended LR 36:2867 (December 2010), LR 41:949 (May 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1772 (December 2019).

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.

Rebekah E. Gee MD, MPH  
Secretary

1912#077

## **RULE**

### **Department of Health Bureau of Health Services Financing**

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Reimbursement Rate Adjustment  
(LAC 50:V.Chapters 53-61)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:V.Chapters 53-61 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospitals**

**Subpart 5. Outpatient Hospitals**

**Chapter 53. Outpatient Surgery**

**Subchapter B. Reimbursement Methodology**

**§5313. Non-Rural, Non-State Hospitals**

A. - K.1. ...

L. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state hospitals for outpatient surgery shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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 Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2534 (December 2017), LR 44:2166 (December 2018), LR 45:1773 (December 2019).

**§5317. Children's Specialty Hospitals**

A. - I.1. ...

J. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to children's specialty hospitals for outpatient surgery shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Final reimbursement shall be 100 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2534 (December 2017), LR 44:2167 (December 2018), LR 45:1773 (December 2019).

**§5319. State-Owned Hospitals**

A. - B. ...

C. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to state-owned hospitals for outpatient surgery shall be increased by 14.67 percent of the fee schedule rates on file as of December 31, 2019.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2773 (November 2012), amended LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1773 (December 2019).

**Chapter 55. Clinic Services**

**Subchapter B. Reimbursement Methodology**

**§5513. Non-Rural, Non-State Hospitals**

A. - K.1. ...

L. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state hospitals for outpatient clinic services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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 Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:1773 (December 2019).

**§5517. Children's Specialty Hospitals**

A. - I. ...

J. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to children's specialty hospitals for outpatient hospital clinic services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

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 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:1773 (December 2019).

**§5519. State-Owned Hospitals**

A. - B. ...

C. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to state-owned hospitals for outpatient clinic services shall be increased by 14.67 percent of the fee schedule rates on file as of December 31, 2019.

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 38:2774 (November 2012), amended LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1773 (December 2019).

**Chapter 57. Laboratory Services**

**Subchapter B. Reimbursement Methodology**

**§5713. Non-Rural, Non-State Hospitals**

A. - K.2. ...

L. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state hospitals for outpatient laboratory services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. In accordance with Section 1903(i)(7) of the Social Security Act, payments for Medicaid clinical diagnostic laboratory services shall be limited to the amount that Medicare pays on a per test basis. If this or any other rate adjustment causes the Medicaid calculated rate to exceed the Medicare payment rate for a clinical laboratory test, the rate shall be adjusted to the lower Medicare payment rate.

2. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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 Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:1773 (December 2019).

#### **§5719. Children's Specialty Hospitals**

A. - I.1. ...

J. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. In accordance with section 1903(i)(7) of the Social Security Act, payments for Medicaid clinical diagnostic laboratory services shall be limited to the amount that Medicare pays on a per test basis. If this or any other rate adjustment causes the Medicaid calculated rate to exceed the Medicare payment rate for a clinical laboratory test, the rate shall be adjusted to the lower Medicare payment rate.

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 36:2043 (September 2010), amended LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:1774 (December 2019).

#### **Chapter 59. Rehabilitation Services**

##### **Subchapter B. Reimbursement Methodology**

#### **§5913. Non-Rural, Non-State Hospitals**

A. - E.1. ...

F. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state hospitals for outpatient rehabilitation services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2043 (September 2010), LR 44:2167 (December 2018), LR 45:1774 (December 2019).

#### **§5917. Children's Specialty Hospitals**

A. - C.1. ...

D. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to children's specialty hospitals for outpatient rehabilitation services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

1. Final reimbursement shall be 100 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010), amended by the Department of Health,

Bureau of Health Services Financing LR 44:2168 (December 2018), LR 45:1774 (December 2019).

#### **§5919. State-Owned Hospitals**

A. - A.2. ...

B. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to state hospitals for outpatient rehabilitation services shall be increased by 3.2 percent of the rates on file as of December 31, 2019.

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 38:2774 (November 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1774 (December 2019).

#### **Chapter 61. Other Outpatient Hospital Services**

##### **Subchapter B. Reimbursement Methodology**

#### **§6115. Non-Rural, Non-State Hospitals**

A. - K.1. ...

L. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to non-rural, non-state hospitals for outpatient hospital services, other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees, shall be increased by 3.2 percent of the rates in effect as of December 31, 2019.

1. Final reimbursement shall be 85.84 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2043 (September 2010), LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2168 (December 2018), LR 45:1774 (December 2019).

#### **§6119. Children's Specialty Hospitals**

A. - I.1. ...

J. Effective for dates of service on or after January 1, 2020, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services, other than rehabilitation services and outpatient hospital facility fees, shall be increased by 3.2 percent of the rates in effect as of December 31, 2019.

1. Final reimbursement shall be 100 percent of allowable cost as calculated through the cost report settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2044 (September 2010), amended LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2168 (December 2018), LR 45:1774 (December 2019).

#### **§6127. State-Owned Hospitals**

A. - C. ...

D. Effective for dates of service on or after January 1, 2020, the reimbursement rates paid to state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation

services and outpatient hospital facility fees shall be increased by 11 percent of the rates in effect on December 31, 2019. Final reimbursement shall be at 100 percent of allowable cost through the cost settlement process.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:957 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2774 (November 2012), LR 40:315 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1774 (December 2019).

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.

Rebekah E. Gee MD, MPH  
Secretary

1912#078

## **RULE**

### **Department of Health Office for Citizens with Developmental Disabilities**

Community and Family Support System  
Flexible Family Fund  
(LAC 48:I.16115)

Under the authority of R.S. 28:824, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that, the Louisiana Department of Health, Office for Citizens with Developmental Disabilities (LDH-OCDD), has amended LAC 48:I.16115, Appeals in the Community and Family Support System. The amendment sets the timeline for an appeal deadline. This Rule is hereby adopted on the day of promulgation.

#### **Title 48**

#### **PUBLIC HEALTH—GENERAL**

#### **Part 1. General Administration**

#### **Subpart 11. Community and Family Support System**

#### **Chapter 161. Community and Family Support System—Flexible Family Fund**

#### **§16115. Appeals**

A. ...

B. 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.

C. The local governing entity (LGE) will prepare a summary of evidence upon being notified of an appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:865 (July 1997), LR 28:1022 (May 2002), LR 33:1137 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2587 (September 2011), amended the Department of Health, Office for

Citizens with Developmental Disabilities, LR 45:561 (April 2019), amended by the Department of Health, Office for Citizens with Developmental Disabilities, LR 45:1775 (December 2019).

Rebekah E. Gee MD, MPH  
Secretary

1912#053

## **RULE**

### **Department of Insurance Office of the Commissioner**

#### **Regulation 70—Replacement of Life Insurance and Annuities (LAC 37:XIII.Chapter 89)**

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 70—Replacement of Life Insurance and Annuities by repealing §8905.A.11.

The purpose of the amendment to Regulation 70 is to remove the exemption from the regulation of any insurer that markets under the Home Service Marketing Distribution System, as R.S. 22:1553(C), which defined the Home Service Marketing Distribution System, was repealed by Acts 2009, No. 485, §3 and to update statutory references that have changed due to recodification of Title 22 of the Louisiana Revised Statutes. This Rule is hereby adopted on the day of promulgation.

#### **Title 37**

#### **INSURANCE**

#### **Part XIII. Regulations**

#### **Chapter 89. Regulation 70—Replacement of Life Insurance and Annuities**

#### **Subchapter A. General Provisions**

#### **§8905. Exemptions**

\* \* \*

A. - A.10. ...

11. Repealed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:910 and R.S. 22:1141(C)(2).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 37:318 (July 2011), amended LR 45:1775 (December 2019).

#### **§8917. Violations and Penalties**

A. Any failure to comply with this regulation shall be considered a violation of R.S. 22:1964. Examples of violations include:

A.1. - C. ...

D. Violations of this regulation shall subject the violators to penalties as provided by R.S. 22:1969, 1970, and any other applicable provisions of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and R.S. 22:910.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 37:318 (July 2011), amended LR 45:1775 (December 2019).

James J. Donelon  
Commissioner

1912#018

## RULE

### Department of Insurance Office of the Commissioner

#### Regulation 72—Commercial Lines Insurance Policy Form Deregulation (LAC 37:XIII.Chapter 90)

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 72—Commercial Lines Insurance Policy Form Deregulation.

The purposes of the amendments to Regulation 72 are to update cross-references to redesignated sections of Title 22 of the Louisiana Revised Statutes that were redesignated pursuant to Act 415 of the 2008 Regular Session, to update the purpose of the regulation to make clear that the exemption implemented under this regulation is not experimental, to update acronyms used throughout the regulation, to change the definition of “person” to the same definition used in Title 22, to delete definitions for terms not used in the regulation, to replace references to the Louisiana Insurance Rating Commission with the commissioner of insurance, and to update provisions relative to the right to demand a hearing. This Rule is hereby adopted on the day of promulgation.

#### Title 37 INSURANCE

#### Part XIII. Regulations

#### Chapter 90. Regulation 72—Commercial Lines Insurance Policy Form Deregulation

##### §9001. Authority

A. This regulation is adopted pursuant to R.S. 22:861.F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:861.F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:500 (March 2000), amended LR 45:1776 (December 2019).

##### §9003. Purpose

A. The purpose of this regulation is to allow for more flexibility in the placement of insurance with large commercial risks within the parameters of the admitted market by establishing an exemption from the form filing, review and approval requirements of the Louisiana Insurance Code, and to adopt the initial definition of an “exempt commercial policyholder”. The exemption implemented under this regulation is predicated upon the continued existence of an open and competitive market and the good faith of insurers in carrying out the fiduciary obligations owed to their insureds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:861.F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:500 (March 2000), amended LR 45:1776 (December 2019).

##### §9009. Definitions

A. ...

\*\*\*

*Authorized Insurer*—shall have the meaning found in R.S. 22:46(3).

*Commissioner*—the commissioner of insurance for the state of Louisiana.

\*\*\*

*Competitive Market*—a market in which a reasonable degree of competition exists or which has not been found to be in violation of R.S. 22:1961 et seq. In determining whether a reasonable degree of competition exists within a line of insurance, the commissioner shall consider the following factors:

a. - f. ...

*Insurer*—shall have the meaning found in R.S. 22:46(10).

*Person*—any individual, company, insurer, association, organization, reciprocal or inter-insurance exchange, partnership, business, trust, limited liability company, or corporation.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11 and R.S. 22:861.F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:500 (March 2000), amended LR 45:1776 (December 2019).

#### §9011. Types of Coverage Exempt from Form Filing and Approval

A. All kinds of commercial property and casualty insurance, including but not limited to Commercial Property, Boiler and Machinery, Commercial Auto, General Liability, Directors and Officers, Business Owners and Inland Marine insurance, written on commercial risks are exempt from the form filing and approval provisions of R.S. 22:861 if the policy is issued to an exempt commercial policyholder as defined in §9013 of this regulation, except for the following kinds:

A.1. - A.2. ...

B. The exemption provided for in this Section only applies to policy forms. Rate and rule filings must be made with the commissioner as required by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:861.F, and R.S. 22:1456.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:501 (March 2000), amended LR 45:1776 (December 2019).

#### §9013. Special Commercial Entities

A. - B.3. ...

C. Beginning January 1, 2001, the criteria in Subsection B of this Section must be reviewed on an annual basis by the commissioner for the purposes of determining whether the criteria should be modified. The review must be completed on or before the thirty-first day of March.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:11, and R.S. 22:861.F.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:501 (March 2000), amended LR 45:1776 (December 2019).

#### §9015. Disclosure Requirements and Certification Form

A. - C. ...

D. A copy of the certification form shall be maintained by the insurer and by the producing agent or broker in the policyholder's record for a period of five years from the date of issuance of the insurance policy or renewal policy if at renewal a new certification form is executed. The insurer or producing agent or broker shall make such certification forms available for examination by the commissioner or any person acting on behalf of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:11, R.S. 22:861.F, R.S. 22:1961 et seq., and R.S. 22:1981.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:501 (March 2000), amended LR 45:1776 (December 2019).

#### **§9017. Requirements for Maintaining Records**

A. - A.4. ...

B. The record required by this Section may be kept in electronic or written form and shall be maintained by the insurer for a period of five years from the date of issuance of the insurance policy or renewal policy if a new certification form is required pursuant to §9015.C. Upon request, the insurer shall produce such record for examination by the commissioner or any person acting on behalf of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:11, R.S. 22:1961 et seq., and R.S. 22:1981.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:502 (March 2000), amended LR 45:1777 (December 2019).

#### **§9019. Exempt Policy Forms**

A. Commercial risk property and casualty policy forms which would otherwise have to be filed with and approved by the commissioner are exempt from this requirement if issued to an exempt commercial policyholder. The exemption of the policy form from the requirement that it be filed with and approved by the commissioner is not to be taken by an insurer to mean that an insurance contract confected by the use of such a policy form, or policy forms, may in any manner be inconsistent with the statutory law of this state or public policy as expressed by the courts of this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:11, R.S. 22:861, and R.S. 22:1961 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:502 (March 2000), amended LR 45:1777 (December 2019).

#### **§9021. Penalties for Failure to Comply**

A. The exemption created by this regulation is a limited one and insurers must strictly comply with the conditions creating the exemption. Failure to comply with the regulation by any person subject to its provisions, after proper notice, may result in the imposition of such penalties as are authorized by law. An aggrieved party affected by the commissioner's decision, act, or order may demand a hearing in accordance with R.S. 22:191 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:11, R.S. 22:18, R.S. 22:861, R.S. 22:1961 et seq., and R.S. 22:1554.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:502 (March 2000), amended LR 45:1777 (December 2019).

James J. Donelon  
Commissioner

1912#017

## **RULE**

### **Department of Insurance Office of the Commissioner**

#### **Regulation 80—Commercial Lines Insurance Rate Deregulation (LAC 37:XIII.Chapter 93)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and through the authority granted under R.S. 22:1 et seq., and specifically R.S. 22:11, the Department of Insurance has hereby repealed Regulation 80—Commercial Lines Insurance Rate Deregulation. The Department of Insurance has repealed Regulation 80 to comply with Acts 2007, No. 459, § 3 of the Regular Session of the Louisiana Legislature that repealed R.S. 22:1401.1D, under which authority Regulation 80 was originally promulgated.

The purpose of Regulation 80 was to implement the provisions of Acts 2004, No. 878 of the Louisiana Legislature, Regular Session, which exempted commercial property and casualty insurers from the rate approval process unless the commissioner determines that the market for a line of insurance is noncompetitive. This Rule is hereby adopted on the day of promulgation.

#### **Title 37**

#### **INSURANCE**

#### **Part XIII. Regulations**

#### **Chapter 93. Regulation Number 80—Commercial Lines Insurance Rate Deregulation**

##### **§9301. Authority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45:1777 (December 2019).

##### **§9303. Purpose**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45:1777 (December 2019).

##### **§9305. Scope and Applicability**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45:1777 (December 2019).

##### **§9307. Severability**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45:1777 (December 2019).



### **§9309. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45:1778 (December 2019).

### **§9311. Types of Insurance Exempt from Rate Filing and Approval Process**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45: 1778 (December 2019).

### **§9313. Exempt Rates**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45: 1778 (December 2019).

### **§9315. Noncompetitive Market; Public Notice and Hearing**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45: 1778 (December 2019).

### **§9317. Disciplinary Hearings; Fines**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45: 1778 (December 2019).

### **§9319. Effective Date**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:1401.1D.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 30:2834 (December 2004), repealed LR 45: 1778 (December 2019).

James J. Donelon  
Commissioner

1912#016

## **RULE**

### **Department of Insurance Office of the Commissioner**

#### **Regulation 100—Coverage of Prescription Drugs through a Drug Formulary (LAC 37:XIII.Chapter 41)**

Editor's Note: This Rule is being repromulgated to correct a publication error. The original Rule may be viewed on pages 1207-1208 of the September 20, 2019 *Louisiana Register*.

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 100 to provide clarification in regards to the requirement of obtaining approval from the commissioner whenever a health insurance issuer implements a modification affecting drug coverage in accordance with Act No. 316 in the 2012 Regular Session. This Rule is hereby adopted on the day of promulgation.

## **Title 37**

## **INSURANCE**

### **Part XIII. Regulations**

#### **Chapter 41. Regulation 100—Coverage of Prescription Drugs through a Drug Formulary**

##### **§14101. Purpose**

A. ...

B. The purpose of the amendment to Regulation 100 is to provide clarification set forth in R.S. 22:1068(F) and R.S. 22:1074(F) in regards to the requirement of obtaining approval from the commissioner whenever a health insurance issuer modifies health insurance coverage offered in the group and individual markets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 1068(F) and R.S. 22:1074 (F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 45:1207 (September 2019), repromulgated LR 45: 1778 (December 2019).

##### **§14111. Requirements for the Modification Affecting Drug Coverage**

A. - A5. ...

B. A health insurance issuer shall notify the commissioner in writing of a modification affecting drug coverage 75 days prior to the renewal date of the policy form as to those modifications enumerated in R.S. 22:1061(5) and set forth in § 14111.A herein. A health insurance issuer shall provide the notice of modification affecting drug coverage as provided for in R.S. 22:1068(D)(3) and R.S. 22:1074(D)(3) and shall only modify the policy or contract of insurance at the renewal of the policy or contract of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 45:1778 (September 2019), repromulgated LR 45: 1778 (December 2019).

##### **§14115. Requirements for Modifying a Group Insurance Product**

A. Pursuant to R.S. 22:1068, a health insurance issuer may modify its drug coverage offered to a group health plan if each of the following conditions is met.

1. The modification occurs at the time of coverage renewal.

2. The modification is approved by the commissioner. However, modification affecting drug coverage as defined in R.S. 22:1061(5)(y) and found in §14111.A. of this regulation shall not require approval by the commissioner.

3. The modification is consistent with state law.

4. The modification is effective on a uniform basis among all small or large employers covered by that group health plan.

5. The health insurance issuer, on the form approved by the Department of Insurance, notifies the small or large employer group and each enrollee therein of the modification no later than the sixtieth day before the date the modification is to become effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 45: 1207 (September 2019), repromulgated LR 45: 1778 (December 2019).

#### **§14117. Requirements for Modifying an Individual Insurance Product**

A. Pursuant to R.S. 22:1074, a health insurance issuer may modify its drug coverage offered to individuals if each of the following conditions is met.

1. The modification occurs at the time of coverage renewal.

2. The modification is approved by the commissioner. However, modification affecting drug coverage as defined in R.S. 22:1061(5)(y) and found in §14111.A. of this regulation shall not require approval by the commissioner.

3. The modification is consistent with state law.

4. The modification is effective on a uniform basis among all individuals with that policy form.

5. The health insurance issuer, on a form approved by the Department of Insurance, notifies each affected individual of the modification no later than the sixtieth day before the date the modification is to become effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended LR 45: 1207 (September 2019), repromulgated LR 45:1779 (December 2019).

#### **§14119. Modification Affecting Drug Coverage**

A. To facilitate the ability of the commissioner to comply with his statutory duty, the commissioner shall have the authority to enter into a contract with any person or entity he deems applicable, relevant and/or appropriate to provide advice and/or make a recommendation to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22: 1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:1028 (April 2012), amended 45: 1207 (September 2019), repromulgated LR 45: 1779 (December 2019).

#### **§141120. Effective Date**

A. This regulation shall be effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, R.S. 22:1068(F) and R.S. 22:1074(F).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 45:1207 (September 2019), repromulgated LR 45: 1779 (December 2019).

James J. Donelon  
Commissioner

1912#008

## **RULE**

### **Department of Insurance Office of the Commissioner**

#### **Regulation 107—Homeowner and Fire/Commercial Insurance Policy Disclosure Forms (LAC 37:XIII.Chapter 153)**

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 107—Homeowner and Fire/Commercial Insurance Policy Disclosure Forms by amending Appendices B and C and repromulgating Appendix A.

The purpose of the amendment to Regulation 107 is to revise and repromulgate forms for homeowners' insurance policies that comply with the requirements of Act No. 194 of the 2019 Regular Session of the Louisiana Legislature, which enacted R.S. 22:1332(B)(8). This Rule is hereby adopted on the day of promulgation.

#### **Title 37**

#### **INSURANCE**

#### **Part XIII. Regulations**

#### **Chapter 153. Regulation 107—Homeowner and Fire/Commercial Insurance Policy Disclosure Forms**

#### **§15301. Purpose**

A. The purpose of Regulation 107 is to repromulgate the fire/commercial insurance policy disclosure form contained in Appendix A and to amend the homeowners insurance policy disclosure forms contained in Appendices B and C developed by the commissioner of insurance for use by all property and casualty insurers issuing, delivering or renewing homeowners and fire/commercial insurance policies that provide coverage for damages to property in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:530 (March 2017), amended LR 45: 1779 (December 2019).

#### **§15303. Applicability and Scope**

A. Regulation 107 shall be applicable to all property and casualty insurers for all new fire/commercial policies and homeowner policies and all renewals of existing fire/commercial policies and homeowner policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:530 (March 2017), amended LR 45: 1779 (December 2019).

#### **§15305. Disclosure Forms**

A. - C. ...

D. Appendix B contains the form that sets forth the disclosures required by R.S. 22:1332(B)(1)-(6) and (8) for use by all property and casualty insurers issuing homeowner policies covering property in Louisiana.

E. Appendix C contains the form that sets forth the disclosures required by R.S. 22:1332(B)(1)-(8) for use by all property and casualty insurers issuing homeowner policies covering property in Louisiana that use claims that do not exceed the policy deductible and that do not result in a payment either to the insured or on behalf of the insured to increase the cost of the policy premium in the future or as part of the basis for cancellation of a policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR 45: 1779 (December 2019).

#### **§15307. Amendment**

A. The commissioner of insurance reserves the right to amend, modify, alter or rescind all or any portion of Regulation 107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR 45:1780 (December 2019).

#### **§15309. Severability Clause**

A. If any provision of Regulation 107, or the application thereof to any circumstance, is held invalid, such determination shall not affect other provisions or applications of Regulation 107 which can be given effect without the invalid provision or application, and to that end the provisions of Regulation 107 are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR 45: 1780 (December 2019).

#### **§15311. Effective Date**

A. The forms previously promulgated in Appendices B and C shall continue in use until May 30, 2020.

B. The amendments to Appendices B and C shall be used for all new and renewal policies issued or renewed on or after May 30, 2020.

C. The form previously promulgated in Appendix A remains unchanged and shall continue in full force and effect until amended, modified, altered or rescinded by the commissioner of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR 45: 1780 (December 2019).

#### **§15313. Appendices**

##### **A. Appendix A**

Important Information Required by the Louisiana Department of Insurance

Fire Insurance Policy Coverage Disclosure Summary  
(other than Homeowners)

Or

Commercial Insurance Policy Coverage Disclosure Summary  
This form is promulgated pursuant to La. R.S. 22:1319

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

**\*\*READ YOUR INSURANCE POLICY FOR COMPLETE POLICY TERMS AND CONDITIONS\*\***

COVERAGE(S) FOR WHICH PREMIUM WAS PAID (La. R.S. 22:1319(B)(1))

[INSERT PROPERTY COVERAGES]

Deductibles (La. R.S. 22:1319(B)(3))

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible Examples—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

The insurer shall comply with La. R.S. 22:1319 B(3) by selecting either option A or B below:

A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss for each coverage included in the policy for which a premium has been paid. The total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible(s) so that the example demonstrates a net payment to the insured.

B. Utilizing the standardized example prepared by the LDI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

The following assumes no co-insurance penalty and a 2% hurricane, wind, or named storm deductible. The amounts of loss to the damaged property are \$50,000 (building) and \$20,000 (business personal property).

Limits of insurance on building.....	\$ 100,000
Total amount of building loss.....	\$ 50,000
Less 2% deductible (\$100,000 X .02).....	\$ 2,000
Net payment to insured for building loss.....	\$ 48,000
Limits of insurance on the business personal property.....	\$ 50,000
Total amount of business personal property loss.....	\$ 20,000
Less 2% deductible (\$50,000 X .02).....	\$ 1,000
Net payment to insured for business personal property loss.....	\$ 19,000
Total net payment to insured for building and business personal property loss (\$48,000 + \$19,000).....	\$ 67,000

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

Limitations or Exclusions under this Policy (La. R.S. 22:1319(B)(2))

FLOOD—Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes, but is not limited to, storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling or building and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy, from this or another insurer, if the amount of the primary flood insurance is not enough to cover the value of your property.

You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

**MOLD**—Damage caused solely by mold [is/is not] covered under this policy.

**\*\*FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS\*\***

## B. Appendix B

Important Information Required by the Louisiana Department of Insurance

Homeowners Insurance Policy Coverage Disclosure Summary

This form is promulgated pursuant to La. R.S. 22:1332(B)(1)-(6) and (8)

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

**\*\*READ YOUR INSURANCE POLICY FOR COMPLETE POLICY TERMS AND CONDITIONS\*\***

COVERAGE(S) FOR WHICH PREMIUM WAS PAID (La. R.S. 22:1332(B)(1))

[INSERT PERSONAL PROPERTY COVERAGES]

Example:

Coverage A Dwelling  
Coverage B Other Structures  
Coverage C Personal Property  
Coverage D Loss of Use  
Coverage E Personal Liability  
Coverage F Medical Payments

Deductibles (La. R.S. 22:1332(B)(5) and (6))

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

**NOTICE:** This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

**Separate Deductible Example—Hurricane, Wind or Named Storm Damage.**

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

The insurer shall comply with La. R.S. 22:1332(B)(6) by selecting and inserting either option A or B below:

A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss under each of Coverage A, B, C and D and the total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible so that there shall be a net payment to the insured.

B. Utilizing the standardized example prepared by the LDI if this standardized example properly reflects how a separate

deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

If the total insured value of the dwelling or Coverage A is \$200,000 and you have a 2% hurricane, wind, or named storm deductible, then your hurricane, wind or named storm deductible would be \$200,000.00 X .02 = \$4,000.00.

Losses:

Coverage A – Dwelling	\$15,000
Coverage B – Other Structures	\$ 2,500
Coverage C – Personal Property	\$ 3,000
Coverage D – Loss of Use	\$ 2,000
Total amount of all losses	\$22,500
Less 2% hurricane, wind or named storm deductible	\$ 4,000
Net payment to insured	\$18,500

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

Limitations or Exclusions under this Policy (La. R.S. 22:1332(B)(2))

**FLOOD**—Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes but is not limited to storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy from this or another insurer if the amount of the primary flood insurance is not enough to cover the value of your property.

You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

**MOLD**—Damage caused solely by mold [is/is not] covered under this policy.

**\*\*FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS\*\***

Claim Filing Process (La. R.S. 22:1332(B)(3))

There may be time limitations for filing a claim and filing of a satisfactory proof of loss. There may also be time limitations for repairing and replacing damaged property that could cause you to not recover the replacement cost for the insured loss of your property, if applicable.

Payment of Claims (La. R.S. 22:1332(B)(3))

Depending on the terms of the insurance policy, some losses may be based on actual cash value (ACV) and other losses based on replacement cost (RC).

ACV is the amount needed to repair or replace the damaged or destroyed property, minus the depreciation.

RC involves the initial payment of actual cash value (ACV) of a loss, and the subsequent payment of the additional amount that is actually and necessarily expended to repair or replace the damaged or destroyed property.

**\*\*Refer to your policy for the terms and conditions describing how a particular loss is to be paid.**

Payment and Adjustment of Claims (La. R.S. 22:1332(B)(4))

Pursuant to La. R.S. 22:1892 and 22:1973, except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and/or a claim for reasonable medical expenses within fourteen (14) days after notification of loss by the claimant.

In the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within thirty (30) days after notification of loss by the claimant unless the Commissioner of Insurance promulgates a rule to extend the time period for initiating a loss adjustment for damages arising from a presidentially declared emergency or disaster or a gubernatorially declared emergency or disaster for up to an additional thirty (30) days. Thereafter, one additional extension of the period of time for initiating a loss adjustment may be allowed by the Commissioner of Insurance if approved by the Senate Committee on Insurance and the House Committee on Insurance.

All insurers shall make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after the receipt of satisfactory proof of loss of that claim.

Failure to make such payment within thirty (30) days after receipt of such satisfactory written proofs and demand thereof or failure to make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after receipt of a satisfactory proof of loss of that claim may result in a late penalty against the insurer in addition to the payment of the claim.

If the insurer is found to be arbitrary, capricious, or without probable cause in settling any property damage claim, the insurer must pay the insured, in addition to the amount of the loss, fifty percent (50%) damages on the amount found to be due from the insurer to the insured, or one thousand dollars (\$1,000.00), whichever is greater, as well as attorney fees and costs, if applicable.

Reduction in Premium for Improvements or Modifications to Property (La. R.S. 22:1332(B)(8))

Certain improvements or modifications to your property, such as adding storm shutters, modifying the roof design, and improving the roof covering, may reduce your premium. Contact your insurance producer or insurer for complete details on qualifying improvements or modifications. For further guidance and assistance, see Regulation 94—Premium Adjustments for Compliance with Building Codes and Damage Mitigation, found at LAC 37:XIII.Chapter 127.

## C. Appendix C

### Important Information Required by the Louisiana Department of Insurance

#### Homeowners Insurance Policy Coverage Disclosure Summary

This form is promulgated pursuant to La. R.S. 22:1332 (B) (1)-(8)

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

**\*\*READ YOUR INSURANCE POLICY FOR COMPLETE POLICY TERMS AND CONDITIONS\*\***

COVERAGE(S) FOR WHICH PREMIUM WAS PAID  
(La. R.S. 22:1332(B)(1))

[INSERT PERSONAL PROPERTY COVERAGES]

Example:

Coverage A Dwelling  
Coverage B Other Structures  
Coverage C Personal Property  
Coverage D Loss of Use  
Coverage E Personal Liability  
Coverage F Medical Payments  
Deductibles (La. R.S. 22:1332(B)(5), (6) and (7))

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be

subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

If you file a claim that does not exceed the policy deductible and that does not result in a payment either to you or on your behalf, that claim may be used to increase the cost of your policy's premium in the future or as part of the basis for cancellation of your policy.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible Example—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

The insurer shall comply with La. R.S. 22:1332 B(6) by selecting and inserting either option A or B below:

A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss under each of Coverage A, B, C and D and the total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible so that there shall be a net payment to the insured.

B. Utilizing the standardized example prepared by the LDI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

If the total insured value of the dwelling or Coverage A is \$200,000.00 and you have a 2% hurricane, wind, or named storm deductible, then your hurricane, wind or named storm deductible would be \$200,000.00 X .02 = \$4,000.00.

#### Losses:

Coverage A – Dwelling	\$15,000
Coverage B – Other Structures	\$ 2,500
Coverage C – Personal Property	\$ 3,000
Coverage D – Loss of Use	\$ 2,000
Total amount of all losses	\$22,500
Less 2% hurricane, wind or named storm deductible	\$ 4,000
Net payment to insured	\$18,500

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

Limitations or Exclusions under this Policy (La. R.S. 22:1332(B)(2))

**FLOOD**—Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes but is not limited to storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy from this or another insurer if the amount of the primary flood insurance is not enough to cover the value of your property.

You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

**MOLD**—Damage caused solely by mold [is/is not] covered under this policy.

**\*\*FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS\*\***

**Claim Filing Process (La. R.S. 22:1332(B)(3))**

There may be time limitations for filing a claim and filing of a satisfactory proof of loss. There may also be time limitations for repairing and replacing damaged property that could cause you to not recover the replacement cost for the insured loss of your property, if applicable.

**Payment of Claims (La. R.S. 22:1332(B)(3))**

Depending on the terms of the insurance policy, some losses may be based on actual cash value (ACV) and other losses based on replacement cost (RC).

ACV is the amount needed to repair or replace the damaged or destroyed property, minus the depreciation.

RC involves the initial payment of actual cash value (ACV) of a loss, and the subsequent payment of the additional amount that is actually and necessarily expended to repair or replace the damaged or destroyed property.

**\*\* Refer to your policy for the terms and conditions describing how a particular loss is to be paid.**

**Payment and Adjustment of Claims (La. R.S. 22:1332(B)(4))**

Pursuant to La. R.S. 22:1892 and 22:1973, except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and/or a claim for reasonable medical expenses within fourteen (14) days after notification of loss by the claimant.

In the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within thirty (30) days after notification of loss by the claimant unless the Commissioner of Insurance promulgates a rule to extend the time period for initiating a loss adjustment for damages arising from a presidentially declared emergency or disaster or a gubernatorially declared emergency or disaster for up to an additional thirty (30) days. Thereafter, one additional extension of the period of time for initiating a loss adjustment may be allowed by the Commissioner of Insurance if approved by the Senate Committee on Insurance and the House Committee on Insurance.

All insurers shall make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after the receipt of satisfactory proof of loss of that claim.

Failure to make such payment within thirty (30) days after receipt of such satisfactory written proofs and demand thereof or failure to make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after receipt of a satisfactory proof of loss of that claim may result in a late penalty against the insurer in addition to the payment of the claim.

If the insurer is found to be arbitrary, capricious, or without probable cause in settling any property damage claim, the insurer must pay the insured, in addition to the amount of the loss, fifty percent (50%) damages on the amount found to be due from the insurer to the insured, or one thousand dollars (\$1,000.00), whichever is greater, as well as attorney fees and costs, if applicable.

**Reduction in Premium for Improvements or Modifications to Property (La. R.S. 22:1332(B)(8))**

Certain improvements or modifications to your property, such as adding storm shutters, modifying the roof design, and improving the roof covering, may reduce your premium. Contact your insurance producer or insurer for complete details on qualifying improvements or modifications. For further guidance and assistance, see Regulation 94—Premium Adjustments for Compliance with Building Codes and Damage Mitigation, found at LAC 37:XIII.Chapter 127.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:11, 22:1319 and 22:1332.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:531 (March 2017), amended LR 45: 1780 (December 2019).

James J. Donelon  
Commissioner

1912#015

**RULE**

**Department of Public Safety and Corrections  
Corrections Services**

**Public Information Program and Media Access  
(LAC 22:I.339)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has amended the contents of §339, Public Information Program and Media Access. This Rule is hereby adopted on the day of promulgation.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult Services**

**§339. Public Information Program and Media Access**

A. Purpose—to state the general guidelines regarding department policies aimed at maintaining informative relationships with the public, the media and other agencies.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens, Director of Probation and Parole, Director of Prison Enterprises and communications director. Each unit head shall develop procedures to facilitate interaction with the public, the media, and other agencies and is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and to inform employees and offenders of its contents.

C. Policy. It is the secretary's policy to maintain a cooperative and responsible relationship with and to inform the public, media and other agencies concerning department operations, accomplishments, challenges and critical incidents. News media inquiries shall be responded to in an accurate and timely manner, consistent with the security, public safety and the privacy interests of the department, its staff and offenders. All legitimate news media organizations shall be allowed reasonable access to the state's correctional facilities unless security considerations dictate otherwise.

**D. Definitions**

*Commercial Production*—freelance photographers, writers and film makers who intend to sell their work product (including uncommitted documentaries) for profit to other companies.

*Credentials*—for purposes of identification, both photo identification, such as a valid driver's license, and identification (ID) card issued by the reporter's place of employment shall be required. In the absence of employee ID cards, the department reserves the right to verify all

identification and to refuse admittance when such identification is found to be suspect.

*Designated Spokesperson*—an individual employee that has been given permission to speak to the media on behalf of the department, institution, or Probation and Parole Office. These persons are granted permission to speak to the media by the unit head.

*News Media*—any accredited agency that gathers and reports news for a general circulation newspaper, news magazine, national or international news service or radio/television news program. This includes newspapers, publications, television/radio stations and internet news services. Authors or freelance journalists who are researching and/or writing articles about corrections or criminal justice topics must provide credentials to verify their association with a legitimate news/media organization.

*News Release*—a written statement concerning an issue, event or situation for which the department wishes to make a permanent record-for widespread dissemination.

*On Record Correspondence*—official and quotable communication or information dissemination on behalf of the Department of Corrections with any media or news outlet.

#### E. Release of Information

1. The secretary shall have discretion to grant or deny an interview request.

2. Information regarding non-restrictive departmental operations, policies, procedures, etc. shall be released through the communications director.

3. Departmental news releases shall be disseminated through the communications director. Unit specific news releases shall be submitted to the communications director for review and approval prior to dissemination.

4. The unit head or his designee shall inform the communications director of any and all news media requests. The communications director shall advise and assist the unit head or designee in all matters, responses, and information dissemination related to such requests.

5. Any on record correspondence with local, state, national or international media, whether in person, telephone, or writing, must first be approved by the communications director, the secretary or the executive counsel.

6. The reporting of unusual occurrences shall be made in accordance with established policy and procedures. In addition, the secretary, chief of operations and communications director shall be made aware as soon as possible of any incidents involving offenders under the supervision of the Division of Probation and Parole.

7. Unless specifically assigned to do so by the unit head, other departmental employees shall not make statements on behalf of the unit or the department. Staff shall refer all media inquiries to the unit head or designee.

#### F. Release of Data

1. In conjunction with the secretary and communications director, and in accordance with the requirements of Section E, units will proactively communicate with the news media regarding escapes,

incidents of serious violence, riots, or other disturbances which result in fatalities, major injuries, major property damage or any other serious disruption of prison operations.

2. Upon request from a news media representative, information regarding an offender shall be released in accordance with established policy and procedures.

3. Information regarding psychiatric, medical or juvenile criminal histories of offenders cannot be released. Additionally, pursuant to R.S. 46:1844(W)(1)(a), the name, address or identity of crime victims who, at the time of the commission of the offense were minors under 18 years of age, or who were victims of sex offenses, regardless of the date of commission of the offense, cannot be disclosed.

#### G. General Procedures

1. Unit procedures shall address emergency and non-emergency responses to the news media and include, at a minimum, the following:

a. identification of areas in the unit that are accessible to news media representatives;

b. contact person for routine requests for information;

c. identification of data and information protected by federal or state privacy laws, or federal and state freedom of information laws;

d. special events coverage;

e. news release policy; and

f. designated staff authorized to speak with the news media (which shall be submitted to the communications director each time the staff list is updated).

2. Inquiries from legislative and executive bodies shall be referred to the secretary's office.

#### H. General Population and Offender Interviews

1. News media wishing to interview an offender shall submit a request to the unit head indicating whom they want to interview and the nature of the story. The request shall be submitted on official letterhead. Such requests must be made within a reasonable time frame, considering the scope of the story and the unit's ability to adequately prepare for the visit. The unit head or designee shall submit all inmate interview requests to the communications director for consideration. The unit head or designee shall facilitate interview requests upon the approval of the communications director.

2. Interviews of offenders shall be considered on a case by case basis at the sole discretion of the communications director.

3. Offenders may be eligible to be interviewed by the media under the following conditions:

a. assigned to general population (not to include initial reception unless a pressing need request is approved by the secretary);

b. required to sign an offender media release form. Because interviews are voluntary, the offender has the right to refuse to be interviewed, photographed or recorded by the media. The written release or decision not to be interviewed shall be filed in the offender's master prison record;

c. receive no compensation or anything of value (monetary or through enhanced status) in exchange for, or as a result of, the interview.

4. In general, interviews with offenders housed in maximum custody areas for behavior problems and/or poor conduct records and offenders convicted of sexual offenses are strongly discouraged.

5. Any request to interview an offender may be denied on the basis of security, public safety, medical or other administrative reason including, but not limited to the following:

a. the news media representative or news organization which is represented does not agree to the conditions established by the department and the warden;

b. the news media representative or news organization has, in the past 12 months, failed to abide by any required conditions;

c. the offender is physically or mentally unable to participate;

d. the interview, in the opinion of the warden, would endanger the health or safety of the interviewer, media crew, facility, offender, or could cause serious unrest or disrupt the operation of the facility;

6. Telephone interviews with an offender are prohibited.

NOTE: Exceptions may be authorized and require the approval of both the communications director and the warden or designee.

#### I. Rules for Media in Prisons

1. All media representative must have prior approval to visit an institution.

2. Live broadcasts by television or radio (other than KLSP) are prohibited within correctional facilities, unless specifically authorized by the secretary.

3. Interviews shall take place on prison grounds in an area outside of offender living areas.

4. Interviews shall take place in view of a departmental employee for the safety of the media representative. The warden or designee reserves the right to terminate any interview or coverage within the facility should a disturbance or disruption occur.

5. All media visitors shall be provided with an escorting staff member for the duration of the visit.

6. Interviews may be recorded by video, audio, notes or other methods with prior approval of the warden and the offender to be interviewed.

7. Only one media organization may be allowed to interview an offender at any given time. News conferences are not permitted for offenders.

8. A media representative shall give written approval to allow the department the opportunity to respond to any allegations which might be published or broadcast prior to distribution.

9. The warden or designee may suspend all media visits during an institutional crisis or critical incident. The warden or designee shall periodically brief all media on the situation. A media briefing center may be established at a remote location.

10. Failure by a news media representative to comply with the rules of this regulation constitutes grounds for

denying the representative and/or the representative's agency permission to conduct the interview or any other interviews for a 12-month period.

#### J. Death Row and Executions

1. Death Row offenders must have their attorney's written approval prior to an interview, photograph and/or audio or video recording.

2. Media access preceding and following an execution shall be in accordance with established policy and procedures.

#### K. Procedures for Commercial Productions or Non-News Media

1. Unit access by independent filmmakers, writers for non-news magazines and others may be permitted by special advance arrangement and with the approval of the secretary and unit head.

2. All commercial production staff are required to make a written request to the unit head for access. Written requests shall include, at a minimum, the following information, as applicable:

a. name, job title and employer of person requesting visit (if freelance, the organization represented);

b. topic of story, where it will be used and for what purpose;

c. name of individual(s) to be interviewed;

d. date and time of arrival and anticipated duration;

e. name of all persons accompanying requestor;

f. if applicable, a hold harmless clause: "I recognize a visit to a correctional facility may present certain risks/hazards. I agree to assume all ordinary and/or usual risks to my personal safety inherent in a visit to an institution of this type."

3. Written requests shall be forwarded to the secretary for final review prior to project commencement.

4. All commercial productions are required to read, understand and sign a commercial production location agreement form upon their arrival at the unit. The unit head or designee may require review of the material prior to distribution solely to insure that it comports with the agreement.

#### L. Exceptions

1. The secretary or designee may make exceptions to specific sections of this regulation. Requests for exceptions, and the reasons therefore, shall be directed to the secretary for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49.950 and American Correctional Association (ACA) Standards 2-CO-1A-25 through 27-1 (Administration of Correctional Agencies) 4-4019 through 4-4021 (Adult Correctional Institutions).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 25:1260 (July 1999), amended LR 31:1100 (May 2005), repromulgated LR 31:1343 (June 2005), amended LR 36:1265 (June 2010), LR 45:1783 (December 2019).

James M. LeBlanc  
Secretary

1912#044



## RULE

### Department of Public Safety and Corrections Office of State Fire Marshal Uniform Construction Code Council

#### Uniform Construction Code (LAC 17:I.Chapter 1)

In accordance with the provisions of R.S. 40:1730.26 and R.S. 40:1730.28, relative to the authority of the Louisiana State Uniform Construction Code Council (LSUCCC) to promulgate and enforce rules and in accordance with R.S. 49:953(B), the Administrative Procedure Act, the Department of Public Safety and Corrections, Office of State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC) has amended the following rule. The purpose amending the currently adopted construction codes is to replace them with the more recent technology, methods and materials for the 2015 editions of the *International*

*Residential Code and International Plumbing Code*. This Rule is hereby adopted on the day of promulgation.

#### Title 17

#### CONSTRUCTION

#### Part I. Uniform Construction Code

#### Chapter 1. Adoption of the Louisiana State Uniform Construction Code

##### (Formerly LAC 55:VI.Chapter 3)

#### §103. *International Building Code*

##### (Formerly LAC 55:VI.301.A.1)

A. *International Building Code* (IBC), 2015 Edition, not including Chapter 1, Administration, Chapter 11, Accessibility, Chapter 27, Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. Furthermore, IBC shall be amended as follows and shall only apply to the *International Building Code*.

Amend	Chapter 2, Definitions.	Mini-Storage Facility- a self-service storage facility which rents or leases individual storage space to occupants for the storage and/or removal of personal property.
Amend	Chapter 9	To adopt and amend 2015 International Building Code
Amend	Section 903.2.1.1, Group A-2.	
Amend	Item (2.)	Item (2). The fire area has an occupant load of 300 or more.
Adopt	Item (4.)	Item (4). Open-air pavilions on three sides or more, not exceeding 12,000 square feet, shall not be required to comply with 903.2.1.3(1) and 903.2.1.3(2) where each side has unobstructed access to a public way (10'-0" wide by 10'-0" high). No fixed elements, equipment, seating, etc. are permitted within the 10'-0" by 10'-0" access.
Adopt	Exceptions	(a). The requirements of Sections 903.2.1.2(1) and 903.2.1.2(2) shall not apply to a single multi-purpose room less than 12,000 sf when all of the following conditions are met: (1.) The single multi-purpose room shall not be used for display or exhibition, bars or taverns. (2.) The single multi-purpose room shall not share exit access with other occupancies. Non-separated accessory uses that are incidental or ancillary to the single multi-purpose room shall be considered as part of the assembly occupancy. The accessory uses shall not be limited to 10 percent of the single multi-purpose room floor area and/or building, but shall be included and considered as part of the limited assembly room floor area. (3.) The single multi-purpose room shall not be part of a fire area containing other assembly occupancies. (4.) A single multi-purpose room with an occupant load greater than 300 persons shall be provided with a fire alarm system in accordance with Section 907.2.1. (5.) The single multi-purpose room with its accessory or ancillary uses shall be separated, when part of a multiple occupancy, in accordance with Table 508.4 and Section 707 from the remainder of the building. The single multi-purpose room fire area containing the single multi-purpose room and its accessory or ancillary uses shall be less than 12,000 sf. (6.) Provide system smoke detection in all areas in accordance with Section 907 throughout the entire building.
Amend	Section 903.2.1.3, Group A-3.	
Adopt	Item (4.)	4. Open air pavilions on three sides or more, not exceeding 12,000 square feet, shall not be required to comply with Section 903.2.1.3(2) where each side has unobstructed access to a public way (10'-0" wide by 10'-0" high). No fixed elements, equipment, seating, etc. are permitted within the 10'-0" by 10'-0" access.
Adopt	Exceptions	(a). The requirements of Sections 903.2.1.2(1) and 903.2.1.2(2) shall not apply to a single multi-purpose room less than 12,000 sf when all of the following conditions are met: (1.) The single multi-purpose room shall not be used for display or exhibition. (2.) The single multi-purpose room shall not share exit access with other occupancies. Non-separated accessory uses that are incidental or ancillary to the single multi-purpose room shall be considered as part of the assembly occupancy. The accessory uses shall not be limited to 10 percent of the single multi-purpose room floor area and/or building, but shall be included and considered as part of the limited assembly room floor area. (3.) The single multi-purpose room shall not be part of a fire area containing other assembly occupancies. (4.) A single multi-purpose room with an occupant load greater than 300 persons shall be provided with a fire alarm system in accordance with Section 907.2.1. (5.) The single multi-purpose room with its accessory or ancillary uses shall be separated, when part of a multiple occupancy, in accordance with Table 508.4 and Section 707 from the remainder of the building. The single multi-purpose room fire area containing the single multi-purpose room and its accessory or ancillary uses shall be less than 12,000 sf. (6.) Provide system smoke detection in all areas in accordance with Section 907 throughout the entire building.
Amend	Section 903.2.9, Group S-1.	
Adopt	Item (5.)	Item (5). A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 sf (232 m <sup>2</sup> ).

