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This public document was published at a total cost of \$1,975. Two hundred fifty copies of this public document were published in this monthly printing at a cost of \$1,975. The total cost of all printings of this document including reprints is \$1,975. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 49:981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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# Executive Orders

## EXECUTIVE ORDER BJ 15-25

Bond Allocation—Louisiana Community  
Development Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. BJ 2008-47 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits (hereafter “Ceiling”);

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

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

WHEREAS, the Louisiana Community Development Authority has applied for an allocation of the 2015 Ceiling to be used in connection with the financing by NFR BioEnergy CT, LLC, for the development and construction of a biorefinery plant which will convert sugarcane waste and other agricultural waste into biocarbon products, including but not limited to energy pellets for use as fuel, to be located at the Cora Texas Sugar Mill on Highway 1 South, in the Parish of Iberville, City of White Castle, State of Louisiana, within the boundaries of the Issuer.

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2015 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$60,000,000	Louisiana Community Development Authority	NFR BioEnergy CT, LLC

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the “Application for Allocation of a Portion of the State of Louisiana’s Private Activity Bond Ceiling” submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2015, provided that such bonds are delivered to the initial purchasers thereof on or before December 31, 2015.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 22nd day of October, 2015.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1511#004

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Economic Development Office of Business Development and Board of Commerce and Industry

#### Industrial Ad Valorem Tax Exemption Program (LAC 13:I.Chapter 5)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development and the Louisiana Board of Commerce and Industry have an immediate need for rules for the Industrial Ad Valorem Tax Exemption Program (LA Const. Art. VII, Section 21 and R.S. 51:921 et seq.), to effect fees under the new fee schedule provided by HB 773 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 2015 edition, and then subsequently as a Notice of Intent in the August 2015 edition, with a public hearing which was held on September 29, 2015.

#### Title 13

#### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

#### Chapter 5. Industrial Ad Valorem Tax Exemption Program

#### §503. Advance Notification; Application

A. An advance notification of intent to apply for tax exemption shall be filed with the LED Office of Business Development (OBD) on the prescribed form prior to the beginning of construction or installation of facilities. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins. An advance notification fee of \$250 shall be submitted with the form. The advance notification will expire and become void if no application is filed within 12 months of the estimated project ending date stated in the advance notification (subject to amendment by the applicant).

B. - B.3. ...

C. An application fee shall be submitted with the application in the amount equal to 0.5 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$500 and in no case shall a fee exceed \$15,000 per project.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2376 (August 2011), amended by the Department of Economic Development, Office of Business Development and the Board of Commerce and Industry, LR 42:

#### §505. Miscellaneous Capital Additions

A. - B. ...

C. An application fee shall be submitted with the MCA application in the amount equal to 0.5 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$500 and in no case shall a fee exceed \$15,000 per project.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), amended by the Department of Economic Development, Office of Business Development and the Board of Commerce and Industry, LR 42:

#### §525. Effective Date of Contract; Project Completion Report

A. The owner of a new manufacturing establishment or addition shall document the beginning date of operations and the date that construction is substantially complete. The owner must file that information with OBD on the prescribed project completion report form not later than 90 days after the beginning of operations, completion of construction, or receipt of the fully executed contract, whichever occurs last. A project completion report fee of \$250 shall be submitted with the form. The deadline for filing the project completion report may be extended pursuant to §523.

B. ...

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development LR 37:2379 (August 2011), amended by the

Department of Economic Development, Office of Business Development and the Board of Commerce and Industry, LR 42:

**§527. Affidavit of Final Cost**

A. Within six months of the beginning of operations, completion of construction, or receipt of the executed contract, whichever occurs last, the owner of a manufacturing establishment or addition shall file on the prescribed form an affidavit of final cost showing complete cost of the exempted project. A fee of \$250 shall be filed with the affidavit of final cost or any amendment to the affidavit of final cost. Upon request by OBD, a map showing the location of all facilities exempted in the project shall be submitted in order that the exempted property may be clearly identifiable. The deadline for filing the affidavit of final cost may be extended pursuant to §523.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), amended by the Department of Economic Development, Office of Business Development and the Board of Commerce and Industry, LR 42:

**§529. Renewal of Tax Exemption Contract**

A. Application for renewal of the exemption must be filed with OBD on the prescribed form not more than six months before, and not later than the expiration of the initial contract. A fee of \$250 shall be filed with the renewal application. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Upon proper showing of full compliance with the initial contract of exemption, the contract may be approved by the board for an additional period of up to but not exceeding five years.