Adopt	Exception	(1.) The requirement of Section 903.2.9(5) shall not apply to mini-storage facilities less than 12,000 sf. Mini-storage facilities, including mini-storage facilities which are climate-controlled, shall comply with 903.2.9(1) thru 903.2.9(4).
Amend	Section 903.2.7, Group M.	
Amend	Item (4.)	Item (4). A Group M occupancy used for the display and sale of upholstered furniture or mattresses where the floor area occupied by the upholstered furniture or mattresses exceeds 5,000 sf (464 m <sup>2</sup> ).
Amend	Section 903.2.8, Group R.	
Adopt	Exceptions	(a). An automatic sprinkler system is not required when not more than two dwelling or sleeping units are attached to a commercial or non-residential occupancy where all of the following conditions exist: (1.) The dwelling or sleeping units shall be separated vertically and/or horizontally from the non-residential occupancy as well as each other by two-hour construction in accordance with Sections 707 and 711. (2.) The entire building shall be smoke protected in accordance with Section 907. (3.) Egress from the dwelling or sleeping units shall not pass through the non-residential occupancy. (4.) The building shall not exceed two stories.
Adopt		(b). An automatic sprinkler system is not required in Residential Group R-3, boarding houses (transient and nontransient) as defined by Section 310.5, where one of the following conditions exist: (1.) Every sleeping room has a door opening directly to the exterior at the street or finish grade. (2.) Every sleeping room has a door opening directly to the exterior which leads to an outside stair protected in accordance with Section 1027.
Amend	Section 1006	Amend and revise Tables 1006.3.2(1) and 1006.3.2(2).
Repeal		a. Delete from footnote "a": (1.) and provided with emergency escape and rescue openings in accordance with Section 1030.
Amend	Section 1010.1.9.6, Controlled Egress Doors in Groups I-1 and I-2.	
Amend	Section 1010.1.9.6	
Amend		(a.) Electric locking systems, including electromechanical locking systems and electromagnetic locking systems, shall be permitted to be locked in the means of egress in Group I-1 or I-2 occupancies where persons receiving care require their containment. Controlled egress doors shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors are installed and operate in accordance with all of the following: (1.) The door locks shall unlock on actuation of the automatic sprinkler system or automatic fire detection system. (2.) The door locks shall unlock on loss of power controlling the lock or lock mechanism. (3.) The door locking system shall be installed to have the capability of being unlocked by a switch located at the fire command center, a nursing station or other approved location. The switch shall directly break power to the lock. (4.) A means of manual mechanical unlocking must be provided at each door that is not in direct view of the remote release location required by Item 3. (5.) The procedures for unlocking the doors shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the <i>International Fire Code</i> . (6.) All clinical staff shall have the keys, codes or other means necessary to operate the locking systems. (7.) Emergency lighting shall be provided at the door. (8.) The door locking system units shall be listed in accordance with UL 294.
Repeal	Exceptions 1 and 2	Delete Exceptions 1 and 2.
Adopt		(9.) "Automatic" Re-Locking, after an emergency release as described above, shall be prohibited. A specific human action dedicated for re-locking doors must be provided at the remote control location or at each lock location. (10.) Document the "staff/patient ratio" for the occupants of the locked area to the authority having jurisdiction. The ratio shall be within state and federal licensing/certification guidelines. Please note that only "nurses" and "nurses' aides" assigned to the locked area shall be considered acceptable responsible staff in regard to this ratio documentation. (11.) Provide the reason for installing specialized security measures to the authority having jurisdiction. (12.) Documentation addressing each condition itemized above shall be provided to the authority having jurisdiction and shall include the signature of the building owner or the facility administrator.
Amend	Section 1010.1.9.7, Delayed Egress.	(a.) Delayed egress locking systems shall be permitted to be installed on doors serving any occupancy except the main entrance/exit for a Group A, and all exits for a Group H in buildings that are equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907. The locking system shall be installed and operated in accordance with all of the following: (1.) The delay electronics of the delayed egress locking system shall deactivate upon actuation of the automatic sprinkler system or automatic fire detection system, allowing immediate, free egress. (2.) The delay electronics of the delayed egress locking system shall deactivate upon loss of power controlling the lock or lock mechanism, allowing immediate free egress. (3.) The delayed egress locking system shall have the capability of being deactivated at the fire command center and other approved locations. (4.) An attempt to egress shall initiate an irreversible process that shall allow such egress in not more than 15 seconds when a force of not more than 15 pounds (67 N) is applied to the egress side door hardware for not more than 3 seconds. Initiation of the irreversible process shall activate an audible signal in the vicinity of the door. Once the delay electronics have been deactivated, rearming the delay electronics shall be by manual means only.
Amend	Exception	Where approved by the authority having jurisdiction, a delay of not more than 30 seconds is permitted on a delayed egress door.
		(5.) The egress path from any point shall not pass through more than one delayed egress locking system.
Repeal	Exception	In Group I-2 or I-3 occupancies, the egress path from any point in the building shall pass through no more than two delayed egress locking systems provided the combined delay does not exceed 30 seconds.

Amend		<p>(6) A sign shall be provided on the door and shall be located above and within 12 inches (305 mm) of the door exit hardware.</p> <p>(6.1) For doors that swing in the direction of egress, the sign shall read: Push until alarm sounds. Door can be opened in 15 [30] seconds.</p> <p>(6.2) For doors that swing in the opposite direction of egress, the sign shall read: Pull until alarm sounds. Door can be opened in 15 [30] seconds.</p> <p>(6.3)</p> <p>(i). The sign shall comply with the visual character requirements in ICC A117.1. <i>Americans with Disabilities Act and Architectural Barriers Act—Accessibilities Guidelines (ADA/ABA-AG)</i>.</p>
Repeal	Exception	Where approved, in Group I occupancies, the installation of a sign is not required where care recipients who because of clinical needs require restraint or containment as part of the function of the treatment area.
Amend		<p>(7.) Emergency lighting shall be provided on the egress side of the door.</p> <p>(8.) The delayed egress locking system units shall be listed in accordance with UL 294.</p>
Amend	Section 1010.1.9.8, Sensor Release of Electrically Locked Egress Doors.	<p>(a.) The electric locks on sensor released doors located in a required means of egress are permitted where installed and operated in accordance with all of the following criteria:</p> <p>(1.) The sensor shall be installed on the egress side, arranged to detect an occupant approaching the doors. The doors shall be arranged to unlock by a signal from or loss of power to the sensor.</p> <p>(2.) Loss of power to the lock or locking system shall automatically unlock the doors.</p> <p>(3.) Item 3</p> <p>(a). The doors shall be arranged to unlock from a manual unlocking device located 40 inches to 48 inches (1016 mm to 1219 mm) vertically above the floor and within 5 feet (1524 mm) of the secured doors. Ready access shall be provided to the manual unlocking device and the device shall be clearly identified by a sign that reads “Push to Exit” When operated, the manual unlocking device shall result in direct interruption of power to the lock, independent of other electronics, and the doors shall remain unlocked for not less than 30 seconds. The sign shall comply with the visual character requirements in <i>Americans with Disabilities Act and Architectural Barriers Act—Accessibilities Guidelines (ADA/ABA-AG)</i>.</p> <p>(4.) Activation of the building fire alarm system, where provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire alarm system has been reset.</p>
Adopt	Item (5.)	(5.) The activation of manual fire alarm boxes that activate the fire alarm system shall not be required to unlock the doors.
Amend	Item (6.)	(6.) Activation of the building automatic sprinkler system or fire detection system, where provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire alarm system has been reset.
Amend	Item (7.)	(7.) The door locking system units shall be listed in accordance with UL 294.
Adopt	Item (8.)	(8.) Doors in buildings with an occupancy in Group A shall not be secured from the egress side during periods that the building is open to the general public.
Adopt	Item (9.)	(9.) Doors in buildings with an occupancy in Group R-3 or Group I-3 shall not be equipped with this locking system.
Adopt	Item (10.)	(10.) Doors serving any Group M occupancy shall be permitted to be equipped with this locking system in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907.
Adopt	Item (11.)	(11.) Emergency egress lighting shall be provided at the door.
Amend	Section 1010.1.9.9, Electromagnetically Locked Egress Doors.	<p>(a.) a. Doors in the required means of egress shall be permitted to be locked with an electromagnetic locking system where equipped with hardware and where installed and operated in accordance with all of the following:</p> <p>(1.) The hardware that is affixed to the door leaf has an obvious method of operation that is readily operated under all lighting conditions.</p> <p>(2.) The hardware is capable of being operated with one hand.</p> <p>(3.) Operation of the hardware directly interrupts the power to the electromagnetic lock and unlocks the door immediately.</p> <p>(4.) Loss of power to the locking system automatically unlocks the door.</p> <p>(5.) Where panic or fire exit hardware is required by Section 1010.1.10, operation of the panic or fire exit hardware also releases the electromagnetic lock.</p> <p>(6.) The locking system units shall be listed in accordance with UL 294.</p>
Amend	Section 1020.1, Construction.	
Amend	Exception	
Adopt	Item (6.)	(6.) A fire-resistance rating is not required for corridors where the space or area served does not exceed the occupant load and common path of egress travel values, for each occupancy, listed in Table 1006.2.1. The travel distance to the exit from the space or area served shall not exceed the common path of travel.
Amend	Section 1020.5, Air Movement in Corridors.	Corridors that require protection under Table 1020.1—Corridor Fire-Resistance Rating, shall not serve as supply, return, exhaust, relief or ventilation air ducts.
Amend	Section 1027.6	
Amend	Exceptions	
Adopt	Item (4.)	(4.) Exterior stairs or ramps which serve no more than one story above the level of exit discharge and constructed with non-combustible materials or constructed with fire retardant treated lumber, shall be allowed when the fire separation distance is between 5 and 10 feet measured from the exterior edge of the stairway or ramp.
Amend	Section 1030.1	
Amend	Exception	
Amend	Item (4.)	(4.) In other than Group R-3 occupancies, buildings equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.

Amend	Section 1603.1.5, Earthquake Design Data.	The following information related to seismic loads shall be shown, regardless of whether seismic loads govern the design of the lateral-force-resisting system of the building: a. seismic importance factor, I, and occupancy category; b. mapped spectral response accelerations, SS and S1; c. site class; d. spectral response coefficients, SDS and SD1; e. seismic design category; f. basic seismic-force-resisting system(s); g. design base shear; h. seismic response coefficient(s), CS; i. response modification factor(s), R; j. analysis procedure used;
Adopt	Exceptions	
Adopt	Item (1.)	(1.) Construction documents that are not required to be prepared by a registered design professional;
Adopt	Item (2.)	(2.) Construction documents for structures that are assigned to Seismic Design Category A.
Amend	Section 1609.1.2, Protection of Openings.	In wind-borne debris regions, glazing in buildings shall be impact resistant or protected with an impact-resistant covering meeting the requirements of an approved impact-resistant standard or ASTM E 1996 and ASTM E 1886 referenced herein as follows: a. Glazed openings located within 30 feet (9144 mm) of grade shall meet the requirements of the large missile test of ASTM E 1996. b. Glazed openings located more than 30 feet (9144 mm) above grade shall meet the provisions of the small missile test of ASTM E 1996.
Amend	Exceptions	
Amend	Item (1.)	(1.) Wood structural panels with a minimum thickness of 7/16 inch (11.1 mm) and maximum panel span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings classified as Risk Category 2. Panels shall be pre-cut so that they shall be attached to the framing surrounding the opening containing the product with the glazed opening. Panels shall be predrilled as required for the anchorage method and shall be secured with the attachment hardware provided. Attachments shall be designed to resist the components and cladding loads determined in accordance with the provisions of ASCE 7, with corrosion-resistant attachment hardware provided and anchors permanently installed on the building. Attachment in accordance with Table 1609.1.2 with corrosion-resistant attachment hardware provided and anchors permanently installed on the building is permitted for buildings with a mean roof height of 45 feet (13 716 mm) or less where $V_{asd}$ determined in accordance with Section 1609.3.1 does not exceed 140 mph (63 m/s).
Amend	Item (2.)	(2.) Glazing in Risk Category I buildings as defined in Section 1604.5, including greenhouses that are occupied for growing plants on a production or research basis, without public access shall be permitted to be unprotected.
Amend	Item (3.)	(3.) Glazing in Risk Category II, III or IV buildings located over 60 feet (18 288 mm) above the ground and over 30 feet (9144 mm) above aggregate surface roofs located within 1,500 feet (458 m) of the building shall be permitted to be unprotected.
Amend	Section 1612.4, Design and Construction.	
Repeal	Referenced ASCE 24-14, Freeboard.	Delete Referenced ASCE 24-14 Freeboard requirements and Table 1-1, Flood Design Class of Buildings and Structures.
Amend	Section 1613.1, Scope.	Every structure, and portion thereof, including nonstructural components that are permanently attached to structures and their supports and attachments, shall be designed and constructed to resist the effects of earthquake motions in accordance with ASCE 7, excluding Chapter 14 and Appendix 11A. The seismic design category for a structure is permitted to be determined in accordance with Section 1613 or ASCE 7-10. Figure 1613.5(1) shall be replaced with ASCE 7-10 Figure 22-1. Figure 1613.5(2) shall be replaced with ASCE 7-10 Figure 22-2.
Amend	Exceptions	
Adopt	Item (5.)	(5.) Structures that are not required to have a registered design professional in responsible charge;
Adopt	Item (6.)	(6.) structures that are assigned to Seismic Design Category A.
Amend	Chapter 29, Plumbing Systems.	
Amend	Section 2901, Scope.	The provisions of this Chapter and the <i>International Plumbing Code</i> shall govern the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing equipment and systems. Toilet and bathing rooms shall be constructed in accordance with Section 1210. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the <i>International Plumbing Code</i> .
Repeal	Section 2901, Scope.	Private Sewage disposal systems shall conform to the <i>International Private Sewage Disposal Code</i> .
Repeal	Section 2902	

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 41:2380 (November 2015), amended by the

Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 44:75 (January 2018), repromulgated LR 45:916 (July 2019), amended LR 45:1786 (December 2019).

### **§107. International Residential Code (Formerly LAC 55:VI.301.A.3.a)**

A.1. *International Residential Code*, 2015 Edition, not including Parts I-Administrative, and VIII-Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. The enforcement of such standards shall be mandatory only with respect to new construction, reconstruction, additions to homes previously built to the *International Residential Code*, and extensive alterations. 2018 *International Residential Code*,

Appendix Q, Tiny Houses, with inspections on site and or in the manufacturing plant as required by the LSUCCC regulations. Appendix J, Existing Buildings and Structures,

may be adopted and enforced only at the option of a parish, municipality, or regional planning commission.

Amend	Chapter 2, Definitions	
Adopt	Human Consumption	The use of water by humans for drinking, cooking, bathing, showering, hand washing, dishwashing, or maintaining oral hygiene.
Adopt	Lead Free	(a). in general:
Adopt		1. not containing more than 0.2 percent lead when used with respect to solder and flux; and;
Adopt		2. not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures;
Adopt		B. calculation:
Adopt		1. the weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: a. for each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with Clause a.ii above. For lead content of materials that are provided as a range, the maximum content of the range shall be used.
Adopt	Section R302.1, Exterior Walls.	
Adopt	Exception	
Adopt	Item (1.)	(1.) On lots that are 50 feet or less in width and that contain a one or two family dwelling or townhouse that was in existence prior to October 1, 2005, the following are permitted for rebuilding: (a.) a projection 2 feet from the property line with a 1 hour minimum fire-resistance rating on the underside; (b.) a wall 3 feet or more from the property with a 0 hour minimum fire-resistance rating.
Amend	2015 IRC Section 313.1, Townhouse Automatic Sprinkler System. Per Act No. 685 of the 2010 Regular Session of the Louisiana Legislature.	The council shall not adopt or enforce any part of the <i>International Residential Code</i> or any other code or regulation that requires a fire protection sprinkler system in one- or two-family dwellings. Further, no municipality or parish shall adopt or enforce an ordinance or other regulation requiring a fire protection sprinkler system in one- or two-family dwellings.
Amend	Exception	
	Item (1.)	(1.) If an owner voluntarily chooses to install an automatic residential fire sprinkler system, it shall be installed per Section R313.1.
Amend	2015 IRC Section 313.2, One- and Two-Family Dwellings Automatic Fire Systems. Per Act No. 685 of the 2010 Regular Session of the Louisiana Legislature.	The council shall not adopt or enforce any part of the <i>International Residential Code</i> or any other code or regulation that requires a fire protection sprinkler system in one- or two-family dwellings. Further, no municipality or parish shall adopt or enforce an ordinance or other regulation requiring a fire protection sprinkler system in one- or two-family dwellings.
Amend	Exception	
	Item (1.)	(1.) If an owner voluntarily chooses to install an automatic residential fire sprinkler system, it shall be installed per Section R313.2.1, Design and Installation.
Amend	Section R322.2.1, Elevation Requirements.	
Amend		Buildings and structures in flood hazard areas including flood hazard areas designated as Coastal A Zones, shall have the lowest floors elevated to or above the base flood elevation or the design flood elevation.
Repeal		Delete plus 1 foot (305 mm) requirement.
Amend		In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including basement) elevated to a height of not less than the highest adjacent grade as the depth number specified in feet (mm) on the FIRM or not less than 2 feet if a depth number is not specified.
Repeal		Delete plus 1 foot (305 mm) requirement.
Amend		Basement floor that are below grade on all sides shall be elevated to or above base flood elevation or the design flood elevation, whichever is higher.
Repeal		Delete plus 1 foot (305 mm) requirement.
Amend	Section R322.3.2, Enclosed Area Below Design Flood Elev.	
Repeal		Delete plus 1 foot (305 mm) requirement.
Amend	Section R 1006.1, Exterior Air.	Factory-built or masonry fireplaces covered in this chapter shall be equipped with an exterior air supply to assure proper fuel combustion.
Substitute	Chapter 11, Energy Efficiency.	Substitute Chapter 11, Energy Efficiency of the 2009 IRC, in lieu of Chapter 11, Energy Efficiency of the 2015 IRC.
Adopt	Section N1101.9.1, Louisiana Insulation Certificate requirement.	A State of Louisiana Insulation Certificate shall be permanently posted in a utility area.
Adopt	Section N1101.9.2, Louisiana Insulation Certificate Template.	

**State of Louisiana Insulation Certificate**  
 Permanently attach this certificate in a utility area

Install Date   
 Permit Number

Area Insulated	R-Value		Thickness in Inches	Cell Density Open or Close	Ignition Barrier	Ignition Barrier
Attic under Sheathing		at				
Attic Ceiling		at				
Sloped Ceiling		at				
Walls		at				
Knee Walls		at				
Under First Floors		at				
Other		at				

Jobsite Address	
Contractor/License No.	
Insulation Contractor	
Installer/Applicator	
Manufacture Product Batch Number	

**The Packet Contains**

- ☐ One copy of packet to Home Owner
- ☐ Upload packet to permitting office

- Insulation Certificate
- Manufacturer's MSDS
- 3rd party Name and Performance Report
- Applicator's Manufacturer's Training Certificate.

Amend	Section N1102.2.1, Ceilings with attic spaces.	
Adopt	Exception	
	Item (1.)	(1.) When the thermal covering at the roof line creates an unvented attic: (a.) Proper sizing or modification of the HVAC system to the current code is required. (b.) Any insulation between the sealed, conditioned attic space and the living space must be removed. (c.) Exception: The space under appliances located in a sealed, conditioned attic may remain in place if sealed from the attic space. It is less than 10% of the total conditioned attic floor, and the appliances are approved for use in a sealed attic. (d.) There shall be no outside attic ventilation and all openings must be blocked with rigid material and are sealed, in accordance with the ICC IRC Chapter 8 "Roof-Ceiling Construction".
Amend	Section N1102.2.6, Floors.	Subfloor insulation shall provide or be installed in permanent contact with a rigid air barrier material. If the building is cooled with air conditioning subfloors in any vented crawl space shall be insulated with an airtight, class II vapor retarder insulation system (perm < 1.0).
Adopt	Exception	
Adopt	Item (1.)	(1.) Plastic Spray Foam cannot be applied to finish flooring where no subfloor exists.
Amend	Section N1102.3, Access Hatches and Doors.	Access doors from conditioned spaces to unconditioned spaces shall be weather-stripped and have a minimum insulation value of an R-4.
Amend	Section N1102.4.2, Air Sealing and Insulation.	The air tightness demonstration method of compliance is to be determined by the contractor, design professional or homeowner.
Amend	Section N1102.4.2.1, Testing Option.	Tested air leakage is less than 7 ACH when tested with a blower door at a pressure of 50 pascals (0.007 psi). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. When the contractor, design professional or homeowner chooses the blower door testing option, blower door testing shall be performed by individuals certified to perform blower door tests by a nationally recognized organization that trains and provides certification exams for the proper procedures to perform such tests. The responsible BCEO shall accept written blower door test reports from these certified individuals to verify the minimum requirements of Section N1102.4.2.1 Testing Option are attained.
Amend	Section N1102.4.3, Fireplaces.	New wood-burning fireplaces shall have outdoor combustion air.
Adopt	Section N1102.4.6, Rooms containing fuel-burning appliances.	Where open combustion air ducts provide combustion air to open combustion fuel burning appliances, the appliances and combustion air openings shall be located outside the thermal envelope or enclosed in a room, isolated from inside the thermal envelope. Such rooms shall be sealed and insulated in accordance with the envelope requirements of N1102.1 (different from R402.12) where the walls, floors, and ceilings shall meet not less than the basement wall R-value requirement. The door into the room shall be fully gasketed and any water lines and ducts in the room insulated in accordance with Section N1103 (different than Section 403). The combustion air duct shall be insulated where it passes through conditioned space to a minimum of R-6.
Adopt	Exceptions	
Adopt	Item (1.)	(1.) Direct vent appliances with both intake and exhaust pipes installed continuous to the outside.
Adopt	Item (2.)	(2.) Fireplaces and stoves complying with Section R1006 of the <i>International Residential Code</i> .
Amend	Section N1103.2.1, Insulation.	Supply and return ducts in attics shall be insulated to a minimum of R-6.

Amend	Section N1103.2.2, Sealing.	Ducts, air handlers, filter boxes and building cavities used as ducts shall be sealed. Joints and seams shall comply with section M1601.4. Duct leakage testing shall be performed by individuals certified to perform duct leakage tests by a nationally recognized organization that trains and provides certification exams for the proper procedures to perform such tests. The responsible BCEO shall accept written duct leakage test reports from these certified individuals to verify the minimum requirements of Section N1103.2.2, Sealing, are attained.
Adopt	Exception	
Adopt	(1.) HVAC Contractors	(1.) HVAC contractors, who are not certified to perform duct leakage tests, may perform the test with the responsible BCEO visually verifying test procedures and results on site.
Amend	Section N1103.2.2, Sealing.	Joints and seams shall comply with section M1601.4. Duct tightness shall be verified by either for the following:
Amend	Post-Construction Test.	Leakage to outdoors shall be less than or equal to 8 cfm (3.78 L/s) per 100 ft <sup>2</sup> (9.29 m <sup>2</sup> ) of conditioned floor area or a total leakage less than or equal to 12 cfm (5.66 L/s) per 100 ft <sup>2</sup> (9.29 m <sup>2</sup> ) of conditioned floor area when tested at a pressure differential of 0.1 inch w.g. (25 Pa) across the entire system, including the manufacturer's air handler end closure. All register boots shall be taped or otherwise sealed during the test.
Amend	Rough-In Test.	Total leakage shall be less than or equal to 6 cfm (2.83 L/s) per 100 ft <sup>2</sup> (9.29 m <sup>2</sup> ) of conditioned floor area when tested at a pressure differential of 0.1 inch w.g. (25 Pa) across the roughed in system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test. If the air handler is not installed at the time of the test, total leakage shall be less than or equal to 4 cfm (1.89 L/s) per 100 ft <sup>2</sup> (9.29 m <sup>2</sup> ) of conditioned floor area.
Amend	Exception	
Amend	Item (1.)	(1.) Duct tightness test is not required if the air handler and all ducts are located within conditioned space.
Adopt	Section N1103.5.1, Bathroom Exhaust.	Homes utilizing insulation to create an unvented attic shall have bath fans properly sized and installed according to manufacturing recommendations, shall be vented to the outside and shall be performance verified after installation.
Amend	Section N1103.8.3, Pool Covers.	Pool covers shall not be required to meet the energy efficiency requirements of this Section.
Amend	Section M1307.3.1, Protection from Impact.	Appliances shall not be installed in a location subject to automobile or truck damage except where protected by approved barriers.
Amend	Section M1507.3.1, System Design.	The whole-house ventilation system shall consist of a combination of supply and exhaust fans, and associated ducts and controls. Local exhaust and supply fans are permitted to serve as such a system. Outdoor air ducts connected to the return side of an air handler shall be considered to provide supply ventilation.
Amend	Section M1507.3.2, System Controls.	The whole-house mechanical ventilation system shall be provided with controls that enable manual override and a method of air-flow adjustment.
Repeal	Section M1507.3.3, Mechanical Ventilation Rate.	
Amend	Section M1507.4, Minimum Required Local Exhaust.	Local exhaust systems shall be designed to have the capacity to exhaust the minimum air flow rate as follows:
Amend	Item (1.)	(1.) Kitchen: 100 cfm intermittent or 25 cfm continuous, a balanced ventilation system is required for continuous exhaust.
Amend	Item (2.)	(2.) Bathrooms: exhaust capacity of 50 cfm intermittent or 20 cfm continuous, a balanced ventilation system is required for continuous exhaust.
Amend	Section P2502.2	
Adopt	Exception	
Adopt	Repairs to Drainage System via Re-Route.	In the case where it is determined that there is a broken underground drain line including, but not limited to, broken drain lines under the slab of a building, and a drain line re-route is performed, the existing broken underground drain line shall be and sealed watertight and gastight using approved plumbing materials and joining/jointing methods, e.g., properly install an approved cap, plug, or cleanout on the cut or disconnected pipe.
Adopt	Section 2503.1, Drainage and Vent Testing.	An air test shall be made by forcing air into the system until there is a uniform gauge pressure of 5 psi (34.5 kPa) or sufficient to balance a 10-inch (254 mm) column of mercury. This pressure shall be held for a test period of not less than 15 minutes. Any adjustments to the test pressure required because of changes in ambient temperatures or the seating of gaskets shall be made prior to the beginning of the test period.
Amend	Section P2503.4, Building sewer testing.	The testing of building and public sewer systems shall be performed by the installer using a 10' water head.
Amend	Section P2503.6, Testing of Shower Receptacles.	Testing of shower receptacles shall be the responsibility of the installer.
Amend	Section P2603.5, Freezing.	In localities having a winter design temperature of 32°F (0°C) or lower as shown in Table R301.2(1) of this code, a water pipe and/or sanitary traps shall not be installed outside of a building, in exterior walls, in attics or crawl spaces, or in any other place subjected to freezing temperature unless adequate provision is made to protect it from freezing by insulation or heat or both. Water service pipe shall be installed not less than 12 inches (305 mm) deep and not less than 6 inches (152 mm) below the frost line.
Amend	Section P2706.1, General.	For other than hub drains that receive only clear-water waste and standpipes, a removable strainer or basket shall cover the waste outlet of waste receptors. Waste receptors shall not be installed in concealed spaces. Waste receptors shall not be installed in plenums or interstitial spaces above ceilings and below floors. Waste receptors shall be accessible.
Amend	Section P2725, Nonliquid Saturated Treatment Systems.	
Amend	Section P2715.1	
Adopt	Exception	
Adopt	Item (1.)	(1.) Compost toilets are prohibited.
Amend	Section P2804.6.1, Requirements for discharge pipe.	(5.) Discharge to the floor, a waste receptor, mop sinks or to the outdoors.

Amend	Section P2708.2, Shower Drain.	Any portion of the drainage system installed underground or below a basement or cellar shall not be less than 2-inch diameter.
Repeal	Section P2903.10, Hose bibb	
Adopt	Section P2902.5.6, Connections to swimming pools.	The potable water supply to swimming pools shall be protected against backflow by an air gap or reduced pressure principal backflow prevention assembly.
Adopt	Section P2902.5.7, Connections to animal watering troughs, ornamental fountains, or other similar equipment.	The potable water supply to animal watering troughs, ornamental fountains, or other similar fixtures shall be protected against backflow by an air gap.
Amend	Section P2905	The developed length of hot or tempered water piping, from the source of hot water to the fixtures that require hot or tempered water, shall not exceed 100 feet (15 240 mm). Recirculating system piping and heat-traced piping shall be considered to be sources of hot or tempered water.
Repeal	Section P2905.1, Heated Water circulation systems and heat trace systems.	
Repeal	Section P2905.2	
Amend	Section P2906.2.1, Lead content of water supply pipe and fittings used for human consumption.	Water Piping Quality. All potable water pipes, fittings, valves, and fixtures used to provide water for human consumption shall be lead free and shall be evaluated and listed as conforming with NSF/ANSI 372. Any solder or flux which is used in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption shall be lead free. i. Exception: The lead free requirement above shall not apply to: (a.) leaded joints necessary for the repair of existing cast iron pipes; (b.) fire hydrants, pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or (c.) toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.
Amend	Section P2906.6, Fittings.	Pipe fittings shall be approved for installation with the piping material installed and shall comply with the applicable standards listed in Table P2905.6. All pipe fittings used in water supply systems shall also comply with NSF 61. All copper, brass and stainless steel joints below a building slab shall be brazed and/or welded in accordance with the requirements of this code, as appropriate. With the exception of heat fused polypropylene, all other joints and fittings for plastic pipe below a building slab are prohibited.
Amend	Table P2906.6	

Material	Standard
Acrylonitrile butadiene styrene (ABS)	ASTM D2468
plastic	
Brass	ASTM F1974
Cast-iron	ASME B16.4; ASME B16.12
Chlorinated polyvinyl chloride (CPVC)	ASSE 1061; ASTM D2846;
plastic	ASTM F 437; ASTM F 438;
	ASTM F 439; CSA B137.6
Copper or copper alloy	ASSE 1061; ASME B16.15;
	ASME B 16.18; ASME
	B 16.22; AS ME B 16.26
Cross-linked	ASTM F 1986
polyethylene/aluminum high-density	
polyethylene (PEX-AL-HDPE)	
Fittings for cross-linked polyethylene	ASSE 1061; ASTM F 877;
(PEX) plastic tubing	ASTM F 1807; ASTM F
	1960;
	ASTM F 2080; ASTM F
	2098; ASTM F 2159; ASTM
	F 2434; ASTM F 2735; CSA
	B 137.5
Gray iron and ductile iron	AWWAC110; AWWAC153
Malleable iron	ASME B16.3
Insert fittings for	ASTM F 1974; ASTM F
Polyethylene/aluminum/polyethylene	1281; ASTM F 1282; CSA
(pE-AL-PE) and cross-linked	B137.9;
polyethylene/aluminum/polyethylene	CSA B137.10
(PEX-AL-PEX)	
Polyethylene (PE) plastic	CSA B137.1
Fittings for polyethylene of raised	ASTM F 1807; ASTM F2098;
temperature (PE-RT) plastic tubing	ASTM F 2159; ASTM F 2735
Polypropylene (PP) plastic pipe or tubing	ASTM F 2389; CSA B 137.11
Polyvinyl chloride (PVC) plastic	ASTM D 2464; ASTM D
	2466; ASTM D 2467; CSA
	B 137.2;
	CSA B137.3
Stainless steel (Type 304/304L) pipe	ASTM A 312; ASTM A 778



	Stainless steel (Type 316/316L) pipe	ASTM A 312; ASTM A 778
	Steel	ASME B 16.9; ASME B16.11; ASME B16.28
Adopt	Section P2914, Separation of Water Service from Contamination.	
Adopt	Section P2914.1, Potable Water (Pressure) Lines Near Soil Absorption Trenches, Sand Filter Beds, Oxidation Ponds, and any Effluent Reduction Option (Effluent Reduction Fields, Rock Plant Filters, Spray Irrigation Systems, Overland Flow Systems, Mound Systems, or Subsurface Drip Disposal Systems).	Underground potable water (pressure) lines shall not be located within 25 feet (7.6 m) of any soil absorption trenches, sand filter beds, oxidation ponds, or any effluent reduction option including, but not limited to effluent reduction fields, rock plant filters, spray irrigation systems (from the edge of the spray and its drainage), overland flow systems (from the discharge point and field of flow), mound systems, or subsurface drip disposal systems which have been installed for either the disposal of septic tank effluent or mechanical treatment plant effluent.
Adopt	Section P2914.2, Potable Water (Pressure) Lines Near Septic Tanks, Mechanical Sewage Treatment Plants, and Pump Stations.	Underground potable water (pressure) lines shall not be located within 10 feet (3.0 m) of any septic tank, mechanical sewage treatment plant, or sewage pump station.
Adopt	Section P2914.3, Potable Water (Pressure) Lines Near Seepage Pit, Cesspool, or Sanitary Pit Privy.	Underground potable water (pressure) lines shall not be located within 50 feet (15.2m) of any seepage pit, cesspool, or sanitary pit privy.
Adopt	Section P2914.4, Reclaimed Water Lines.	Reclaimed water lines shall be considered and treated as though they are sewerage lines and shall be installed in accord with the spacing requirements of Section 2906.4.1 for the protection of potable water lines.
Amend	Chapter 30, Sanitary Drainage.	
Amend	Section P3005.2.2, Building sewers.	Building sewers smaller than 8 inches (203 mm) shall have cleanouts located at intervals of not more than 100 feet (30 480 mm). Building sewers 8 inches (203 mm) and larger shall have a manhole located not more than 80 feet from the junction of the building drain and building sewer and at intervals of not more than 400 feet (122 m). The interval length shall be measured from the cleanout or manhole opening, along the developed length of the piping to the next drainage fitting providing access for cleaning, a manhole or the end of the building sewer.
Adopt	Section 3005.9, Underground Drainage Piping.	Any portion of the drainage system installed underground or below a basement or cellar shall not be less than 2-inch diameter. In addition, any portion of the drainage system installed underground which is located upstream from a grease trap or grease interceptor as well as the underground horizontal branch receiving the discharge there from shall not be less than 3-inch diameter.
Amend	Section P3104.1, Connection.	Individual branch and circuit vents shall connect to a vent stack, stack vent or extend to the open air.
Repeal	Exception	Individual, branch and circuit vents shall be permitted to terminate at an air admittance valve in accordance with Section P3114.
Repeal	Item (1.)	(1.) Individual, branch and circuit vents shall be permitted to terminate at an air admittance valve in accordance with Section P3114.
Repeal	Section P3114, Air Admittance Valves.	

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire

Marshall, LR 41:2383 (November 2015), amended LR 42:1672 (October 2016), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 44:79 (January 2018), amended LR 44:2218 (December 2018), repromulgated LR 45:919 (July 2019), amended LR 45:1789 (December 2019).

**§111. The International Plumbing Code (Formerly LAC 55:VI.301.A.5)**

A. The *International Plumbing Code*, 2015 Edition. The appendices of that code may be adopted as needed, but the specific appendix or appendices shall be referenced by name or letter designation at the time of adoption (per R.S. 40:1730.28, eff. 1/1/16).

Amend	Chapter 1	
Amend	Section [A] 101.2, Scope.	The provisions of this code shall apply to the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing systems within this jurisdiction. The installation of fuel gas distribution piping and equipment, fuel-gas-fired water heaters and water heater venting systems shall be regulated by the <i>International Fuel Gas Code</i> . Provisions in the appendices shall not apply unless specifically adopted.
Adopt	Item (a.)	(a.) Nothing in this Part or any provision adopted pursuant to this Part shall prohibit the Department of Health from the following:
Adopt	Item (1.)	(1.) Regulating stored water temperatures through enforcement of the <i>Sanitary Code</i> ;
Adopt	Item (2.)	(2.) Regulating medical gas and medical vacuum systems.
Amend	Exception	
Amend	Item (1.)	1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the <i>International Residential Code</i> .
Amend	Chapter 2, Definitions.	
Adopt	<i>Adult Day Care Center</i>	Any place or facility, operated by any person for the primary purpose of providing care, supervision and guidance of 10 or more people 18 years and older, not related to the caregiver and unaccompanied by parent or guardian, on a regular basis, for a total of at least 20 hours in a continuous seven day week in a place other than the person's home.
Adopt	<i>Barometric Loop</i>	A fabricated piping arrangement rising at least 35 feet at its topmost point above the highest fixture it supplies. It is utilized in water supply systems to protect against backsiphonage backflow.
Amend	<i>Building Drain</i>	That part of the lowest piping of a drainage system that receives the discharge from soil, waste and other drainage pipes inside and that extends 30 inches (762 mm) in developed length of pipe beyond the exterior walls of the building and conveys the drainage to the building sewer:
Repeal		Delete definition <i>Combined—Building Drain</i> —"See building drain, combined".
Amend		<i>sanitary</i> —a building drain that conveys sewage only;
Amend		<i>storm</i> —a building drain that conveys storm water or other drainage, but not sewage
Amend	<i>Building Sewer</i>	that part of the drainage system that extends from the end of the building drain and conveys the discharge to a community sewerage system, commercial treatment facility, or individual sewerage system or other point of disposal:
Repeal		Delete definition <i>Combined Building Sewer</i> —"See <i>Building sewer, combined</i> ".
Amend		1. <i>sanitary</i> —a building drain that conveys sewage only;
Amend		2. <i>storm</i> —a building drain that conveys storm water or other drainage, but not sewage.
Adopt	<i>By-Pass</i>	any system of piping or other arrangement whereby the water may be diverted around any part or portion of the water supply system including, but not limited to, around an installed backflow preventer
Adopt	<i>Child Day Care Center</i>	any place or facility, operated by any person for the primary purpose of providing care, supervision and guidance of seven or more children under the age of 18, not related to the care giver and supervision and guidance of seven or more children under the age of 18, not related to the care giver and unaccompanied by parent or guardian, on a regular basis, for a total of at least 20 hours in a continuous seven-day week in a place other than the children's home. A day care center that remains open for more than 20 hours in a continuous seven-day week, and in which no individual child remains for more than 24 hours in one continuous stay shall be known as a full-time day care center.
Adopt	<i>Commercial Treatment Facility</i>	any treatment facility which is required by the state health officer whenever the use of an individual sewerage system is unfeasible or not authorized.
Adopt	<i>Community Sewerage System</i>	any sewerage system which serves multiple connections and consists of a collection and/or pumping system/transport system and treatment facility.
Adopt	<i>Containment</i>	a method of backflow prevention which requires a backflow prevention device or method on the water service pipe to isolate the customer from the water main.
Adopt	<i>Continuous Water Pressure</i>	a condition when a backflow preventer is continuously subjected to the upstream water supply pressure for a period of 12 hours or more.
Adopt	<i>Day Care Centers</i>	includes adult and child day care centers.
Adopt	<i>Degree of Hazard</i>	an evaluation of the potential risk to public health if the public were to be exposed to contaminated water caused by an unprotected or inadequately protected cross connection.
Adopt	<i>Domestic Well</i>	a water well used exclusively to supply the household needs of the owner/lessee and his family. Uses may include human consumption, sanitary purposes, lawn and garden watering and caring for pets.
Adopt	<i>Dual Check Valve</i>	a device having two spring loaded, independently operated check valves without tightly closing shut-off valves and test cocks; generally employed immediately downstream of the water meter.
Adopt	<i>Fixture Isolation</i>	a method of backflow prevention in which a backflow preventer is located to protect the potable water of a water supply system against a cross connection at a fixture located within the structure or premises itself.
Adopt	<i>Grade (G)</i>	normally, this references the location of some object in relation to either the floor or ground level elevation.
Adopt	<i>Gravity Grease Interceptor</i>	plumbing appurtenances of not less than 125 gallons capacity that are installed in the sanitary drainage system to intercept free-floating fats, oils, and grease from waste water discharge. Separation is accomplished by gravity during a retention time of not less than 30 minutes.
Adopt	<i>Human Consumption</i>	the use of water by humans for drinking, cooking, bathing, showering, hand washing, dishwashing, or maintaining oral hygiene.
Adopt	<i>Individual Sewerage System</i>	any system of piping (excluding the building drain and building sewer), and/or collection and/or transport system which serves one or more connections, and/or pumping facility, and treatment facility, all located on the property where the sewage originates; and which utilizes the individual sewerage system technology which is set forth in LAC 51:XIII.Chapter 7, Subchapter B, or a commercial treatment facility which is specifically authorized for use by the state health officer.
Repeal		Delete definition <i>Individual Water Supply</i> —a water supply that serves one or more families, and that is not an approved public water supply.
Adopt	<i>Lead Free</i>	A. in general:
Adopt		1. not containing more than 0.2 percent lead when used with respect to solder and flux; and
Adopt		2. not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures;
Adopt		B. calculation:

Adopt		1. the weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula:
Adopt		a. for each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with Clause a.ii above. For lead content of materials that are provided as a range, the maximum content of the range shall be used.
Adopt	<i>Master Meter</i>	a water meter serving multiple residential dwelling units or multiple commercial units. Individual units may or may not be sub-metered
Adopt	<i>Potable Water Supply</i>	a publicly owned or privately owned water supply system which purveys potable water.
Adopt	<i>Preschool</i>	any child less than five years of age
Adopt	<i>Private Water Supply</i>	a potable water supply that does not meet the criteria for a public water supply including, but not limited to a domestic well.
		Delete definition <i>Public Water Main</i> —a water supply pipe for public use controlled by public authority
Adopt	<i>Public Water Supply</i>	public water system.
Adopt	<i>Public Water System</i>	a particular type of water supply system intended to provide potable water to the public having at least 15 service connections or regularly serving an average of at least 25 individuals daily at least 60 days out of the year.
Adopt	<i>Putrescible Waste</i>	waste which is subject to spoilage, rot, or decomposition and may give rise to foul smelling, offensive odors and/or is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies. It includes wastes from the preparation and consumption of food, vegetable matter, and animal offal and carcasses
Adopt	<i>Residential Facility</i>	any place, facility, or home operated by any person who receives therein four or more people who are not related to such person for supervision, care, lodging and maintenance with or without transfer of custody. This shall include, but not be limited to group homes, community homes, maternity homes, juvenile detention centers, emergency shelters, halfway homes and schools for the mentally retarded.
Note	<i>Sanitary Sewage</i>	see <i>sewage</i>
Amend	<i>Sewer</i>	a pipe or other constructed conveyance which conveys sewage, rainwater, surface water, subsurface water, or similar liquid wastes:
Amend		1. <i>building sewer</i> —see “ <i>building sewer</i> ”;
Amend		2. <i>public sewer</i> —a common sewer directly controlled by a public authority or utilized by the public;
Amend		3. <i>sanitary sewer</i> —a sewer that carries sewage and excludes storm, surface and ground water;
Amend		4. <i>storm sewer</i> —a sewer that conveys rainwater, surface water, subsurface water and similar liquid wastes.
Adopt	<i>Sewerage System</i>	any system of piping (excluding the building drain and building sewer) and/or collection and/or transport system and/or pumping facility and/or treatment facility, all for the purpose of collecting, transporting, pumping, treating and/or disposing of sanitary sewage.
Amend	<i>Water Main</i>	a water supply pipe or system of pipes installed and maintained by a city, township, county, public utility company or other public entity, on public property, in the street or in an approved dedicated easement of public or community use. This term shall also mean the principal artery (or arteries) used for the distribution of potable water to consumers by any water supplier including, but not limited to, those public water systems which are not owned by the public and which may not be on public property.
Adopt	<i>Water Supplier</i>	a person who owns or operates a water supply system including, but not limited to, a person who owns or operates a public water system.
Amend	<i>Water Supply System</i>	the water service pipe, water distribution pipes, and the necessary connecting pipes, fittings, control valves and all appurtenances in or adjacent to the structure or premise. This term shall also mean the system of pipes or other constructed conveyances, structures and facilities through which water is obtained, treated to make it potable (if necessary) and then distributed (with or without charge) for human consumption or other use.
Repeal	<i>Well-Bored</i>	a well constructed by boring a hole in the ground with an auger and installing a casing.
Repeal	<i>Well-Drilled</i>	a well constructed by making a hole in the ground with a drilling machine of any type and installing casing and screen.
Repeal	<i>Well-Driven</i>	a well constructed by driving a pipe in the ground. The drive pipe is usually fitted with a well point and screen.
Repeal	<i>Well-Dug</i>	a well constructed by excavating a large-diameter shaft and installing a casing.
Amend	Chapter 3, General Regulations.	
Amend	Section 312.1, Required Tests.	The permit holder shall make the applicable tests prescribed in Sections 312.2 through 312.10 to determine compliance with the provisions of this code. The permit holder shall give reasonable advance notice to the code official when the plumbing work is ready for tests. The code official shall verify the test results. The equipment, material, power and labor necessary for the inspection and test shall be furnished by the permit holder and the permit holder shall be responsible for determining that the work will withstand the test pressure prescribed in the following tests. All plumbing system piping shall be tested with either water or by air. After the plumbing fixtures have been set and their traps filled with water, the entire drainage system shall be submitted to final tests. The code official shall require the removal of any cleanouts if necessary to ascertain whether the pressure has reached all parts of the system.
Amend	Section 312.3, Drainage and Vent Test.	An air test shall be made by forcing air into the system until there is a uniform gauge pressure of 5 psi (34.5 kPa) or sufficient to balance a 10-inch (254 mm) column of mercury. This pressure shall be held for a test period of not less than 15 minutes. Any adjustments to the test pressure required because of changes in ambient temperatures or the seating of gaskets shall be made prior to the beginning of the test period.
Amend	Section 312.5, Water Supply System Test.	Upon completion of a section of or the entire water supply system, the system, or portion completed, shall be tested and proved tight under a water pressure not less than 1.5 times the working pressure of the system, but not less than 140 psi; or, for piping systems other than plastic, by an air test of not less than 50 psi (344 kPa). This pressure shall be held for not less than 15 minutes. The water utilized for tests shall be obtained from a potable source of supply. The required tests shall be performed in accordance with this section and Section 107.

Amend	Section 312.10 Installation, Inspection and Testing of Backflow Prevention Assemblies, Barometric Loops and Air Gaps.	Installation, inspection and testing shall comply with Sections 312.10.1 through 312.10.3.
Amend	Section 312.10.1, Inspections.	Annual inspections shall be made of all backflow prevention assemblies, barometric loops and air gaps to determine whether they are operable, properly installed and maintained, and meet testing/code requirements. Inspections of backflow prevention devices including barometric loops and air gaps used to protect high degree of hazard cross connections shall be documented in writing and the report provided to the owner of the backflow prevention device.
Amend	Section 312.10.2, Testing.	Reduced pressure principle, double-check, pressure vacuum breaker, reduced pressure detector fire protection, double check detector fire protection, and spill-resistant vacuum breaker backflow preventer assemblies shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5013, ASSE 5015, ASSE 5020, ASSE 5047, ASSE 5048, ASSE 5052, ASSE 5056, CSA B64.10.1, USC's FCCC and HR's "Manual of Cross-Connection Control", or UFL's TREEO's "Backflow Prevention—Theory and Practice". Any backflow preventer which is found to be defective shall be repaired.
Adopt	Section 312.10.3, Owner Responsibilities.	The owner of the backflow prevention assemblies shall comply with the following:
Adopt		1. It shall be the duty of the owner of the backflow prevention assembly to see that these tests are made in a timely manner in accord with the frequency of field testing specified in 312.10.2 of this code.
Adopt		2. The owner shall notify the building official, and/or water supplier (for those devices associated with containment) in advance when the tests are to be undertaken so that the building official and/or water supplier may witness the tests if so desired.
Adopt		3. Upon completion, the owner shall provide records of such tests, repairs, overhauls, or replacements to the building official or water supplier (for those devices associated with containment). In addition, all records shall be kept by the owner of the backflow prevention device or method for at least five years and, upon specific request, shall be made available to the building official or water supplier.
Adopt		4. All tests, repairs, overhauls or replacements shall be at the expense of the owner of the backflow preventer.
Amend	Chapter 4	
Amend	Section 403.3.3, Location of Toilet Facilities in Occupancies other than Malls and Educational Buildings.	In occupancies other than covered and open mall buildings, and educational buildings, the required public and employee toilet facilities shall be located not more than one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).
Adopt	Section 403.3.7, Location of Toilet Facilities in Educational Buildings.	For primary schools, and other special types of institutions with classrooms, for children through 12 years of age, separate boys' and girls' toilet room doors shall not be further than 200 feet from any classroom doors. For secondary schools, and other special types of institutions with classrooms, for persons of secondary school age, separate boys' and girls' toilet room doors shall not be further than 400 feet from any classroom door. In multi-storied buildings, there shall be boys' and girls' toilet rooms on each floor, having the number of plumbing fixtures as specified in Table 403.1 of this code for the classroom population of that floor. When new educational buildings are added to an existing campus, the restroom facilities and drinking fountains located in the existing building(s) may be used to serve the occupants of the new educational building(s) only when all of the following provisions are met:
Adopt		1. covered walkways consisting of a roof designed to protect the students and faculty from precipitation having a minimum width of 6 feet and located above a slip-resistant concrete or other acceptable hard surfaces leading to and from the restrooms shall be provided whenever children or faculty have to walk outside to access the toilet room;
Adopt		2. the path of travel from the classroom door to the toilet room doors (boys' or girls') does not exceed the applicable distance specified in this Section; and
Adopt		3. the number of occupants of the new building does not cause an increase in the school population that would trigger the need for more fixtures per Table 403.1 (Minimum Number of Required Plumbing Fixtures).
Adopt	Section 403.6, Other Fixture Requirements for Licensed Pre-schools, Day Care Centers, and Residential Facilities.	Additional plumbing fixtures shall be provided in day care centers and residential facilities as required by this Section.
Adopt	Section 403.6.1, Food Preparation.	The food preparation area in pre-schools, day cares, and residential facilities shall meet the following requirements. The food preparation, storage and handling where six or less individuals are cared for shall provide a two-compartment sink and an approved domestic type dishwasher. Where the number of individuals cared for is between 7 and 15, either a three-compartment sink, or an approved domestic or commercial type dishwashing machine and a two-compartment sink with hot and cold running water shall be provided. Where 16 or more individuals are cared for, a three-compartment sink must be provided. If a dishwasher is also utilized in these instances (16 or more individuals), it must be a commercial type and it shall be in addition to the required three-compartment sink. One laundry tray, service sink, or curbed cleaning facility with floor drain shall also be provided on the premises for cleaning of mops and mop water disposal (for facilities caring for 16 or more individuals).
Adopt	Section 403.6.2, Caring for Children between 0 and 4 Years of Age.	In child day care facilities, a hand washing sink shall be in or adjacent to each diaper changing area. In addition, one extra laundry tray, service sink, or similar fixture is required to clean and sanitize toilet training potties immediately after each use. Such fixture shall be dedicated solely for this purpose and shall not be in the food preparation/storage, utensil washing, or dining areas. Training potties shall not be counted as toilets in determining the minimum fixture requirements of Table 403.1. Fixtures shall be size appropriate for the age of the children being cared for (toilets 11 inches maximum height and lavatories 22 inches maximum height), or if standard size fixtures are used, safe, cleanable step aids shall be provided.
Adopt	Section 410.6, Minimum Required Separation from Contamination.	Drinking fountain fixtures shall provide a minimum requirement of 18 inches of separation from its water outlet (spigot) to any source of contamination. Combination sink/drinking fountain units shall provide a minimum of 18 inches between the drinking fountain water outlet (spigot) and the nearest outside rim of the sink bowl [or other source(s) of contamination].

Adopt	Exceptions	
Adopt		1. This 18 inch minimum separation may only be reduced by the use of a vertical shield made of a smooth, easily cleaned surface that is attached flush with the top surface of the unit and extends to a distance at least 18 inches in height above the drinking fountain water outlet (spigot) level.
Adopt		2. Prohibited Fixture. Combination sink/drinking fountain units which share the same sink bowl are prohibited except in individual prison cells.”
Amend	Section 412, Floor and Trench Drains.	
Adopt	Section 412.5, Miscellaneous Areas.	
Adopt		1. A floor drain shall be required in public toilet rooms, excluding hotel/motel guest rooms or patient rooms of a hospital or nursing home.
Adopt		2. A floor drain shall be required in the recess room for sterilizers in a medical facility.
Adopt		3. Floor drains are not permitted in general food storage areas, unless in accordance with Section 802.1.1 or 802.1.2 of this code.
Amend	Section 417.3, Shower Water Outlet.	Waste outlets serving showers shall be not less than 2 inches (50.8 mm) in diameter and, for other than waster outlets in bathtubs, shall have removable strainers not less than 3 inches (76 mm) in diameter with strainer openings not less than 1/4 inch (6.4 mm) in least dimension. Where each shower space is not provided with an individual waste outlet, the waste outlet shall be located and the floor pitched so that waste from one shower does not flow over the floor area serving another shower. Waste outlets shall be fastened to the waste pipe in an approved manner.
Adopt	Section 418.4, Handwash Sinks.	
Adopt		1. Dedicated handwash sinks shall be located to permit convenient use by all employees in food processing, food preparation, and other food handling areas.
Adopt		2. Each commercial body art (tattoo) facility shall provide a hand washing sink to be used solely for hand washing in body art procedure area for the exclusive use of the operator. A separate instrument sink shall also be provided for the sole purpose of cleaning instruments and equipment prior to sterilization.
Adopt		3. A hand washing sink may not be used for purposes other than hand washing.
Adopt		4. Sinks used for food preparation or for washing and sanitizing of equipment and utensils shall not be used for hand washing.
Adopt	Section 418.5, Manual Warewashing, Sink Requirements.	A sink with at least three compartments constructed of smooth, impervious non-corrosive material such as stainless steel or high density food grade polymer plastic shall be provided in slaughter rooms, packing rooms, retail food establishments, and other food handling areas for manual washing, rinsing and sanitizing equipment and utensils except where there are no utensils or equipment to wash, rinse and sanitize; i.e., such as in a facility with only prepackaged foods.
Adopt	Section 422.11, Handwashing Facilities.	Medical facilities, including doctor’s office and clinics, shall be provided with hand washing facilities within each patient examination and treatment room. The hand wash facility shall be provided with hot and cold water delivered via a mixing faucet.
Amend	Chapter 5, Water Heaters.	
Amend	Section 504.6	5. Discharge to the floor, to a waste receptor, mop sinks or to the outdoors
Amend	Section 504.7.1, Pan Size and Drain.	The drain pan shall be a minimum of 2-inches (2”) (50.8 mm) in depth and shall be of sufficient size and shape to receive all dripping or condensate from the tank or water heater. The pan shall be drained by an indirect waste pipe having a diameter of not less than 1-inch (25.4 mm). Piping for safety pan drains shall be of those materials listed in Table 605.4.
Amend	Chapter 6	
Amend	Chapter 6, Water Supply and Distribution.	
Amend	Section 602.3, Individual Water Supply.	Where a potable public water supply is not available, a private water supply meeting the applicable requirements of LAC 51:XII (Water Supplies) and LAC 56:I (Water Wells) shall be utilized.
Repeal		1. Delete and remove Sections 602.3.1, 602.3.2, 602.3.3, 602.3.4, 602.3.5 and 602.3.5.1, Pump Enclosure.
Adopt	Section 603.3, Potable Water (Pressure) Lines Near Soil Absorption Trenches, Sand Filter Beds, Oxidation Ponds, and any Effluent Reduction Option (Effluent Reduction Fields, Rock Plant Filters, Spray Irrigation Systems, Overland Flow Systems, Mound Systems, or Subsurface Drip Disposal Systems).	Underground potable water (pressure) lines shall not be located within 25 feet (7.6 m) of any soil absorption trenches, sand filter beds, oxidation ponds, or any effluent reduction option including, but not limited to effluent reduction fields, rock plant filters, spray irrigation systems (from the edge of the spray and its drainage), overland flow systems (from the discharge point and field of flow), mound systems, or subsurface drip disposal systems which have been installed for either the disposal of septic tank effluent or mechanical treatment plant effluent.
Adopt	Section 603.4, Potable Water (Pressure) Lines Near Septic Tanks, Mechanical Sewage Treatment Plants, and Pump Stations.	Underground potable water (pressure) lines shall not be located within 10 feet (3.0 m) of any septic tank, mechanical sewage treatment plant, or sewage pump station.
Adopt	Section 603.5, Potable Water (Pressure) Lines Near Seepage Pit, Cesspool, or Sanitary Pit Privy.	Underground potable water (pressure) lines shall not be located within 50 feet (15.2m) of any seepage pit, cesspool, or sanitary pit privy.
Adopt	603.6, Reclaimed Water Lines.	Reclaimed water lines shall be considered and treated as though they are sewerage lines and shall be installed in accord with the spacing requirements of this Section for the protection of potable water lines.

Amend	Section 605.2.1, Lead Content of Water Supply Pipe and Fittings used for Human Consumption.	Water Piping Quality. All potable water pipes, fittings, valves, and fixtures used to provide water for human consumption shall be lead free and shall be evaluated and listed as conforming with NSF/ANSI 372. Any solder or flux which is used in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption shall be lead free.
Adopt	Exceptions	The lead-free requirement above shall not apply to:
Adopt		1. leaded joints necessary for the repair of existing cast iron pipes;
Adopt		2. fire hydrants, pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or
Adopt		3. toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches in diameter or larger.
Amend	Section 605.3, Water Service Pipe with Corresponding Table 605.3.	Water service pipe shall conform to NSF 61 and shall conform to one of the standards listed in Table 605.3. Water service pipe or tubing, installed underground and outside of the structure, shall have a working pressure rating of not less than 160 psi (1100 kPa) at 73.4 degrees F (23 degrees C). Where the water pressure exceeds 160 psi (1100 kPa) piping material shall have a working pressure rating not less than the highest available pressure. Water service piping materials not third-party certified for water distribution shall terminate at or before the full open valve located at the entrance to the structure. All ductile iron water service piping shall be cement mortar lined in accordance with AWWA C104.
Amend	Table 605.3—Water Service Pipe.	

Material	Standard
Acrylonitrile butadiene styrene (ABS) plastic pipe	ASTM D 1527; ASTM D 2282
Brass pipe	ASTM B 43
Chlorinated polyvinyl chloride (CPVC) plastic pipe	ASTM D 2846; ASTM F 441; ASTM F 442; CSA B137.6
Copper or copper-alloy pipe	ASTM B 42; ASTM B 302
Copper or copper-alloy tubing (Type K, WK, L, or WL only. i.e., Type M and WM copper is prohibited.)	ASTM B 75; ASTM B 88; ASTM B 251; ASTM B 447
Cross-linked polyethylene (PEX) plastic pipe and tubing	ASTM F 876; ASTM F 877; AWWA C904; CSA B137.5
Cross-linked polyethylene/aluminum/cross-linked polyethylene (PEX-AL-PEX) pipe	ASTM F 1281; ASTM F 2262; CSA B137.10M
Cross-linked polyethylene/aluminum/high-density polyethylene (PEX-AL-HDPE)	ASTM F 1986
Ductile iron water pipe	AWWA C151/A21.51; AWWA C115/A21.15
Galvanized steel pipe	ASTM A 53
Polyethylene (PE) plastic pipe	ASTM D 2239; ASTM D 3035; AWWA C901; CSA B137.1
Polyethylene (PE) plastic tubing	ASTM D 2737; AWWA C901; CSA B137.1
Polyethylene/aluminum/polyethylene (PE-AL-PE) pipe	ASTM F 1282; CSA B137.9
Polyethylene of raised temperature (PE-RT) plastic tubing	ASTM F 2769
Polypropylene (PP) plastic pipe or tubing	ASTM F 2389; CSA B137.11
Polyvinyl chloride (PVC) plastic pipe	ASTM D 1785; ASTM D 2241; ASTM D 2672; CSA B137.3
Stainless steel pipe (Type 304/304L)	ASTM A 312; ASTM A 778
Stainless steel pipe (Type 316/316L)	ASTM A 312; ASTM A 778

Amend	Section 605.3.1, Dual Check-Valve-Type Backflow Preventer.	Dual check-valve backflow preventers installed on the water supply system shall comply with ASSE 1024 or CSA B64.6. These devices, which are commonly installed immediately downstream of water meters by water suppliers, are not approved backflow prevention devices and are only allowed to be installed when no cross connections exist downstream of the device or when all downstream cross connections are properly protected by approved backflow prevention devices, assemblies, or methods in accordance with Section 608 of this code.
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Amend	Table 605.4, Water Distribution Pipe.																															
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Amend	Section 605.5, Fittings.	Pipe fittings shall be approved for installation with the piping material installed and shall comply with the applicable standards listed in Table 605.5. Pipe fittings utilized in water supply systems shall also comply with NSF 61. Ductile and gray iron pipe fittings shall be cement mortar lined in accordance with AWWA C104. All copper, brass and stainless steel joints below a building slab shall be brazed and/or welded in accordance with the requirements of this code, as appropriate. With the exception of heat fused polypropylene, all other joints and fittings for plastic pipe below a building slab are prohibited																														
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Amend	Section 606.5.5, Low-Pressure Cutoff Required on Booster Pumps.	A low-pressure cutoff shall be installed on all booster pumps in a water pressure booster system to prevent creation of a vacuum or negative pressure on the suction side of the pump when a positive pressure of 20 psi (137.9 kPa) or less occurs on the suction side of the pump.																		
Amend	Section 607.2 Hot or tempered water supply to fixtures.	The developed length of hot or tempered water piping, from the source of hot water to the fixtures that require hot or tempered water, shall not exceed 100. Recirculating system piping and heat-traced piping shall be considered to be sources of hot or tempered water.																		
Amend	Section 608.1, General.	A potable water supply system shall be designed, installed and maintained in such a manner so as to prevent contamination from non-potable liquids, solids or gases being introduced into the potable water supply through cross-connections or any other piping connections to the system. Backflow preventers shall conform to the applicable standard referenced in Table 608.1. Backflow preventer applications shall conform to Table 608.1, except as specifically stated in Sections 608.2 through 608.16.27 and Sections 608.18 through 608.18.2.																		
Amend	Section 608.8, Identification of Nonpotable Water.	Where nonpotable water systems are installed, the piping conveying the nonpotable water shall be identified either by color marking, metal tags or tape in accordance with Sections 608.8.1 through 608.8.3.																		
Adopt	Exception																			
Adopt		1. Overall Exception to this Section (§608.8 of this code). Pursuant to R.S. 40:4.12, industrial-type facilities listed therein shall not be required to comply with this section (§608.8 of this code) provided that such facilities have a potable water distribution identification plan in conformity with the requirements of R.S. 40:4.12. The required formal cross-connection control survey of the facility referenced in R.S. 40:4.12 shall be performed by an individual holding a valid cross-connection control surveyor certificate issued under the requirements of ASSE 5120, or other individuals holding a surveyor certificate from a nationally recognized backflow certification organization approved by the state health officer.																		
Amend	Section 608.14, Location of Backflow Preventers.	Access shall be provided to backflow preventers as specified by the manufacturer's instructions for the required testing, maintenance and repair. A minimum of 1 foot of clearance shall be provided between the lowest portion of the assembly and grade or platform. Elevated installations exceeding 5-feet above grade (g) shall be provided with a suitably located permanent platform capable of supporting the installer, tester, or repairer. Reduced pressure principal type backflow preventers, and other types of backflow preventers with atmospheric ports and/or test cocks (e.g., atmospheric type vacuum breakers, double check valve assemblies, pressure type vacuum breaker assemblies, etc.), shall not be installed below grade (in vaults or pits) where the potential for a relief valve, an atmospheric port, or a test cock being submerged exists.																		
Amend	Section 608.15.4, Protection by a Vacuum Breaker.	Openings and outlets shall be protected by atmospheric-type or pressure-type vacuum breakers. The critical level of atmospheric type vacuum breakers shall be installed not less than 6 inches (152 mm) above all downstream piping and not less than 6 inches (152 mm) above the flood-level rim of the fixture receptor or device served. Shutoff or control valves shall not be installed downstream from an atmospheric vacuum breaker. Atmospheric vacuum breakers including, but not limited to, hose bibb vacuum breakers shall not be subjected to continuous water pressure. The critical level of pressure type vacuum breakers shall be installed not less than 12 inches (305 mm) above all downstream piping and not less than 12 inches (305 mm) above the flood-level rim of the fixture receptor or device served. Fill valves shall be set in accordance with Section 425.3.1. Vacuum breakers shall not be installed under exhaust hoods or similar locations that will contain toxic fumes or vapors.																		
Amend	Section 608.16, Connections to the Potable Water System.	Connections to the potable water system shall conform to Sections 608.16.1 through 608.16.27. These Sections (608.16.1-608.16.27) are not inclusive of all potential contamination sources which may need fixture isolation protection. For potential contamination sources not listed in Sections 608.16.1 through 608.16.27, backflow prevention methods or devices shall be utilized in accordance with Table B1 of CAN/CSA B64.10-1994. When a potential contamination source and its associated backflow prevention method or device is not identified in this code or Table B1 of CAN/CSA B64.10-1994, backflow prevention methods or devices shall be utilized as directed by the building official.																		
Amend	Section 608.16.5, Connections to Lawn/Landscape Irrigation Systems.	The potable water supply to lawn/landscape irrigation systems shall be protected against backflow by an atmospheric vacuum breaker, a pressure vacuum breaker assembly or a reduced pressure principle backflow prevention assembly. Shutoff or control valves shall not be installed downstream from an atmospheric vacuum breaker. When a lawn/landscape sprinkler system is provided with separate zones, the potable water supply shall be protected by a pressure vacuum breaker or reduced pressure principal backflow prevention assembly. Atmospheric vacuum breakers shall be installed at least 6 inches (152 mm) above the highest point of usage (i.e., 6 inches (152 mm) above all downstream piping and highest sprinkler head). Pressure type vacuum breakers shall be installed at least 12 inches (305 mm) above the highest point of usage (i.e., 12 inches (305 mm) above all downstream piping and the highest sprinkler head). Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow prevention assembly.																		
Amend	Section 608.16.8, Portable Cleaning Equipment.	Where the portable cleaning equipment connects to the water distribution system, the water supply system shall be protected against backflow in accordance with Section 608.13.1, 608.13.2, 608.13.3, 608.13.5, 608.13.6, or 608.13.8. The type of backflow preventer shall be selected based upon the application in accordance with Table 608.1.																		
Adopt	Section 608.16.11, Cooling Towers.	The potable water supply to cooling towers shall be protected against backflow by an air gap.																		



Adopt	Section 608.16.12, Chemical Tanks.	The potable water supply to chemical tanks shall be protected against backflow by an air gap.
Adopt	Section 608.16.13, Commercial Dishwashers in Commercial Establishments.	The potable water supply to commercial dishwashers in commercial establishments shall be protected against backflow by an air gap, atmospheric vacuum breaker, or pressure vacuum breaker. Vacuum breakers shall meet the requirements of Section 608.15.4.
Adopt	Section 608.16.14, Ornamental Fountains.	The potable water supply to ornamental fountains shall be protected against backflow by an air gap.
Adopt	Section 608.16.15, Swimming Pools, Spas, Hot Tubs.	The potable water supply to swimming pools, spas, or hot tubs shall be protected against backflow by an air gap or reduced pressure principal backflow prevention assembly.
Adopt	Section 608.16.16, Baptismal Fonts.	The potable water supply to baptismal fonts shall be protected against backflow by an air gap.
Adopt	Section 608.16.17, Animal Watering Troughs.	The potable water supply to animal watering troughs shall be protected against backflow by an air gap.
Adopt	Section 608.16.18, Agricultural Chemical Mixing Tanks.	The potable water supply to agricultural chemical mixing tanks shall be protected against backflow by an air gap.
Adopt	Section 608.16.19, Water Hauling Trucks.	The potable water supply to water hauling trucks/tankers shall be protected against backflow by an air gap when filled from above. When allowed to be filled from below, they shall be protected by a reduced pressure principle backflow prevention assembly. When a tanker truck is designated for the hauling of food grade products (and has been cleaned utilizing food grade cleaning procedures) and is allowed to be filled from below, a double check valve assembly shall be acceptable.
Adopt	Section 608.16.20, Air Conditioning Chilled Water Systems and/or Condenser Water Systems.	The potable water supply to air conditioning chilled water systems and condenser water systems shall be protected against backflow by a reduced pressure principal backflow prevention assembly.
Adopt	Section 608.16.21, Pot-Type Chemical Feeders.	The potable water supply to pot-type chemical feeders shall be protected against backflow by a reduced pressure principal backflow prevention assembly.
Adopt	Section 608.16.22, Food Processing Steam Kettles.	The potable water supply to food processing steam kettles shall be protected against backflow by a double check valve backflow prevention assembly.
Adopt	Section 608.16.23, Individual Travel Trailer Pads.	The potable water supply to individual travel trailer pads shall be protected against backflow by a dual check valve backflow prevention assembly.
Adopt	Section 608.16.24, Laboratory and/or Medical Aspirators.	The potable water supply to laboratory and/or medical aspirators shall be protected against backflow by an atmospheric or pressure vacuum breaker installed in accordance with Sections 608.3.1 and 608.15.4.
Adopt	Section 608.16.25, Laboratory or other Sinks with Threaded or Serrated Nozzles.	The potable water supply to laboratory sinks or other sinks with threaded or serrated nozzles shall be protected against backflow by an atmospheric or pressure vacuum breaker installed in accordance with Sections 608.3.1 and 608.15.4.
Adopt	Section 608.16.26, Mortuary/Embaling Aspirators.	The potable water supply to mortuary/embaling aspirators shall be protected against backflow by a pressure vacuum breaker installed in the supply line serving the aspirator. The critical level of the vacuum breaker shall be installed a minimum of 12 inches higher than the aspirator. The aspirator shall be installed at least 6 inches above the highest level at which suction may be taken. An air gap shall be provided between the outlet of the discharge pipe and the overflow rim of the receiving fixture.
Adopt	Section 608.16.27, Room(s) or other Sub-Unit(s) of a Premise or Facility Receiving Water where Access is Prohibited.	When access is prohibited to particular areas, rooms, or other sub-units of a premise or facility which is receiving water, the potable water supply serving those areas shall be protected against backflow by a reduced pressure principal backflow protection assembly.
Amend	Section 608.17, Protection of Individual Water Supplies.	An individual water supply shall be located and constructed so as to be safeguarded against contamination in accordance with the applicable requirements of LAC 51:XII (Water Supplies) and LAC 56:I (Water Wells).
Repeal	Sections 608.17.1 through 608.17.8 including Table 608.17.1.	Delete Sections 608.17.1 through 608.17.8 including Table 608.17.1.
Adopt	Section 608.18, Containment Practices.	Backflow prevention methods or devices shall be utilized as directed by the water supplier or code official to isolate specific water supply system customers from the water supply system's mains when such action is deemed necessary to protect the water supply system against potential contamination caused by backflow of water from that part of the water system owned and maintained by the customer (for example, the piping downstream of the water meter, if provided). Minimum requirements shall be in accordance with Section 608.18.1 through 608.18.2.
Adopt	Section 608.18.1, Containment Requirements.	As a minimum, the following types of backflow prevention assemblies or methods shall be installed and maintained by water supply system customers immediately downstream of the water meter (if provided) or on the water service pipe prior to any branch line or connections serving the listed customer types and categories.
Adopt		Table 608.18.1, Containment Requirements.

<b>Air Gap</b>	
1. Fire Protection/Sprinkler System utilizing non-potable water as an alternative or primary source of water	
<b>Reduced Pressure Principle Backflow Prevention Assembly</b>	
1. Hospitals, Out-Patient Surgical Facilities, Renal Dialysis Facilities, Veterinary Clinics	
2. Funeral Homes, Mortuaries	
3. Car Wash Systems	
4. Sewage Facilities	
5. Chemical or Petroleum Processing Plants	
6. Animal/Poultry Feedlots or Brooding Facilities	
7. Meat Processing Plants	
8. Metal Plating Plants	
9. Food Processing Plants, Beverage Processing Plants	
10. Fire Protection/Sprinkler Systems using antifreeze in such system (a detector type assembly is recommended on unmetered fire lines)	
11. Irrigation/Lawn Sprinkler Systems with Fertilizer Injection	
12. Marinas/Docks	
13. Radiator Shops	
14. Commercial Pesticide/Herbicide Application	
15. Photo/X-ray/Film Processing Laboratories	
16. Multiple Commercial Units served by a master meter	
17. Any type of occupancy type or any other facility having one or more Single-walled Heat Exchangers which uses any chemical, additive, or corrosion inhibitor, etc., in the heating or cooling medium	
18. Any type of occupancy type or any other facility having one or more Double-walled Heat Exchangers which use any chemical, additive, or corrosion inhibitor, etc., in the heating or cooling medium and which does not have a path to atmosphere with a readily visible discharge	
19. Premises where access/entry is prohibited	
<b>Pressure Vacuum Breaker Assembly/Spill Resistant Vacuum Breaker Assembly</b>	
1. Irrigation/Lawn Sprinkler Systems	
<b>Double Check Valve Assembly</b>	
1. Fire Protection/Sprinkler Systems (a detector type double check valve assembly is recommended on unmetered fire lines)	
2. Two residential dwelling units served by a master meter, unless both units are located on a parcel or contiguous parcels of land having the same ownership and neither unit is used for commercial purposes. As used herein, the term "commercial purposes" means any use other than residential.	
3. Three or more residential dwelling units served by a master meter	
4. Multistoried Office/Commercial Buildings (over 3 floors)	
5. Jails, Prisons, and Other Places of Detention or Incarceration	

Adopt	Section 608.18.2, Other Containment Requirements.	Table 608.18.1 of this code above is not inclusive of all potential contamination sources which may need containment protection. For potential contamination sources not listed in this table, backflow prevention methods or devices shall be utilized in accordance with Table B1 of CAN/CSA B64.10-1994. When a potential contamination source and its associated backflow prevention method or device is not identified in Table 608.18.1 of this code above or Table B1 of CAN/CSA B64.10-1994, backflow prevention methods or devices shall be utilized:
Adopt		1. as directed by the building code official; or
Adopt		2. as directed by the water supplier;
Adopt		3. in cases of a discrepancy regarding the particular backflow prevention assembly or method required, the assembly or method providing the higher level of protection shall be required.
Amend	Chapter 7, Sanitary Drainage.	
Amend	Section 701.2, Sewer Required.	Buildings in which plumbing fixtures are installed and premises having sanitary drainage system piping shall be connected to a community sewerage system, where available, or an approved commercial treatment facility or individual sewerage meeting the requirements of LAC 51:XIII (Sewage Disposal).
Adopt	Section 701.9, Repairs to Drainage System via Re-Route.	In the case where it is determined that there is a broken underground drain line including, but not limited to, broken drain lines under the slab of a building, and a drain line re-route is performed, the existing broken underground drain line shall be and sealed watertight and gastight using approved plumbing materials and joining/jointing methods, e.g., properly install an approved cap, plug, or cleanout on the cut or disconnected pipe.
Adopt	Section 703.6, Minimum Size Building Sewer.	No building sewer shall be less than 4 inches in size with the exception of force lines.
Amend	Section 710.1, Maximum Fixture Unit Load.	The maximum number of drainage fixture units connected to a given size of building sewer, building drain or horizontal branch of the building drain shall be determined using Table 710.1(1). The maximum number of drainage fixture units connected to a given size vertical soil or waste stack, or horizontal branch connecting to a vertical soil or waste stack, shall be determined using Table 710.1(2).
Amend	Table 710.1(1).	

Diameter of Pipe (Inches)	Maximum Number of Drainage Fixture Units Connected to Any Portion of the Building Drain or the Building Sewer, Including Branches of the Building Drain <sup>a</sup>			
	Slope Per Foot			
	1/16 inch	1/8 inch	1/4 inch	1/2 inch
1 1/4			1	1
1 1/2			3	3
2			21	26
2 1/2			24	31
3		20 (not over two water closets)	27 (not over two water closets)	36 (not over two water closets)
4	—	180	216	250
5	—	390	480	575
6	—	700	840	1,000
8	1,400	1,600	1,920	2,300
10	2,500	2,900	3,500	4,200
12	3,900	4,600	5,600	6,700
15	7,000	8,300	10,000	12,000

For SI: 1 inch = 25.4 mm, 1 inch per foot = 83.3 mm/m.

<sup>a</sup> The minimum size of any building drain serving a water closet shall be 3 inches.

Amend Table 710.1(2). Table 710.1(2)—Horizontal Fixture Branches and Soil Stacks<sup>a</sup>.

Diameter of Pipe (inches) (The minimum size of any branch or soil stack serving a water closet shall be 3".)	Maximum Number of Drainage Fixture Units (dfu)			
	Total for horizontal branch (Does not include branches of the building drain. Use 50 percent less dfu's for any circuit or battery vented fixture branches, no size reduction permitted for circuit or battery vented branches throughout the entire branch length.)	Soil Stacks <sup>b</sup>		
		Total discharge into one branch interval when greater than three branch intervals	Total for soil stack when three branch intervals or less	Total for soil stack when greater than three branch intervals
1 1/2	3	2	4	8
2	6	6	10	24
2 1/2	12	9	20	42
3	20 (not over two water closets)	16 (not over two water closets)	30 (not over six water closets)	60 (not over six water closets)
4	160	90	240	500
5	360	200	540	1,100
6	620	350	960	1,900
8	1,400	600	2,200	3,600
10	2,500	1,000	3,800	5,600
12	3,900	1,500	6,000	8,400
15	7,000	Note c	Note c	Note c

For SI: 1 inch = 25.4 mm.

<sup>a</sup> Does not include branches of the building drain. Refer to Table 710.1(1).

<sup>b</sup> Soil stacks shall be sized based on the total accumulated connected load at each story or branch interval. As the total accumulated connected load decreases, stacks are permitted to be reduced in size. Stack diameters shall not be reduced to less than one-half of the diameter of the largest stack size required.

<sup>c</sup> Sizing load based on design criteria.

Adopt	Section 710.3, Underground Drainage Piping.	Any portion of the drainage system installed underground or below a basement or cellar shall not be less than 2-inch diameter. In addition, any portion of the drainage system installed underground which is located upstream from a grease trap or grease interceptor as well as the underground horizontal branch receiving the discharge there from shall not be less than 3-inch diameter.
Amend	Chapter 8, Indirect/Special Waste.	
Amend	Section 802.1.1, Food Handling.	Equipment and fixtures utilized for the storage, preparation and handling of food shall discharge through an indirect waste pipe by means of an air gap. Food handling equipment includes, but is not limited to, the following: any sink where food is cleaned, peeled, cut up, rinsed, battered, defrosted or otherwise prepared or handled; potato peelers; ice cream dipper wells; refrigerators; freezers; walk-in coolers or freezers; ice boxes; ice making machines; fountain-type drink dispensers; rinse sinks; cooling or refrigerating coils; laundry washers; extractors; steam tables; steam kettles; egg boilers; coffee urns; steam jackets or other food handling or cooking equipment wherein the indirect waste pipe may come under a vacuum; or similar equipment.

Amend	Section 802.3 Waste Receptors.	For other than hub drains that receive only clear-water waste and standpipes, a removable strainer or basket shall cover the outlet of waste receptors. Waste receptors shall not be installed in concealed spaces. Waste receptors shall not be installed in plenums, interstitial spaces above ceilings and below floors. Access shall be provided to waste receptors.
Amend	Chapter 9, Vents.	
Repeal	Section 918, Air Admittance Valves.	Delete Section 918, Air Admittance Valves in its entirety and all referring sections of the 2015 IPC. In accordance with the requirements of Act 836 of the 2014 Regular Session, air admittance valves are prohibited from use on all plumbing systems.
Amend	Chapter 10, Traps, Interceptors and Separators.	
Amend	Section 1003.2, Approval.	Interceptors and separators shall be designed and installed in accordance with the manufacturer's instructions and the requirements of this section based on the anticipated conditions of use. Wastes that do not require treatment or separation shall not be discharged into any interceptor or separator. No interceptor or separator shall be installed until its design, size, location and venting has been approved by the local jurisdictional code official. The local jurisdictional code official shall have the authority to require a grease interceptor to be serviced, repaired, or replaced with a larger unit when it is determined that a unit is not working or being maintained properly, the unit is damaged, or the mode of operation of the facility no longer meets the anticipated conditions of use (i.e., offensive odors, sewage backups or overflows, or when it is determined that grease is bypassing the grease interceptor and causing downstream blockages or interfering with sewage treatment).
Adopt	Section 1003.2.1, Grease Interceptor Sizing.	In all instances of new construction, change of occupancy classification or use of the property, a gravity grease interceptor or hydro-mechanical grease interceptor meeting the minimum capacity as required by this Section of the Code shall be installed. The minimum required capacity (volume) of the grease interceptor shall be determined based upon the maximum number of persons served during the largest meal period. The minimum capacity shall not be less than 125 gallons below the static water level. This capacity is sufficient to hold the flow from one meal long enough to accomplish proper grease separation when serving up to 50 people during a single meal period. When over 50 people are served during a single meal period, the minimum capacity shall be increased beyond 125 gallons based upon at least an additional 2 1/2 gallons per person beginning with the 51st person served and greater.
Adopt	Exceptions	
Adopt		(a.) At the discretion of the local jurisdictional code official, a smaller, point of use type hydro-mechanical grease interceptor or automatic grease removal device may be permissible when:
Adopt		1. a concrete slab would have to be broken at an existing building or facility for the proper installation of a grease interceptor; or
Adopt		2. an outside, unpaved area surrounding an existing building where a grease interceptor could be installed is available; however, it is determined that the area is located further than 75 feet from the plumbing fixtures that the grease interceptor would be servicing; or
Adopt		3. the local jurisdictional code official determines that the installation is unfeasible such as when servicing a kitchen located on the upper floors of a multistoried building; or
Adopt		4. the local jurisdictional code official determines that minimal fat, oil and grease will be produced or introduced into the sanitary drainage system based on the menu and mode of operation of the facility (i.e., snowball stands, sandwich shops, or other similar facilities with low grease production and which utilize single-service tableware and hollowware including forks, knives, spoons, plates, bowls, cups, and other serving dishes).
Adopt		(b.) In these instances, listed under the exception, the minimum required size of the hydromechanical grease interceptor; fats, oils and greases disposal system or automatic grease removal device shall be determined in accordance with the requirements of Section 1003.3.4 of this code. In no case shall a grease interceptor or automatic grease removal device be installed which has an approved rate of flow of less than 20 gallons per minute.
Amend	Section 1003.3.4, Hydromechanical Grease Interceptors, Fats, Oils and Greases Disposal Systems and Automatic Grease Removal Devices.	When specifically allowed under the exception of Section 1003.2.1 of this code, hydromechanical grease interceptors; fats, oils, and greases disposal systems and automatic grease removal devices shall be sized in accordance with ASME A112.14.3, ASME A112.14.4, ASME A112.14.6, CSA B481.3 or PDI-G101. Hydromechanical grease interceptors; fats, oils, and grease disposal systems and automatic grease removal devices shall be designed and tested in accordance with ASME A112.14.3, ASME A112.14.4, CSA B481.1, PDI G101 or PDI G102. Hydromechanical grease interceptors; fats, oils, and greases disposal systems and automatic grease removal devices shall be installed in accordance with the manufacturer's instructions. Where manufacturer's instructions are not provided, hydromechanical grease interceptors; fats, oils, and greases disposal systems and automatic grease removal devices shall be installed in compliance with ASME A112.14.3, ASME A112.14.4, ASME A112.14.6, CSA B481.3 or PDI-G101.
Amend	Section 1003.3.46, Gravity Grease Interceptors/Grease Traps.	Gravity grease interceptors shall comply with the requirements of Sections 1003.3.46.1 through 1003.3.46.8 and shall be sized in accordance with Section 1003.2.1 of this code.
Adopt	Section 1003.3.6.1, Indoor Installations.	If a gravity grease interceptor must be installed within an enclosed building, any access covers shall be gasketed to prevent the intrusion of odors into the building.
Adopt	Section 1003.3.6.2, Distance.	The grease interceptor shall be placed as close to the plumbing fixture(s) discharging greasy waste as possible, but preferably on the outside of the building when feasible.
Adopt	Section 1003.3.6.3, Outlet Pipe.	The minimum diameter of the outlet pipe shall not be less than 4 inches. The invert of the gravity grease interceptor outlet opening (i.e., lowest portion of the outlet pipe where it draws waste near the bottom of the grease interceptor), shall be located at a maximum of 6 inches and a minimum of 4 inches from the floor of the grease interceptor. This requirement also applies to any intermediate outlets in multi-compartment gravity grease interceptors.
Adopt	Section 1003.3.6.4, Air Space.	A minimum of one foot of air space shall be provided above the static water level.

Adopt	Section 1003.3.6.5, Venting.	A gravity grease interceptor outlet shall be properly vented in accordance with this section to prevent it from siphoning itself out. Any internally vented outlet line shall have the vent terminal extended to within 2 inches of the bottom of the access cover to prevent grease from escaping the gravity grease interceptor through the open vent terminal. For those gravity grease interceptors having a gasketed cover, the gravity grease interceptor outlet line shall not be allowed to be internally vented. In this case, the outlet line itself shall be vented with a minimum 2-inch vent pipe installed in accordance with Chapter 9 of this code.
Adopt	Section 1003.3.6.6, Water Seal.	On unbaffled single compartment gravity grease interceptors, a 90 degree ell shall be used on the inlet and shall terminate 6 inches below the static water level. On baffled single compartment gravity grease interceptors, a baffle wall shall be placed between the inlet and outlet. The inlet shall discharge into the gravity grease interceptor at a level at least 6 inches below the top of the baffle wall.
Adopt	Section 1003.3.6.7, Minimum Horizontal Distance.	The minimum horizontal distance between the inlet and outlet piping in the gravity grease interceptor shall be 24 inches.
Adopt	Section 1003.3.6.8, Access/Covers.	Access from the top of the gravity grease interceptor shall be provided by an easily removable cover above an access opening for proper maintenance. Additional access opening/covers shall be provided as necessary to provide accessibility to each compartment in multi-compartment or multi-baffled arrangements as well as access to both the inlet and outlet. Access opening covers shall be above or at grade (G) to provide ready accessibility. Each access cover shall be designed so that it cannot slide, rotate, or flip when properly installed in order that the opening is not unintentionally exposed. Especially for lightweight covers, mechanical fasteners are recommended to augment the safety of and ensure positive closure of the cover.
Amend	Section 1003.10, Access and Maintenance of Interceptors and Separators.	Access shall be provided to each interceptor and separator for service and maintenance. A two-way cleanout shall be provided on the discharge waste line immediately downstream of all interceptors and separators. Interceptors and separators shall be maintained by periodic removal of accumulated grease, scum, oil, or other floating substances and solids deposited in the interceptor or separator.
Amend	Chapter 11, Storm Drainage.	
Amend	Section 1101.3, Prohibited Drainage.	Storm water shall not be drained into sewers intended for sewage only.
Adopt	Exception	
Adopt		1. Liquid waste from the cleaning operation and from the leakage of garbage containers and dumpsters holding putrescible wastes shall be disposed of as sewage. Methods used for this disposal shall prevent rainwater and runoff from adjacent areas from entering the sanitary sewerage system (i.e., dumpster pads may be elevated or curbed, enclosed or covered). When determined by the code official that liquid wastes or putrescible wastes contain fats, oils or grease (or, for new establishments, will likely contain fats, oils, or grease in the future), an approved grease interceptor shall be installed in the waste line in accordance with Section 1003 of this code.
Repeal	Section 1103.1.	
Repeal	Section 1103.2.	
Repeal	Section 1103.3.	
Repeal	Section 1103.4.	
Repeal	Section 1109.1.	
Amend	Chapter 13, Gray Water Recycling Systems.	
Amend	Section 1301.4, Permits.	Permits shall be required for the construction, installation, alteration and repair of nonpotable water systems. Construction documents, engineering calculations, diagrams and other such data pertaining to the nonpotable water system shall be submitted with each permit application. Such plans and specifications shall be appropriately sealed and signed by a Louisiana registered professional engineer.
Amend	Section 1301.5, Potable Water Connections.	Where a potable system is connected to a nonpotable water system, the potable water supply shall be protected against backflow by an air gap or reduced pressure principal backflow prevention assembly.
Amend	Section 1301.9.5, Makeup Water.	Where an uninterrupted supply is required for the intended application, potable or reclaimed water shall be provided as a source of makeup water for the storage tank. The makeup water supply shall be protected against backflow by an air gap or reduced pressure principal backflow prevention assembly. A full-open valve located on the makeup water supply line to the storage tank shall be provided. Inlets to the storage tank shall be controlled by fill valves or other automatic supply valves installed to prevent the tank from overflowing and to prevent the water level from dropping below a predetermined point. Where makeup water is provided, the water level shall not be permitted to drop below the source water inlet or the intake of any attached pump.
Amend	Chapter 15, Referenced Standards.	
Amend	CSA Referenced Standard.	B64.10-94 Manual for the Selection, Installation, Maintenance and Field Testing of Backflow Prevention Devices (not including Part 6 (Maintenance and Field Testing) Section 608.16 and Section 618.2
Adopt	Chapter 16, Travel Trailer and Mobile/Manufactured Home Parks.	
Adopt	Definitions	Add the following definitions:
Adopt	<i>Dependent Travel Trailer</i>	a travel trailer not equipped with a water closet.
Adopt	<i>Drain Hose</i>	the approved type hose, flexible and easily detachable, used for connecting the drain outlet on a travel trailer to a sewer inlet connection.
Adopt	<i>Drain Outlet</i>	the lowest end of the main drain of a travel trailer itself to which a drain hose is connected.
Adopt	<i>Independent Travel Trailer</i>	a travel trailer equipped with a water closet and a bath or shower.
Adopt	<i>Inlet Coupling</i>	the terminal end of the branch water line to which the mobile/manufactured home or travel trailer's water service connection is made. It may be a swivel fitting or threaded pipe end.
Adopt	<i>Intermediate Waste Holding Tank</i>	(travel trailers only)—an enclosed tank for the temporary retention of water-borne waste.

Adopt	<i>Mobile/Manufactured Home</i>	a prefabricated home built on a permanent chassis which can be transported in one or more sections and is typically used as a permanent dwelling. Manufactured homes built since 1976 are built to the <i>Manufactured Home Construction and Safety Standards (HUD Code)</i> and display a HUD certification label on the exterior of each transportable section.
Adopt	<i>Park or Mobile/Manufactured Home Park or Travel Trailer Park</i>	any lot, tract, parcel or plot of land upon which more than one travel trailer and/or mobile/manufactured homes parked for the temporary or permanent use of a person or persons for living, working or congregating.
Adopt	<i>Park Drainage System</i>	the entire system of drainage piping within the park which is used to convey sewage or other wastes from the mobile/manufactured home or travel trailer drain outlet connection, beginning at its sewer inlet connection at the mobile/manufactured home or travel trailer site, to a community sewerage system, a commercial treatment facility, or an individual sewerage system.
Adopt	<i>Park Water Distribution System</i>	all of the water distribution piping within the park, extending from the water supply system or other source of supply to, but not including, the mobile/manufactured home or travel trailer's water service connection, and including branch service lines, fixture devices, service buildings and appurtenances thereto.
Adopt	<i>Service Building</i>	a building housing toilet and bathing facilities for men and women, with laundry facilities.
Adopt	<i>Sewer Inlet</i>	a sewer pipe connection permanently provided at the travel trailer or mobile/manufactured home site which is designed to receive sewage when a travel trailer or a mobile/manufactured home is parked on such site. It is considered the upstream terminus of the park drainage system.
Adopt	<i>Travel Trailer</i>	a vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use.
Adopt	<i>Travel Trailer Sanitary Service Station</i>	a sewage inlet with cover, surrounded by a concrete apron sloped inward to the drain, and watering facilities to permit periodic wash down of the immediately adjacent area, to be used as a disposal point for the contents of intermediate waste holding tanks of travel trailers.
Adopt	<i>Water Service Connection</i>	as used in conjunction with mobile/manufactured homes and travel trailers, the water pipe connected between the inlet coupling of the park water distribution system and the water supply fitting provided on the mobile/manufactured home or travel trailer itself.
Adopt	Section 1601, General.	
Adopt	Section 1601.1, Scope.	The requirements set forth in this Chapter shall apply specifically to all new travel trailer and mobile/manufactured home parks, and to additions to existing parks as herein defined, and are to provide minimum standards for sanitation and plumbing installation within these parks, for the accommodations, use and parking of travel trailers and/or mobile/manufactured homes.
Adopt	Section 1601.2, Governing Provisions.	Other general provisions of this code shall govern the installation of plumbing systems in travel trailer and mobile/manufactured home parks, except where special conditions or construction are specifically defined in this Chapter.
Adopt	Section 1601.3, Sewage Collection, Disposal, Treatment.	Travel trailers or mobile/manufactured homes shall not hereafter be parked in any park unless there are provided plumbing and sanitation facilities installed and maintained in conformity with this code. Every travel trailer and mobile/manufactured home shall provide a gastight and watertight connection for sewage disposal which shall be connected to an underground sewage collection system discharging into a community sewerage system, a commercial treatment facility, or an individual sewerage system which has been approved by the state health officer.
Adopt	Section 1601.4, Travel Trailer Sanitary Service Station.	At least one travel trailer sanitary service station shall be provided in all travel trailer parks that accept any travel trailers having an intermediate waste holding tank. The water supply serving the sanitary service station shall be protected against backflow by a reduced pressure principle backflow prevention assembly meeting the requirements of Section 608 of this code.
Adopt	Section 1601.5, Materials.	Unless otherwise provided for in this Chapter, all piping fixtures or devices used in the installation of drainage and water distribution systems for travel trailer parks and mobile/manufactured home parks shall conform to the quality and weights of materials prescribed by this code.
Adopt	Section 1601.6, Installation.	Unless otherwise provided for in this Chapter, all plumbing fixtures, piping drains, appurtenances and appliances designed and used in the park drainage, water distribution system, and service connections shall be installed in conformance with the requirements of this code.
Adopt	Section 1601.7, Maintenance.	All devices or safeguards required by this Chapter shall be maintained in good working order by the owner, operator, or lessee of the travel trailer park or his designated agent.
Adopt	Section 1602, Service Buildings.	
Adopt	Section 1602.1, Service Buildings for Independent Travel Trailers.	Each travel trailer park which serves only independent travel trailers shall have at least one service building to provide necessary sanitation and laundry facilities. Each mobile/manufactured home park which also serves one or more independent travel trailers (in addition to mobile/manufactured homes) shall have at least one service building to provide necessary sanitation and laundry facilities. When a service building is required under this Section, it shall have a minimum of one water closet, one lavatory, one shower or bathtub for females and one water closet, one lavatory, and one shower or bathtub for males. In addition, at least one laundry tray or clothes washing machine and one drinking fountain located in a common area shall be provided.
Adopt	Exception	
		1. Temporary (six months) travel trailers residing in mobile home parks and or where more than one travel trailer resides for the purpose of employment and or hardships, may be exempted by the local jurisdiction building official from section.
Adopt	Section 1602.2, Service Building for Dependent Travel Trailers.	The service building(s) in travel trailer or mobile/manufactured home parks that also accommodate dependent travel trailers shall have a minimum of two water closets, one lavatory, one shower or bathtub for females, and one water closet, one lavatory, one urinal, and one shower or bathtub for males. In addition, at least one laundry tray or clothes washing machine and one drinking fountain located in a common area shall be provided. The above facilities are for a maximum of ten dependent travel trailers. For every ten additional dependent travel trailers (or any fraction thereof) the following additional fixtures shall be provided: one laundry tray or clothes washing machine, one shower or bathtub for each sex, and one water closet for females. Also, one additional water closet for males shall be provided for every 15 additional dependent travel trailers (or any fraction thereof).

Adopt	Section 1602.3, Service Building Design Requirements.	Each service building shall conform to Sections 1602.3.1 through 1602.3.3 of this code.
Adopt	Section 1602.3.1, Construction.	Every service building shall be of permanent construction with an interior finish of moisture resistant material which will stand frequent washing and cleaning and the building shall be well-lighted and ventilated at all times.
Adopt	Section 1602.3.2, Fixture Separation.	The laundry tray(s) and/or clothes washing machine(s) and drinking fountain(s) shall be located in a common area. None of these fixtures shall be located within any toilet room. Each water closet, tub and/or shower shall be in separate compartments with self-closing doors on all water closet compartments. The shower stall shall be a minimum of 3 x 3 feet (914 x 914 mm) in area, with a dressing compartment.
Adopt	Section 1602.3.3, Floor Drains.	A minimum 2-inch floor drain protected by and approved trap primer shall be installed in each toilet room and laundry room.
Adopt	Section 1603, Park Drainage System.	
Adopt	Section 1603.1, Separation of water and sewer lines.	The sewer main and sewer laterals shall be separated from the park water service and distribution system in accordance with Section 603.2 of this code.
Adopt	Section 1603.2, Minimum Size Pipe.	The minimum size pipe in any mobile/manufactured home park or travel trailer park drainage system shall be 4 inches. This includes branch lines or sewer laterals to individual travel trailers and mobile/manufactured homes.
Adopt	Section 1603.3, Fixture Units.	Each mobile/manufactured home and travel trailer shall be considered as 6 fixture units in determining discharge requirements in the design of park drainage and sewage disposal systems.
Adopt	Section 1603.4, Sewage Disposal/Treatment.	The discharge of a park drainage system shall be connected to a community sewerage system. Where a community sewerage system is not available, an approved commercial treatment facility or individual sewerage system shall be installed in accord with the requirements of LAC 51:XIII (Sewage Disposal).
Adopt	Section 1603.5, Manholes and Cleanouts.	Manholes and/or cleanouts shall be provided and constructed as required in Chapter 7 of this code. Manholes and/or cleanouts shall be accessible and brought to grade.
Adopt	Section 1603.6, Sewer Inlets.	Sewer inlets shall be 4-inch diameter and extend above Grade (G) 3 to 6 inches (76 to 152 mm). Each inlet shall be provided with a gas-tight seal when connected to a travel trailer or mobile/manufactured home and have a gas-tight seal plug for use when not in service.
Adopt	Section 1603.7, Drain Connections.	Drain connections shall slope continuously downward and form no traps. All pipe joints and connections shall be installed and maintained gastight and watertight.
Adopt	Section 1603.8, Waste.	No sewage, waste water, or any other effluent shall be allowed to be deposited on the surface of the ground.
Adopt	Section 1603.9, Testing the Park Drainage System.	Upon completion and before covering, the park drainage system shall be subjected to a static water test performed in accordance with Section 312 of this code.
Adopt	Section 1604, Water Supply and Distribution System.	
Adopt	Section 1604.1, General.	Every mobile/manufactured home and travel trailer site shall be provided with an individual branch water service line delivering potable water.
Adopt	Section 1604.2, Water Service Lines.	Water service lines to each travel trailer site shall be sized to provide a minimum of 8 gpm (0.505 L/s) at the point of connection with the trailer's water distribution system. Water service lines to each mobile/manufactured home site shall be sized to provide a minimum of 17 gpm (1.1 L/s) at the point of connection with the mobile/manufactured home's water distribution system. All water service lines shall be a minimum of 3/4 inch. A separate service shutoff valve shall be installed on each water service line. In instances where a backflow prevention device or assembly is installed on the water service line (see Section 608.16.23), the shutoff valve shall be located on the supply side of the device or assembly.
Adopt	Section 1604.3, Water Service Connections.	The water service connection from the water service line to the mobile/manufactured home or travel trailer site shall be not less than 1/2-inch diameter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1) and Act836 of the 2014 of the Regular Louisiana Legislative Session.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshall, LR 41:2386 (November 2015), amended by the Department of Public Safety and Corrections, Office of State Fire

Marshal, Uniform Construction Code Council, LR 42:1672 (October 2016), LR 44:81 (January 2018), repromulgated LR 45:919 (July 2019), amended LR 45:1794 (December 2019).

### **Chapter 3. Preliminary Provisions** **§301. Request for Rule Change** **(Formerly LAC 55:VI.101)**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1730.22(C) and (D).

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:290 (February 2007), amended LR 34:93 (January 2008), repealed LR 45:1808 (December 2019).

Lt. Colonel Jason Starnes  
Chief Administrative Officer

1912#022

## **RULE**

### **Department of Public Safety and Corrections Office of State Police**

#### **Breath and Blood Alcohol Analysis Methods and Techniques (LAC 55:I.583)**

In accordance with the provisions of R.S. 32:663 relative to the authority of Louisiana Department of Public Safety and Corrections to promulgate and enforce rules pursuant to approval of testing methods, the Louisiana Department of Public Safety and Corrections, Office of State Police has amended rules under Title 55 Part I §583, in relation to Breath and Blood Alcohol Analysis to make a distinction between types of mass spectrometers used in toxicology analyses and provide identification criteria in addition to criteria already listed. This Rule is hereby adopted on the day of promulgation.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part I. State Police**

#### **Chapter 5. Breath and Blood Alcohol Analysis Methods and Techniques**

#### **Subchapter C. Analysis of Blood and Urine for Controlled Dangerous Substances**

#### **§583. Analytical Procedures**

A. Analytical procedures shall include the use of at least two tests (a screening test and a confirmation test, or two confirmation tests) performed for each analyte present. If a screening test is used, the confirmation tests shall be based on a different physical or chemical principle from that of the screening test and offer a higher degree of specificity. All confirmation tests shall be performed using gas chromatography/mass spectrometry or liquid chromatography/mass spectrometry. Screening tests may include, but not be limited to, colorimetric, enzymatic, or chromatographic analysis. Confirmation of the identity of an analyte in a different specimen from that used for the first test (e.g., blood and urine) is acceptable, as is reconfirmation in a second aliquot of the same specimen.

B. Positive identification of an analyte shall at a minimum be based on the possible presence of the analyte or the analyte class in the screening test and its presence in the confirmatory test. Confirmation shall be based on the identification of at least three major ions with that of a reference analyte, unless otherwise specified below. When confirmation is made by selective ion monitoring in either gas or liquid chromatography procedures, correlation between ion ratios of the base peak and another major peak shall be within 20 percent for gas chromatography/mass spectrometry procedures and within 30 percent for liquid chromatography/mass spectrometry procedures. When confirmation is made by multiple reaction monitoring using either gas or liquid chromatography procedures, the presence of a characteristic precursor ion and two product ions shall have an ion ratio within + or – 30 percent to that of a calibrator, or the average of all calibrators for the run. When the confirmation is made by gas or liquid chromatography coupled to a Time-of-Flight (ToF) or other high-resolution mass spectrometer (HRMS), the presence of a characteristic precursor ion with overall mass accuracy shall be less than

15 parts-per-million or + or – 5 millimass units. At least one additional product ion compared to that of a reference analyte shall also be present. Retention times between the analyte in question and the reference analyte shall be “within + or = 2 percent” for gas chromatography/mass spectrometry procedures and “within + or – 6 seconds or + or – 10 percent” for liquid chromatography/mass spectrometry procedures. If a quantification result of a drug and/or metabolite is reported, the quantification result is prohibited from including a value range or measurement uncertainty.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:663.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 26:2625 (November 2000), amended LR 37:1417 (May 2011), LR 44:1272 (July 2018), LR 45:1809 (December 2019).

Lt. Col. Jason Starnes  
Chief Administrative Officer

1912#023

## **RULE**

### **Department of Revenue Policy Services Division**

#### **Individual and Fiduciary Income Tax Filing Extensions (LAC 61:III.2501 and 2507)**

Under the authority of R.S. 47:103(D), 1511, 1514, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, amends LAC 61:III.2501 to repeal the mandate requiring the electronic filing of a request for an extension to file an individual income tax return and enacts LAC 61:III.2507 to require the electronic filing of a request for an extension to file a fiduciary income tax return. This Rule is hereby adopted on the day of promulgation.

#### **Title 61**

#### **REVENUE AND TAXATION**

#### **Part III. Administrative and Miscellaneous Provisions**

#### **Chapter 25. Returns**

#### **§2501. Individual Income Tax Filing Extensions**

A. Pursuant to R.S. 47:103(D), the secretary may grant a reasonable extension of time to file a state income tax return, not to exceed six months from the date the return is due.

1. To obtain a filing extension, the taxpayer must make the request on or before the tax return's due date.

2. A taxpayer may request a state filing extension by submitting one of the following:

- a. a paper Louisiana Department of Revenue form requesting a filing extension;
- b. a paper copy of the taxpayer's Internal Revenue Service form requesting an extension to file a federal income tax return for the same taxable period; or
- c. an electronic application.

3. An electronic application may be submitted by:

- a. the Department of Revenue's web site;
- b. tax preparation software; or
- c. any other electronic method authorized by the secretary.



**B. Filing Extension Does Not Extend Time to Pay Tax**

1. A filing extension granted by the secretary only allows for an extension of time to file the tax return. The extension does not allow an extension of time to pay the tax due.

2. To avoid interest and penalty assessments, estimated taxes due must be paid on or before the original due date.

C. A tax preparer subject to the electronic filing mandate under LAC 61:III.1501.B must file an electronic application for a state filing extension for individual income taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:103(D) and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:1137 (June 2009), amended LR 36:73 (January 2010), LR 39:103 (January 2013), LR 45:1809 (December 2019).

**§2507. Fiduciary Income Tax Filing Extensions**

A. Pursuant to R.S. 47:103(D), the secretary may grant a reasonable extension of time to file a state income tax return, not to exceed six months from the date the return is due.

1. To obtain a filing extension for filing a fiduciary return, estates and trusts must make the request on or before the due date of the tax return.

2. For taxable periods beginning on or after January 1, 2019, an estate or trust must request a state filing extension by submitting an electronic application.

3. An electronic application may be submitted via:

- a. the Department of Revenue's web site;
- b. tax preparation software; or
- c. any other electronic method authorized by the secretary.

B. Filing extension does not extend time to pay tax.

1. A filing extension granted by the secretary only allows for an extension of time to file the tax return. The extension does not allow an extension of time to pay the tax due.

2. To avoid interest and penalty assessments, income taxes due must be prepaid on or before the original due date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:103(D) and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 45:1810 (December 2019).

Kimberly Lewis Robinson  
Secretary

1912#013

**RULE**

**Department of Revenue  
Policy Services Division**

**Mandatory Electronic Filing of Industrial Hemp-Derived  
CBD Tax Returns and Payment of Tax  
(LAC 61:III.1535 and 1536)**

Under the authority of R.S. 47:1511, 47:1519, 47:1520, and 47:1695, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopts LAC 61:III.1535 and 1536, to provide mandatory electronic filing and payment requirements for the Industrial Hemp-Derived CBD Tax Return.

R.S. 47:1519(B)(1) authorizes the secretary to require payments by electronic funds transfer, and R.S. 47:1520(A)(2) authorizes the secretary the discretion to require electronic filing of tax returns or reports by administrative rule promulgated with legislative oversight in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of this regulation is to mandate electronic filing of all Industrial Hemp-Derived CBD Tax Returns and electronic payment of all industrial hemp-derived CBD tax. This Rule is hereby adopted on the day of promulgation.

**Title 61**

**REVENUE AND TAXATION**

**Part III. Administrative and Miscellaneous Provisions**

**Chapter 15. Mandatory Electronic Filing of Tax  
Returns and Payment**

**§1535. Industrial Hemp-Derived CBD Tax Return –  
Electronic Filing Requirements**

A. For tax periods beginning on or after January 1, 2020, every industrial hemp-derived CBD retailer shall be required to file the Industrial Hemp-Derived CBD Tax return electronically with the Department of Revenue using the electronic format prescribed by the department.

B. Retailers may not send paper versions of any returns required to be filed.

C.1. Failure to comply with the electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, and 47:1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 45:1810 (December 2019).

**§1536. Industrial Hemp-Derived CBD Tax - Electronic  
Payment Required**

A. R.S. 47:1519(B)(1) allows the secretary to require payment of the industrial hemp-derived CBD tax by electronic funds transfer.

B. Effective for all taxable periods beginning on or after January 1, 2020, all payments by an industrial hemp-derived CBD product retailer shall be electronically transferred to the Department of Revenue on or before the twentieth day following the close of the reporting period using the electronic format provided by the department.

C. For purposes of this Rule, specific requirements relating to the procedures for making payments by electronic funds transfer are set forth in R.S. 47:1519 and LAC 61:I.4910.

D. Failure to comply with the electronic funds transfer requirements shall result in the tax payment being considered delinquent and subject to penalties and interest as provided under R.S. 47:1601 and 1602.

E. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519, this Rule, and LAC 61:I.4910, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must furnish the department with

documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

F. In any case where the taxpayer can prove payment by electronic funds transfer would create an undue hardship, the secretary shall exempt the taxpayer from the requirement to transmit funds electronically.

G. The tax returns must be filed electronically separately from the electronic transmission of the remittance. Specific requirements relating to the mandatory electronic filing of the return required by the Department of Revenue are set forth in LAC 61:III.1535.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 47:1519, 47:1520 and 47:1695.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 45:1810 (December 2019).

Kimberly Lewis Robinson  
Secretary

1912#059

## RULE

### Department of Revenue Policy Services Division

#### Small Town Health Professionals Credit (LAC 61:I.1915)

Under the authority of R.S. 47:297(H) and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.1915 regarding the small town health professionals credit.

The purpose of these amendments is to implement the provisions of Act No. 338 of the 2019 Regular Session of the Louisiana Legislature. Act No. 338 amended the definition of certified medical primary care health professional to include a primary care physician assistant licensed by the state of Louisiana and an optometrist licensed by the state of Louisiana. This Rule is hereby adopted on the day of promulgation.

## Title 61

## REVENUE AND TAXATION

### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

##### §1915. Small Town Health Professionals Credit

###### A. General Description

1. The small town health professionals credit provides an individual income tax credit for certified medical primary care health professionals including:

- physicians possessing an unrestricted license by the state of Louisiana to practice medicine;
- dentists licensed by the state of Louisiana to practice dentistry;
- primary care nurse practitioners licensed by the state of Louisiana;

d. primary care physician assistants licensed by the state of Louisiana; or

e. optometrists licensed by the state of Louisiana.

2. To be eligible for the credit, a certified medical primary care health professional must:

a. establish and maintain the primary office of their practice which is, as determined by the Department of Health through annual application:

i. for medical physicians, nurse practitioners, physician assistants, and optometrists, an area that is a primary care high needs geographic Health Professional Shortage Area (HPSA), or for dentists, a Dental Health Professional Shortage Area (DHPSA), as designated by the U.S. Department of Health and Human Services' Health Resources and Services Administration's Bureau of Health Workforce, Division of Policy and Shortage Designation (DPSD); and

ii. a rural area as defined in rules promulgated by the Department of Health (See LAC 48:I.10307 for parishes that meet the definition of rural.);

iii. accept Medicaid and Medicare payments for services rendered;

b. to be eligible for the credit, the certified medical primary care health professional must practice under the conditions set forth above for a period of not less than three tax years. In addition, the health professional must submit an annual application and receive certification from the Department of Health for each calendar year in order to claim the credit for the corresponding tax year. Under no circumstances shall a taxpayer receive the credit for more than one relocation or more than five tax years.

###### B. Definitions.

*Certified Medical Primary Care Health Professional*—a physician possessing an unrestricted license by the State of Louisiana to practice medicine, a dentist licensed by the State of Louisiana to practice dentistry, a primary care nurse practitioner licensed by the State of Louisiana, a primary care physician assistant licensed by the state of Louisiana, or an optometrist licensed by the state of Louisiana.

*Department of Health*—the Louisiana Department of Health

*Department of Revenue*—the Louisiana Department of Revenue

*Health Professional Shortage Area/Dental Health Professional Shortage Area*—an area so designated by the U.S. Department of Health and Human Services' Health Resources and Services Administration's Bureau of Health Workforce, Division of Policy and Shortage Designation (DPSD) as of December 31 of the year preceding the applicable application period.

###### C. - E.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:297(H) and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:1641 (September 2018), LR 45:1811 (December 2019).

Kimberly Lewis Robinson  
Secretary

1912#014

## RULE

### Department of State Elections Division

#### Voter Registration at Driver's License Facilities (LAC 31:II.303-313)

The Department of State, pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under the authority of R.S. 18:114, R.S. 18:1461, R.S. 18:1461.2, R.S. 18:1461.4, and R.S. 36:742 has amended the Rule for voter registration at driver's license facilities. This Rule is hereby adopted and becomes effective on the day of promulgation.

### Title 31

### ELECTIONS

#### Part II. Voter Registration

#### Chapter 3. Voter Registration at Driver's License Facilities

##### §303. Secretary of State

A. It will be the policy of the secretary of state to facilitate the implementation and support of the program for voter registration at driver's license facilities. The secretary of state will coordinate the activities of the parish registrars of voters with the Department of Public Safety and Corrections, and for that purpose, he shall:

1. provide the Department of Public Safety and Corrections with updates on the names and addresses of the parish registrars of voters;
2. provide the Department of Public Safety and Corrections standard notices to be displayed informing the public of the availability of voter registration at driver's license facilities and the eligibility requirements for registration;
3. design in conjunction with the Department of Public Safety and Corrections an electronic voter registration application form and provide paper voter registration applications to be used under emergency and unusual situations;
4. provide training materials to be used for voter registration; and
5. prepare a biannual report as required by the U.S. Election Assistance Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:114.

HISTORICAL NOTE: Promulgated by Department of Elections and Registration, Commissioner of Elections, LR 16:606 (July 1990), amended LR 20:1373 (December 1994), amended by the Department of State, Elections Division, LR 45:1812 (December 2019).

##### §305. Parish Registrars of Voters

A. It is the intention of the parish registrars of voters to cooperate fully in the registration of voters at driver's license facilities. In that regard, parish registrars shall:

1. notify the Department of State immediately of any change in the office mailing address of the registrar of voters;
2. upon receipt in the registrar's office of a voter registration application form from any driver's license facility located within his parish, indicate the date received for the application in the Election and Registration Information Network (ERIN) system;

3. determine the parish in which the applicant seeks to register, or if already registered, seeks to change his name or address and, if not his parish, transmit to the appropriate registrar of voters;

4. review such voter registration application form to determine if the applicant is eligible to register to vote in accordance with law; and

5. if there is a change of name or address for a registered voter, process such change and mail a new voter identification card to the voter.

B. The offices of the registrars of voters shall utilize the ERIN system for processing voter registration application forms that are received from the Office of Motor Vehicles (OMV).

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:114.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 16:606 (July 1990), amended LR 20:1373 (December 1994), amended by the Department of State, Elections Division, LR 45:1812 (December 2019).

##### §307. Authorized Employees at Driver's License Facilities

###### A. Definition

*Authorized Employee* or an *Authorized Employee of a Driver's License Facility*—any official or employee of the Department of Public Safety and Corrections or an official or employee of a contractor of the Department of Public Safety and Corrections.

B. Qualifications. An authorized employee at a driver's license facility shall possess the following qualifications:

1. the person shall be an official or employee of the Department of Public Safety and Corrections or an official or employee of a contractor of the Department of Public Safety and Corrections who is employed at a facility for the issuance of Louisiana driver's license or Louisiana identification cards;
2. the person shall have received in-service training;
3. the person shall not participate or engage in any political activity, except to exercise his right as a citizen to express his opinion privately and to cast his vote as he desires;
4. the person shall not have been convicted of any election offense; and
5. the person shall not be a candidate for public office.

C. Duties. An authorized employee at a driver's license facility shall perform the duties listed below.

1. During regular working hours, an authorized employee shall offer voter registration to any U.S. citizen who obtains, renews, or changes the name or address on a Louisiana Driver's License or Louisiana Identification Cards:

- a. a person who is at least 16 years of age and who is an actual resident of the state, parish, and precinct in which he seeks to register to vote; however, the person will not be eligible to vote until the age of 18;

- b. a person who is not under an order of imprisonment for conviction of a felony as defined in R.S. 18:2(2), except as provided in R.S. 18:102(A)(1)(b) and R.S. 18:102(A)(1)(c);

- c. a person who has not been interdicted after being declared to be mentally incompetent as a result of a full

interdiction or is not subject to a limited interdiction where the person's right to vote has been suspended; and

d. a person who is a United States citizen.

2. An authorized employee shall allow an applicant who resides at more than one place in the state with an intention to reside there indefinitely, to choose which residence will be used for registration purposes. However, if the applicant has a homestead exemption, he must register and vote in the precinct in which that residence is located. The exceptions to this provision are:

a. if the person resides in a nursing home (as defined in R.S. 18:333(A)) or in a veterans' home, he may register and vote at the address where the nursing home or veterans' home is located or where he has a homestead exemption; or

b. if the person is a bona fide full-time student attending an institution of higher learning in this state, he may choose as his residence and may register to vote either at the place where he resides while attending the institution of higher learning or at the place where he resides when not attending such institution of higher learning.

3. An authorized employee shall assist any applicant who requests assistance in registering to vote. Such assistance may consist of answering any question the person might have about completing the registration form and shall include assistance in the completion and execution of an application, if requested by the applicant. Additionally, if the person has a physical disability or is unable to read or write English, such assistance shall include:

a. reading the document to the applicant;

b. executing the document by writing what the person dictates or what is said through an interpreter; and

c. allowing the person to sign, or if unable to sign, to make his mark in front of two witnesses who shall also sign.

4. An authorized employee shall require the applicant to provide sufficient information to establish his age, identity, and residency.

5. An authorized employee shall inform an applicant that if he does not declare a political party affiliation that his voter registration application shall indicate "No Party" on the application form.

6. An authorized employee shall ensure that the information provided on the voter registration application is legible and to the best of his knowledge accurate and complete.

7. An authorized employee shall administer any oath required on the voter registration application, as authorized by R.S. 18:114(F)(7).

8. An authorized employee shall inform the applicant that the applicant is not officially registered to vote until the application has been received and approved by the parish registrar of voters. Upon approval by the registrar of voters, a voter identification card will be mailed to the applicant.

9. An authorized employee shall ensure that the completed electronic voter registration application is transmitted immediately to the Department of State who shall transmit the application daily to the appropriate parish registrar of voters. The date and time of transmission shall automatically be recorded for electronic submissions. An authorized employee shall ensure that a completed paper application is made available to the designated person of the

Department of Public Safety and Corrections or its contractor who will be responsible for transmittal to the parish registrar of voters for the parish in which the driver's license facility is located. On the paper voter registration application, the employee shall circle "MV", sign, and date the bottom of each paper application before transmitting to the Department of Public Safety and Corrections or its contractor. For a paper voter registration application, the date of transmittal shall be indicated on the application, and the transmittal shall be made within five working days of the completion of the application form unless the application is accepted within five days before the last day for registration then the application form shall be transmitted at the conclusion of each business day.

10. An authorized employee shall ask any person making a change of name or a change of address on a Louisiana Driver's License or Louisiana Identification Card if such change is to be used for voter registration purposes. If affirmed, such change shall be transmitted in the same manner as a voter registration application form.

11. An authorized employee shall keep any declinations to register to vote confidential, and shall keep confidential the fact that any particular applicant has submitted an application to register to vote at a driver's license facility. All declinations shall be written and signed by the voter. All such applications and declinations to register to vote shall be used only for voter registration purposes.

C. Offenses. No person authorized to accept voter registration application forms shall knowingly, willfully, or intentionally:

1. offer, promise, solicit, or accept money or anything of present or prospective value to secure or influence a vote or registration of a voter;

2. forge, alter, deface, destroy, or remove from proper custodial care any application for voter registration; or

3. intimidate, directly or indirectly, any prospective voter in matters concerning registration or nonregistration.

D. Penalties

1. Any authorized employee who commits an offense as provided herein shall be subject to the penalties provided in R.S. 18:1461, R.S. 18:1461.2, or R.S. 18:1461.4.

2. Any authorized employee who fails to comply with the provisions of law relative to registration at driver's license facilities shall be subject to the penalties established in R.S. 18:114(H).

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:114, R.S. 18:2(2), R.S. 18:62, R.S. 18:101, R.S. 18:102, R.S. 18:105, R.S. 18:106, R.S. 18:1461, R.S. 18:1461.2, and R.S. 18:1461.4.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 16:607 (July 1990), amended LR 20:1373 (December 1994), amended by the Department of State, Elections Division, LR 45:1812 (December 2019).

### **§309. Training**

A. The Department of State and/or the registrar of voters shall train designated personnel of the Department of Public Safety and Corrections to conduct in-service training. In-service training will be provided to all employees authorized to accept voter registration application forms by these personnel.

B. The training shall include, but shall not be limited to, the following:

1. review responsibility of an authorized employee to offer voter registration;
2. conduct study of the voter registration application with special emphasis on problem areas;
3. discuss information that may be used to establish applicant's age, identity, and residency;
4. discuss assistance that may be provided to applicant;
5. review responsibilities of an authorized employee in ensuring accuracy and legibility of voter registration application and stressing the authorized employee's responsibility for informing the applicant that the applicant is not registered until the parish registrar notifies the applicant of registration;
6. review declination requirements that must be done in writing and signed by the applicant;
7. review transmittal requirements;
8. review offenses; and
9. review penalties established in R.S. 18:114(H) for noncompliance with the provisions of law relative to voter registration at driver's license facilities and in R.S. 18:1461, R.S. 18:1461.2, and R.S. 18:1461.4 relative to voter registration in general.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:114, R.S. 18:104 -18:106, R.S. 18:1461, R.S. 18:1461.2, and R.S. 18:1461.4.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 16:608 (July 1990), amended LR 20:1374 (December 1994), amended by the Department of State, Elections Division, LR 45:1813 (December 2019).

### **§311. Review Process**

A. An annual meeting between the Department of State and the Department of Public Safety and Corrections shall be held during the first quarter of each year to monitor any problem areas where changes in rules and regulations or the revised statutes may be necessary. The annual meeting may be discontinued upon mutual agreement when it is felt there is no longer a need to continue to hold such meetings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:114.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 16:608 (July 1990), amended LR 20:1374 (December 1994), amended by the Department of State, Elections Division, LR 45:1814 (December 2019).

### **§313. Implementation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:114.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 16:608 (July 1990), amended LR 20:1374 (December 1994), repealed by the Department of State, Elections Division, LR 45:1814 (December 2019).

R. Kyle Ardoin  
Secretary of State

1912#064

## **RULE**

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

#### **Eagle Lake Crappie Length and Creel Regulations (LAC 76:VII.198)**

Pursuant to the authority of R.S. 56:6(25)(a), R.S. 56:325(C) and R.S. 56:326.3, the Wildlife and Fisheries Commission has amended the current crappie regulations on Eagle Lake, Madison Parish, Louisiana. The daily take and size regulations will be 30 fish per person with an 11-inch minimum length limit. This Rule is hereby adopted on the day of promulgation.

### **Title 76**

### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic life**

#### **Chapter 1. Freshwater Sport and Commercial Fishing**

#### **§198. Crappie Regulations—Eagle Lake**

A. The recreational daily limit and total length limit for black crappie (*Pomoxis nigromaculatus*) and white crappie (*Pomoxis annularis*) on Eagle Lake located east of the Mississippi River in Madison Parish, Louisiana shall be as follows:

1. The recreational daily creel limit shall be 30 fish, in the aggregate.

2. The minimum total length limit shall be 11 inches.

B. This Rule will remain effective provided identical minimum total length limit and daily creel regulations set by the Mississippi Wildlife, Fisheries and Parks Commission are effective on the Mississippi portion of Eagle Lake; otherwise the statewide crappie regulations will be effective on the Louisiana portion of Eagle Lake.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25) (a), R.S. 56:325(C) and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 41:1499 (August 2015), amended LR 45:1814 (December 2019).

Jack Montoucet  
Secretary

1912#025

## **RULE**

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

#### **Removal of Abandoned Crab Traps (LAC 76:VII.367)**

Notice is hereby given 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.367 to temporarily close a portion of state inside waters to the use of crab traps in order to facilitate the removal of abandoned crab traps in these waters.

The Wildlife and Fisheries Commission has amended the provisions in LAC 76:VII.367 governing the locations of

temporary crab trap closures to address problems in portions of state waters resulting from large numbers of abandoned and derelict crab traps (*Louisiana Register*; Volume 30, Number 1; Volume 31, Number 1; Volume 32, Number 2; Volume 33, Number 1; Volume 34, Number 1; Volume 36; Number 1; Volume 38, Number 1; Volume 38, Number 12; Volume 40, Number 1; Volume 41, Number 1; Volume 42, Number 1; Volume 42, Number 12; Volume 44, Number 1; Volume 45, Number 2). The Wildlife and Fisheries Commission took action on July 1, 2019 to describe a new portion of state waters to be temporarily closed to the use of crab traps for the purpose of conducting a crab trap cleanup. This Rule is hereby adopted on the day of promulgation.

#### **Title 76**

### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 3. Saltwater Sport and Commercial Fishery**

##### **§367. Removal of Abandoned Crab Traps**

A. The use of crab traps shall be prohibited for a 14-day period from 12:00 a.m. February 3, 2020 through 11:59 p.m. February 16, 2020 within portions of Jefferson, Orleans, and St. Tammany Parishes as described below:

1. from a point originating from the intersection of the north bound lane of the Lake Pontchartrain Causeway Bridge and the southern shoreline of Lake Pontchartrain (30 degrees 01 minutes 13.054 seconds north latitude, 90 degrees 09 minutes 15.165 seconds west longitude); thence easterly along the southern shoreline of Lake Pontchartrain to Chef Menteur Pass (30 degrees 05 minutes 49.10 seconds north latitude, 89 degrees 49 minutes 09.54 seconds west longitude); thence southerly along the western shoreline of Chef Menteur Pass to its intersection with U.S. Highway 90 at 30 degrees 03 minutes 59.99 seconds north latitude, 89 degrees 48 minutes 19.04 seconds west longitude; thence easterly following the east bound lane of U.S. Highway 90 to its intersection with the north shore of Rigolets Pass (30 degrees 10 minutes 32.08 seconds north latitude, 89 degrees 43 minutes 45.66 seconds west longitude); thence westerly following the north shore of Rigolets Pass to its opening at the northern shore of Lake Pontchartrain; thence westerly following the northern shore of Lake Pontchartrain to its intersection with the north bound lane of the Lake Pontchartrain Causeway Bridge; thence southerly along the north bound lane of the Lake Pontchartrain Causeway Bridge to the origin.

B. The use of crab traps shall be prohibited for a 14-day period from 12:00 a.m. February 3, 2020 through 11:59 p.m. February 16, 2020 within portions of Jefferson, Lafourche, and Plaquemines Parishes as described below:

1. from a point originating at the intersection of the Gulf Intracoastal Waterway and the northern shore of Hero Canal (29 degrees 48 minutes 12.73 seconds north latitude, 90 degrees 04 minutes 09.21 seconds west longitude); thence westerly to a point along the western shore of the Gulf Intracoastal Waterway at 29 degrees 48 minutes 15.14 seconds north latitude, 90 degrees 04 minutes 18.67 seconds west longitude; thence southerly along the western shore of the Gulf Intracoastal Waterway to a point opposite the western shore of Bayou Perot (29 degrees 40 minutes 56.67 seconds north latitude, 90 degrees 11 minutes 36.79 seconds west longitude); thence easterly to a point on the western shore of Bayou Perot at 29 degrees 40 minutes 50.66

seconds north latitude, 90 degrees 11 minutes 25.48 seconds west longitude; thence southerly along the western shore of Bayou Perot to Little Lake; thence southerly along the western shore of Little Lake to 29 degrees 30 minutes 00 seconds north latitude, 90 degrees 12 minutes 01.497 seconds west longitude; thence eastward along 29 degrees 30 minutes 00 seconds north latitude to the eastern shore of Wilkinson Canal (29 degrees 30 minutes 00 seconds north latitude, 89 degrees 56 minutes 58.47 seconds west longitude); thence northerly along the eastern shore of Wilkinson Canal to its termination; thence northerly to the western shore of the Mississippi River at 29 degrees 38 minutes 24.94 seconds north latitude, 89 degrees 57 minutes 1.21 seconds west longitude; thence northerly along the western shore of the Mississippi River to a point easterly of the northern shoreline of Hero Canal (29 degrees 47 minutes 9.60 seconds north latitude, 90 degrees 01 minutes 17.77 seconds west longitude); thence westerly to the northern shore of Hero Canal; thence westerly along the northern shore of Hero Canal to the origin.

C. The use of crab traps shall be prohibited for a 10-day period from 12:00 a.m. February 10, 2020 through 11:59 p.m. February 19, 2020 within portions of Cameron Parish as described below:

1. from a point originating on the eastern shore of Calcasieu Lake at 29 degrees 56 minutes 30 seconds north latitude, 93 degrees 14 minutes 52.30 seconds west longitude; thence southerly following the eastern and southern shore of Calcasieu Lake to its intersection with the eastern shore of East Pass at 29 degrees 50 minutes 21.904 seconds north latitude, 93 degrees 19 minutes 40.934 seconds west longitude; thence southerly following the eastern shore of East Pass to its intersection with the Calcasieu Ship Channel; then southerly along the eastern shore of the Calcasieu Ship Channel to a point located just north of the Cameron Ferry (29 degrees 48 minutes 14.45 seconds north latitude, 93 degrees 20 minutes 43.75 seconds west longitude); thence west along 29 degrees 48 minutes 14.45 seconds north latitude to a point located north of the Cameron Ferry on the western shore of the Calcasieu Ship Channel (29 degrees 48 minutes 14.45 seconds north latitude, 93 degrees 20 minutes 56.436 seconds west longitude); thence northerly along the western shore of the Calcasieu Ship Channel to a point at 29 degrees 56 minutes 30 seconds north latitude, 93 degrees 20 minutes 25.77 seconds west longitude; thence west along 29 degrees 56 minutes 30 seconds north latitude to the origin.

D. The use of crab traps shall be prohibited for a 14-day period from 12:00 a.m. February 10, 2020 through 11:59 p.m. February 23, 2020 within portions of Iberia and Vermilion Parishes as described below:

1. from a point originating from the intersection of the Acadiana Navigational Channel and the Gulf Intracoastal Waterway (29 degrees 50 minutes 33.793 seconds north latitude, 91 degrees 50 minutes 26.43 seconds west longitude); thence southwest along the Acadiana Navigational Channel red buoy line to the red navigational marker number 20 (29 degrees 36 minutes 12.551 seconds north latitude, 92 degrees 00 minutes 18.487 seconds west longitude) near the Marsh Island shoreline near Southwest Pass; thence westerly to the Green Light Channel Marker number 21 (29 degrees 36 minutes 44.541 seconds north

latitude, 92 degrees 00 minutes 21.808 seconds west longitude); thence westerly to Southwest Point; thence westerly along the southern shore of Vermilion Bay to the eastern shore of Hell Hole; thence southerly along the shore of Hell Hole to its intersection with Hell Hole Bayou; thence westerly to the western shore of Hell Hole; thence northerly along the western shore of Hell Hole to its intersection with the southwestern shore of Vermilion Bay; thence northerly along the southwestern shore of Vermilion Bay to Redfish Point; thence westerly along the shore of Vermilion Bay to its intersection with Freshwater Bayou Canal just past Coles Bayou (29 degrees 44 minutes 54.065 seconds north latitude, 92 degrees 13 minutes 02.277 seconds west longitude); thence northerly along the western shore of Freshwater Bayou Canal to its intersection with the northern shore of the Gulf Intracoastal Waterway; thence easterly along the northern shore of the Gulf Intracoastal Waterway to the origin.

E. The use of crab traps shall be prohibited for a 14-day period from 12:00 a.m. March 2, 2020 through 11:59 p.m. March 15, 2020 within portions of Orleans, St. Bernard, and St. Tammany Parishes as described below:

1. from a point originating at the intersection of the Mississippi/Louisiana state line and U.S. Highway 90 (30 degrees 14 minutes 20.816 seconds north latitude, 89 degrees 36 minutes 53.218 seconds west longitude); thence westerly along U.S. Highway 90 to its intersection with the western shore of Chef Menteur Pass; thence southerly on the western shore of Chef Menteur Pass to its intersection with the Gulf Intracoastal Waterway; thence westerly on the northern shore of the Gulf Intracoastal Waterway to its intersection with the Inner Harbor Navigation Canal Lake Borgne Surge Barrier (30 degrees 00 minutes 53.88 seconds north latitude, 89 degrees 54 minutes 06.13 seconds west longitude); thence southerly along the Inner Harbor Navigation Canal Lake Borgne Surge Barrier to the western shore of the Mississippi River Gulf Outlet (29 degrees 59 minutes 39.183 seconds north latitude, 89 degrees 54 minutes 29.09 seconds west longitude); thence southerly along the western shore of the Mississippi River Gulf Outlet to its intersection with the western shore of the Shell Beach Canal; thence southerly along the western shore of the Shell Beach Canal to a point at 29 degrees 51 minutes 13.28 seconds north latitude, 89 degrees 40 minutes 47.54 seconds west longitude; thence easterly to a point on the eastern shore of the Shell Beach Canal (29 degrees 51 minutes 12.82 seconds north latitude, 89 degrees 40 minutes 45.80 seconds west longitude); thence northerly along the eastern shore of the Shell Beach Canal to its intersection with the western shore of the Mississippi River Gulf Outlet; thence northerly to a point located on the eastern shore of the Shell Beach Cut; thence northerly along the eastern shore of the Shell Beach Cut to a point located at its intersection with the southern shore of Lake Borgne; thence easterly and northerly along the south and east shore of Lake Borgne to Malherieux Point (30 degrees 04 minutes 41.392 seconds north latitude, 89 degrees 29 minutes 02.000 seconds west longitude); thence northerly to a point on the Mississippi/Louisiana state line (30 degrees 09 minutes 45.844 seconds north latitude, 89 degrees 29 minutes 02.000 seconds west longitude); thence northerly along the Mississippi/Louisiana state line to the origin.

F. The use of crab traps shall be prohibited for a 14-day period from 12:00 a.m. March 2, 2020 through 11:59 p.m. March 15, 2020 within portions of Terrebonne Parish as described below:

1. from a point originating along the western shore of Bayou Pointe Aux Chenes (29 degrees 25 minutes 59.26 seconds north latitude, 90 degrees 27 minutes 31.39 seconds west longitude) near the intersection of Lower U.S. Highway 665 and Island Road; thence westerly to the south bound lane of Island Road; thence southerly along the south bound lane of Island Road to its intersection with the western boundary of the Pointe Aux Chenes Unit of the Pointe Aux Chenes Wildlife Management Area (29 degrees 24 minutes 25.774 seconds north latitude, 90 degrees 29 minutes 28.429 seconds west longitude); thence northerly along the western boundary of the Pointe Aux Chenes Unit of the Pointe Aux Chenes Wildlife Management Area to its intersection with the southern boundary of the Montegut Unit of the Pointe Aux Chenes Wildlife Management Area (29 degrees 25 minutes 20.378 seconds north latitude, 90 degrees 29 minutes 58.29 seconds west longitude); thence westerly along the southern boundary of the Montegut Unit of the Pointe Aux Chenes Wildlife Management Area to its southwestern most point located on the eastern shore of the Humble Canal (29 degrees 25 minutes 51.125 seconds north latitude, 90 degrees 33 minutes 31.885 seconds west longitude); thence northerly along the eastern shore of the Humble Canal to its intersection with Bayou Terrebonne (29 degrees 26 minutes 17.702 seconds north latitude, 90 degrees 34 minutes 00.193 seconds west longitude); thence westerly to a point located on the western shore of Bayou Terrebonne at 29 degrees 26 minutes 17.66 seconds north latitude, 90 degrees 34 minutes 02.751 seconds west longitude; thence southerly along the western shore of Bayou Terrebonne to its intersection with Bush Canal (29 degrees 22 minutes 07.156 seconds north latitude, 90 degrees 36 minutes 05.437 seconds west longitude); thence westerly along the northern shore of Bush Canal to its intersection with Bayou Little Caillou (29 degrees 22 minutes 52.495 seconds north latitude, 90 degrees 37 minutes 14.931 seconds west longitude); thence southerly along the western shore of Bayou Little Caillou to 29 degrees 17 minutes 00 seconds north latitude, 90 degrees 38 minutes 41.401 seconds west longitude; thence east along 29 degrees 17 minutes 00 seconds north latitude to the western shore of Bayou Pointe Aux Chenes (29 degrees 17 minutes 00 seconds north latitude, 90 degrees 23 minutes 00.507 seconds west longitude); thence northerly along the western shore of Bayou Pointe Aux Chenes to the origin.

G. All crab traps remaining in the closed area during the specified period shall be considered abandoned. Crab trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Department of Wildlife and Fisheries personnel or its designees are authorized to remove these abandoned crab traps within the closed area. All traps removed during a closed area are to be brought to the designated disposal area. No person removing crab traps from the designated closed areas during the closure periods shall possess these traps outside of the closed area. The

Wildlife and Fisheries Commission authorizes the secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 33:113 (January 2007), LR 34:97

(January 2008), LR 36:77 (January, 2010), LR 38:146 (January 2012), LR 38:3250 (December 2012), LR 40:96 (January 2014), LR 41:155 (January 2015), LR 42:70 (January 2016), amended by the Department of Wildlife and Fisheries, Office of Fisheries and the Wildlife and Fisheries Commission LR 42:2196 (December 2016), LR 44:100 (January 2018), LR 45:78 (January 2019), repromulgated LR 45:282 (February 2019), LR 46:1815 (December 2019).

Jack Montoucet  
Secretary

1912#024



# Notices of Intent

## NOTICE OF INTENT

### 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 initiated rulemaking procedures to amend certain sections of the Rules for the Board of Ethics to define statutory language and provide clarity to current statutory provisions.

#### 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:

#### Family Impact Statement

The proposed Rule changes have no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

#### Poverty Impact Statement

The proposed Rule changes have no known impact on poverty, as described in R.S. 49:972.

## Small Business Analysis

The proposed Rule should not have any known or adverse impact on small business as described in R.S. 49:956.6

## Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session.

## Public Comments

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton Rouge, LA 70821, telephone (225) 219-5600, until 4:45 p.m. on January 10, 2020.

Kathleen M. Allen  
Ethics Administrator

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Campaign Finance Disclosure

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

The estimated cost to implement the proposed rule change is \$168 in FY 19-20, which accounts for the cost to publish the Notice of Intent and the rule in the State Register. There are no additional estimated implementation costs or savings to state or local governmental units. The proposed rule seeks to amend certain sections to define statutory language and provide clarity to current statutory provisions with regard to the Campaign Finance Disclosure Act.

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

The proposed rule change will have no anticipated effect on revenue collections of state or local governmental units.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed action will affect persons who file or are required to file campaign finance disclosure reports; however, it is not anticipated that it will impact their costs and /or economic benefits.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no anticipated effect on competition and employment.

Kristy Gary  
Ethics Administrator  
1912#063

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### 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 initiated rulemaking procedures to repeal certain

sections of the Rules for the Board of Ethics to bring the rules into compliance with current statutory provisions.

**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:

**§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:

**Family Impact Statement**

The proposed Rule changes have no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed Rule changes have no known impact on poverty, as described in R.S. 49:972.

**Small Business Analysis**

The proposed Rule should not have any known or adverse impact on small business as described in R.S. 49:956.6

**Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session.

**Public Comments**

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton Rouge, LA 70821, telephone (225) 219-5600, until 4:45 p.m. on January 10, 2020.

Kathleen M. Allen  
Ethics Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Code of Governmental Ethics**

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

The estimated cost to implement the proposed rule change is \$168 in FY 19-20, which accounts for the cost to publish the Notice of Intent and the rule in the State Register. There are no additional estimated implementation costs or savings to state or local governmental units. The proposed rule seeks to repeal two sections of the rules for the Board of Ethics, as the relevant law does not exist anymore and the rule has become obsolete.

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

The proposed rule change will have no anticipated effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

The proposed rule change will have no anticipated costs or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The proposed rule change will have no anticipated effect on competition and employment.

Kristy Gary  
Deputy Ethics Administrator  
1912#062

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**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., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to amend certain sections of the rules for the Board of Ethics to clarify hearing procedures, pre-hearing procedures and motions for summary judgments and to reference current statutory provisions.

**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:

**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:

## **§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:

### **Family Impact Statement**

The proposed Rule changes have no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

### **Poverty Impact Statement**

The proposed Rule changes have no known impact on poverty, as described in R.S. 49:972.

### **Small Business Analysis**

The proposed Rule should not have any known or adverse impact on small business as described in R.S. 49:956.6

### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session.

### **Public Comments**

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton Rouge, LA 70821, telephone (225) 219-5600, until 4:45 p.m. on January 10, 2020.

Kathleen M. Allen  
Ethics Administrator

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Hearings and Pre-Hearing Procedures**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The estimated cost to implement the proposed rule change is \$168 in FY 19-20, which accounts for the cost to publish the Notice of Intent and the rule in the State Register. There are no additional estimated implementation costs or savings to state or local governmental units. The proposed rule seeks to amend certain sections to clarify hearing procedures, pre-hearing procedures and motions for summary judgements and to reference current statutory provisions.

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

The proposed rule change will have no anticipated effect on revenue collections of state or local governmental units.

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

The proposed action will affect those persons who are the subject of charges pending before the Ethics Adjudicatory Board. It is not anticipated that this action will have a demonstrable effect on their costs and/or economic benefits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no anticipated effect on competition and employment.

Kristy Gary  
Deputy Ethics Administrator  
1912#061

Evan Brasseux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**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 gives notice that it proposes to amend 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 proposed 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 proposed rules addresses the adjudicatory record, including the confidentiality of records and the procedure for requesting a transcript of a hearing. Chapter 5 of the proposed rules addresses the commencement of adjudications at DAL, pleadings, and service of process. Chapter 7 of the proposed rules addresses discovery and the adjudication process. Chapter 9 of the proposed rules addresses mediation requests. Chapter 11 of the proposed rules addresses the Ethics Adjudicatory Board. The proposed rules will be 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:

**§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:

#### **§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:

#### **§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:

#### **§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:

### **§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 45:

### **§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:

### **§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:

### **§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:

### **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:

#### **§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:

#### **§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 prepayment 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:

### **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:

#### **§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:

**§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:

**§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:

**§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:

**§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:



**§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:

**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:

**§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:

**§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:

**§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

## **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:

## **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:

### **§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:

#### **§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:

#### **§ 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:

#### **Family Impact Statement**

The proposed adoption of this Rule should have no known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule has no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;

4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

#### **Poverty Impact Statement**

The proposed Rule has no known impact on poverty as described in R.S. 49:973.

#### **Small Business Impact Analysis**

The proposed Rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

#### **Provider Impact Statement**

The proposed Rule has no known or foreseeable effect on:

1. the staffing levels requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the provider to provide the same level of service;
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

All interested persons may submit written data, views, arguments or comments regarding this proposed Rule to: Lindsey Hunter, General Counsel, P.O. Box 44033, Baton Rouge, LA 70804 Written comments will be accepted until 4:30 p.m., February 3, 2020.

Emalie A. Boyce  
Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Division of Administrative Law Adjudications**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rules establish the procedures that will govern adjudications conducted by the Division of Administrative Law (DAL). It is not anticipated that the proposed rules will result in additional costs or savings to state or local governmental units.

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

It is not anticipated that the proposed rules will effect 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 not anticipated that the proposed rules will result in costs or economic benefits to directly affected persons or non-governmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rules govern the procedure of adjudications conducted by the Division of Administrative Law. The proposed rules will not affect competition or employment in the public or private sector.

Emalie A. Boyce  
Director  
1912#043

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Culture, Recreation and Tourism Office of the State Museum

Public Access; Accessions, Deaccessions and Loan Policy  
(LAC 25:III.Chapter 3)

In accordance with the Louisiana Administrative Procedure Act (APA), R.S. 49:950, et seq., the Louisiana Department of Culture, Recreation and Tourism, Office of the State Museum has initiated the process of repealing LAC Title 25, Part III, Chapter 3, Accessions, Deaccessions and Loan Policy.

Under the APA, *rulemaking* means the process employed by an agency for the formulation of a rule. A “rule” means an agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency.

LAC Title 25, Part III, Chapter 3 provides internal policy and therefore, does not meet the definition of a rule under the APA.

#### Title 25 CULTURAL RESOURCES

#### Part III. Office of State Museums

#### Chapter 3. Accessions, Deaccessions and Loan Policy

##### §301. Accessions Procedures

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2341-2347.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Museum, LR 11:684 (July 1985), repealed LR 17:874 (September 1991).

##### §303. Deaccession of Museum Collection Items

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:345 and R.S. 9:2341-2347.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Museum, LR 11:684 (July 1985), repealed LR 12:89 (February 1986), LR 17:875 (September 1991).

##### §305. Loan Policy

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:201.

HISTORICAL NOTE: Promulgated by the Department of Culture, Recreation and Tourism, Office of State Museum, LR 11:518 (May 1985), repealed LR 17:875 (September 1991).

#### Family Impact Statement

Amendment to this Rule has no known impact on family formation, stability or 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 relations to individual or family poverty in relations to individual or community asset development as described in R.S. 49:973.

#### 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.

## Public Comments

Written comments may be addressed to Nancy Watkins Undersecretary, Department of Culture, Recreation and Tourism, P.O. Box 94361, Baton Rouge, LA 70804 until 4:30 p.m. on January 10, 2020.

Nancy Watkins  
Undersecretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Public Access; Accessions, Deaccessions and Loan Policy

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

It is not anticipated that there will be any implementation costs to State or local governmental units. The agency is requesting to repeal Title 25 Part III Chapter 3 Accessions, Deaccessions and Loan Policy.

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

There is no effect on revenue collections by repealing Title 25 Part III Chapter 3 Accessions, Deaccessions and Loan Policy.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no cost or economic benefit to directly affected persons or non-governmental groups by repealing Title 25 Part III Chapter 3 Accessions, Deaccessions and Loan Policy.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment by repealing Title 25 Part III Chapter 3 Accessions, Deaccessions and Loan Policy.

Nancy Watkins  
Undersecretary  
1912#082

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### 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 proposes to amend 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 proposed 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.

**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 46:

**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:

**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<sup>2</sup>. 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	

<sup>1</sup> 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.

<sup>2</sup> 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	

Certification Area	Name of Test	Area Test Score
Content Leader	Louisiana Content Leader Assessment Series	5
Educational Leader—Level 1	School Leaders Licensure Assessment (1011 or 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), amended LR 46:

### 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:

- co-teaching;
- collaborative planning; and
- 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:

##### §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 46:

##### §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 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 earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

#### **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 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? 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 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on 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, January 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: Alternate Program Candidates**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be a decrease in costs for the Department of Education (LDE) to support mentor teacher training and certification. There will be an increase in costs for local school districts to meet new mentoring requirements for alternative teacher preparation program candidates. Costs will vary by district and will depend upon the number of credentialed school-based mentor teachers, the number of candidates requiring a mentor teacher, and the content areas and demands for such teachers. Finally, Institutions of Higher Education may also incur costs associated with training and support services for mentor teacher candidates enrolled in their programs. These proposed rule changes delete the current 80-hour pre-service requirement for alternative certification teacher candidates and instead require these teachers to receive mentorship from a credentialed school-based mentor teacher; further specifies instructional time and intensive supports which must be provided.

In November 2017 the LDE launched a three-year training initiative to develop mentor teachers. In October 2018, BESE

policy established a new state credential for mentor teachers that will be required for all mentors beginning September 2020, eventually replacing the previously required Supervisor of Student Teaching credential. For the past three years, the LDE has provided training and materials through a \$10.8 million contract with the University of Texas at Austin Dana Center. The contract is funded with both state and federal funds. In the Fall of 2020, this mentor training will transition from the state provided model to a state approved model, thereby reducing costs to the LDE. To this end, beginning with the 2019-2020 school year, the LDE has approved an estimated 18 providers, including some institutions of higher education in the state to continue providing necessary training and supports for teachers to become a certified mentor teacher. Training costs will become the responsibility of the school districts and will be funded with a mix of state, local, and federal funds.

Currently there are 68 teachers eligible for mentor certification. However, based on 2017-2018 data there are some 829 traditional teacher candidate residents and 1,235 alternative certification candidates in the state that will require supervision by a credentialed mentor teacher under the proposed rule. Furthermore, beginning with the 2019-2020 school year both traditional and alternative teacher residency programs will be fully implemented, resulting in an increase in the number of credentialed mentor teachers required annually. Per the 2018 US Department of Education Title II data report, in the 2016-2017 school year there were 964 traditional teacher program completers and 1,401 alternative certification program completers in the state. This would indicate a need for at least 2,365 mentor teachers. By mid 2020, the LDE will have provided training for some 1,800 mentor teachers. However, only 68 teachers, less than 4%, have passed the assessment required to obtain the credential. As such, there are still an insufficient number of credentialed mentor teachers necessary to meet current and future demand.

School districts will incur costs to meet training and certification requirements in order for mentor teachers to become credentialed. Estimated costs for a teacher to receive such a credential will vary depending upon the provider but may be as much as \$1,600 to complete coursework; with an additional \$175 fee to complete the training aligned Mentor Teacher Assessment Series. It is unknown to what extent districts will provide funding or whether some portion of these costs will be passed along to teachers. There will also be ancillary costs for districts associated with travel, substitute teachers, and other support services for teachers seeking this training and certification. To the extent there are an insufficient number of mentor teachers within a school, districts may assign multiple candidates to a single mentor, potentially across multiple schools within a district. Some districts participating in pilots addressed this by reducing the number of periods a mentor teaches each day. Other districts created system-based mentors as well as school-based mentors. Changing staffing patterns and scheduling to accommodate these types of approaches may result in additional costs for the districts.

While the annual training costs for the LDE will decrease significantly, the department has committed to continue utilizing federal funds of approximately \$44,000 to provide the \$175 assessment fee for up to 250 mentors annually. Additional funding may be available to certain schools through the "Super App" which allows school systems to access their federal formula funds and competitive funds for struggling schools, however, not all schools are eligible for these competitive funds. Alternatively, while those schools may use other federal funding such as Title II to support these costs, these funds currently support other activities and may not be available for mentor credentialing expenses. Finally, mentor teachers receive a \$1,000 stipend which is funded through the LDE using state and federal funds. However, beginning the 2020-2021 school

year (FY 21), LDE costs will further decline as state support will only be provided to credentialed mentor teachers. (The Supervision of Student Teaching certificate will continue to be valid until September 2023). It is not known whether districts will continue to provide stipends to other support personnel who have not completed the assessment series in order to be credentialed.

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

Schools labeled Comprehensive Intervention Required (CIR) and Urgent Intervention Required (UIR) will be eligible to apply for competitive funding to support training and credentialing costs. There are currently in excess of 900 such schools.

## III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The costs to individuals seeking a mentor teacher credential are indeterminable. It is unknown to what extent districts will share in the cost of training and assessments and whether individuals will be responsible for some portion of these costs. To the extent these teachers complete the training and pass the assessment to receive the credential, they are eligible to receive stipends in the amount of \$1,000. Finally, the certificate will contribute to the requirements for the Educational Leader 1 license.

## IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Based on the results of national studies, the LDE anticipates a positive impact on retention rates of alternatively certified teachers associated with the proposed school-based credentialed mentor and other support services requirement. However, it is not clear what the potential impact may be if teachers opt not to participate in the additional training requirements to obtain an ancillary certificate and/or there are an insufficient number of credentialed school-based mentors.

Beth Scioneaux  
Deputy Superintendent  
1912#037

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### 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 gives notice that rulemaking procedures have been initiated to amend 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 will incorporate 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.

### **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:

#### **§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:

#### **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 Hearing**

A public hearing will be held on January 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.

#### **Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ105ft. Such comments must be received no later than January 28, 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](mailto:DEQ.Reg.Dev.Comments@la.gov). The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ105ft. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson  
General Counsel

1912#046

## NOTICE OF INTENT

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

#### Regulatory Permit for Stationary Combustion Turbines (LAC 33:III.327)(AQ385)

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.327. (AQ385)

This Rule will establish a regulatory permit which can be used to authorize the construction and operation of certain stationary combustion turbines. Authorization to construct and operate a stationary combustion turbine eligible for coverage under the regulatory permit shall become effective only upon notification by the department that the application required by the regulatory permit has been determined complete.

R.S. 30:2054(B)(9)(a) allows the Louisiana Department of Environmental Quality to develop regulatory permits for certain sources of air emissions provided the conditions in R.S. 30:2054(B)(9)(b) are satisfied. A regulatory permit is a permit that is incorporated into the regulations in the form of a Rule.

Pursuant to R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019, promulgation of rules and regulations (i.e., the Administrative Procedure Act, R.S. 49:950 et seq.). The basis and rationale for this Rule are to establish a regulatory permit for stationary and combustion turbines. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### Title 33

## ENVIRONMENTAL QUALITY

### Part III. Air

#### Chapter 3. Regulatory Permits

#### §327. Regulatory Permit for Stationary Combustion Turbines

##### A. Applicability

1. This regulatory permit authorizes the construction and use of stationary combustion turbines, subject to the requirements established herein, upon notification by the department that the application (i.e., notification form) submitted in accordance with Subsection H of this Section has been determined to be complete.

2. This regulatory permit shall not apply to stationary combustion turbines that:

a. combust fuels other than natural gas, refinery gas, or distillate oil with more than 15 parts per million sulfur; or

b. are subject to federal regulations not identified in Subsection D of this Section.

3. This regulatory permit shall not be used to authorize a stationary combustion turbine that, when

considering potential emissions from it and potential emissions from the remainder of the stationary source, would result in the creation of a major source of criteria pollutants, hazardous air pollutants, or toxic air pollutants.

##### B. Definitions

*Stationary Combustion Turbine*—as defined in 40 CFR 60.4420.

##### C. Emission Limitations

1. Emission limitations for the stationary combustion turbines shall be established by the application (i.e., notification form) submitted in accordance with Subsection H of this Section.

a. The limitations shall be enforceable by the department.

b. If actual emissions exceed these limitations for any reason other than as described in LAC 33:III.501.C.12, the permittee shall notify the Office of Environmental Compliance in accordance with Louisiana General Condition XI of LAC 33:III.537.A. For Part 70 sources, the reports required by Paragraph C.2 of this Section shall satisfy this requirement.

2. The permittee shall address each stationary combustion turbine located at a Part 70 source in the submittals required by Part 70 General Conditions K, M, and R of LAC 33:III.535.A. Deviations from the terms and conditions of this regulatory permit, including the standards identified in Subsection D of this Section, shall not be considered violations of the stationary source's Part 70 permit.

##### D. Stationary Combustion Turbine Standards

1. The permittee shall comply with the provisions of the following federal and state regulations pertaining to stationary combustion turbines, as applicable:

a. LAC 33:III.2201;

b. 40 CFR 60, subpart GG or KKKK; and

c. 40 CFR 63, subpart YYY.

##### E. Opacity

1. Smoke. The emission of smoke shall be controlled so that the shade or appearance of the emission is not darker than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one six-minute period in any 60 consecutive minutes.

##### 2. Monitoring, Recordkeeping, and Reporting

a. The permittee shall inspect each stationary combustion turbine's stack for visible emissions on a daily basis while in operation. If visible emissions are not detected during the initial six minutes of the inspection, the inspection may be concluded. If visible emissions are detected, the inspection period shall be extended to one hour (60 consecutive minutes).

b. If visible emissions are detected for more than one six-minute period over the 60 consecutive minute test period, the permittee shall conduct a six-minute opacity reading in accordance with Method 9 of 40 CFR 60, Appendix A, within 24 hours.

c. The permittee shall notify the Office of Environmental Compliance no later than 30 calendar days after any Method 9 reading in excess of 20 percent average opacity or, for Part 70 sources, in accordance with Part 70 General Condition R of LAC 33:III.535.A.

d. Records of visible emissions checks shall be kept on-site for at least five years and shall be made available for inspection by the Office of Environmental Compliance. These records shall include:

- i. the stationary combustion turbine's ID number;
- ii. a record if visible emissions were detected during the initial six minutes of the inspection;
- iii. a record if visible emissions were detected for more than one six-minute period over the 60 consecutive minute test period (if required); and
- iv. a record and the results of any Method 9 testing conducted.

3. Alternatives

a. As an alternative to the requirement to conduct Method 9 testing, the permittee may assume that any visible emissions detected constitute opacity greater than 20 percent. In this case, no visible emissions detected shall be considered opacity less than or equal to 20 percent, even if a qualitative assessment suggests otherwise.

b. The permittee may determine opacity via any federally-approved alternative to Method 9 (e.g., Method ALT-082).

c. In lieu of performing daily visual inspections, the permittee may immediately perform a six-minute opacity reading in accordance with Method 9.

d. The inspection of each stationary combustion turbine's stack for visible emissions may be made using a video camera, provided that the camera is:

- i. capable of capturing images of the stack and a reasonable distance above the stack; and
- ii. set at an angle suitable for visible emissions observations.

4. When the presence of uncombined water is the only reason for failure of an emission to meet the requirements of this Subsection, this Subsection shall not apply.

5. This Subsection shall not apply to stationary combustion turbines described in LAC 33:III.1107.B.1.

F. Performance Testing

1. The following performance testing requirements shall apply to stationary combustion turbines that have the potential to emit more than 40 tons per year of nitrogen oxides (NOX) or more than 100 tons per year of carbon monoxide (CO).

a. No later than 180 days after the stationary combustion turbine commences operation, the permittee shall conduct a performance test to determine NOX and CO emissions using Methods 7E (Determination of Nitrogen Oxides Emissions from Stationary Sources) and 10 (Determination of Carbon Monoxide Emissions from Stationary Sources) of 40 CFR 60, Appendix A. Each test run shall be conducted within 80 percent of the stationary combustion turbine's maximum rated capacity or within 10 percent of the maximum achievable load. Alternate stack test methods may be used with the prior approval of the Office of Environmental Assessment.

i. The permittee shall notify the Office of Environmental Assessment at least 30 days prior to the performance test in order to provide the department with the opportunity to conduct a pretest meeting and/or observe the test.

ii. The permittee shall submit the performance test results to the Office of Environmental Assessment no later than 60 days after completion of the test.

b. This Subsection shall not apply to stationary combustion turbine that remain at a stationary source for less than 12 consecutive months.

c. This Subsection shall not apply to stationary combustion turbines that must conduct a performance test in accordance with applicable federal requirements as described in LAC 33:III.323.D. If a performance test is required for only NOX or CO, but not both, a performance test for the other pollutant shall be conducted during the performance test required by 40 CFR 60.8 and/or 40 CFR 63.7.

G. Emissions Inventory. Each stationary source subject to LAC 33:III.919 shall include emissions from each stationary combustion turbine authorized by this regulatory permit in its annual emissions inventory.

H. Notification Requirements

1. Written notification describing the stationary combustion turbine shall be submitted to the Office of Environmental Services using the appropriate form provided by the department.

2. A separate notification shall be submitted for each stationary combustion turbine.

I. Fees. Fees for this regulatory permit shall be the applicable major or minor modification fee for the stationary source as determined in accordance with LAC 33:III.211.B. Applicable surcharges as described in LAC 33:III.211.A shall also be assessed.

J. Stationary combustion turbines authorized by this regulatory permit shall be included in the next application to renew or modify the stationary source's existing permit.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs 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 AQ385. Such comments must be received no later than February 4, 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 by fax (225) 219-4068 or by email 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 AQ385. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

#### **Public Hearing**

A public hearing will be held on January 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: Regulatory Permit for Stationary Combustion Turbines**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule establishing a regulatory permit for stationary combustion turbines.

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

There will be no revenue impacts to state or local governments.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to "submit a written notification ... in lieu of submission of a permit application." However, this notification form will be specifically tailored to the source addressed by the regulatory permit (i.e., stationary combustion turbines) and used in place of the traditional, more generic permit application documents. Permit fees will be equivalent to, and in place of, that which would have been required under the current rule. Therefore, there will be no increase in costs to applicants seeking coverage under this regulatory permit.

#### **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  
General Counsel  
1912#048

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

#### **Water Quality Standards Triennial Revision (LAC 33:IX.Chapter 11)(WQ097)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.1101, 1105, 1107, 1109, 1113, 1115, 1119, 1121, and 1123. (WQ097)

This proposed Rule corrects typographical errors, incorrect spelling and incorrect references throughout Chapter 11 in the water quality regulations. Where needed for clarification, language in Chapter 11 has been revised. There have been additions and deletions made to the definitions in §1105. In §1109, language has been revised to be in agreement with the federal Water Quality Standards Regulatory Revisions final rule (80 FR 51019). In §1113, the ambient water quality criteria toxic substances for the protection of human health in Table 1 has been updated based primarily on EPA's final updated recommendations (80 FR 36986). An ammonia criterion for freshwater has been added in §1113. Language revisions have been made in §§1115, 1119, and 1121. In §1123, Table 3, subsegment descriptions and boundaries have been revised using up-to-date technology. The basis and rationale for this proposed Rule are to conform to §303(c) of the Clean Water Act and to maintain and protect state waters. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

#### **Title 33**

#### **ENVIRONMENTAL QUALITY**

#### **Part IX. Water Quality**

#### **Subpart 1. Water Pollution Control**

#### **Chapter 11. Surface Water Quality Standards**

#### **§1101. Introduction**

A. The purpose of this Chapter is to establish surface water quality standards that will:

1. - 2. ...

3. protect or enhance the quality of state waters for designated uses; and

A.4. - B.2. ...

3. criteria that protect the designated uses by specifying general and numeric limitations for various water quality parameters.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 20:883 (August 1994), amended by the Office of the Secretary, Legal Affairs Division, LR 33:826 (May 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

## §1105. Definitions

\* \* \*

*Brackish Marshes*—those areas inundated or saturated by surface water or groundwater of moderate salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, brackish emergent vegetation. Typical vegetation includes bulltongue (*Sagittaria* spp.), wild millet (*Echinochloa walteri*), bullwhip (*Scirpus californicus*), sawgrass (*Cladium jamaicense*), wiregrass (*Spartina patens*), three-cornered grass (*Scirpus olneyi*), and widgeongrass (*Ruppia maritima*). *Brackish marshes* are also characterized by interstitial water salinity that normally ranges between 3 and 15 parts per thousand.

\* \* \*

*Cypress-Tupelo Swamps*—those areas inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, cypress-tupelo vegetation. Typical vegetation includes water tupelo (*Nyssa sylvatica* var. *aquatica*), bald cypress (*Taxodium distichum*), red maple (*Acer rubrum*), buttonbush (*Cephalanthus occidentalis*), and common wax myrtle (*Myrica cerifera*). *Cypress-tupelo swamps* can tolerate continuously flooded conditions and are divided into two subtypes: continuously flooded and seasonally flooded. Continuously flooded swamps are those areas that have standing water present all year round. They range from forests with a closed canopy to open canopy conditions with understory freshwater emergent wetland vegetation. Seasonally flooded swamps are those areas that are typically flooded for more than six months per year. They typically have a closed canopy that limits understory vegetation.

\* \* \*

*Effluent Limitation*—any applicable state or federal qualitative or quantitative limitation that imposes any restriction or prohibition on quantities, discharge rates, and concentrations of pollutants discharged into the waters of the state.

\* \* \*

*Fresh Warmwater Biota*—aquatic life species whose populations typically inhabit waters with warm temperatures (seasonal averages above 20°C, 68°F) and low salinities (less than two parts per thousand), including, but not limited to, black bass; freshwater sunfish; freshwater catfish; and characteristic freshwater aquatic invertebrates and wildlife.

\* \* \*

*Freshwater Emergent Wetlands* (including *freshwater marshes*)—those areas inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, freshwater emergent vegetation. Typical vegetation includes cattail (*Typha angustifolia*), bulltongue (*Sagittaria* spp.), maiden cane (*Panicum hemitomon*), water hyacinth (*Eichhornia crassipes*), pickerelweed (*Pontederia cordata*), alligator weed (*Alternanthera philoxeroides*), and pennywort (*Hydrocotyle* spp.). *Freshwater emergent wetlands* also are characterized by interstitial water salinity that is normally less than 2 parts per thousand. There are two subtypes of *freshwater emergent wetlands*: floating and attached. Floating wetlands are those areas where the wetland surface

substrate is detached and is floating above the underlying deltaic plain (also called "buoyant" and "flotant"). Attached wetlands are those areas where the vegetation is attached to the wetland surface and is contiguous with the underlying wetland substrate and can be submerged or emergent.

\* \* \*

*Highest Attainable Use*—the modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the Clean Water Act and attainable, based on the evaluation of the factor(s) in LAC 33:IX.1109.B.3 that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the state demonstrates the relevant use specified in section 101(a)(2) of the Clean Water Act and subcategories of such a use are not attainable.

\* \* \*

*LC50*—the numeric limit or concentration of a test material that is lethal to 50 percent of the exposed aquatic organisms within a specified period of time.

\* \* \*

*Non-101(a)(2) Use*—any use unrelated to the protection and propagation of fish, shellfish, wildlife or recreation in or on the water.

\* \* \*

*Pollutant Minimization Program*—a structured set of activities to improve processes and pollutant controls that prevent and reduce pollutant loadings in the context of LAC 33:IX.1109.E.

\* \* \*

*Practicable*—technologically possible, economically viable, and able to be put into practice, in the context of LAC 33:IX.1109.A.2.b.

\* \* \*

*Salt (Saline) Marshes*—those areas that are inundated or saturated by surface water or groundwater of salinity characteristic of nearshore Gulf of Mexico ambient water at a frequency and duration sufficient to support, and that under normal circumstances do support, saline emergent vegetation. Typical vegetation includes oystergrass (*Spartina alterniflora*), glasswort (*Salicornia* spp.), black rush (*Juncus roemerianus*), saltwort (*Batis maritima*), black mangrove (*Avicennia germinans*), and saltgrass (*Distichlis spicata*). *Salt marshes* are also characterized by interstitial water salinity that normally exceeds 16 parts per thousand.

\* \* \*

*Water Quality Standard*—an established set of provisions consisting of antidegradation requirements (policy and/or procedures), designated uses, and water quality criteria (narrative or numeric) to protect the designated uses and general policies included at the state's discretion, in order to meet the objectives in section 101(a) of the Clean Water Act.

*Water Quality Standards Variance (WQS Variance)*—a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the *water quality standards variance*.

*Waters of the State (or State Waters)*—all surface and underground waters and watercourses within the state of Louisiana, whether natural or man-made, including but not limited to, all rivers, streams, lakes, wetlands, and groundwaters, within the confines of the state, and all

bordering waters extending three miles into the Gulf of Mexico.

\* \* \*

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#### **§1107. Enforcement**

A. ...

B. Since aquatic systems receive organic and inorganic materials from natural and man-made sources and receive physical inputs from natural and man-made sources, due allowances will be made for situations where low dissolved oxygen concentrations or other water quality conditions attributable to natural sources are at variance with the standards. To allow for such situations, the numeric criteria will not be applied below the 7Q10 or other appropriate critical flow as defined in LAC 33:IX.1115.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 20:883 (August 1994), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

#### **§1109. Policy**

Water quality standards policies concerned with the protection and enhancement of water quality in the state are discussed in this Section. Policy statements on antidegradation, water use, water body exception classification, compliance schedules, variances, short-term activity authorization, errors, severability, revisions to standards, and sample collection and analytical procedures are described.

##### **A. Antidegradation Policy**

1. The existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Where the water quality exceeds levels necessary to support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water, that water quality shall be maintained and protected unless the state finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. The state shall assure water quality adequate to fully protect existing uses with such degradation or lower water quality. The state shall assure the highest statutory and regulatory requirements shall be achieved for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

a. Waters may be identified for the protections described in Paragraph 2 of this Subsection on a parameter-by-parameter basis or on a water body-by-water body basis. Where the state identifies waters for antidegradation protection on a water body-by-water body basis, the state shall provide an opportunity for public involvement in any decisions about whether the protections described in Paragraph 2 of this Subsection will be given to a water body, and the factors considered when making those decisions. A water body shall not be excluded from the protections described in Paragraph 2 of this Subsection solely because water quality does not exceed levels necessary to support all of the uses specified in section 101(a)(2) of the Clean Water Act.

b. Before allowing any lowering of high water quality, according to Paragraph 2 of this Subsection, the state shall find, after an analysis of alternatives, that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located. The analysis of alternatives shall evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity. When the analysis of alternatives identifies one or more practicable alternatives, the state shall only find that a lowering is necessary if one such alternative is selected for implementation.

3. Waste discharges shall comply with applicable state and federal laws for the attainment of water quality goals. Any new, existing, or expanded point source or nonpoint source discharging into state waters, including any land clearing which is the subject of a federal permit application, shall be required to provide the necessary level of waste treatment to protect state waters as determined by the administrative authority. Further, the highest statutory and regulatory requirements shall be achieved for all existing point sources and best management practices (BMPs) for nonpoint sources. Additionally, no degradation shall be allowed in high-quality waters designated as *outstanding natural resource waters*, as defined in LAC 33:IX.1111.A. Waters included in the Louisiana Natural and Scenic Rivers System, under the administration of the Louisiana Department of Wildlife and Fisheries, will be considered by the department for designation as outstanding natural resource waters. Those water bodies presently designated as outstanding natural resource waters are listed in LAC 33:IX.1123. The administrative authority shall not approve any wastewater discharge or certify any activity for federal permit that would impair water quality or use of state waters, including waters in the Natural and Scenic Rivers System that are waters of the state.

4. The antidegradation policy and implementation method shall be consistent with section 316 of the Clean Water Act where a potential water quality impairment is associated with a thermal discharge.

5. An implementation plan for this antidegradation policy is provided in LAC 33:IX.1119. The state's methods for implementing the antidegradation policy shall be, at a minimum, consistent with the state's policy and with the federal regulations at 40 CFR 131.12(a). The state shall provide an opportunity for public involvement during the development and any subsequent revisions of the implementation methods.



B. - B.3.f. ...

4. The department shall ensure that the water quality standards provide for the attainment and maintenance of the water quality standards of the downstream waters when designating water body uses and the appropriate criteria for those uses.

5. A subcategory of a use may be adopted and the appropriate criteria set to reflect the varying needs of such a subcategory of a use.

C. Water Body Exception Classification. Some water bodies may qualify for a water body exception classification. This classification will be made on a case-by-case basis. Whenever data indicate that a water body exception classification is warranted, the department will recommend the exception to the administrative authority for approval. In all cases where exceptions are proposed, the concurrence of EPA must be obtained and the opportunity for public participation must be provided during the exceptions review process. The general criteria of these standards shall apply to all water bodies classified as a water body exception except where a particular water body is specifically exempted. A use attainability analysis shall be conducted to justify a water body exception classification if an accompanying downgrade of a 101(a)(2) use or revision of criteria is being proposed. Exceptions are allowed for the following three classifications of water bodies.

1. - 2.d. ...

3. Naturally Dystrophic Waters

a. Naturally dystrophic waters are defined as waters that receive large amounts of natural organic material largely of terrestrial plant origin, are commonly stained by the decomposition of such organic material, and are low in dissolved oxygen because of natural conditions. Only those water bodies primarily affected by nonanthropogenic sources of oxygen-demanding substances or naturally occurring cycles of oxygen depletion will be considered for classification as naturally dystrophic waters. These water bodies typically include or are surrounded by wetlands (e.g., bottomland hardwood forests, freshwater swamps and marshes, or intermediate, brackish, or saline marshes) and have sluggish, low-gradient flows most of the year. Naturally dystrophic water bodies, though seasonally deficient in dissolved oxygen, may fully support fish and wildlife propagation and other water uses. Low dissolved oxygen concentrations (less than 5 mg/l) may occur seasonally during the warmer months of the year in naturally dystrophic water bodies.

b. No water body may be classified as naturally dystrophic without the approval of both the administrative authority and the EPA. A use attainability analysis may be conducted to gather data to document the characteristics of a naturally dystrophic water body. A use attainability analysis must be conducted to support the modification of dissolved oxygen criteria and/or the seasonality of dissolved oxygen criteria in naturally dystrophic waters. Applicable general and numeric criteria not specifically exempt shall remain applicable to waters classified as naturally dystrophic.

c. A wastewater discharge to an approved naturally dystrophic water body may be proposed only if the discharge will not by itself or in conjunction with other discharges,

cause impairment of the applicable designated uses, nor cause exceedance of any applicable general and site-specific criteria in the receiving water body, as determined in the exception approval process, nor cause exceedance of any applicable general and site-specific criteria in LAC 33:IX.1113 and 1123 in any water body that receives water from the naturally dystrophic water body.

d. Natural background conditions and proposed significant changes will be determined through use attainability analyses prior to the addition of any discharge. A wastewater discharge may be proposed for an approved, designated naturally dystrophic water body in a wetland only if the discharge will not by itself, or in conjunction with other discharges:

i. cause inundation of the receiving area such that regeneration of characteristic vegetative species would be significantly reduced;

ii. significantly modify species composition of the receiving area; and

iii. increase biological succession of the receiving area above naturally occurring levels.

D. Compliance Schedules in LPDES Permits. Upon permit issuance, modification, or renewal, compliance schedules may be incorporated into a permit to allow a permittee adequate time to make treatment facility modifications necessary to comply with water quality-based permit limitations determined to be necessary to implement new or revised water quality standards. Compliance shall be achieved at the earliest practicable time. The department will establish interim conditions which may consist of, but are not limited to, compliance schedules, monitoring requirements, temporary limits, and milestone dates so as to measure progress toward final project completion (e.g., design completion, construction start, construction completion, date of compliance).

E. Water Quality Standards (WQS) Variances

1. The state may adopt a *WQS variance*, as defined in Section 1105 of this Chapter. The WQS variance is subject to the provisions of this Subsection and public participation requirements at 40 CFR 131.20(b). A WQS variance shall comply with the requirements of 40 CFR 131.14 and is a water quality standard subject to EPA review and approval, or disapproval under section 303(c) of the Clean Water Act.

a. Applicability

i. A WQS variance may be adopted for a permittee(s) or water body/water body segment(s), but only applies to the permittee(s) or water body/water body segment(s) specified in the WQS variance.

ii. When adopting a WQS variance the underlying designated use and criterion addressed by the WQS variance shall be retained, unless a revision to the underlying designated use and criterion is adopted by the department and approved by EPA consistent with federal regulations. All other applicable standards not specifically addressed by the WQS variance remain applicable.

iii. Once the WQS variance is adopted by the state and approved by EPA, it shall be the applicable standard for purposes of the Clean Water Act under 40 CFR 131.21(d)-(e), for the following limited purposes. The approved WQS variance applies for the purposes of developing LPDES

permit limits and requirements under federal regulations, where appropriate, consistent with Clause E.1.d.i of this Subsection.

iv. A WQS variance will not be adopted if the designated use and criterion addressed by the WQS variance can be achieved by implementing technology-based effluent limits required under sections 301(b) and 306 of the Clean Water Act.

b. Requirements for Submission to EPA. The following information shall be included in the WQS variance submitted to EPA when granting a variance request for a permittee(s), or water body/water body segment(s).

i. Identify the pollutant(s) or water quality parameter(s) and the water body/water body segment(s) to which the WQS variance applies. A discharger(s)-specific WQS variance shall also identify the permittee(s) subject to the WQS variance.

ii. Provide the requirements that apply throughout the term of the WQS variance. The requirements shall represent the highest attainable condition of the water body or water body segment applicable throughout the term of the WQS variance based on the required supporting documentation. The requirements shall not result in any lowering of the currently attained ambient water quality, unless a WQS variance is necessary for restoration activities, consistent with LAC 33:IX.1109.E.1.c.i.(a).(ii). The state shall specify the highest attainable condition of the water body or water body segment as a quantifiable expression that is one of the following:

(a). for a discharger(s)-specific WQS variance:

(i). the highest attainable interim criterion;

(ii). the interim effluent condition that reflects the greatest pollutant reduction achievable; or

(iii). if no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the state adopts the WQS variance, and the adoption and implementation of a pollutant minimization program, as defined in Section 1105 of this Chapter:

(b). for a WQS variance applicable to a water body or water body segment:

(i). the highest attainable interim use and interim criterion; or

(ii). if no additional feasible pollutant control technology can be identified, the interim use and interim criterion that reflect the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the state adopts the WQS variance, and the adoption and implementation of a pollutant minimization program.

iii. Provide a statement that the requirements of the WQS variance are either the highest attainable condition identified at the time of the adoption of the WQS variance, or the highest attainable condition later identified during any reevaluation consistent with Clause E.1.b.v of this Subsection, whichever is more stringent.

iv. State the term of the WQS variance, expressed as an interval of time from the date of EPA approval or a specific date. The term of the WQS variance shall only be as

long as necessary to achieve the highest attainable condition and consistent with the demonstration provided in Subparagraph E.1.c of this Subsection. The state may adopt a subsequent WQS variance consistent with this Subsection.

v. For a WQS variance with a term greater than five years, specify a frequency to reevaluate the highest attainable condition using all existing and readily available information and stipulate a provision how the state intends to obtain public input on the reevaluation. Such reevaluations shall occur no less frequently than every five years after EPA approval of the WQS variance and the results of such reevaluation shall be submitted to EPA within 30 days of completion of the reevaluation.

vi. A provision of the WQS variance shall stipulate the WQS variance will no longer be the applicable water quality standard for purposes of the Clean Water Act if the state does not conduct a reevaluation consistent with the frequency specified in the WQS variance or the results are not submitted to EPA as required by Clause E.1.b.v of this Subsection until the state conducts the reevaluation and submits the results to EPA.

c. The supporting documentation submitted to EPA shall include the following.

i. Documentation that shall demonstrate the need for a WQS variance.

(a). For a WQS variance to a Clean Water Act section 101(a)(2) use or a subcategory of such a use, the state shall demonstrate that attaining the designated use and criterion is not feasible throughout the term of the WQS variance because:

(i). one of the factors listed in Clause B.3 of this Section is met; or

(ii). actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.

(b). For a WQS variance to a non-Clean Water Act section 101(a)(2) use, the state shall submit documentation justifying how its consideration of the use and value of the water for those uses listed in 40 CFR 131.10(a) appropriately supports the WQS variance and term. A demonstration consistent with Subclause E.1.c.i.(a) of this Subsection may be used to satisfy this requirement.

ii. Documentation that shall demonstrate that the term of the WQS variance is only as long as necessary to achieve the highest attainable condition. Such documentation shall justify the term of the WQS variance by describing the pollutant control activities to achieve the highest attainable condition, including those activities identified through a pollutant minimization program, which serve as milestones for the WQS variance.

iii. In addition to Clause E.1.c.i and ii of this Subsection, for a WQS variance that applies to a water body or water body segment:

(a). Identify and document any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or water body segment(s) specified in the WQS variance that could be implemented to

make progress towards attaining the underlying designated use and criterion (The state shall provide public notice and comment for any such documentation).

(b). Any subsequent WQS variance for a water body or water body segment shall include documentation of whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the WQS variance and the water quality progress achieved.

d. Implementation of a WQS variance in an LPDES permit. A WQS variance serves as the applicable water quality standard for implementation of LPDES permitting requirements pursuant to LAC 33:IX.2707.D for the term of the WQS variance. Any limitations and requirements necessary to implement the WQS variance shall be included as enforceable conditions of the LPDES permit for the permittee(s) subject to the WQS variance.

F. Short-Term Activity Authorization. The administrative authority may exempt from water quality standards certain short-term activities that the state determines are necessary to accommodate activities, emergencies, or to protect the public health and welfare. Such activities shall not cause long-term or permanent impact on designated water uses. These activities may include, but are not limited to, mosquito abatement projects, algae and weed control projects, and fish eradication projects. No short-term activity authorization shall supersede any applicable state or federal law or regulation including permitting process or the terms or conditions of any permit.

G. Errors. Errors resulting from inadequate or erroneous data and human or clerical errors will be subject to correction by the state, and the discovery of such errors does not render the remaining or unaffected standards invalid.

H. Severability. If any provisions of these standards or the application of any provision of these standards to any person or circumstance is held invalid, the application of such provision to other persons or circumstances and the remainder of the standards shall not be affected thereby.

#### I. Water Quality Standards Revision Process

1. It is the position of the state of Louisiana that the standards contained herein are those that are reasonable on the basis of the actual or potential quality of the state's waters, present and future water uses, and the best practicable wastewater treatment under any conditions. However, standards are not fixed for all time, but are subject to future revision. The nature of future revisions of these standards will be strongly influenced by many factors. Among these are the following.

a. As a downstream or bordering state in all cases involving interstate streams, Louisiana's standards will be affected by the quality of water received from its upstream and neighboring states.

b. Because it is the state farthest downstream, Louisiana's water quality will be affected by mean low flows when interstate rivers and tributaries become subject to flow regulation and diversion projects.

c. Changes in technology or natural conditions, or the availability of new data, may require a revision of numeric criteria at any time. Such revisions, however, will be accomplished only after proper consideration of designated water uses. Any proposed revision will be consistent with state and federal regulations.

d. Advances in scientific knowledge concerning the toxicity, cancer potency, metabolism, or exposure pathways of toxic pollutants that affect the assumptions on which existing criteria are based may necessitate a revision of numeric criteria at any time. Such revisions, however, will be accomplished only after proper consideration of designated water uses. Any proposed revision will be consistent with state and federal regulations.

2. The state shall hold public hearings at least once every three years to review applicable water quality standards and, as appropriate, modify and adopt standards. The revised standards will be reviewed in accordance with the state Administrative Procedure Act (R.S. 49:950 et seq.) and appropriate EPA procedures.

J. Sample Collection and Analytical Procedures. Procedures for collecting and analyzing samples to be used to determine whether the standards have been attained shall be subject to the following requirements as well as those specified in the department's Quality Assurance (QA) Plan for water monitoring and analysis.

1. Samples will be obtained at a depth or depths representative of the average water quality at the sampling station in question.

2. Samples will be collected from sampling locations as necessary to assess attainment of standards.

3. Collection and preservation of samples will be in accordance with accepted practices as specified in the department's QA Plan.

4. Numeric values of the various parameters will typically be determined by analytical procedures as specified in the QA Plan.

#### K. Wetlands

1. Wetlands, as defined in LAC 33:IX.1105, are a valuable resource to the state of Louisiana. Because of the state's natural low elevations, extensive riverine and riparian environments, and the presence of the Mississippi River delta, Louisiana has a large and diverse amount of wetland habitat. Specific values of Louisiana wetlands include commercial, recreational, and cultural uses. In addition, Louisiana wetlands provide important biological and physiochemical functions that include, but are not limited to, buffering against hurricanes and storms, holding excess floodwaters during high rainfall or high tides, recharging groundwater aquifers used for drinking water and irrigation, and improving water quality by filtering pollutants and taking up nutrients.

2. There are two basic types of Louisiana wetlands: forested wetlands and non-forested, or marsh, wetlands. Forested wetlands include bottomland hardwood swamps, continuously flooded cypress-tupelo swamps, seasonally flooded cypress-tupelo swamps, and oligotrophic seasonally flooded pine forests. Non-forested or marsh wetlands include floating freshwater emergent wetlands, attached freshwater emergent wetlands, brackish marshes, and salt (saline) marshes. Each of these wetland types are defined in LAC 33:IX.1105.

3. Wetlands approved by the administrative authority for wastewater assimilation projects pursuant to the Water Quality Management Plan, Volume 3, Section 10, Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards, are assigned the following

designated uses: secondary contact recreation and fish and wildlife propagation.

4. Applicable Criteria. Wetlands provide several values and functions that necessitate water quality criteria protective primarily of vegetative productivity. Additionally, wetlands can periodically become anoxic or anaerobic, or lack water altogether. Therefore, the following criteria are applicable to wetlands approved by the administrative authority for wastewater assimilation projects pursuant to the Water Quality Management Plan, Volume 3, Section 10, Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards.

a. A numeric dissolved oxygen criterion is not necessary to protect the beneficial use of fish and wildlife propagation.

b. The general criteria found in LAC 33:IX.1113.B, except for LAC 33:IX.1113.B.3 and 9, apply.

c. Numeric criteria found in LAC 33:IX.1113.C.4, 5.b, and 6 apply.

d. The biological criteria found in LAC 33:IX.1113.B.12.b apply.

e. Additional or site-specific criteria may be necessary to protect other existing or beneficial uses identified by the administrative authority.

5. A wastewater discharge may be proposed for a wetland of any defined type only if the discharge will not cause impairment of the wetland or exceedance of applicable general or site-specific criteria.

6. Discharges to wetlands approved by the administrative authority for wastewater assimilation projects will only be permitted following procedures pursuant to the Water Quality Management Plan, Volume 3, Section 10, Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

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### **§1113. Criteria**

#### **A. Introduction**

1. Water quality criteria are elements of the water quality standards that set general and numeric limitations on the permissible amounts of a substance or other characteristics of state waters. General and numeric criteria are established to promote restoration, maintenance, and protection of state waters. A criterion for a substance represents the limits for that substance at which water quality will remain sufficient to support a designated use.

2. Water quality criteria for the waters of Louisiana are based on their present and potential uses and the existing water quality indicated by data accumulated through monitoring programs of the department and other state and federal agencies as well as universities and private sources. In some cases, available water quality and flow data are not

adequate to establish criteria. Criteria in these cases are established on the basis of the best information available from water bodies that are similar in hydrology, water quality, and physical configuration.

3. General and numeric water quality criteria may be modified to take into account site-specific, local conditions. Whenever data acquired from the sources named in LAC 33:IX.1113.A.2 or other sources indicate that criteria should be modified, the department will develop and recommend revised site-specific criteria. The revised criteria will be submitted to the EPA for approval and promulgated in accordance with established procedures including, but not limited to, those in the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

#### **B. - B.4. ...**

5. Toxic Substances. No substances shall be present in the waters of the state or the sediments underlying said waters in quantities that alone or in combination will be toxic to human, plant, or animal life or significantly increase health risks due to exposure to the substances or consumption of contaminated fish or other aquatic life. The numeric criteria (LAC 33:IX.1113.C.6) specify allowable concentrations in water for several individual toxic substances to provide protection from the toxic effects of these substances. Requirements for the protection from the toxic effects of other toxic substances not included in the numeric criteria and required under the general criteria are described in LAC 33:IX.1121.

#### **6. - 13. ...**

C. Numeric Criteria. Numeric criteria identified in LAC 33:IX.1123, Table 3, apply to the specified water bodies, and to their tributaries, distributaries, and interconnected streams and water bodies contained in the water management subsegment if they are not specifically named therein, unless unique chemical, physical, and/or biological conditions preclude the attainment of the criteria. In those cases, natural background levels of these conditions may be used to establish site-specific water quality criteria. Those water bodies officially approved and designated by the state and EPA as intermittent streams, man-made water bodies, or naturally dystrophic waters may be excluded from some or all numeric criteria as stated in LAC 33:IX.1109. Although naturally occurring variations in water quality may exceed criteria, water quality conditions attributed to human activities must not exceed criteria when flows are greater than or at critical conditions (as defined in LAC 33:IX.1115.C).

#### **1. ...**

2. Chlorides, Sulfates, and Total Dissolved Solids. Numeric criteria for these parameters generally represent the arithmetic mean of existing data from the nearest sampling location plus three standard deviations. For estuarine and coastal marine waters subsegments in Table 3 that have no listed criteria (i.e., designated N/A), criteria will be established on a case-by-case basis using field determination of ambient conditions and the designated uses. For water bodies not specifically listed in the Numeric Criteria and Designated Uses Table, increases over background levels of chlorides, sulfates, and total dissolved solids may be permitted. Such increases will be permitted at the discretion of the department on a case-by-case basis and shall not cause in-stream concentrations to exceed 250, 250, and 500 mg/L

for chlorides, sulfates, and total dissolved solids, respectively, except where a use attainability analysis indicates that higher levels will not affect the designated uses. In permitting such increases, the department shall consider their potential effects on resident biota and downstream water bodies in addition to the background conditions. Under no circumstances shall an allowed increase over background conditions cause any numeric criteria to be exceeded in any listed water body or any other general or numeric criteria to be exceeded in either listed or unlisted water bodies.

3. - 5.c. ...

d. Oyster Propagation. The fecal coliform median shall not exceed 14 fecal coliforms per 100 mL, and not more than 10 percent of the samples shall exceed 43 fecal coliforms per 100 mL in those portions of the area most probably exposed to fecal contamination during the most unfavorable hydrographic and pollution conditions.

6. Toxic Substances. Numeric criteria for specific toxic substances are listed in Table 1.

a. Numeric criteria for specific toxic substances are mostly derived from the following publications of the Environmental Protection Agency: Water Quality Criteria, 1972 (commonly referred to as the "Blue Book"; Quality Criteria for Water, 1976 (commonly referred to as the "Red Book"; Ambient Water Quality Criteria, 1980 (EPA 440/5-80); Ambient Water Quality Criteria, 1984 (EPA 440/5-84-85); and Quality Criteria for Water, 1986—with updates (commonly referred to as the "Gold Book"). Natural

background conditions, however, are also considered. These toxic substances are selected for criteria development because of their known or suspected occurrence in Louisiana waters and potential threat to attainment of designated water uses.

b. The criteria for protection of aquatic life are based on acute and chronic concentrations in fresh and marine waters (see LAC 33:IX.1105) as specified in the EPA criteria documents and are developed primarily for attainment of the fish and wildlife propagation use. Where a specific numeric criterion is not derived in EPA criteria documents, a criterion is developed by applying an appropriate application factor for acute and chronic effects to the lowest LC50 value for a representative Louisiana species. The application of either freshwater toxics criteria or marine toxics criteria in brackish waters will be determined by the average salinity of the water body (see LAC 33:IX.1105). In cases where the average salinity is 2 parts per thousand or greater and less than 10 parts per thousand, the more stringent criteria will be used unless an alternative site-specific criterion is developed (as described in EPA-822-R-02-047, November 2002).

c. - e. ...

f. The use of clean techniques may be required to definitively assess ambient levels of some pollutants (e.g., EPA Method 1669 for metals) or to assess such pollutants when numeric or narrative water quality criteria are not being attained. *Clean techniques* are defined in LAC 33:IX.1105.

**Table 1**  
**Numeric Criteria for Specific Toxic Substances**  
**[In micrograms per liter (µg/L)]**

Toxic Substance Chemical Abstracts Service (CAS) Registry Number	Aquatic Life Protection						Human Health Protection	
	Freshwater		Marine Water		Brackish Water		Drinking Water Supply <sup>1</sup>	Non-Drinking Water Supply <sup>2</sup>
	Acute	Chronic	Acute	Chronic	Acute	Chronic		
Aldrin309-00-2	3.00	--	1,300	--	1,300	--	4x10 <sup>-5</sup>	4x10 <sup>-5</sup>
Benzene 71-43-2	2,249	1,125	2,700	1,350	2,249	1,125	0.58	6.59
Benidine 92-87-5	250	125	--	--	250	125	8x10 <sup>-5</sup>	1.7x10 <sup>-4</sup>
Bromodichloromethane 75-27-4	--	--	--	--	--	--	0.52	6.884
Bromoform (Tribromomethane) 75-25-2	2,930	1,465	1,790	895	1,790	895	3.9	34.7
Carbon Tetrachloride (Tetrachloromethane) 56-23-5	2,730	1,365	15,000	7,500	2,730	1,365	0.22	1.2
Chlordane 57-74-9	2.40	0.0043	0.090	0.0040	0.090	0.0040	1.9x10 <sup>-4</sup>	1.9x10 <sup>-4</sup>
Chloroform (Trichloromethane) 67-66-3	2,890	1,445	8,150	4,075	2,890	1,445	5.3	70
2-Chlorophenol 95-57-8	258	129	--	--	258	129	0.10	126.4
3-Chlorophenol 108-43-0	--	--	--	--	--	--	0.10	--
4-Chlorophenol 106-48-9	383	192	535	268	383	192	0.10	--
Cyanide 57-12-5	45.9	5.4	1.0	--	1.0	--	663.8	12,844

<b>Table 1</b> <b>Numeric Criteria for Specific Toxic Substances</b> <b>[In micrograms per liter (µg/L)]</b>								
<b>Toxic Substance</b> <b>Chemical Abstracts Service (CAS)</b> <b>Registry Number</b>	<b>Aquatic Life Protection</b>						<b>Human Health Protection</b>	
	<b>Freshwater</b>		<b>Marine Water</b>		<b>Brackish Water</b>		<b>Drinking Water Supply<sup>1</sup></b>	<b>Non-Drinking Water Supply<sup>2</sup></b>
	<b>Acute</b>	<b>Chronic</b>	<b>Acute</b>	<b>Chronic</b>	<b>Acute</b>	<b>Chronic</b>		
DDE 72-55-9	52.5	10.5000	0.700	0.1400	0.700	0.1400	1.9x10 <sup>-4</sup>	1.9x10 <sup>-4</sup>
DDT 50-29-3	1.10	0.0010	0.130	0.0010	0.130	0.0010	1.9x10 <sup>-4</sup>	1.9x10 <sup>-4</sup>
Dibromochloromethane 124-48-1	--	--	--	--	--	--	0.39	5.08
1,2-Dichloroethane (EDC) 107-06-2	11,800	5,900	11,300	5,650	11,300	5,650	0.36	6.8
1,1-Dichloroethylene 75-35-4	1,160	580	22,400	11,200	1,160	580	0.05	0.58
2,4-Dichlorophenoxyacetic acid (2,4-D) 94-75-7	--	--	--	--	--	--	100.00	--
2,3-Dichlorophenol 576-24-9	--	--	--	--	--	--	0.04	--
2,4-Dichlorophenol 120-83-2	202	101	--	--	202	101	0.30	232.6
2,5-Dichlorophenol 583-78-8	--	--	--	--	--	--	0.50	--
2,6-Dichlorophenol 87-65-0	--	--	--	--	--	--	0.20	--
3,4-Dichlorophenol 95-77-2	--	--	--	--	--	--	0.30	--
1, 3-Dichloropropene 542-75-6	606	303	79	39.5	79	39.5	0.33	5.51
Dieldrin 60-57-1	0.2374	0.0557	0.710	0.0019	0.2374	0.0019	5x10 <sup>-5</sup>	5x10 <sup>-5</sup>
Endosulfan <sup>7</sup> 115-29-7	0.22	0.0560	0.034	0.0087	0.034	0.0087	0.47	0.64
Endrin 72-20-8	0.0864	0.0375	0.037	0.0023	0.037	0.0023	0.26	0.26
Ethylbenzene 100-41-4	3,200	1,600	8,760	4,380	3,200	1,600	247	834
Heptachlor 76-44-8	0.52	0.0038	0.053	0.0036	0.053	0.0036	7x10 <sup>-5</sup>	7x10 <sup>-5</sup>
Hexachlorobenzene 118-74-1	--	--	--	--	--	--	2.5x10 <sup>-4</sup>	2.5x10 <sup>-4</sup>
Hexachlorobutadiene <sup>3</sup> 87-68-3	5.1	1.02	1.6	0.32	1.6	0.32	0.09	0.11
Hexachlorocyclohexane (gamma BHC; Lindane) 58-89-9	5.30	0.21	0.160	--	0.160	--	0.11	0.20
Methyl chloride (Chloromethane) 74-87-3	55,000	27,500	27,000	13,500	27,000	13,500	--	--
Methylene chloride (Dichloromethane) 75-09-2	19,300	9,650	25,600	12,800	19,300	9,650	4.4	87
Phenol (Total) <sup>4</sup> 108-95-2	700	350	580	290	580	290	5.00	50.0
Polychlorinated Biphenyls, Total <sup>6</sup> (PCBs) 1336-36-3	2.00	0.0140	10.000	0.0300	2.00	0.0140	5.59x10 <sup>-5</sup>	5.61x10 <sup>-5</sup>
TDE (DDD) 72-54-8	0.03	0.0060	1.250	0.2500	0.03	0.0060	2.7x10 <sup>-4</sup>	2.7x10 <sup>-4</sup>
2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) <sup>5</sup> 1746-01-6	--	--	--	--	--	--	0.71x10 <sup>-6</sup>	0.72x10 <sup>-6</sup>
1,1,2,2-Tetrachloroethane 79-34-5	932	466	902	451	902	451	0.16	1.8
Tetrachloroethylene 127-18-4	1,290	645	1,020	510	1,020	510	0.65	2.5
Toluene 108-88-3	1,270	635	950	475	950	475	6,100	46,200
Toxaphene 8001-35-2	0.73	0.0002	0.210	0.0002	0.210	0.0002	2.4x10 <sup>-4</sup>	2.4x10 <sup>-4</sup>
1,1,1-Trichloroethane 71-55-6	5,280	2,640	3,120	1,560	3,120	1,560	200.0	--
1,1,2-Trichloroethane 79-00-5	1,800	900	--	--	1,800	900	0.56	6.9
Trichloroethylene 79-01-6	3,900	1,950	200	100	200	100	2.8	21

<b>Table 1</b> <b>Numeric Criteria for Specific Toxic Substances</b> <b>[In micrograms per liter (µg/L)]</b>								
Toxic Substance Chemical Abstracts Service (CAS) Registry Number	Aquatic Life Protection						Human Health Protection	
	Freshwater		Marine Water		Brackish Water		Drinking Water Supply <sup>1</sup>	Non-Drinking Water Supply <sup>2</sup>
	Acute	Chronic	Acute	Chronic	Acute	Chronic		
2-(2,4,5-Trichlorophenoxy) propionic acid (2,4,5-TP; Silvex) 93-72-1	--	--	--	--	--	--	10.00	--
Vinyl Chloride (Chloroethylene) 75-01-4	--	--	--	--	--	--	2.37x10 <sup>-2</sup>	0.45

\* \* \*

<sup>6</sup> Total refers to the sum of the Aroclors as stated in 40 CFR 136.3.

<sup>7</sup> Endosulfan is the sum of Endosulfan α and Endosulfan β.

<b>Table 1A</b> <b>Numeric Criteria for Metals and Inorganics</b> <b>[In micrograms per liter (µg/L) or parts per billion (ppb)]</b>				
Toxic Substance Chemical Abstracts Service (CAS) Registry Number	Aquatic Life Protection			Human Health Protection
	Freshwater	Marine Water	Brackish Water <sup>d</sup>	Drinking Water Supply <sup>e</sup>
Ammonia (in mg TAN/L) <sup>g</sup> 7664-41-7	Acute: $0.7249 \times \left( \frac{0.00781}{1 + 10^{0.000124 - \text{pH}}} + \frac{2.6222}{2 + 10^{0.017 - \text{pH}}} \right) \times \min(51.89, 28.12 \times 10^{0.000044(\text{pH} - 7)})$ Chronic: $0.8876 \times \left( \frac{0.00781}{1 + 10^{0.000124 - \text{pH}}} + \frac{2.6222}{2 + 10^{0.017 - \text{pH}}} \right) \times (2.126 \times 10^{0.000044(\text{pH} - 7)})$	--	--	--
Arsenic <sup>a</sup> 7440-38-2	Acute: 339.8 Chronic: 150	Acute: 69 Chronic: 36	Acute: 69 Chronic: 36	10
Cadmium <sup>a,b</sup> 7440-43-9	Acute: $e^{(1.1280[\ln(\text{hardness})] - 1.6774)} \times \text{CF}_1$ Chronic: $e^{(0.7852[\ln(\text{hardness})] - 3.4900)} \times \text{CF}_2$	Acute: 45 Chronic: 10	Acute: * Chronic: *	10
Chromium III (Tri) <sup>a,b</sup> 16065-83-1	Acute: $e^{(0.8190[\ln(\text{hardness})] + 3.6880)} \times 0.316$ Chronic: $e^{(0.8190[\ln(\text{hardness})] + 1.5610)} \times 0.86$	Acute: 515 Chronic: 103	Acute: * Chronic: *	50
Chromium VI (Hex) <sup>a</sup> 18540-29-9	Acute: 16 Chronic: 11	Acute: 1,100 Chronic: 50	Acute: 16 Chronic: 11	50
Copper <sup>a,b,h</sup> 7440-50-8	Acute: $e^{(0.9422[\ln(\text{hardness})] - 1.3844)} \times 0.960$ Chronic: $e^{(0.8545[\ln(\text{hardness})] - 1.3860)} \times 0.960$	Acute: 3.63 Chronic: 3.63	Acute: * Chronic: *	1,000
Lead <sup>a,b</sup> 7439-92-1	Acute: $e^{(1.2730[\ln(\text{hardness})] - 1.4600)} \times \text{CF}_3$ Chronic: $e^{(1.2730[\ln(\text{hardness})] - 4.7050)} \times \text{CF}_3$	Acute: 209 Chronic: 8.08	Acute: * Chronic: *	50
Mercury 7439-97-6	Acute: 2.04 <sup>c</sup> Chronic: 0.012 <sup>f</sup>	Acute: 2 <sup>c</sup> Chronic: 0.025 <sup>f</sup>	Acute: 2 <sup>c</sup> Chronic: 0.012 <sup>f</sup>	2.0
Nickel <sup>a,b</sup> 7440-02-0	Acute: $e^{(0.8460[\ln(\text{hardness})] + 3.3612)} \times 0.998$ Chronic: $e^{(0.8460[\ln(\text{hardness})] + 1.1645)} \times 0.997$	Acute: 74 Chronic: 8.2	Acute: * Chronic: *	--
Zinc <sup>a,b</sup> 7440-66-6	Acute: $e^{(0.8473[\ln(\text{hardness})] + 0.8604)} \times 0.978$ Chronic: $e^{(0.8473[\ln(\text{hardness})] + 0.7614)} \times 0.986$	Acute: 90 Chronic: 81	Acute: * Chronic: *	5,000
Conversion Factor (CF)	CF <sub>1</sub> calculated as: 1.136672-[ln (hardness)(0.041838)] CF <sub>2</sub> calculated as: 1.101672-[ln (hardness)(0.041838)] CF <sub>3</sub> calculated as: 1.46203-[ln (hardness)(0.145712)]			

\* For hardness-dependent criteria, values are calculated using average hardness (mg/L CaCO<sub>3</sub>) from two-year data compilations contained in the latest Louisiana Water Quality Data Summary or other comparable data compilations or reports, as described in LAC 33:IX.1113.C.6.

a Freshwater and saltwater metals criteria are expressed in terms of the dissolved metal in the water column. The standard was calculated by multiplying the previous water quality criteria by a conversion factor. The conversion factor represents the EPA-recommended conversion factors found in EPA-822-R-02-047, November 2002.

b Hardness-dependent criteria for freshwater are based on the natural logarithm formulas multiplied by conversion factors for acute and chronic

protection. The minimum and maximum hardness values used for criteria calculation are 25 mg/L and 400 mg/L CaCO<sub>3</sub>, as specified in 40 CFR 131.36.

c Applies to surface water bodies designated as drinking water supply and also protects for primary and secondary contact recreation and fish consumption.

d According to LAC 33:IX.1113.C.6.d, the most stringent criteria (freshwater or marine) will be used.

e Conversion factor is from: Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria, October 1, 1993. Factors were expressed to two decimal places.

f It is not appropriate to apply a conversion factor to the chronic value for mercury since it is based on mercury residues in aquatic organisms rather than toxicity.

g For temperature (T, in °C) and pH dependent criteria, values are calculated using the temperature and pH measured at the time of sampling in coordination with the ambient water quality monitoring program.

h Upon request the administrative authority may grant the use of the Biotic Ligand Model for deriving site-specific copper criteria utilizing the procedures identified in EPA's Aquatic Life Ambient Freshwater Quality Criteria - Copper (2007), EPA-822-R-07-001. Site-specific criteria derived using the Biotic Ligand Model are new and revised water quality standards that require EPA review under section 303(c) of the Clean Water Act.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2402 (December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30:1474 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:829 (May 2007), LR 35:446 (March 2009), amended by the Office of the Secretary, Legal Division, LR 42:736 (May 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1188 (September 2019), LR 46:

### **§1115. Application of Standards**

#### **A. Background**

1. The water quality standards set forth in this Chapter are the foundation for a range of programs that establish water quality goals for water body segments thereby ensuring suitable aquatic ecosystems. Water quality standards are derived for individual water segments on the basis of the designated use or uses of the segment and the natural qualities of the waters.

2. An established water quality criterion represents the general or numeric concentration limit or characteristic of a constituent in a water body segment that is allowed by the state. For some toxic substances, however, criteria provide both acute and chronic limits for the protection of aquatic life in fresh and marine waters, and separate limits for the protection of human health. Criteria apply at all times, except where natural conditions cause them to be exceeded or where specific exemptions in the standards apply. Water uses, pollution sources, natural conditions, and the water quality criteria are all considered in the department's determination of appropriate permit limits for each wastewater discharge to a water body.

3. The difference between an ambient concentration and a water quality criterion should not be construed as the amount of a constituent that can be discharged. The antidegradation statement requires that all waters which exceed the water quality standards be maintained at their existing high quality, which can be lowered only after demonstrating that allowing lower water quality is necessary to accommodate important economic and or social development in the area in which the waters are located. In addition, before a lowering of high water quality can be allowed, an analysis of alternatives shall be performed to demonstrate that the lowering of high water quality is necessary. More stringent requirements apply to those waters designated as outstanding natural resource waters, as described in LAC 33:IX.1109.A.3.

B. - C.1. ...

2. Mixing zones are exempted from general and numeric criteria as specified in LAC 33:IX.1113, except as required in Paragraph C.5 of this Section. The waters outside of mixing zones must meet all the standards for that particular body of water. For toxic substances, this requires meeting chronic aquatic life criteria beginning at the edge of the mixing zone.

3. - 5.b. ...

c. materials in concentrations that will cause acute toxicity to aquatic life. Acute toxicity refers to aquatic life lethality or other deleterious effects caused by the passage through a mixing zone of migrating fish moving up or downstream, or by the passage through a mixing zone of less mobile forms such as zooplankton that drift through the mixing zone. Numeric acute criteria or other acute quantitative limits for toxic substances will be applied in the mixing zone to protect aquatic life from acute toxicity.

6. - Table 2b. ...

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2403 (December 1999), LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:831 (May 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

### **§1119. Implementation Plan for Antidegradation Policy**

#### **A. - B.2. ...**

a. The state establishes the water quality standards specified in this Chapter to reflect the goals for individual water bodies and provide the legal basis for antidegradation and for water pollution control. This Chapter also defines and designates water uses and criteria to protect those uses.

B.2.b. - C.3. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2074(B)(1).

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### **§1121. Regulation of Toxic Substances Based on the General Criteria**

#### **A. Introduction**

1. The water quality standards in this Chapter provide for the protection of human, plant, and animal life from the deleterious effects of toxic substances. The general criteria (LAC 33:IX.1113.B.5), in particular, require that state waters be free from the effects of toxic substances. This requirement is especially applicable to those toxic substances for which no numeric criteria are established.

2. The following methods are developed to protect state waters from the effects of toxic substances as required



under the general criteria and where no numeric criteria exist. The methods follow the permitting policies of the department. The resulting permit (effluent) limitations imposed on discharges prevent toxic in-stream conditions as required under the general criteria.

B. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2404 (December 1999), LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:832 (May 2007), LR 33:2163 (October 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:

### §1123. Numeric Criteria and Designated Uses

A. - A.2. ...

\*\*\*

B. Explanation of Water Body Code Number. The water body subsegment number and unique water body identification code are designated as follows:

AABBCC

where:

AA = Water Quality Management Basin Number

BB = Segment Number

CC = Subsegment Number

Example:

090207 = Water Body Subsegment and Identification Code for Middle Pearl River and West Middle Pearl River

where:

09 = Pearl River Management Basin

0902 = Segment 0902 of the Pearl River Management Basin

090207 = Subsegment 090207 of Pearl River Management Basin Segment 02

### C. Numeric Criteria Unit Definitions

1. Parameter Abbreviations. The following abbreviations of water quality parameters are used in Table 3 under the subheading "Numeric Criteria."

\*\*\*

### 2. Bacterial Criteria (BAC)

a. The code numbers associated with the following designated uses are used in Table 3 under the Numeric Criteria subheading "BAC."

\*\*\*

b. The code number identified under the Numeric Criteria subheading "BAC" in Table 3 represents the most stringent bacterial criteria that apply to each individual subsegment. Where applicable, additional bacterial criteria also apply, depending on the designated uses of the subsegment and the geographic location of the subsegment. The specified numeric bacterial criteria for each designated use listed in this Paragraph can be found in LAC 33:IX.1113.C.

D. - E. ...

Table 3. Numeric Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numeric Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
Atchafalaya River Basin (01)									
* * *									
010401	East Atchafalaya Basin and Morganza Floodway South to Interstate 10 Canal	A B C	65	70	5.0	6.5-8.5	1	33	440
010501	Lower Atchafalaya Basin Floodway—From Whiskey Bay Pilot Channel at mile 54 to US Highway 90 bridge in Morgan City; includes Grand Lake and Six-Mile Lake	A B C D	65	70	5.0	6.5-8.5	1	33	440
* * *									
010801	Atchafalaya River—From ICWW south of Morgan City to Atchafalaya Bay; includes Sweetbay Lake and Bayou Shaffer	A B C	500	150	5.0	6.5-9.0	1	35	1,000
010802	Wax Lake Outlet—From ICWW to Atchafalaya Bay; includes Wax Lake	A B C	500	150	5.0	6.5-9.0	1	35	1,000
010803	Intracoastal Waterway—From Bayou Boeuf Lock to Bayou Sale; includes Wax Lake Outlet to US Highway90	A B C	65	70	5.0	6.0-8.5	1	32	440
* * *									
Barataria Basin (02)									
* * *									
020201	Bayou Des Allemands—From Lac Des Allemands to US Highway 90 (Scenic)	A B C G	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
* * *									

Table 3. Numeric Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numeric Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
020301	Bayou Des Allemands—From US Highway 90 to Lake Salvador (Scenic)	A B C G	600	100	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	1,320
***									
020303	Lake Cataouatche and Tributaries	A B C	500	150	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,000
020304	Lake Salvador	A B C	600	100	3.3 April-Sept.; 5.0 Oct.-Mar.	6.0-8.5	1	32	1,320
020305	Luling Wetland—Forested wetland located 1.8 miles south of US Highway 90 at Luling, east of the Luling wastewater treatment pond, bordered by Cousin Canal to the west and Louisiana Cypress Lumber Canal to the south	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
***									
020903	Barataria Waterway—From Bayou Rigolettes to Grand Bayou (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1 [25]	35	N/A
***									
Calcasieu River Basin (03)									
030101	Calcasieu River—From headwaters to La. Highway 8	A B C F	65	35	5.0	6.0-8.5	1	32	225
030102	Calcasieu River—From La. Highway 8 to the Rapides-Allen Parish line (Scenic)	A B C F G	65	35	5.0	6.0-8.5	1	32	225
030103	Calcasieu River—From Rapides-Allen Parish line to Marsh Bayou (Scenic) [10]	A B C F G-[10]	65	35	5.0	6.0-8.5	1	32	225
030104	Mill Creek—From headwaters to Calcasieu River	A B C	60	60	5.0	6.0-8.5	1	32	250
030105	Kinder Ditch—From confluence of unnamed tributary with Bayou Serpent to confluence with Calcasieu River	B C	65	35	3.0	6.0-8.5	1	32	225
***									
030401	Calcasieu River—From Moss Lake to the Gulf of Mexico; includes Ship Channel, West Cove and Monkey Island Loop (Estuarine)	A B C E	N/A	N/A	4.0	6.0-8.5	4 [25]	35	N/A
***									
030506	Bundicks Creek—From headwaters to Bundicks Lake (Scenic)	A B C	20	20	5.0	6.0-8.5	1	30	150
***									
030508	Bundicks Creek—From Bundicks Lake to Whiskey Chitto Creek (Scenic)	A B C	20	20	5.0	6.0-8.5	1	30	150
030601	Barnes Creek—From headwaters to Little Barnes Creek (Scenic)	B C	60	60	[2]	6.0-8.5	2	30	150
030602	Barnes Creek—From Little Barnes Creek to Calcasieu River (Scenic)	A B C	60	60	5.0	6.0-8.5	1	32	250
***									
030701	Bayou Serpent—From headwaters to Calcasieu River	A B C F	250	75	5.0	6.0-8.5	1	32	300

Table 3. Numeric Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numeric Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
* * *									
030802	Hickory Branch—From headwaters to West Fork Calcasieu River (Scenic)	A B C F	250	75	5.0	6.0-8.5	1	32	500
030803	Beckwith Creek—From headwaters to West Fork Calcasieu River (Scenic)	A B C F	25	25	5.0	6.0-8.5	1	32	100
* * *									
030806	Houston River—From Bear Head Creek at La. Highway 12 to West Fork Calcasieu River	A B C F	250	75	[3]	6.0-8.5	1	32	500
030807	Bear Head Creek—From headwaters to Houston River at La. Highway 12	A B C	250	75	5.0	6.0-8.5	1	32	500
030808	Houston River Canal—From 1 mile west of La. Highway 388 to its terminuses at Mossville and the Houston River	A B C D F	250	75	[3]	6.0-8.5	1	32	500
* * *									
031002	Intracoastal Waterway—From Calcasieu River Basin western boundary to Calcasieu Ship Channel; includes Old Canal (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1 [25]	35	N/A
031101	Intracoastal Waterway—From Calcasieu River to Creole Canal at Gibbstown	A B C	250	75	5.0	6.5-9.0	1	32	500
* * *									
Lake Pontchartrain Basin (04)									
040101	Comite River, Comite Creek, and Little Comite Creek—From Mississippi state line to Wilson-Clinton Highway	A B C	25	10	5.0	6.0-8.5	1	32	150
* * *									
040305	Colyell Bay; includes Colyell Creek and Middle Colyell Creek—From Hood Road to Amite River	A B C	25	10	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	150
* * *									
040401	Blind River—From Amite River Diversion Canal to Lake Maurepas (Scenic)	A B C G	250	75	2.3 Mar.-Nov.; 4.0 Dec.-Feb. [9]	6.0-8.5	1	30	500
* * *									
040502	Tickfaw River—From La. Highway 42 to Lake Maurepas	A B C	10	5	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	30	55
* * *									
040506	Blood River—From headwaters to George White Road	A B C	10	5	5.0	6.0-8.5	1	30	55
* * *									
040604	South Slough; includes Anderson Canal and Interstate Highway 55 borrow pit canal to North Pass	A B C	30	20	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	30	150
040605	Mississippi Bayou and associated canals; includes Dutch Bayou, Reserve Relief Canal and Hope Canal	A B C	1,600	200	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	3,000
* * *									

Table 3. Numeric Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numeric Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
040607	South Slough Wetland—Forested freshwater and brackish marsh bounded to the north by South Slough, west by Interstate Highway 55 borrow pit canal, and south by North Pass	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
***									
040704	Chappeeela Creek—From headwaters to Tangipahoa River	A B C G	20	20	5.0	6.0-8.5	1	30	140
***									
040802	Tchefuncte River—From US Highway 190 to Bogue Falaya River; includes tributaries (Scenic)	A B C G	20	10	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	30	110
***									
040806	East Tchefuncte Marsh Wetland—Freshwater and brackish marsh, bounded on the south by Lake Pontchartrain, west by Tchefuncte River, north by La. Highway 22, and east by Sanctuary Ridge	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
040807	Ponchitolawa Creek—From headwaters to US Highway 190	A B C	850	135	5.0	6.0-8.5	1	30	1,850
***									
041001	Lake Pontchartrain—West of US Highway 11 bridge (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1 [25]	32	N/A
***									
041802	Bayou Chaperon (Scenic) (Estuarine)	A B C G	N/A	N/A	4.0	6.5-9.0	1 [25]	35	N/A
***									
041901	Mississippi River Gulf Outlet (MRGO)—From ICWW to MRGO closure structure at mile 23.8	A B C E	N/A	N/A	5.0	6.5-9.0	4 [25]	35	N/A
***									
Mermentau River Basin (05)									
***									
050402	Lake Arthur and Lower Mermentau River to ICWW	A B C	90	30	5.0	6.0-8.5	1	32	260
***									
050601	Lacassine Bayou—From headwaters to ICWW	A B C F	90	10	[16]	6.0-8.5	1	32	400
***									
050802	Big Constance Lake (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1 [25]	35	N/A
***									
Vermilion-Teche River Basin (06)									
***									
060201	Bayou Cocodrie—From US Highway 167 to Bayou Boeuf-Cocodrie Diversion Canal (Scenic)	A B C G	45	35	[19]	6.0-8.5	1	32	100
***									
060210	Bayou Carron—From headwaters to Little Bayou Teche	A B C	40	30	5.0	6.0-8.5	1	32	220
***									
060212	Chatlin Lake Canal and Bayou DuLac—From Alexandria to Bayou des Glaives Diversion Canal; includes a portion of Bayou des Glaives	A B C	45	35	5.0	6.0-8.5	1	32	100
***									
060701	Tete Bayou—From headwaters to Lake Fausse Point	A B C	80	50	5.0	6.0-8.5	1	32	350
060702	Lake Fausse Point and Dauterive Lake	A B C D	80	50	5.0	6.0-8.5	1	32	350

Table 3. Numeric Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numeric Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
060703	Bayou Du Portage—From headwaters to Dauterive Lake	A B C	80	50	5.0	6.0-8.5	1	32	350
060801	Vermilion River—From headwaters to La. Highway 3073 bridge	A B C F	230	70	5.0	6.0-8.5	1	32	440
060802	Vermilion River—From La. Highway 3073 bridge to ICWW	A B C F	230	70	[6]	6.0-8.5	1	32	440
* * *									
060805	Breaux Bridge Swamp—Forested wetland in St. Martin Parish, 1/2 mile southwest of Breaux Bridge, southeast of La. Highway 94, west of Bayou Teche, east of Vermilion River, and north of Evangeline and Ruth Canals; also called Cyprière Perdue Swamp	B C	[5]	[5]	[5]	[5]	2	[5]	[5]
060806	Cypress Island Coulee Wetland—Forested wetland located in St. Martin Parish, 2 miles west of St. Martinville, 1/2 mile north of La. Highway 96, west of Bayou Teche, and east of Vermilion River	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
060807	Cote Gelee Wetland—Forested wetland located in Lafayette Parish, 2 miles east of Broussard, 2 miles northeast of US Highway 90, and west of Bayou Tortue	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
* * *									
060902	Bayou Carlin—From Lake Peigneur to Bayou Tigre; also called Delcambre Canal (Estuarine)	A B C	N/A	N/A	4.0	6.5-9.0	1 [25]	35	N/A
* * *									
Mississippi River Basin (07)									
* * *									
070504	Monte Sano Bayou—From US Highway 61 to Mississippi River [7], [8]	B L	[7]	[7]	3.0	6.0-9.0	1	35 [8]	[7]
* * *									
Ouachita River Basin (08)									
* * *									
080401	Bayou Bartholomew—From Arkansas state line to Ouachita River; also known as Bayou Desiard and Lake Bartholomew (Scenic to Dead Bayou)	A B C G	55	35	5.0	6.0-8.5	1	32	420
* * *									
080801	South Cheniere Creek—From headwaters to Cheniere Brake Lake	A B C	25	25	5.0	6.0-8.5	1	32	100
* * *									
080904	Bayou Lafourche—From headwaters to Boeuf River near Columbia	A B C	500	200	5.0	6.0-8.5	1	32	1,500
* * *									
081201	Tensas River—From headwaters to confluence with Ouachita River; includes Tensas Bayou	A B C	45	30	5.0	6.0-8.5	1	32	500
* * *									
081301	Little River—From dam at Archie to Ouachita River	A B C	95	10	5.0	6.0-8.5	1	32	265
* * *									
081601	Little River—From Castor Creek-Dugdemonia River confluence to Bear Creek (Scenic)	A B C G	250	500	5.0	6.0-8.5	1	33	1,000

Table 3. Numeric Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numeric Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
081602	Little River—From Bear Creek to Catahoula Lake (Scenic)	A B C G	50	75	5.0	6.0-8.5	1	33	260
* * *									
081605	Little River—From Catahoula Lake to dam at Archie	A B C	50	75	5.0	6.0-8.5	1	33	260
* * *									
081612	Georgetown Reservoir	A B C D G	250	500	5.0	6.0-8.5	1	33	1,000
Pearl River Basin (09)									
* * *									
090102	East Pearl River—From Holmes Bayou to Interstate 10	A B C	20	15	5.0	6.0-8.5	1	32	180
090103	East Pearl River—From Interstate 10 to Lake Borgne (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1 [25]	35	N/A
* * *									
090202	West Pearl River—From Holmes Bayou to The Rigolets; includes east and west mouths (Scenic)	A B C G	90	20	5.0	6.0-8.5	1	32	235
090203	Lower Bogue Chitto—From Pearl River Navigation Canal to Wilson Slough	A B C	15	10	5.0	6.0-8.5	1	32	105
090204	Pearl River Navigation Canal—From below Lock No. 3 to West Pearl River	A B C	15	10	5.0	6.0-8.5	1	32	105
090205	Wilson Slough and Bradley Slough—From Pearl River to West Pearl River (Scenic)	A B C G	15	10	5.0	6.0-8.5	1	32	105
090207	Middle Pearl River and West Middle Pearl River—From West Pearl River to Little Lake	A B C	90	20	5.0	6.0-8.5	1	32	235
090208	Little Lake (Estuarine)	A B C	N/A	N/A	4.0	6.0-8.5	1 [25]	32	N/A
090209	Morgan River—From Porters River to West Pearl River (Scenic)	A B C G	90	20	5.0	6.0-8.5	1	32	235
* * *									
090503	Little Silver Creek—From headwaters to Big Silver Creek	A B C	15	10	5.0	6.0-8.5	1	35	105
* * *									
Red River Basin (10)									
100101	Red River—From Arkansas state line to US Highway 165 in Alexandria	A B C D F	185	110	5.0	6.0-8.5	1	34	780
100201	Red River—From US Highway 165 to Old River Control Structure Outflow Channel	A B C	185	110	5.0	6.0-8.5	1	34	780
* * *									
100301	Black Bayou—From Texas state line to La. Highway 1 at Black Bayou Lake	A B C F	250	25	5.0	6.0-8.5	1	33	500
100302	Black Bayou Lake—From La. Highway 1 to spillway	A B C	250	25	5.0	6.0-8.5	1	33	500
* * *									
100601	Bayou Pierre—From headwaters to Rolling Lake Bayou	A B C F	150	75	5.0	6.0-8.5	1	32	500
* * *									
100606	Bayou Pierre—From Rolling Lake Bayou to Red River	A B C D F	150	75	5.0	6.0-8.5	1	32	500
* * *									
100704	Kepler Creek—From headwaters to Kepler Creek Lake	A B C F	25	25	5.0	6.0-8.5	1	32	79
100705	Kepler Creek Lake	A B C F	25	25	5.0	6.0-8.5	1	32	79
100706	Kepler Creek—From Kepler Creek Lake to Black Lake Bayou	A B C F	25	25	5.0	6.0-8.5	1	32	79
* * *									

Table 3. Numeric Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numeric Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
100902	Nantaches Lake	A B C F	25	25	5.0	6.0-8.5	1	32	100
101001	Sibley Lake	A B C D F	25	25	5.0	6.0-8.5	1	32	100
* * *									
101507	Old Saline Bayou—From headwaters to control structure at Saline Bayou	A B C	45	10	5.0	6.0-8.5	1	32	165
* * *									
101605	Bayou Cocodrie—From Lake Concordia to La. Highway 15	A B C	250	75	5.0	6.0-8.5	1	32	500
* * *									
101607	Bayou Cocodrie—From La. Highway 15 to Little Cross Bayou	B L	250	75	[13]	6.0-8.5	2	32	500
Sabine River Basin (11)									
* * *									
110401	Bayou Toro—From headwaters to La. Highway 473	A B C	25	25	5.0	6.0-8.5	1	32	150
110402	Bayou Toro—From La. Highway 473 to Sabine River	A B C	25	25	5.0	6.0-8.5	1	32	150
* * *									
Terrebonne Basin (12)									
* * *									
120103	Bayou Choctaw—From Bayou Poydras to ICWW	A B C	250	75	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	500
120104	Bayou Grosse Tete—From headwaters to ICWW	A B C	25	25	2.3 Mar.-Nov.; 5.0 Dec.-Feb.	6.0-8.5	1	32	200
* * *									
120503	Bayou Petit Caillou—From Bayou Terrebonne to La. Highway 24 bridge	A B C E	500	150	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4	32	1,000
120504	Bayou Petit Caillou—From La. Highway 24 bridge to Boudreaux Canal (Estuarine)	A B C E	N/A	N/A	3.8 April-Aug.; 5.0 Sept.-Mar.	6.0-9.0	4 [25]	32	N/A
* * *									
120507	Bayou Chauvin—From ICWW to Lake Boudreaux (Estuarine)	A B C	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	1 [25]	32	N/A
* * *									
120604	Bayou Blue—From Company Canal to Grand Bayou Canal	A B C	445	105	3.8 April-Aug.; 5.0 Sept.-Mar.	6.5-9.0	1	32	1,000
* * *									
120705	Houma Navigation Canal—From 1 mile south of Bayou Grand Caillou to Terrebonne Bay (Estuarine)	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.5-9.0	4 [25]	35	N/A

Table 3. Numeric Criteria and Designated Uses									
A-Primary Contact Recreation; B-Secondary Contact Recreation; C-Fish And Wildlife Propagation; L-Limited Aquatic Life and Wildlife Use; D-Drinking Water Supply; E-Oyster Propagation; F-Agriculture; G-Outstanding Natural Resource Waters									
Code	Stream Description	Designated Uses	Numeric Criteria						
			CL	SO <sub>4</sub>	DO	pH	BAC	°C	TDS
* * *									
120709	Bayou Petit Caillou—From Houma Navigation Canal to Terrebonne Bay	A B C E	N/A	N/A	3.8 June-Aug.; 4.0 Sept.-May	6.0-9.0	4 [25]	32	N/A
* * *									

#### ENDNOTES:

[1]. - [4]. ...

[5] Designated Naturally Dystrophic Waters Segment. The following criteria are applicable:

[5].(a). - [25]....

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1130 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2405 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814, 1817 (September 2003), LR 30:1474 (July 2004), amended by the Office of Environmental Assessment, LR 30:2468 (November 2004), LR 31:918, 921 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:815, 816, 817 (May 2006), LR 33:832 (May 2007), LR 34:1901 (September 2008), LR 35:446 (March 2009), repromulgated LR 35:655 (April 2009), amended LR 36:2276 (October 2010) amended by the Office of the Secretary, Legal Division, LR 41:2603 (December 2015), LR 42:737 (May 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1178 (September 2019), 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 WQ097. Such comments must be received no later than February 4, 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 WQ097. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

#### Public Hearing

A public hearing will be held on January 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: Water Quality Standards Triennial Revision

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

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule changes which align state rules with federal regulations, update and clarify certain definitions, and make technical corrections, in accordance with federal regulations.

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

The proposed rule is not anticipated to have any impact on the revenues 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 as a result of the proposed rule.



#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the rule change.

Herman Robinson  
General Council  
1912#047

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

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

#### Procedure Manual (LAC 34:III.Chapter 1)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of RS 39:1410, The Division of Administration, Facility Planning and Control, hereby gives notice of its intent, to amend LAC 34:III.Chapter 1, Subchapter A. Procedure Manual. This change updates and clarifies the rules on budget, compensation, payments, contractual terms, and insurance for the designer's contracts. The requirements for sections regarding detailed technical responsibilities, however, have been deleted and relegated to the more appropriate procedure manual, which is published on Facility Planning and Control's website, and remains a part of the designer's contract. This Rule change, therefore, updates and clarifies the critical budget, compensation, and certain contractual aspects of the designer contract, which should remain within the administrative code, yet allows the technical sections to more easily adapt to required changes.

#### Title 34

### GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

#### Part III. Facility Planning and Control

#### Chapter 1. Capital Improvement Projects

#### Subchapter A. Designer Contracts

#### §101. Condition of the Contract

A. The following rules shall be a part and condition of the contract between owner and designer, herein referred to as the "contract."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006), LR 46:

#### §103. Definitions

*Available Funds for Construction (AFC)*—the budgeted amount of funds, established by the owner, available for awarding the construction contract(s).

*Consultants*—individuals or organizations engaged by the owner or the designer to provide professional consultant services complementing or supplementing the designer's services. As applicable, consultants shall be licensed to practice in accordance with laws of the state of Louisiana. The owner shall engage or have the designer furnish as part of the designer's services the services of consultants, which are deemed necessary for the project. Typical consultants are architects, landscape architects, civil, structural, mechanical,

and electrical engineers, and others required to provide the services required or implied by the scope of the project, compensation for which is included in designer's basic fee.

*Designer*—a person or organization professionally qualified and licensed to practice architecture, engineering, or landscape architecture in accordance with the laws of the state of Louisiana, who is to perform basic services for the project, as named in the contract.

*Owner*—the State of Louisiana, Office of the Governor, Division of Administration, the responsibilities of which shall be exercised by the Commissioner of Administration or the designated representative, the Office of Facility Planning and Control (FP&C).

*Project*—a Capital Outlay Project for which funds have been appropriated or other public government project for which funds are available, as specifically defined in the program attached to and stated in the contract between owner and designer.

*User Agency*—the agency, department, division, board or institution which will be the principal user of and for which the facility is being designed and constructed, as named in the contract. Where reference is made hereinafter to the *user agency*, it will refer to both the "umbrella" and "local" entities of the department, board, agency, division, etc. (Examples: The LSU Board of Supervisors and the Department of Health are "umbrella" using agencies and "local" using agencies such as LSU-Alexandria and Pinecrest Support and Services Center are under their respective jurisdiction and administration).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 46:

#### §105. Owner-User Agency Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006), repealed LR 46:

#### §107. Available Funds for Construction (AFC)

A. The available funds for construction (AFC) of the project as fixed by the owner shall be stated in the contract between owner and designer.

B. The designer shall be responsible for designing the project so that the base bid does not exceed the AFC. The use of any alternate bids must be pre-approved by the owner.

C.1. At the completion of the program completion phase, the designer shall determine whether the AFC is realistic for the project when compared with the completed program. At this point, or at any other submissions of the project's statement of probable cost (construction cost estimate) by the designer, if such statement of probable cost is in excess of the AFC, the owner shall have the option to:

a. instruct the user agency to collaborate with the designer to revise the program so that the base bid will be within the AFC; such program revisions shall be done without additional compensation to the designer, except for extensive program revisions authorized in writing by the owner;

- b. provide additional funds to increase the AFC; or
- c. abandon or suspend the project.

2. Any adjustment in the AFC, approved in writing by the owner during design shall include an appropriate adjustment in the fee. The fee shall not be modified at any time after advertising for bids, except as allowed per §109.A.1.e and §109.A.3.

D.1. When the lowest bona fide base bid exceeds the AFC, the owner shall have the option to:

- a. have the designer, without additional compensation, modify the construction documents as required in order to rebid the project to be within the AFC;
- b. provide additional funds to award the construction contract without adjustment of the fee if the project scope remains the same; or
- c. abandon the project.

2. The lowest bona fide base bid is defined as the lowest base bid submitted by a responsible and responsive bidder, not withdrawn in accordance with R.S. 38:2214, and which complies in every respect with the bidding requirements of the contract documents.

E. When the lowest bona fide base bid is less than 90 percent of the AFC and the designer has reduced the original program scope to reduce costs, the owner shall have the option to have the designer, without additional compensation, modify the construction documents as required to restore elements of the program that were eliminated to reduce cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006), LR 46:

## **§109. Compensation**

A. The basic design services fee to be paid to the designer shall be as follows.

1. The fee for basic services, shall be calculated as the product of the fee percentage, adjusted for inflation, and the Available Funds for Construction (AFC), adjusted for inflation. The fee percentage shall be computed by the formula.

$$\text{FEE PERCENTAGE} = \frac{46.10}{\text{Log (AFC (1975 BCI/Current BCI))}}$$

The fee shall be computed by the following formula:

$$\text{FEE} = \text{FEE PERCENTAGE (AFC(1975 BCI/Current BCI)(Current CPI/1975 CPI)}$$

Where "BCI" = Building Cost Index as published by Engineering News Record and "CPI" = Consumer Price Index as published by U.S. Department of Labor, Bureau of Labor Statistics. Since the annual averages computed in December of the BCI and CPI are used, fee calculations are based upon the most current calendar year average of both indices.

a. Should fee modifications occur during the course of the project, the BCI and CPI index factors used to calculate the original fee shall be used.

b. If a project, through no fault of the designer, is inactive for more than 24 months, the current BCI and CPI index factors shall be applied to the project's remaining phases once re-activated, unless the new index factors

reduce the fee. In that case, the index factors shall not be revised.

c. Multiple construction contracts. If the owner determines that the best interest of the project is served by bidding and constructing the project under two or more separate construction contracts, the design fee shall be established for each portion by application of the formula and modification factors herein.

d. If a project consists of more than one element, to be bid and constructed under one construction contract, then the AFC to be used in computing the design fee under the formula, herein, shall be the sum of the AFC's of each element.

e. Fee adjustments for alternates are as follows.

i. If an alternate, pre-approved by the owner, has a cost estimate within the AFC, the designer's compensation for said alternate is already included within the designer's base fee.

ii. If an alternate, pre-approved by the owner, has a cost estimate in excess of the AFC, the designer shall receive compensation for the value above the AFC for that portion of the phase completed as described in §111.A.1.a. (by increasing the AFC for designer fee purposes). If the scope contained in that alternate is not awarded at bid, but later included as a change order and the designer compensated per §111.A.1.a, the compensation shall be adjusted such that the designer shall not be compensated twice for the same work.

iii. If the lowest bona fide base bid, is less than 90 percent of the AFC, refer to §107.E. regarding any additional compensation for alternates and change orders.

2. Modification Factors. Prior to selection, the owner shall have the discretion to evaluate the scope, function, complexity, image, and context of the project and apply modification factors listed below to the designer's compensation for basic services.

a. Complexity factor shall be based upon the complexity of the project scope as determined by the owner.

i. Simple (0.85 of basic compensation), to be determined by owner—single use projects generally of utilitarian character without complication or detail, such as pre-engineered buildings. Buildings with a high degree of repetition may be included in this classification.

ii. Average (1.00 of basic compensation), to be determined by owner—projects of conventional character requiring normal attention to design and detail, including complete mechanical and electrical systems.

iii. Medium complex (1.1 of basic compensation), to be determined by owner—projects of special character and/or function requiring an above average level of skill in design and containing more than ordinary requirements of scientific, mechanical and electrical equipment.

iv. Complex (1.15 of basic compensation), to be determined by owner, projects of highly specialized design character and function requiring a high degree of design skill and requiring extensive, or special scientific, electronic, mechanical and electrical equipment and design expertise.

b. A renovation factor of up to 1.25 of applied fees, to be established and set by the owner for each individual project, will be multiplied by the fee percentage to arrive at the fee for renovation projects, when determined by the

owner to be justified. This fee shall include verifying existing conditions and/or any other additional work incidental to renovation projects. The renovation factor will be set in proportion to additional work anticipated by the owner. The renovation factor will not be applied to re-roofing projects, except in unusual circumstances.

c. An adjustment factor shall be applied, by the owner, based on the design phases required in relation to typical basic services as described in §111. If all design phases are required, the adjustment factor shall be 1.0. If design phases, based on those described in §111, are not required due to previous work, or for other reasons as determined by the owner, eliminated or reduced, then this factor may be reduced below 1.0, prior to designer selection, or negotiated with the designer if an existing contract is amended. If an adjustment factor less than 1.0 is applied, the reduction in total designer fee shall not be applied to each phase, but rather to reflect the phases reduced or eliminated, such that the designer earns the proper fee for work performed at each phase.

3. Change Orders. Preparation of documents required for change orders for any cause shall not be started without owner's written approval. Fee adjustments for change orders shall be as follows.

a. Based on the owner's determination, routine change orders, which involve a small amount of effort, will not involve extra compensation. The designer shall notify and obtain the owner's prior written approval before preparing a change order for which he/she feels is due extra compensation for the extra effort involved. When final payment is made to the designer, all such change orders will be reviewed by the owner and the designer's contract will be amended to reflect extra compensation for the change orders which the owner has determined merit additional fee. The fee will be computed by increasing the AFC (for designer fee purposes) by the amount of change orders that qualify for additional fee as described above and recalculating the fee.

b. Designer shall prepare change orders caused by errors or omissions of the designer without additional compensation. The designer shall be financially responsible for costs that result from errors and/or omissions. The owner shall participate in the cost of omissions to the extent of the value received by the owner.

*Errors*—changes to the work caused by the designer for which the contractor is entitled to payment but for which the owner receives no value. Typically, these involve work that has been constructed and must be demolished and replaced. Therefore, where the owner receives no value, the designer is responsible for 100 percent of the cost.

*Omissions*—changes to the work caused by the designer for which the contractor is entitled to payment for which the owner receives value. Typically these involve work that must be added to contract with little or no change to the work that has been constructed. Because the omitted work should have been included in the original bid documents, in lieu of added as a negotiated change order, the designer shall be responsible for no less than 10 percent of the cost of the omitted work.

B. Payment to the designer for additional services, shall be made on the basis of a detailed scope of work, a proposal from the designer, and negotiations between the owner and designer. All additional services must be pre-approved in writing by the owner prior to start.

*Direct Personnel Expense*—if referenced as part of the designer's proposal, the normal, straight-time direct salaries of all the designer's personnel engaged in the project (technical but not clerical). This shall also include the direct salaries of designer's consultants involved in the additional services.

C. Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the designer, his/her employees or professional consultants in the interest of the project as directed and authorized by the owner in writing prior to their occurrence.

1. The owner shall reimburse the designer the direct cost for all geotechnical investigations, topographic surveys, and other related information, prior approved by the owner and necessary for the design of the project.

2. The designer shall pay for the cost of printing and distribution of construction documents for the owner's and user agency's use, for regulatory agencies' approvals, and as required for the designer and consultant's own use. The owner will reimburse the designer the direct cost of printing and distribution of all other sets of construction documents, over and above the amount of the deposits on same retained by the designer. This will include necessary sets for the contractor to construct the project. If the designer proposes and the owner agrees to an alternative form of document distribution, such as an electronic format, the designer will be reimbursed the direct cost of this method in lieu of the reimbursement described above. The intent remains the same for the designer to bear costs for internal and consultant use.

D. Designer will be paid for prolonged contract administration and observation of construction should the contract time, as may be extended, be exceeded due to no fault of the designer and liquidated damages are required per the contract documents. The amount of such payment shall be computed by dividing 20 percent of the basic total fee by the number of days construction time, as extended, and multiplying by the number of days of liquidated damages as required by the contract documents.

E. When the designer exceeds the established time schedule, including any extensions of time approved by the owner, unless the extension is due to actions by the owner or user, then the amount of the fee shall be reduced by an amount, as liquidated damages, as stated in the advertisement for designer's selection, for each calendar day past the original or extended date that the designer has not delivered all construction documents to the owner sufficiently complete, coordinated and ready to bid. Completeness of the construction document phase will be determined by the owner as described in §111.A.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850

(September 1985), LR 31:1077 (May 2005), LR 32:2047 (November 2006), LR 46:

### **§111. Payments to the Designer**

A. Payments on account of designer's services shall be made as follows.

1. Basic Services

a. Upon satisfactory completion of all basic services for each phase, submission of all documents to the owner and upon the owner's and user's approval of same, which approval shall not be arbitrarily withheld, payment for the following phases of the designer's services will be made in one lump sum (with the exception of the construction documents phase as described below in Paragraph 2); such payments shall be up to the following percentages of the designer's fixed fee, either interim or final, as applicable, which percentages are cumulative.

Program completion phase	5 percent
Schematic design phase	15 percent
Design development phase	35 percent
Construction documents phase	60 percent
Bidding and contract phase	65 percent

b. Monthly in proportion to the contractor's certificate for payment for the following phase: Construction phase—95 percent.

c. Upon satisfactory completion and furnishing required documents to the owner for the following phase: Construction close-out phase—100 percent.

i. One percent of the designer's fee up to \$2,000 maximum may be withheld from construction close-out payment until completion of the one year warranty inspection period.

2. A partial payment for the construction documents phase shall be made when the designer has completed 100 percent of the construction documents and has submitted these to the owner, the user agency, and the other required statutory agencies and the owner determines by inventory check and conformity with that all required documents have been submitted, and are sufficiently complete, coordinated and ready to bid, then the designer shall be entitled to a payment of 72 percent of the fee for the construction documents phase. Should the owner's approval of the construction documents not be issued within 45 days of submittal due to no fault of the designer, then the designer shall be paid an additional payment of 20 percent of the fee for the construction documents phase. The balance of the fee for this phase will be due upon the completion of review by owner and user, when corrections have been made, and when the project is approved for bidding. For projects with an AFC over \$10 million, interim payments up to 50 percent of the fee for the construction document phase may be made by agreement between the owner and the designer.

3. If any phase or phase payment is delayed through no fault of the designer, the owner and designer may negotiate a partial payment.

4. The designer shall promptly pay consultants. By signing the professional design services invoice, the designer agrees that all consultants will be promptly paid those amounts due them out of the amount paid to the designer within 30 days. Upon receipt of reasonable evidence of the designer's failure to pay consultants' amounts due them, the owner may withhold all or part of the designer's payment

until the owner is satisfied that any amounts owed have been paid or otherwise settled.

B. Payments on account of designer's additional services and for reimbursable expenses shall be made on submission of designer's invoices with supporting data, and their written approval by owner and user agency and issuance of an amendment to the contract covering such services.

C. Payments to the designer on termination, abandonment or suspension shall be made in accordance with §§117 and 119, hereinafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:851 (September 1985), LR 13:656 (November 1987), LR 31:1078 (May 2005), LR 46:

### **§113. Designer's Services**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:475 (September 1982), amended LR 11:851 (September 1985), LR 31:1079 (May 2005), LR 32:2048 (November 2006), repealed LR 46:

### **§115. Designer's Accounting Records**

A. Records of direct reimbursable expenses and expenses pertaining to additional services on the project, and for services performed on the basis of direct personnel expense, shall be kept on the basis of generally accepted accounting principles and shall be furnished and/or made available to the owner or the owner's authorized representative on request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:477 (September 1982), amended LR 11:854 (September 1985), LR 46:

### **§117. Termination of Contract**

A. The contract between owner and designer may be terminated by either party upon 30 days written notice to the other party, should said other party fail to perform in accordance with its terms, through no fault of the terminating party, or the contract may be terminated by mutual consent.

B. In the event of termination by the owner due to failure of the designer to perform satisfactorily, the designer shall receive no compensation beyond that already paid or due for the last satisfactorily completed phase. Any work done shall become the property of the owner to be used at the owner's discretion without additional compensation to the designer. No compensation shall be paid to the designer for any uncompleted phase, except by written agreement between owner and designer prior to termination. Such termination shall constitute the designer being held at fault under the terms of R.S. 38:2313(B)(5), which provides that problems with time delays, cost overruns or design inadequacies for which the designer is held to be at fault, shall be taken into account by the selection boards in considering past performance on public projects.

C. In the event the contract is terminated by mutual consent, the designer shall be paid for all work completed

prior to termination, and all work done shall become the property of the owner to be used at the owner's discretion without additional compensation to the designer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:854 (September 1985), LR 46:

#### **§119. Abandonment or Suspension**

A. If any work designed or specified by the designer is abandoned or suspended in whole or part by the owner, the designer is to be paid for the services rendered up to receipt of written notice from the owner, as follows.

1. If the abandonment or suspension occurs at the completion of a phase, the designer shall be paid the full amount due on completion of such phase as described in §111.A.1.

2. If the abandonment or suspension occurs during a phase, the designer shall submit to the owner all documents prepared by him up to receipt of written notice from the owner, and the owner shall compensate the designer up to the percentage completion of that phase.

B. Should the project be reactivated, the new fee will be computed on the basis of the revised AFC and §109.A.1.b if inactive for more than 24 months. The designer's fee for the phases of work required to complete the project shall be the percentages for such phases stated in §111.A.1 applied to the new fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:854 (September 1985), LR 46:

#### **§121. Ownership of Documents**

A. Per R.S. 38:2317, any and all plans, designs, specifications, or other construction documents resulting from professional services paid for by the owner shall remain the property of the owner whether the project for which they were prepared was constructed or not. If a project is terminated for any reason prior to completion of the project, electronic copies of the most current drawings and specifications shall be transmitted by the designer to the owner.

B. Upon completion of the project, record drawings (as-builts) shall be furnished to the owner and the user agency. The designer shall have the right to re-use the construction documents on other projects not constructed for the owner.

C. The right of ownership provided for above shall not be transferable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control in LR 8:478 (September 1982), amended LR 11:854 (September 1985), LR 46:

#### **§123. Successors and Assigns**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and

Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), repealed LR 46:

#### **§125. Extent of Agreement**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control in LR 8:478 (September 1982), amended LR 11:855 (September 1985), repealed LR 46:

#### **§127. Governing Law**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), LR 31:1080 (May 2005), repealed LR 46:

#### **§129. Other Conditions**

A. Insurance. Prior to the signing of the contract between owner and the designer, the designer shall furnish to the owner proof of coverage for the following.

1. Insurance. Professional liability insurance shall be required as per the owner's requirements on a project by project basis. Refer to Exhibit B of the contract for the extent of coverage required. Insurance will be required at the time of contract execution between the owner and the designer. Proof of coverage will be required at that time. No deductible shall be in excess of 5 percent of the amount of the policy.

2. Comprehensive general liability with minimum limits of \$500,000 per accident/occurrence.

3. Comprehensive automobile liability insurance with minimum limits of \$300,000 per accident/occurrence.

4. The designer shall provide a certificate of insurance as proof of workmen's compensation coverage.

B. Affidavit. The designer, on signing the contract, shall submit to the owner, on such form as the owner shall designate, a noncollusion affidavit.

C. When the time schedule has been established by the owner and designer, a completion date shall be set up for delivery of 100 percent completed, coordinated and ready to bid construction documents to the owner. If the designer is delayed through no fault of his/her own, then the completion date shall be extended accordingly, provided the designer makes such request in writing before starting the subsequent phase and the owner approves such as justified. The designer shall continue to work during this process.

D. Non-Binding Mediation

1. In an effort to resolve any conflicts that arise during or following the completion of the project, the owner and the designer agree that all disputes between them arising out of or relating to this agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. If non-binding mediation is not successful, then arbitration is the only remedy available to all parties of the contract. Arbitration, mediation and/or any legal action resulting from this contract shall take place in East Baton Rouge Parish.

2. The owner and designer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the

project and to require all independent contractors and consultants to likewise include providing for mediation as the primary method for dispute resolution between the parties to those agreements.

3. If this non-binding mediation fails to resolve any conflicts, then the following arbitration clause shall take effect. All claims, disputes and other matters arising from the contract shall, at the option of the owner, be decided by arbitration. To the extent possible, such arbitration proceedings shall be conducted in accordance with the construction industry association rules of the American Arbitration Association. Any such arbitration proceeding shall, at the option of the owner, be consolidated with or joined to other arbitration proceedings between the owner and other persons or entities under contract with the state for the construction, repair or alterations of the project in question.

E. Fault. Time delays, cost overruns, design inadequacies or other problems with performance of the designer may result in the designer being held "at fault." The owner shall determine if the designer is to be held at fault as provided in R.S. 38:2313.B.(5).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), LR 13:656 (November 1987), LR 31:1081 (May 2005), LR 46:

#### **Family Impact Statement**

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earnings and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

#### **Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

#### **Small Business Analysis**

The Office of Facility Planning and Control has considered all methods of reducing the impact of the proposed rule on small business as noted in R.S. 49:965.6, and have determined the proposed Rule will not have any impact on small business.

#### **Public Comments**

Interested persons may submit comments to Barry Hickman, Facility Planning and Control, 1450 Poydras St., Suite 1130, New Orleans, LA 70112. Written comments will be accepted through January 10, 2020.

Mark A. Moses  
Director

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Procedure Manual**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no anticipated implementation costs or savings for state or local governmental units as a result of the proposed rule changes. The proposed updated rules amend the language of the existing Subchapter A, Procedure Manual, renaming it Designer Contracts. These changes update and clarify the rules on budget, compensation, payments, contractual terms, and insurance for the designer's contract. The main aspects, such as designer fee structure remain the same, though the compensation section was reorganized to better group the different means of designer compensation such as the main fee, additional services, and reimbursable expenses. The requirements for sections regarding detailed technical responsibilities and specific insurance minimum coverages, however, have been repealed and relegated to the more appropriate procedure manual, which is published on Facility Planning and Control's website. Sections regarding contractual law, which were for informational purposes only, were also relegated to the procedure manual, as part of the contractual terms.

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

There is no anticipated direct material effect on state or local governmental revenues as a result of this measure.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is no anticipated material impact to directly affected persons or nongovernmental groups as a result of the proposed rule change.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated direct material effect on competition and employment as a result of the proposed administrative rules.

Mark A. Moses  
Director  
1912#019

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

##### **Office of the Governor Board of Certified Public Accountants**

Certified Public Accountants; Examination,  
Retake and Granting of Credit Requirements  
(LAC 46:XIX.505)

Notice is hereby given that 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 intends to amend its Rules governing Examination, LAC 46:XIX.505.F.1.b.

Individuals seeking to enter the CPA profession in Louisiana must pass all test sections of the Uniform CPA examination (exam) within a rolling qualifying period of 18 months, which begins on the date that any test section(s) passed is taken. The Board's current rules prevent retesting a failed test section of the exam within the same testing window, which is a calendar quarter. The proposed amendments eliminate the prohibition contained in LAC 46:XIX.505.F.1.b., to allow candidates to retest as soon desired after a failed test section score is released. The conversion to nationwide retesting (or continuous testing) will require multiple changes, including those relating to security components, by testing vendors. Pursuant to LAC 46:XIX.505.F.1.b.ii, the prohibition against retesting a failed test section within the same testing window would be eliminated in Louisiana when continuous exam testing can be implemented in all jurisdictions so that, to the extent possible, uniformity with other states is achieved as specified by La. R.S. 37:75.D (2). The proposed changes are set forth below.

#### **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:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have an adverse impact on family, formation, stability or 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 impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

#### **Provider Impact Statement**

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

#### **Small Business Analysis**

The proposed amendments are not anticipated to have an adverse impact on small businesses as defined in R.S. 49:965.2 et seq.

#### **Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed amendments to Darla M. Saux, CPA, CGMA, Executive Director, State Board of Certified Public Accountants of Louisiana, 601 Poydras Street, Suite 1770, New Orleans, LA 70130, (504) 566-1244. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., January 21, 2020.

#### **Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on January 24, 2020, at 1 p.m. at the office of the State Board of Certified Public Accountants of Louisiana, 601 Poydras Street, Suite 1770, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Darla M. Saux, CPA, CGMA  
Executive Director



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Certified Public  
Accountants; Examination, Retake and  
Granting of Credit Requirements**

**NOTICE OF INTENT**

**Office of the Governor  
Tax Commission**

**Ad Valorem Taxation**

(LAC 61:V.101, 121, 213, 303, 703, 907,  
1103, 1307, 1503, 2503, 2711, 2713, 2717, and 3103)

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

The State Board of Certified Public Accountants of Louisiana (Board) will not incur any expenses due to the proposed rule amendments, other than one-time costs for notice and rule publication estimated at \$546 in FY 2020.

The Uniform Certified Public Accountant (CPA) Examination is the examination (exam) administered to individuals seeking to enter the CPA profession. The Board's rules provide that exam candidates must pass all test sections of the exam within a rolling qualifying period of 18 months, which begins on the date that any test section(s) passed is taken. The Board's current rules, LAC 46:XIX.505.F.1.b., prevent an exam candidate from retaking a failed section of the exam in the same testing window, which is equal to a calendar quarter. Changes in technology have made nationwide retesting (or continuous testing) possible. The proposed amendments eliminate the prohibition against retesting in the same testing window, to allow retesting as soon as desired after a failed test section score is released. However, conversion to nationwide continuous testing will require multiple changes, including those relating to security components, by testing vendors in all jurisdictions. Pursuant to LAC 46:XIX.505.F.1.b.ii, the restriction against retesting on a failed exam section would be removed in Louisiana when continuous testing can be implemented in all jurisdictions so that, consistent with La. R.S. 37:75.D(2), uniformity with other states is achieved to the extent possible.

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

There is no anticipated effect on the revenue collections for the Board or any other state or local governmental unit.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

Individuals seeking to enter the CPA profession, who are unsuccessful on a test section of the CPA exam, could benefit from the opportunity of retesting in the same testing window. Continuous testing has long been sought by CPA exam candidates while their knowledge base may be more readily recalled from recent study. Some candidates may have a better opportunity to pass a test section on an additional attempt, in the same testing window, than by waiting until the next or a later calendar quarter. Additionally, some public accounting firms and other employers may offer incentives, in the form of employee bonuses and/or promotions, upon completion of the exam. Therefore, passing the exam sooner could benefit some exam candidates financially and professionally, to an extent which the Board is not in a position to estimate.

There could be a cost to candidates who retake a section of the exam, as a fee is assessed by the third party testing entity for each retested section. The Board does not establish, collect or receive any portion of the fees assessed by the testing entities.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The proposed rule change will have no effect on competition and employment.

Darla M. Saux, CPA, CGMA  
Executive Director  
1912#039

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, notice is hereby given that the Tax Commission intends to adopt, amend and/or repeal sections of the Louisiana Tax Commission real/personal property rules and regulations for use in the 2020 (2021 Orleans Parish) tax year.

The full text of this proposed Rule may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

**Family Impact Statement**

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the Louisiana Tax Commission hereby submits the following Family Impact Statement.

1. The Effect on the Stability of the Family. Implementation of these proposed rules will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parent Regarding the Education and Supervision of Their Children. Implementation of these proposed rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed rules will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of these proposed rules will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed rules will have no effect on the behavior and responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in these Proposed Rules. Implementation of these proposed rules will have no effect on the ability of the family or local government to perform this function.

**Poverty Impact Statement**

The proposed Rule will have no impact on poverty as described in R.S. 49:973.

**Small Business Analysis**

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

**Provider Impact Statement**

The proposed Rule will have no adverse impact on providers of services for individuals with developmental disabilities as described in HCR 170 of 2014.

**Public Comments**

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rules. Written submission must be directed to Michael Matherne, Tax Commission Administrator, LA Tax Commission, 1051 North 3rd St, Room 224, Baton Rouge, LA 70802 or P. O.



Box 66788, Baton Rouge, LA 70896 and must be received no later than 4 p.m., January 9, 2020.

### **Public Hearing**

A public hearing, on this proposed Rule, will be held on Wednesday, January 29, 2020, at 10 am, at the Louisiana State Capitol, 900 North Third St., 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, please contact (225) 219-0339.

Lawrence E. Chehardy  
Chairman

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Ad Valorem Taxation**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rules reflect annual changes in valuation procedures for taxation purposes based on the most recent available data. There are no estimated costs or savings associated with the proposed rules for state governmental units. An impact to local governmental workload resulting in an additional administrative costs will occur, but is expected to be minimal.

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

The proposed rule changes will result in an increase of approximately \$31,140,000 in revenue collections for local governments based upon revisions to valuation tables increasing real and personal property assessments by approximately 3% in total. However, these revisions will not necessarily affect revenue collections of local government units as any net increase or decrease in assessed valuations are authorized to be offset pursuant to millage adjustment provisions of Article VII, Section 23 of the state Constitution.

On average, these revisions will generally increase certain 2020 real and personal property assessments for property of similar age and condition in comparison with the latest available equivalent assessments. However, the assessments of certain property types will increase compared to prior year. Composite multiplier tables for assessment of most personal property will increase by an estimated 3%. Specific valuation tables for assessment of pipelines will increase by an estimated 3% (Onshore increase by an estimated 2.5% and Offshore increase by an estimated 3.5%). Use Value will increase by an estimated 3% (Agricultural & Horticultural Land by 5% and Timberland by 1%). Oil wells will increase by an estimated 5% and gas wells will increase by an estimated 1% in all 3 Regions. Drilling rigs will increase by an estimated 5.5% (Land rigs by 14.5%, Jack-Ups by 2.5%, Semisubmersible Rigs by 2.5% and Well Service Land Only Rigs by 3%). The net effect determined by averaging these revisions is estimated to increase assessments by 3% and estimated local tax collections by \$31,140,000 in FY 20/21 on the basis of the existing statewide average millage. However, these revisions will not necessarily affect revenue collections of local government units as any net increase or decrease in assessed valuations are authorized to be offset by millage adjustment provisions

### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The effects of these new rules on assessments of individual items of equivalent real and personal property will generally be higher in the aggregate in 2020 compared to the last year of

actual data. Specific assessments of real and personal property will depend on the age and condition of the property subject to assessment. Taxpayers will be impacted based on the changes to the valuation guidelines for assessments as listed in Section II. The magnitude will depend on the taxable property for which they are liable. Regardless of the guidelines adopted by the Tax Commission, all taxpayers continue to have the right to appeal the assessments.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The impact on competition and employment cannot be quantified. In as much as the proposed changes in assessments are relatively small and there will no longer be any charges for the updates, any aggregate impact on competition and employment statewide will likely be minimal.

Lawrence E. Chehardy  
Chairman  
1912#027

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **Department of Health Board of Medical Examiners**

Complaints and Investigations; Adjudication and Practice-Site Visits; Practice Performance Reviews  
(LAC 46:XLV.Chapters 97, 99 and 80)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, La. 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 intends to amend its rules of procedure governing complaints and investigations (Chapter 97), adjudication (Chapter 99) and practice, site visits; practice performance reviews (Chapter 80). Among other items, the proposed changes: expand the application of the rules to include allied health care practitioners regulated by the board (§9701.A), define additional terms (§9703.A) for allied health care practitioner, applicant, compliance counsel, director of investigations, independent counsel, licensee, records or files of the case, and amend several existing definitions. The proposed changes also provide: for complaint origination, complainant confidentiality and routine regulatory functions (§9705.A, D and E); the instances in which the board shall initiate a preliminary review to determine if cause exists for formal investigation (§9709.A); for files and records related to a complaint which the board may obtain (§9709.B); for records or files of the case (§§9703.A and 9709.C); for the duration of a preliminary review and extensions (§9709.D); that if the board intends to use records from any prior investigation, the licensee shall be notified and the records included within the records or files of the case (§9711.D); for individuals who may attend conferences (§9711.G.1); for disciplinary dispositions, provide that prior to offering a consent order to a licensee the board shall make all files and records pertinent to the case before the board available, and for related notice and procedure (§9713.C.2); for general definitions for adjudication purposes (§9902); for notice to a licensee of the right to face any complainant at an administrative hearing and for exceptions relative to

complainant anonymity (§9905.C); that upon filing of a formal administrative complaint all records or files of the case regarding the complaint shall be made available through full discovery (§9916.A.3); that any potential exculpatory evidence shall be disclosed whether or not requested and whether or not reduced to recorded or documentary form (§9916.A.4); the procedure for initiation of site visits, practice performance reviews or requesting medical records from licensees who are not subject to an active investigation (§§8801-8003); and make other changes made necessary by the passage of time and/or for purposes of implementation. The proposed amendments are set forth below.

## **Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS**

### **Part XLV. Medical Professions**

#### **Subpart 3. Practice**

#### **Chapter 80. Site Visits; Practice Performance Reviews**

##### **§8001. 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:

##### **§8003. 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:

#### **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:

##### **§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.*

**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.

**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.

**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:

### **§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:

### **§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:

### **§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:

### **§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:

## **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:

### **§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:

### **§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:

### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed Rule amendments on the family has been considered. It is not anticipated that the proposed Rule amendments will have any impact on family, formation, stability or 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 impact of the proposed Rule amendments on those that may be living at or below one hundred percent of the federal poverty line has been

considered. It is not anticipated that the proposed Rule amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

#### **Provider Impact Statement**

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed Rule amendments on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed Rule amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

#### **Small Business Analysis**

It is not anticipated that the proposed Rule amendments will have any adverse impact on small businesses as defined in the Regulatory Flexibility Act, R.S. 49:965.2 et. seq.

#### **Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed Rule amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., January 20, 2020.

#### **Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on January 27, 2020 at 10 a.m., at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Vincent A. Culotta, Jr., M.D.,  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Complaints and Investigations; Adjudication and Practice-Site Visits; Practice Performance Reviews**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed changes will result in a one-time publication expense estimated totaling \$2,023 in FY 20 for the LA State Board of Medical Examiners (LSBME). Furthermore, the proposed rule changes may result in additional costs not anticipated to be significant associated with amending the process for conducting investigations of complaints.

The proposed changes amend rules governing the practice and procedure applicable to physicians and other health care providers licensed by the LSBME who may be the subject of site-visits, practice performance reviews, complaints and investigations and adjudications, to conform them with Act 599 of the 2018 Regular Session. The proposed changes do the following: align the rules to include presently-regulated allied health care practitioners and define additional terms and amend several existing definitions. They also provide: for complaint origination, complainant confidentiality and routine regulatory

functions; instances in which the Board shall initiate a preliminary review; for files and records related to a complaint which the Board may obtain; for records or files of the case; for the duration of a preliminary review and extensions; the use of records from any prior investigation; who may attend conferences associated with investigations; that prior to offering a consent order to a licensee the board shall make all records or files of the case available and for related notice and procedure; for definitions for adjudications; for notice to a licensee of the right to face any complainant at an administrative hearing and for exceptions relative to complainant anonymity; that upon filing of a formal administrative complaint all records or files of the case shall be made available through full discovery and disclosed to respondent at his or her request; disclosure of potential exculpatory evidence; the procedure for initiation of site visits, practice performance reviews or requesting medical records from licensees who are not subject to an active investigation; and make other changes made necessary by the passage of time and/or for purposes of implementation.

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

The proposed rule changes will not affect 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 not anticipated that the proposed rule amendments will have a significant material effect on costs, paperwork or workload of physicians or allied health care practitioners licensed by the LSBME, nor on receipts and/or income of licensees or non-governmental groups, as the proposed rule changes are procedural in nature. However, because the proposed rule changes significantly amend several processes associated with the LSBME's regulatory functions, physicians and allied health practitioners may realize additional marginal costs that are not anticipated to be significant.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes are not anticipated to affect competition or employment.

Vincent A. Culotta, Jr. M.D.  
Executive Director  
1912#038

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **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)

Notice is hereby given that 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 intends to amend 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 proposed amendments are needed to conform the board's rules to Act 284 of the 2019 Regular Session of the Louisiana Legislature. Among other items, the

proposed changes remove the: (i) provision requiring annual reporting by the board to the legislature as to its views on any additional diseases or conditions that should be added to the list of debilitating conditions (§7701.A.2); (ii) definition of step therapy or fail first protocols (§7705.A), as well as the corollary exceptions respecting such use (§7709.A.2); and (iii) physician domiciliary requirement for a physician to recommend marijuana (§7711.A.3). The proposed amendments also modify the definition of marijuana to exclude a metered-dose inhaler, if permitted by rules adopted by the Louisiana Board of Pharmacy, from the general prohibition against inhalation as an acceptable form of medical marijuana (§7705.A).

#### **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:

A.1. - 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:

##### **§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.

\* \* \*

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:

##### **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:

#### **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. hold current schedule I authority or such other authority as may be designated for therapeutic marijuana by the Louisiana Board of Pharmacy; and

3. complete an on-line educational activity available at no cost on the board's web page.

B. - 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:

##### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

##### **Poverty Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

##### **Provider Statement**

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

##### **Small Business Analysis**

It is not anticipated that the proposed amendments will have any adverse impact on small businesses as defined in the Regulatory Flexibility Act, R.S. 49:965.2 et. seq.

##### **Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until January 20, 2020.

##### **Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on

January 27, 2020 at 9 a.m., at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA70130. Any person wishing to attend should call to confirm that a hearing is being held.

Vincent A. Culotta, Jr., M.D.,  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Physician Practice; Marijuana for Therapeutic Use by Patients Suffering From a Debilitating Medical Condition**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will result in a one-time publication expense estimated to total \$639 in FY 20 for the LA State Board of Medical Examiners (LSBME). Otherwise, it is not anticipated that the proposed changes will have any impact on any state or local governmental units, inclusive of adjustments in workload and paperwork requirements.

The proposed rule changes amend rules governing the practice of physicians who diagnose their patients with a qualifying debilitating medical condition (DMC) for which therapeutic marijuana (TM) may be recommended to conform them to Act 284 of 2019. Consistent with Act 284, the proposed changes amend the Board's existing rules to remove the following requirements: for annual reporting by the Board to the legislature as to any additional diseases or conditions that should be added/removed from the list of DMCs; that a physician utilize step therapy or fail first protocols and the exceptions respecting its use; and that a physician be domiciled and practice at a physical practice location in this state to recommend TM. Lastly, the proposed changes modify the definition of marijuana to exclude a metered-dose inhaler, as permitted by rules adopted by the Board of Pharmacy, from the general prohibition against "inhalation" as an acceptable form of TM.

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

The proposed rule changes will not affect revenue collections for state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

It is not anticipated that the proposed rule changes will significantly affect the workload and/or income of physicians who may diagnose or patients who may be treated with TM for a debilitating medical condition. Patients who may be recommended TM for a DMC may benefit, as the proposed rule changes ease access to TM.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes are not anticipated to affect competition and employment.

Vincent A. Culotta, Jr. M.D.  
Executive Director  
1912#040

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **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 proposes to amend 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 proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 582 of the 2018 Regular Session of the Louisiana Legislature enacted provisions governing licensure and certification requirements for behavioral health providers of psychosocial rehabilitation (PSR) services and community psychiatric support and treatment (CPST) services. In compliance with Act 582, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing psychological services rendered to children in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to allow unlicensed school psychologists and master social workers certified by the Department of Education to provide services under the supervision of a licensed professional in order to align the administrative Rule with the requirements of Act 582.

#### **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:

#### **§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:

#### **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:

##### **§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:

##### **§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:

##### **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 effect 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 a 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, 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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on January 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 January 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



January 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 January 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.

Rebekah E. Gee MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Early and Periodic Screening, Diagnosis and Treatment—Psychological Services Staffing Requirements**

#### **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 \$864 (\$432 SGF and \$432 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 \$432 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)**

In compliance with Act 582 of the 2018 Regular Session of the Louisiana Legislature, this proposed Rule amends the provisions governing psychosocial rehabilitation (PSR) services and community psychiatric support and treatment (CPST) services rendered to children in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to allow unlicensed school psychologists and master social workers certified by the Department of Education to provide psychological services under the supervision of a licensed professional in order to align the administrative Rule with the requirements of Act 582. Implementation of this proposed Rule is anticipated to have a positive impact on the state's individual school districts, as it allows them to continue to recoup costs incurred as a direct result of providing these school-based behavioral health services. It is anticipated that implementation of this proposed Rule will not result in costs to behavioral health providers of PSR and CPST services in the EPSDT program for FY 19-20, FY 20-21, and FY 21-22, since local education authorities (LEAs) have historically been performing and billing for these services. This proposed Rule will be beneficial to these providers by ensuring that the legislative licensure and certification requirements are clearly and 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.

Jen Steele  
Medicaid Director  
1912#067

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **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 proposes to amend LAC 48:I.8201 and §8235 as authorized by R.S. 36:254 and R.S. 2181-2192. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 229 of the 2019 Regular Session of the Louisiana Legislature directed the Department of Health to implement the provisions of R.S. 40:2192 which mandates the establishment of a state certified hospice attendant registry to maintain a roster of individuals eligible for employment as state certified hospice attendants by licensed hospice agencies. In compliance with Act 229, the Department of Health, Bureau of Health Services Financing hereby proposes to amend the provisions governing the licensing of hospice agencies in order to set forth the criteria for employment of state certified hospice attendants and to establish a state certified hospice attendant registry.

#### **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:

#### **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:

#### **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 January 29, 2019.

#### **Public Hearing**

The department will conduct a public hearing at 9:30 a.m. on January 29, 2019 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.

Rebekah E. Gee MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Hospice Licensing Standards**

#### **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 \$864 (SGF) 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 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)**

In compliance with Act 229 of the 2019 Regular Session of the Louisiana Legislature, this proposed rule amends the provisions governing the licensing standards for hospice agencies in order to set forth the criteria for employment of state certified hospice attendants and establish a state certified hospice attendant registry to maintain a roster of individuals eligible for employment by licensed hospice agencies. It is anticipated that implementation of this proposed rule will not result in economic costs to hospice providers for FY 19-20, FY 20-21, and FY 21-22, but will be beneficial by ensuring that individuals trained in the provision of hospice services are available for employment by licensed hospice agencies.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Cecile Castello  
Assistant Deputy Secretary  
1912#068

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **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 proposes to adopt LAC 48:I.9781 as authorized by R.S. 36:254 and 40:1193.1-1193.11. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, 49:950 et seq.

Act 596 of the 2018 Regular Session of the Louisiana Legislature, hereafter referred to as the Nursing Home Virtual Visitation Act, enacted R.S. 40:1193.1-1193.11

which directed the Department of Health to establish provisions governing nursing facility virtual visitation in order to provide for consent, by a nursing facility resident or a legal representative, relative to the authorization for installation and use of a monitoring device in the room of the resident.

In compliance with the requirements of Act 596, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the licensing of nursing facilities in order to adopt provisions governing virtual visitation and promulgated an accompanying Notice of Intent (*Louisiana Register*, Volume 44, Number 11). Based on comments received, the department determined that it was necessary abandon the November 20, 2018 Notice of Intent and to amend the November 20, 2018 Emergency Rule in order to further clarify the provisions governing virtual visitation (*Louisiana Register*, Volume 45, Number 12). This proposed Rule is being promulgated in order to continue the provisions of the November 20, 2018 and the December 20, 2019 Emergency Rules.

### **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:

#### **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 may have a negative impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 since nursing facility residents that consent to virtual visitation or their families are responsible for the costs associated with the installation and use of monitoring devices in the residents' rooms.

#### **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 January 29, 2020.

#### **Public Hearing**

The department will conduct a public hearing at 9:30 a.m. on January 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.

Rebekah E. Gee MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Nursing Facilities Licensing Standards—Virtual Visitation**

#### **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. Any potential additional workload on the regulatory agency is indeterminable, and anticipated to be absorbed with existing staff. It is anticipated that \$540 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 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 continues the provisions of the November 20, 2018 and December 20, 2019 Emergency Rules which amended the licensing standards for nursing facilities in order to adopt provisions governing virtual visitation to provide for consent, by a nursing facility resident or a legal representative, relative to the authorization for installation and use of a monitoring device in the room of the resident, in compliance with Act 596 of the 2018 Regular Session of the Louisiana Legislature. This proposed Rule may result in economic costs to residents of nursing facilities that consent to virtual visitation since the costs associated with the installation and operation of the monitoring devices are the responsibility of the residents. It is anticipated that the implementation of this proposed rule will have no economic costs or benefits to nursing facilities in FY 19-20, FY 20-21 and FY 21-22 since nursing facilities will not bear the financial responsibility for the installation and operation of monitoring devices in residents' room.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Cecile Castello  
Assistant Deputy Secretary LDH  
1912#069

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **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 proposes to amend 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 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 Service Financing proposes to amend the provisions governing reimbursement in the Pharmacy Benefit Management Program in order to add vaccines for adult recipients as a pharmacy benefit to provide an alternative location for these recipients to receive necessary vaccinations and immunizations.

## **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:

#### **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:

##### **§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:

#### **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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it provides adult recipients greater access to necessary immunizations at alternative locations.

#### **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 a 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 may have a positive impact on small businesses, as described in R.S. 49:965.2 et seq. as it permits Medicaid reimbursement for adult vaccinations by pharmacy providers.

#### **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, but may reduce the total direct and indirect cost to the provider to provide the same level of service. This Rule may enhance the provider's ability to provide the same level of service as described in HCR 170 since it permits Medicaid reimbursement for adult vaccinations by pharmacy providers.

#### **Public Comments**

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on January 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 January 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 January 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 January 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.

Rebekah E. Gee MD, MPH  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Pharmacy Benefit Management  
Program—Vaccine Administration and Reimbursement**

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

Therapeutic Group Homes  
Licensing Standards  
Criminal Background Checks  
(LAC 48:I.6210)

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

It is anticipated that the implementation of this proposed rule will result in estimated state programmatic costs of approximately \$4,814 for FY 19-20, \$17,423 for FY 20-21 and \$26,270 for FY 21-22. 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. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.86 percent in FY 19-20, and 67.51 percent for FY 20-21 and FY 21-22 for the projected non-expansion population, and a blended FMAP rate of 93.25 percent in FY 19-20 and 90.75 percent in FY 20-21 and 90.00 percent in FY 21-22 for the projected expansion population.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$26,415 for FY 19-20, \$89,167 for FY 20-21 and \$129,478 for FY 21-22. 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. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 66.86 percent in FY 19-20, and 67.51 percent for FY 20-21 and FY 21-22 for the projected non-expansion population, and a blended FMAP rate of 93.25 percent in FY 19-20 and 90.75 percent in FY 20-21 and 90.00 percent in FY 21-22 for the projected expansion population.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

This proposed rule amends the provisions governing reimbursement in the Pharmacy Benefit Management Program in order to add vaccines for adult recipients in the Medical Assistance Program as a pharmacy benefit to provide an alternative location for these recipients to receive necessary immunizations. Adult recipients will benefit from implementation of this proposed Rule as it increases access to necessary vaccines that physicians may not carry in office settings. This proposed Rule will also be beneficial to pharmacy providers, since currently only influenza vaccines are covered as pharmacy benefits and this Rule allows Medicaid reimbursement for the provision of other vaccinations and immunizations. It is anticipated that implementation of this proposed rule will result in programmatic costs to the Medicaid program of \$30,689 in FY 19-20, \$106,590 in FY 20-21 and \$155,748 in FY 21-22.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

This rule has no known effect on competition and employment.

Jan Steele  
Medicaid Director  
1912#070

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

The Department of Health, Bureau of Health Services Financing adopts LAC 48:I.6210 as authorized by R.S. 36:254 and Act 243 of the 2019 Regular Session of the Louisiana Legislature.

Act 243 of the 2019 Regular Session of the Louisiana Legislature requires that licensing standards for therapeutic group homes (TGH) comply with federal guidelines for Bureau of Criminal Identification and Information criminal background checks and Department of Children and Family Services (DCFS) abuse/neglect registry checks to provide criminal history record information for owners, operators, managers or administrators, employees, contractors, or paid or unpaid volunteers or interns of a TGH that have the potential of providing daily care or supervision to children or youth in the custody, or under the supervision, of any Louisiana state government agency.

In compliance with Act 243, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing the licensing of TGHs in order to comply with federal criminal background check and DCFS abuse/neglect registry check requirements (*Louisiana Register*, Volume 45, Number 10). The department subsequently promulgated an Emergency Rule which amended the September 20, 2019 Emergency Rule in order to further clarify the licensing provisions governing TGH background checks (*Louisiana Register*, Volume 45, Number 12). This proposed Rule is being promulgated in order to continue the provisions of the September 20, 2019 and the December 20, 2019 Emergency Rules.

**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, 14:93.2.1, 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 reactivation 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:

#### **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 January 29, 2020.

The department will conduct a public hearing at 9:30 a.m. on January 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.

Rebekah E. Gee MD, MPH  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Therapeutic Group Homes Licensing Standards—Criminal Background Checks**

#### **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 \$2,052 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 to the Department of Health, 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)**

In compliance with Act 243 of the 2019 Regular Session of the Louisiana Legislature, this proposed rule continues the provisions of the September 20, 2019 and December 20, 2019 Emergency Rules which adopted provisions governing the licensing of therapeutic group homes (TGHs) in order to comply with federal criminal background check and DCFS abuse/neglect registry check requirements. Children receiving TGH services will benefit from the implementation of this proposed rule, since it ensures that criminal history and abuse/neglect findings are verified for individuals that have the potential to provide their daily care and/or supervision. This proposed rule expands the current background check that TGH providers are already required to pay to have performed; therefore, implementation will not result in additional costs to TGHs 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.

Cecile Castello  
Assistant Deputy Secretary  
1912#071

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **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, notice is hereby given that, the Louisiana Department of Health (LDH), Office for Citizens with Developmental Disabilities (OCDD), hereby proposes to amend LAC 48:1, Chapter 11, 1101 - 1137, Individual and Family Support (IFS) Program. The intent of the proposed amendment is to set forth recommended changes as requested by the Developmental Disabilities Council. The proposed 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.

#### **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:

### **§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:

### **§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:

#### **§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:

#### **§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:

#### **§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, LR 46:

### **§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:

### **§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:

### **§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

#### **§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:

### **§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:

### **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 not have an adverse 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 not have an adverse impact on child, individual, and family poverty in relation to individual or community asset development as described in R.S. 49:973.

### **Small Business Analysis**

It is anticipated that the proposed Rule will not have a significant adverse effect on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of

applicable statutes while minimizing any anticipated adverse impact on small businesses.

### **Provider Impact Statement**

After considering House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of 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 about the proposed Rule to Tanya Murphy, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. Ms. Murphy is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is 4:30 p.m. on January 30, 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 January 10, 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 Monday, January 27, 2020 in Room 173 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 parties should first call Allen Enger at (225) 342-1342 after January 10, 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.

Rebekah E. Gee MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Individual and Family Support Program**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This rule change is being proposed to implement changes to the Individual and Family Support (IFS) Program, which provides financial support to families of individuals with an intellectual or developmental disability.

Specifically, the rule removes the provision that families can only access IFS assistance after it has been determined that all other sources of support have been exhausted. Removing this provision expands eligibility for the program. Therefore, more people are anticipated to qualify for assistance from the program, which may increase program costs. Financial support

is distributed to families on a first-come, first-serve basis, and total distribution from the program is limited to funding appropriated by the legislature for this purpose.

The rule also adds clarifying language related to the administration of the IFS program to ensure that program guidelines are applied uniformly across all local governing entities.

The proposed rule change is also anticipated to increase expenditures for OCDD by approximately \$2,237 in FY 20 for the publication of the proposed rule.

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

Implementation of the proposed rule is not anticipated to have an effect on revenue collections of state or local governmental units.

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

The proposed rule change may have an economic benefit to certain families with children with an intellectual or developmental disability. This rule removes the provision that families can only access IFS funding after it has been determined that all other sources of financial support have been exhausted. Therefore, more people may qualify for assistance from the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is not anticipated to have any effects on competition or employment.

Julie Foster Hagan  
Assistant Secretary  
1912#054

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

## NOTICE OF INTENT

### 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, notice is hereby given that the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH), intends to amend Part VII (Dairy Products Regulations) of Title 51 (Public Health—Sanitary Code). These amendments are proposed to 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 desires to revise the current regulatory language to adopt a more rational approach to the regulation of these particular dairy product facilities.

## 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:

#### 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, amendment or repeal.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained the proposed Rule? The proposed rule does not require either the family or local government to perform any function.

#### Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits; or
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

The proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act, R.S. 49:965.2–965.8.

#### **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 Session. Per HCR 170, "provider" means an organization that provides services for individuals with developmental disabilities. In particular, there should be no known or foreseeable effect on the:

1. staffing level requirements or qualifications required to provide the same level of service;
2. total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. overall ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments on the proposed Rule. Such comments must be received no later than Tuesday, January 28, 2020, at COB, 4:30 p.m., and should be addressed to Michael Vidrine, Director, Sanitarian Services, P.O. Box 4489, Baton Rouge, LA 70821.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing either 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 January 10, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9 a.m. on Tuesday, January 28, 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 January 10, 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.

Jimmy Guidry, MD  
State Health Officer  
and  
Rebekah E. Gee, MD, MPH  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Dairy Products Frozen Dessert Regulations**

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

The proposed rule change is anticipated to increase expenditures for the Office of Public Health (OPH) by approximately \$426 in FY 19-20 for the publication of the proposed and final rule in the Louisiana Register. It is not anticipated that any other state or local governmental units will incur costs or savings as a result of this rule change.

The proposed rule updates product testing requirements for frozen dessert manufacturing plants that freeze or partially freeze and repackage frozen desserts. The current rule provides that during any consecutive six month period that four samples of each flavor and fat level of the frozen dessert product shall be tested by the state health officer for the standard plate and coliform counts. The proposed rule amends the current rule and provides that only one sample of each fat level is tested during the six month period.

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

The proposed rule is not anticipated to have any effect on revenue collections of state or local governmental units.

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

The proposed rule is not anticipated to have any cost or economic benefit to frozen dessert manufacturing plants, given that the rules are being updated to reflect current practice.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on employment or competition.

Alexander Billioux, MD, DPhil  
Assistant Secretary  
1912#055

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health Office of Public Health**

#### **Emergency Preparedness Activities (LAC 48:I.Chapter 6)**

Notice is hereby given, in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., that the state health officer, acting through the Louisiana Department of Health, Office of Public Health proposes to promulgate 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.

#### **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:

##### **§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:

##### **§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:

##### **§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:

#### **Family Impact Statement**

1. The proposed Rule should have no measurable impact upon the stability of the family.

2. The proposed Rule should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. The proposed Rule should have no direct impact upon the functioning of the family.

4. The proposed Rule should have no direct impact upon family earnings and budget.

5. The proposed Rule should have no impact upon the behavior and personal responsibility of children.

6. The proposed Rule should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

#### **Poverty Impact Statement**

1. The proposed Rule should have no effect on household income assets and financial security.

2. The proposed Rule should have no effect on early childhood development and preschool through postsecondary education development.

3. The proposed Rule should have no effect on employment and workforce development.

4. The proposed Rule should have no effect on taxes and tax credits.

5. The proposed Rule may have an undeterminable impact on child and dependent care, housing, healthcare, nutrition, transportation, and utilities assistance.

#### **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.

1. The proposed Rule should have no measurable adverse impact upon small businesses.

2. The proposed Rule should have no measureable adverse impact on projected reporting, record keeping, and other administrative costs required for compliance with the proposed Rule, including the type of professional skills necessary for preparation of the report or record.

3. The proposed Rule should have no measureable adverse impact upon small businesses.

4. The proposed Rule should have no measurable adverse impact upon small businesses; therefore, there are no less intrusive or less costly alternatives to the implementation of the proposed Rule.

#### **Provider Impact Statement**

1. The proposed regulation should have no effect on the staffing level requirements or qualifications required to provide the same level of service.

2. The proposed regulation should have no effect, either directly or indirectly, on the cost to the provider to provide the same level of service.

3. The proposed regulation should not have an effect on the overall ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments on the proposed rule. Such comments must be received no later than Tuesday, January 28, 2020, at COB, 4:30 p.m., and should be addressed to Henry Yennie, Office of Public Health, P.O. Box 629, Baton Rouge, LA 70821-0629.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing either 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 January 10, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9 a.m. on Tuesday, January 28, 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 January 10, 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.

Jimmy Guidry MD  
State Health Officer  
and  
Rebekah E. Gee MD, MPH  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Emergency Preparedness Activities**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change is anticipated to increase expenditures for the Office of Public Health (OPH) by approximately \$693 in FY 2019 for the publication of the proposed rule. It is not anticipated that any other state or local governmental units will incur costs or savings as a result of this rule change.

The proposed rule provides for the use and disclosure of protected health information (PHI) by health care providers for

emergency preparedness activities. Specifically, the rule permits home health agencies, hospice agencies, and hospitals to use and disclose certain PHI without a patient's consent for the purpose of participating in emergency preparedness activities, such as training, assessments, and program development. The rule provides that the health care provider shall upload the PHI into the Louisiana AtRisk Registry and that all PHI uploaded to the registry will be deleted after the emergency preparedness activity is complete. The rule also provides a list of entities that will have access to the PHI in the registry.

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

There is no estimated effect on revenue collections of state or local governmental units.

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

Health care providers that choose to participate in the Louisiana AtRisk Registry may experience a slight decrease in workload as a result of the provisions of the proposed rule. Health care providers will be able to directly upload patients' protected health information into the registry without having to complete paperwork or to create mock patient information.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule has no known effect on competition and employment.

Alexander Billioux, MD, DPhil  
Assistant Secretary, OPH  
1912#057

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

# NOTICE OF INTENT

## 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, notice is hereby given that the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH), intends to reenact and amend 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 is being proposed to implement 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 proposed additions and amendments to LAC 49 and 51 are hereby proposed to be adopted.

# 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:

**§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:

**§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:

**§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:

**§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:

**§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:

**§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:

**§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:

**§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:

**§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:

**§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:

**§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:

**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:



### **Family Impact Statement**

The proposed Rule should not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

### **Poverty Impact Statement**

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

### **Small Business Analysis**

The proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

### **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 effect on 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 on the proposed rule. Such comments must be received no later than Tuesday, January 28, 2020 at COB, 4:30 p.m., and should be addressed to Michael Vidrine, Director, Sanitarian Services, P.O. Box 4489, Baton Rouge, LA 70821.

### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing either 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 January 10, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9 am on Tuesday, January 28, 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 January 10, 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.

Jimmy Guidry, MD  
State Health Officer  
and  
Rebekah E. Gee, MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Registration of Foods, Drugs, Cosmetics and Prophylactic Devices**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

As required by Act 164 of the 2019 Louisiana Legislative Session, the proposed rule implements the regulatory framework for the hemp industry and authorizes the Office of Public Health (OPH) to inspect and permit any facility producing hemp and cannabidiol (CBD) products for consumption.

The proposed rule change is anticipated to increase expenditures for OPH by approximately \$96,790 in FY 20 for salaries and benefits associated with hiring four sanitarians to perform the duties of permitting and inspecting hemp production firms. This amount will be annualized in future fiscal years and is estimated to be \$387,162 in FY 21 and 22.

Other costs OPH estimates include \$41,880 for recurring operating services expenditures (travel, supplies, vehicle rental, telephone) and a one time expenditure in FY 20 of \$5,544 for the acquisition of office equipment.

The agency was not appropriated funding in FY 20 to implement this rule. It is anticipated that the revenue collections detailed in Section II below will be sufficient to pay for the estimated expenses.

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

The proposed rule is anticipated to generate \$270,875 in revenue in FY 20 for OPH associated with permitting fees (\$875) and label registration fees (\$270,000).

The rule authorizes OPH to charge a fee to issue a permit to any facility producing hemp and CBD products for consumption. The amount of the permit fee is based on sales revenue and will range from \$175 to \$1,375. OPH anticipates that the producers will likely start out at the bottom of the revenue scale. Therefore, the permit fee charged to these producers is estimated to be \$175. OPH anticipates that 5 permits will be issued in FY 20. (5 producers x \$175 permit fee = \$875 in permit fees collected in FY 20)

The rule also authorizes OPH to charge a label registration fee of \$27 per label. OPH estimates that 10,000 labels will be registered in FY 20. (10,000 labels x \$27 fee = \$270,000 in label registration fees collected in FY 20)

The number of producers is projected to grow by 2-3 per year and the number of label registrations is projected to grow by 20% per year. Therefore, revenue collections in FY 21 and FY 22 are estimated to be as follows:

\$1,225 permit fees (7 producers x \$175 permit fee)  
\$324,000 label fees (12,000 labels x \$27 fee)  
\$325,225 Total collection in FY 21

\$1,750 permit fees (10 producers x \$175 permit fee)  
\$388,800 label fees (14,400 labels x \$27 fee)  
\$390,550 Total collection in FY 22

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

Facilities producing hemp and CBD products for consumption will incur the cost of permits and label registration fees, as detailed in section II above. Additionally, manufacturers and retailers of CBD products are expected to experience an increase in income resulting from the sale of CBD products, which this proposed rule assists in authorizing.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will assist in authorizing the sale of CBD products by manufacturers and retailers. If there is a large public demand for CBD products, manufacturers and retailers may find it necessary to employ additional staff to handle the increased demand.

Alexander Billioux, MD, DPhil  
Assistant Secretary  
1912#056

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

**Regulation 63—Prohibitions on the Use of Medical  
Information and Genetic Test Result  
(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., hereby gives notice of its intent to amend Regulation 63—Prohibitions on the Use of Medical Information and Genetic Test Results.

The proposed regulation is being 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.

**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:

**§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:

#### **§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:

#### **§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:

#### **§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.

requirements of R.S. 22:213.7 prior to utilization.

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:

#### **§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:

#### **Family Impact Statement**

1. Describe the effect of the proposed regulation on the stability of the family. The proposed regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed regulation should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the Rule. The proposed regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

#### **Poverty Impact Statement**

1. Describe the effect on household income, assets, and financial security. The proposed regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed regulation should have no effect on

child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

#### **Small Business Analysis**

The impact of the proposed regulation 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 regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed Rule. The proposed regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed Rule, including the type of professional skills necessary for preparation of the report or record. The proposed regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed Rule. The proposed regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

#### **Provider Impact Statement**

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed regulation will have no effect.

#### **Public Comments**

Interested persons may submit written comments on the proposed promulgation of Regulation 63. Such comments must be received no later than January 20, 2019 by close of business, 4:30 p.m., and addressed to Carol Fowler-Guidry, Deputy General Counsel, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214 or faxed to (225) 342-1632.

James J. Donelon  
Commissioner

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Regulation 63—Prohibitions on the Use of Medical Information and Genetic Test Result**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will not result in additional costs or savings for state or local governmental units. The

proposed amendments codify the provisions for the prohibitions on the use of medical information and genetic test results. The proposed rule changes codify the provisions of Act 129 of 2003, Act 325 of 2004, Act 419 of 2009, Act 919 of 2010 and Act 58 of 2016 and align the administrative rules with present practice and statute. Included in the proposed rule change are definitions, requirements for release of genetic test and related medical information, and prohibitions on the use of medical information.

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

The proposed rule changes will not affect revenue collections for state or local governmental units.

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

The proposed rule changes will have no costs or benefits to directly affected persons or non-governmental groups. The proposed rule changes will benefit individuals undergoing genetic testing by having the prohibitions of medical information and genetic test results align the administrative rule with current statute for clarity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition or employment.

Lance L. Herrin  
Deputy Undersecretary  
1912#058

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Natural Resources Office of Conservation

#### Damage Prevention (LAC 43:XI.Chapter 27)

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43:XI in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed regulations are a result of Act No. 218 of the 2017 Regular Session.

#### Title 43

#### NATURAL RESOURCES

#### Part XI. Office of Conservation—Pipeline Division

#### Subpart 6. Damage Prevention

#### Chapter 27. Damage Prevention

#### §2701. Scope

A. This Chapter applies to the prevention of damage of underground pipelines.

B. It is the public policy of this state to promote the protection of property, workmen, and citizens in the immediate vicinity of an underground pipeline from damage, death, or injury and to promote the health and well-being of the community by preventing the interruption of essential services which may result from the destruction of, or damage to, underground pipelines.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:

## §2703. Definitions

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise.

*Agricultural Excavator*—a person who owns or operates a farm and is directly involved in the cultivation of land or crops or who raises livestock.

*Commissioner*—the commissioner of conservation.

*Damage*—any defacing, scraping, gouging, breaking, cutting, or displacement of, impact upon or removal of an underground pipeline or its means of primary support.

*Demolisher*—any person engaged in the act of demolishing as defined in this Section.

*Demolition*—the total or partial wrecking, razing, rendering, moving, or removing of any building or structure, movable or immovable.

*Emergency*—any crisis situation which poses an imminent threat or danger to life, health, or property requires immediate action, and immediate action is taken.

*Excavation* or *Excavate*—any operation causing movement or removal of earth, rock, or other materials in or on the ground or submerged in a marine environment that could reasonably result in damage to underground or submerged pipelines by the use of powered or mechanical or manual means, including but not limited to pile driving, digging, blasting, augering, boring, back filling, dredging, compaction, plowing-in, trenching, ditching, tunneling, land-leveling, grading, and mechanical probing. *Excavation* or *excavate* shall not include manual probing or any force majeure, act of God, or act of nature.

*Excavator*—any person who engages in excavation operations.

*Inclement Weather*—weather that prohibits or impedes a worker's use of his locating equipment or causes undue risk to himself or his equipment such as lightning, heavy rain, tornadoes, hurricanes, floods, sleet, snow, or flooding conditions.

*Mark by Time*—the date and time provided by the regional notification center by which the pipeline operator is required to mark the location or provide information to enable an excavator or demolisher, using reasonable and prudent means, to determine the specific location of the pipeline as provided for in R.S. 40:1749.14(D). The mark by time may be extended if mutually agreed upon and documented between the excavator and operator.

*Operator*—any person who owns or operates a pipeline as defined by this Part.

*Person*—an individual, firm, partnership, association, limited liability company, corporation, joint venture, municipality, governmental agency, political subdivision, or agent of the state or any legal representative thereof.

*Pipeline*—all intrastate and interstate pipeline facilities defined by 49 CFR 192.3 and 49 CFR 195.2.

*Regional Notification Center*—any one of the following:

a. an entity designated as nonprofit by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code and which is organized to protect its members from damage and is certified by the Department of Public Safety and Corrections in accordance with this Part;

b. an organization of operators, consisting of two or more separate operators who jointly have underground utilities or facilities in three or more parishes in Louisiana, which is organized to protect its own installation from damage and has been certified by the Department of Public Safety and Corrections in accordance with this Part;

c. an operator who has underground utilities or facilities in a majority of parishes in Louisiana and is organized to protect its own installation from damage, and has been certified by the Department of Public Safety and Corrections in accordance with this Part.

*Underground Pipeline*—any pipeline as defined by this Part which is buried, placed below ground or submerged

*Wildfire*—an uncontrolled combustion of natural vegetation.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:

#### **§2705. Excavation and Demolition; Prohibitions**

A. Except as provided in this Section, no person shall excavate or demolish in any street, highway, public place, or servitude of any operator, or near the location of an underground pipeline, or on the premises of a customer served by an underground pipeline without having first ascertained, in the manner prescribed in Subsection B of this Section, the specific location as provided in §2707 of all underground pipelines in the area which would be affected by the proposed excavation or demolition.

B. Except as provided in §2709, prior to any excavation or demolition, each excavator or demolisher shall serve telephonic or electronic notice of the intent to excavate or demolish to the regional notification center or centers serving the area in which the proposed excavation or demolition is to take place. Such notice shall be given to the notification center at least 48 hours, but not more than 120 hours, excluding weekends and holidays, in advance of the commencement of any excavation or demolition activity. Holidays shall consist of the following: New Year's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Eve; and Christmas Day, or the days on which those holidays are observed by the state. The marking of an operator's pipeline shall be provided for excavation or demolition purposes only.

1. This notice shall contain the name, address, and telephone number of the person filing the notice of intent, and, if different, the person responsible for the excavation or demolition, the starting date, anticipated duration, and description of the specific type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition and a statement as to whether directional boring or explosives are to be used. If the excavation or demolition is part of a larger project, the notice shall be confined to the actual area of proposed excavation or demolition that will occur during the 20-day time period under R.S. 40:1749.14(C).

2. The excavator or demolisher shall wait at least 48 hours, beginning at 7 a.m. on the next working day, following notification, unless mutually agreed upon and documented by the excavator and operator to extend such time, before commencing any excavation or demolition activity, except in the case of an emergency as defined in the

provisions of this Part or if informed by the regional notification center that no operators are to be notified.

3. Concerning pipelines located on or in water, when an extension of time to mark a pipeline cannot be agreed upon and the operator has determined said pipeline(s) cannot be adequately marked by the mark by time listed on the Regional Notification Center ticket, the operator may appeal to the commissioner for an extension to the mark by time. Said request shall be made via e-mail to PipelineInspectors@la.gov and the contact e-mail listed on the regional notification center ticket shall be copied on the request. The request shall contain the ticket no., location of the pipe and a summary explaining why the line cannot be located by the mark by time. The request shall be made on a form as provided by the commissioner.

C. This Chapter shall not apply to activities by operators or landowners excavating their own underground pipelines on their own property or operators' exclusive right-of-way provided there is no encroachment on the rights-of-way of any operator and the operator controls access to the location.

D. Excavators may use white paint as marking under American Public Works Association guidelines.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:

#### **§2707 Regional Notification Center**

A. Each operator of an underground pipeline, after having received the notification request from the regional notification center of an intent to excavate, shall supply, prior to the proposed excavation, the following information to the person responsible for the excavation:

1. The specific location and type of all of its underground pipelines which may be damaged as a result of the excavation or demolition. If the surface over the buried or submerged pipeline is to be removed, supplemental offset markings may be used. Offset markings shall be on a uniform alignment and shall clearly indicate that the actual facility is a specific distance away.

2. Unless otherwise required by federal or state statutes, the specific location and type of underground pipeline may, at the operator's option, be marked to locate the pipelines. If the pipelines are visibly marked by the operator, they shall be marked by the operator by color coded paint, flags, or stakes or similar means using the American Public Works Association color code.

a. When the operator has marked the location of underground pipelines, the marking shall be deemed good as long as visible but not longer than 20 calendar days, including weekends and holidays, from the mark by time. An additional notice to the regional notification center shall be given by the excavator or demolisher in accordance with the provisions of this Part when the marks are no longer visible or if the excavation or demolition cannot be completed within 20 calendar days from the mark by time, whichever occurs first.

b.i. Concerning locations of excavation in or on water, an excavator may request an extension to the expiration date of a regional notification center ticket under the following circumstances:

(a). no utilities other than pipelines are listed on the regional notification center ticket; and

(b). the pipeline markings are still visible.

ii. Requests for an extension shall be made via e-mail to PipelineInspectors@la.gov on a form as provided by the commissioner. The operator(s) listed on the regional notification center ticket shall be copied on the extension request.

c. The excavator shall use all reasonable and prudent means, within common industry practice, to protect and preserve all marks of the underground pipeline.

3. If the pipeline(s) cannot be physically located, the operator shall provide information to enable an excavator using reasonable and prudent means to determine the approximate location of the pipeline. The information provided by the operator shall include a contact person and a specific telephone number for the excavators to call. After the operator has received the notification request, the information on location, size, and type of underground pipeline must be provided by the operator to the excavator prior to excavation.

4. In the event of inclement weather as defined in this Chapter, the mark by time shall be extended by a duration equal to the duration of the inclement weather. The owner or operator shall notify the excavator or demolisher before the expiration of the mark by time of the need for such extension.

5. Should an operator determine that their pipeline(s) is not in conflict with the location of the request or should the pipeline(s) not be fully marked for locating purposes, a notification shall be sent to the excavator prior to the mark by time. A response to the Regional Notification Center that generated the locate request shall suffice for compliance with this section.

B. For the purpose of this Section, the specific location of the underground pipeline(s) is defined as an area not wider than the width of the underground pipeline as marked plus eighteen inches on either side.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:

#### **§2709. Emergency Excavation; Notice Required; Penalty**

A. The notice required pursuant to §2705 shall not apply to any person conducting an emergency excavation. Oral notice of the emergency excavation shall be given as soon as practicable to the regional notification center or each operator having underground pipelines located in the area and, if necessary, emergency assistance shall be requested from each operator in locating and providing immediate protection to its underground pipelines.

B. The excavator shall orally certify in the notice required in Subsection A of this Section that the situation poses an imminent threat or danger to life, health, or property and requires immediate action and that the excavator has a crew on site.

C. There is a rebuttable presumption that the excavator failed to give notice as required pursuant to this Section if the excavator failed to give any notice to the regional notification center within the following time periods:

1. within four hours of the beginning of the emergency excavation;

2. in the case of a gubernatorially declared state of emergency due to a tropical storm or hurricane event, within

12 hours of the beginning of the emergency excavation within the parishes to which the emergency declaration applies;

3. in the case of a wildfire, within 24 hours after control of the emergency.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:

#### **§2711. Precautions to Avoid Damage**

A. In addition to the notification requirements in §2705 and §2707 and the emergency notification requirements in §2709, each person responsible for an excavation or demolition operation shall do the following.

1. Plan the excavation or demolition to avoid damage to or minimize interference with underground pipelines in and near the construction area.

2. Maintain a safe clearance between the underground pipelines and the cutting edge or point of any power or mechanized equipment, taking into account the known limit of control of the cutting edge or point to avoid damage to pipelines.

3. Provide support for underground pipelines in and near the construction area, during excavation and back filling operations, as may be reasonably necessary to protect any pipelines.

4. Dig test pits to determine the actual location of pipelines if said lines are to be exposed.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 46:

#### **§2713. Excavation or Demolition; Repair of Damage**

A. Each person responsible for any excavation or demolition operations which result in any damage to an underground pipeline shall, immediately upon discovery of that damage, notify the owner or operator of the pipeline of the location and nature of the damage and shall allow the owner or operator reasonable time to accomplish necessary repairs before continuing the excavation, demolition, or back filling in the immediate area of damage.

B. Each person responsible for an excavation or demolition operation which results in damage to an underground pipeline permitting the escape of any flammable, toxic, or corrosive fluids/gases shall, immediately upon discovery of that damage.

1. Notify the owner or operator of the pipeline as provided in Subsection A, and all other appropriate emergency response personnel, including 911 and the local law enforcement and fire departments and allow the owner or operator reasonable time to accomplish necessary repairs before continuing the excavation, demolition, or back filling in the immediate area of damage.

2. Take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the owner or operator's personnel and police or fire department.

3. Comply with any other notification process required by law or regulation.

C. For the purposes of this Part, failure to comply with the provisions of Subsection B shall constitute a single violation, except as provided below by Subsection D.



D. After discovery of the damage, each day that an excavator or demolisher fails to comply with the provisions of Subsection B shall be considered a separate violation.

AUTHORITY NOTE: Promulgated in accordance with 40:1749.27.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, 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 businesses as described in R.S. 49:965.6.

#### **Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

#### **Public Comments**

All interested parties will be afforded the opportunity to submit data, views, or arguments, in writing. Written comments will be accepted by hand delivery or USPS only, until 4 p.m., February 10, 2020, at Office of Conservation, Pipeline Division, P.O. Box 94275, Baton Rouge, LA 70804-9275; or Office of Conservation, Pipeline Division, 617 North Third Street, Room 931, Baton Rouge, LA 70802. Reference Docket No. PRA 2020-01. All inquiries should be directed to Steven Giambrone at the above addresses or by phone to (225) 342-2989. No preamble was prepared.

Richard P. Ieyoub  
Commissioner

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Damage Prevention**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be implementation costs to the Department of Natural Resources (DNR) as a result of the proposed amendments. However, since these regulations codify Act 218 of 2017 and are already enforced under LA RS 40:1749.11-27, these costs have already been recognized and incorporated into the operating budget.

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

There may be increased revenue to the DNR as a result of fines and penalties, however, based on actual revenue collections between August 2017 through November 2019, these are not anticipated to be material. Additionally, the department has received federal funding to support oversight and administration of pipeline damage prevention activities.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no anticipated costs to directly affected persons or non-governmental groups. Operators and excavators are already required to comply with the requirements of these regulations under LA RS 40:40:1749.11-27. Increased compliance could result in long term benefits to owner/operators in the form of reduced damages.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes are not anticipated to have any impact on competition or employment.

Richard P. Ieyoub  
Commissioner  
1912#060

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **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, notice is hereby given that the Louisiana Workforce Commission proposes to amend LAC 40:IV.377. The proposed amendment to the Rule 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.

#### **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:

#### **Family Impact Statement**

Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on the six criteria set forth in R.S. 49:972(B).

#### **Poverty Impact Statement**

This proposed Rule will have no known impact on poverty as described in R.S. 49:973.

#### **Small Business Analysis**

This proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### **Provider Impact Statement**

This proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session.

#### **Public Comments**

Interested persons may submit written comments to this amended Rule to Robert J. Roux, Executive Counsel, P.O. Box 94094, Baton Rouge, LA 70804-9094, or by email at RRoux@lwc.la.gov. All written comments must be received by 4:30 p.m., January 09, 2020.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Louisiana Workforce Commission, ATTN: Robert Roux, Post Office Box 94094, Baton Rouge, LA 70804-9094; however, such request must be received no later than 4:30 p.m. on January

9, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, a public hearing will be conducted at the Louisiana Workforce Commission, 4th Floor Conference Room #494, Administration Bldg., 1001 N. 23rd St. on January 28, 2020 at 9 a.m. If a public hearing is held, notice will be posted at [www.laworks.net](http://www.laworks.net), and all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Ava Dejoie  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Electronic Filing and Payment Requirements**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no expected implementation costs or savings to state or local governmental units as a result of this proposed rule.

The proposed amendment sets forth the procedure and format for employers' submission of required reports, payment of unemployment contributions, and submission of requested documents to the Louisiana Workforce Commission (LWC). The amendment removes the provision that allows employers to make unemployment contributions by paper check. The rule also provides that any form requested from an employer as a result of an audit must be submitted to LWC electronically. Finally, the rule provides the guidelines for an employer to request a waiver from the electronic filing requirement.

#### **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)**

The implementation of this rule may result in reduced printing costs to employers. Employers will have the ability to submit documentation electronically to LWC, as opposed to printing and submitting hard copies.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule has no known effect on competition and employment.

Ava M. Dejoie  
Secretary  
1912#045

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 Restoration Plan and Environmental Assessment #6: Restore and Conserve Wetlands, Coastal, and Nearshore Habitat

#### **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 Draft Restoration Plan/Environmental Assessment #6: Restore and Conserve Wetlands, Coastal, and Nearshore Habitat* (RP/EA #6), describing and proposing restoration project alternatives considered by the LA TIG to restore and conserve wetlands, coastal, and nearshore habitats injured as a result of the *Deepwater Horizon* (DWH) oil spill. The LA TIG evaluated these alternatives under criteria set forth in the OPA natural resource damage assessment (NRDA) regulations, and also evaluated the environmental consequences of the restoration alternatives in accordance with NEPA. The proposed projects are consistent with the restoration alternatives selected in the *Deepwater Horizon* Final PDARP/PEIS. This notice informs the public off the availability of the Draft RP/EA and provides an opportunity for the public to submit comments on the document.

#### **Dates:**

**Submitting Comments:** The LA TIG will consider public comments on the draft RP/EA #6 received on or before January 21, 2020.

**Public Webinar:** The LA TIG will host a public webinar on January 8, 2020, at 12:00 p.m. CST. The public may register for the webinar at <https://attendee.gotowebinar.com/register/8527752114619805195>.

After registering, participants will receive a confirmation email with instructions for joining the webinar. The presentation will be posted on the web shortly after the webinar is conducted.

#### **Addresses:**

**Obtaining Documents:** You may download the draft RP/EA #6 from either of the following websites:

<https://www.la-dwh.com>

<https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana>

Alternatively, you may request a CD of the draft RP/EA #6 (see For Further Information Contact). A hard copy of the draft RP/EA #6 is also available for review during the public comment period at 16 repositories located across the State.

**Submitting Comments:** You may submit comments on the draft RP/EA #6 by one of the following methods:

**Via the Web:** <http://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 on January 8, 2020.

**For Further Information Contact:** Joann Hicks, CPRA, 225-342-5477

#### **Administrative Record**

The documents comprising the Administrative Record for the RP/EA #6 can be viewed electronically at <https://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 (La. R.S. 30:2451 et seq.), the implementing Natural Resource Damage Assessment Regulations found at La. Admin. Code 43:101 et seq., and NEPA (42 U.S.C. 4321 et seq.).

Lawrence B. Haase  
Executive Director

1912#028

## POTPOURRI

### Office of the Governor Office of Financial Institutions

#### Judicial Interest Rate

Pursuant to authority granted by R.S. 13:4202(B)(1), as amended, the Louisiana Commissioner of Financial Institutions has determined that the judicial rate of interest for calendar year 2020 will be five and three quarters (5.75%) percent per annum.

John Ducrest  
Commissioner

1912#004

## POTPOURRI

### Department of Health Bureau of Health Services Financing

#### 2020 Second 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 October 1, 2019 through December 31, 2019, the quarterly assessment amount to all hospitals will be \$17,458,084. This amounts to 0.15387 percent of total inpatient and outpatient hospital net patient revenue of the assessed hospitals.

Rebekah E. Gee MD, MPH  
Secretary

1912#072

## POTPOURRI

### Department of Natural Resources Office of Conservation

#### Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Kennedy	024-05	10777
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	024-26	19824
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Tuttle	017-14	29734
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Box	017-1	35778
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Box	017-2	36210

Operator	Field	District	Well Name	Well Number	Serial Number
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Tuttle	017-17	36619
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Box	017-7	36788
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Mclelland	019-21	36993
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Box	017-6	37061
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Mclelland	019-13	37259
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Hayne	020-02	42231
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Herold	019-12	46785
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Mclelland	024-8	55053
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Mclelland	019-22	61647
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Price Main	020-1	72667
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	025-13	80060
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	025-11	80412
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	026-9	80745
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Williams	021-5	89438
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Brinkerhoff	030-12	106053
BSI Operating, LLC	Red River-Bull Bayou	S	Robinson	001	111550
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Hayne	020-03	111692
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Clift	013-06	111899

Operator	Field	District	Well Name	Well Number	Serial Number
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Martin	016-11	112003
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Herold	018-15	119350
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Brinkerhoff	030-23	127948
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Mclelland	030-3	127949
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	036-01	127950
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	025-16	127951
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Richardson	025-17	127953
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Richardson	030-5	127954
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Brinkerhoff	030-13	127962
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Kennedy	023-16	128163
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Kennedy	024-011	128164
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	026-07	128165
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Mclelland	013-016	128186
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Christopher	017-16	128231
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	025-07	128686
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Crichton	017-15	128910
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Herold	019-7	129151
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Herold	019-18	129153

Operator	Field	District	Well Name	Well Number	Serial Number
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Marston Heirs	019-8	129154
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Marston Heirs	019-09	129155
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Marston Heirs	020-17	129156
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Marston Heirs	020-05	129157
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Hayne	020-6	129158
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Hayne	020-012	129159
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	025-03	129611
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	025-05	129612
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	025-22	129613
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Kennedy	024-27	129614
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Kennedy	023-19	136243
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Herold	019-10	136244
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; W P Hayne et al	020-7	136245
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Hayne	020-11	136246
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Kennedy	023-009	138314
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Brinkerhoff	030-11	138344
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Herold et al	019-14	138345
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Kennedy	023-010	139569

Operator	Field	District	Well Name	Well Number	Serial Number
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su; W P Hayne et al	020-10	139967
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su; Hayne	020-14	140494
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Herold	018-13	141519
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Mclelland	024-22	141520
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Kennedy	024-06	141533
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Kennedy	023-008	143338
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Kennedy	023-17	144116
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Kennedy	024-18	144118
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Haynes et al	019-19	145022
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Herold et al	019-20	145023
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Herold et al	019-15	145024
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su W P Hayne et al	020-13	145640
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su W P Hayne et al	020-18	146429
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Mclelland	024-20	146569
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Robinson	026-6	146570
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Mclelland	024-21	147230
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Robinson	036-17	147231
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Robinson	036-2	148011

Operator	Field	District	Well Name	Well Number	Serial Number
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Brinkerhoff	030-10	149559
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Kennedy	023-18	149560
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Kennedy	024-12	149561
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Mclelland	030-18	149562
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Richardson	025-8	149563
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su SL 4304	030-19	149564
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su SL 4304	030-6	149565
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su SL 4304	030-8	149566
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Brinkerhoff	030-20	150565
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Hayne	020-19	151494
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Kennedy	024-3	153158
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Mclelland	024-23	153159
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Brinkerhoff	030-21	153236
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Price Main	020-9	153237
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su; Kennedy	024-17	154455
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Randolph Marston	013-13	154456
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su Henry Bourbon	023-15	155983
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; Robinson	025-23	157506

Operator	Field	District	Well Name	Well Number	Serial Number
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su ; SL 9094	024-2	157674
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su; Crichton	013-7	161791
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su; Hayne	020-21	161844
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su; Herold	019-3	171496
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb TUSC su; W P Hayne et al	019-23	171497
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su; Robinson	036-8	192547
BSI Operating, LLC	Red River-Bull Bayou	S	rrbb Tusc su; Huckabay	030-23A	204846
BSI Operating, LLC	Red River-Bull Bayou	S	Hoss rb vuc; ERH Limited et al	001	231175
BSI Operating, LLC	Bracky Branch	S	Kenwood 20 swd	001	232487
BSI Operating, LLC	Red River-Bull Bayou	S	Brinkerhoff et al swd	001	232747
BSI Operating, LLC	Red River-Bull Bayou	S	RRBB Tusc su; Robinson	025-21	970763
BSI Operating, LLC	Red River-Bull Bayou	S	RRBB Tusc su; Richardson	024-9	990602
BSI Operating, LLC	Red River-Bull Bayou	S	RRBB Tusc su; Robinson	025-9	990603
C & C Company	Monroe	M	J C Allen	001	171567
C & C Company	Monroe	M	Wells	001	181602
C & C Company	Monroe	M	Wells	002	181735
C & C Company	Monroe	M	Wells	003	182343
C & C Company	Monroe	M	Love	001	182344
C & C Company	Monroe	M	Love	002	201907
Coastal Minerals, Inc.	Hackberry, West	L	Lewis	001	189649 (30)

Operator	Field	District	Well Name	Well Number	Serial Number
R. Huber Smith	Caddo Pine Island	S	Muslow	001-W	38427
Reggie D. Brown	Monroe	M	Reggie D Brown	001	139425
Reggie D. Brown	Monroe	M	Reggie D Brown	002	188056
Reggie D. Brown	Monroe	M	Reggie D Brown	003	188057
Sandhill Production Inc	Westwood	M	Ayers Land & Timber Co	002	73632
Sandhill Production Inc	Westwood	M	Westwood swd	001	116780
Sandhill Production Inc	Westwood	M	Chicago Mill A	001	159498
Sandhill Production Inc	Westwood	M	Chicago Mill A	002	160508
Sandhill Production Inc	Thornwell, South	L	G A Lyon	001-D	215064
Sandhill Production Inc	Dykesville, East	S	smk c rc suc; Reed	001	232010
Weatherly Oil & Gas, LLC	Ashland	S	cv ra sud; PH 8-13-7 H	001	241491
Weatherly Oil & Gas, LLC	Ashland	S	ha ra sug; Guin-13-7 H	001	242011
Weatherly Oil & Gas, LLC	Ashland	S	ha ra sud; Hood 17-13-7 H	001	242238

Richard P. Ieyoub  
Commissioner

1912#042

## NOTICE OF INTENT

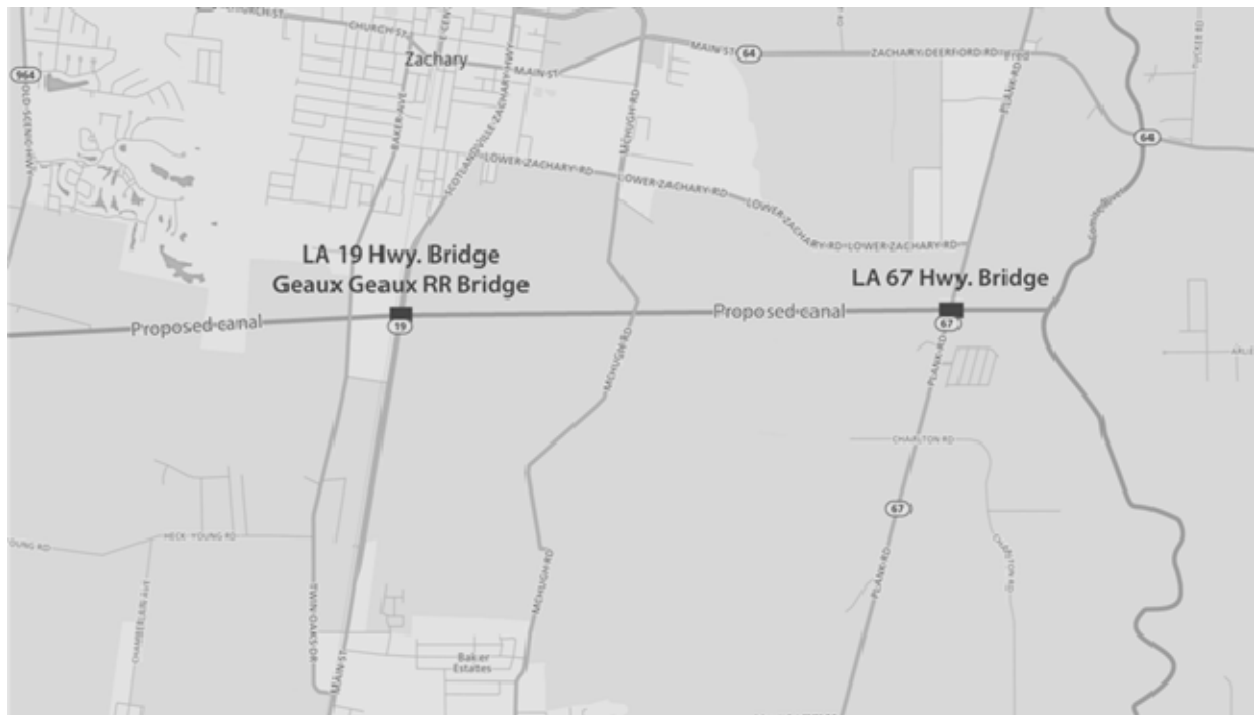
### Department of Transportation and Development

Construction Management at Risk Project  
East Baton Rouge Parish

The Louisiana Department of Transportation and Development (LA DOTD) is announcing the LA DOTD's intent to enter into a Construction Management at Risk (CMAR) contract with a CMAR Contractor possessing qualified construction contracting capability for the Comite River Diversion Canal Bridges (state project nos. H.001352 and H.002273).







The major elements of the Comite River Diversion Canal Bridges CMAR Project (the “project”) as currently proposed include the following:

- new bridge structures over the future Comite River Diversion Canal at LA 67 and LA 19;
- a new railroad bridge structure over the future Comite River Diversion Canal at LA 19;
- temporary at-grade highway bypass roads for LA 67 and LA 19;
- an at-grade shoo-fly for the Geaux Geaux railway on LA 19;
- utility coordination and, as necessary, relocations;
- maintenance of traffic; and
- local and business access.

The anticipated pre-construction services agreement execution date for the project is no later than May 2020.

Responses to this notice and the following request for qualifications (RFQ) will be evaluated to determine the most highly qualified proposer that is able to provide both pre-construction services and, if successfully negotiated, construction services for the Project.

The LA DOTD is seeking a CMAR contractor for the project that is committed to quality; has proven experience in pre-construction and construction services related to the construction of highway and bridge projects; will bring

innovative approaches and a collaborative work effort to the project; will ensure timely completion; and is willing to partner with the LA DOTD and its designer and independent cost estimator for the mutual success of the project.

Firms/teams interested in providing the services for the project should submit a letter of interest (LOI) to [ComiteCMAR@la.gov](mailto:ComiteCMAR@la.gov). All correspondence with the LA DOTD on matters concerning this notice and the subsequent RFQ for the Project should be made in writing to this e-mail address.

An LOI from proposers in response to this notice will be due by January 28, 2020. The LOI should, at a minimum, name the proposed primary team members (if the LOI is being submitted by a team) and contact information (name, telephone number, address, and e-mail address) for the official point of contact for the proposer.

Proposers that provide the LA DOTD with an LOI will be issued the RFQ and will be placed on a list of interested firms that will be placed on the LA DOTD Web site (<http://www.dotd.la.gov>).

Dr. Shawn Wilson  
Secretary

1912#041

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