B. ...

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), amended by the Department of Economic Development, Office of Business Development and the Board of Commerce and Industry, LR 42:

**§533. Reporting Requirements for Changes in Operations**

A. OBD is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract. A fee of \$250 shall be filed with a request for any contract amendment, including but not limited to, a change of ownership, change in name, or change in location. The board may consider restrictions or cancellation of a contract for cessation of the manufacturing operation, or retirement of any portion of the exempted equipment. Failure to report any material changes constitutes a breach of contract and, with approval by the board, shall result in restriction or termination.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), amended by the Department of Economic Development, Office of Business Development and the Board of Commerce and Industry, LR 42:

**§535. Sale or Transfer of Exempted Manufacturing Establishment**

A. In the event an applicant should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. A fee of \$250 shall be filed with a request to transfer the contract. The board shall consider all such applications for transfer of contracts of exemption strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change the name of the contracting applicant. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), amended by the Department of Economic Development, Office of Business Development and the Board of Commerce and Industry, LR 42:

Anne G. Villa  
Undersecretary

1511#023

**DECLARATION OF EMERGENCY**

**Department of Economic Development  
Office of Business Development**

Angel Investor Tax Credit (LAC 13:I.3307)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development has an immediate need for rules for the Angel Investor Tax Credit (R.S. 47:6020 and R.S. 51:921 et seq.), to effect fees under the new fee schedule provided by HB 773 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 2015 edition, and then

subsequently as a Notice of Intent in the September 2015 edition, with a public hearing which occurred on October 26, 2015.

### **Title 13**

#### **ECONOMIC DEVELOPMENT**

##### **Part I. Financial Incentive Programs**

##### **Chapter 33. Angel Investor Tax Credit**

##### **§3307. The Amount, Allocation and Limitations of the Angel Investor Tax Credits**

A. ...

B. All applications for the reservation of credits shall be made on a form prescribed by the department. All applications for the reservation of credits shall be submitted to the department electronically to an email address specified by the department on its website. An application fee shall be submitted with all applications for reservation of credits. The application fee shall be equal to 0.5 percent (0.005) times the total anticipated tax incentive for the investors with a minimum application fee of \$500 and a maximum application fee of \$15,000, payable to Louisiana Department of Economic Development.

C. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006), amended LR 32:1595 (September 2006), LR 37:3196 (December 2011), amended by the Department of Economic Development, Office of Business Development, LR 42:

Anne G. Villa  
Undersecretary

1511#024

#### **DECLARATION OF EMERGENCY**

##### **Department of Economic Development Office of Business Development**

##### **Enterprise Zone Program (LAC 13:I.Chapter 7)**

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development has an immediate need for rules for the Enterprise Zone Program (R.S. 51:1787 and R.S. 51:921 et seq.), to effect fees under the new fee schedule provided by HB 773 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 2015 edition, and then

which will be incorporated into a Notice of Intent in the November 2015 edition, with a public hearing expected in December 2015.

### **Title 13**

#### **ECONOMIC DEVELOPMENT**

##### **Part I. Financial Incentive Programs**

##### **Chapter 7. Enterprise Zone Program**

##### **§717. Annual Employee Certification**

A. An annual employee certification report (ECR) must be filed with the business incentive services by May 31 on all active contracts validating compliance with §§709, 711, 713, and 715. An employee certification report fee of \$250 shall be submitted with the report. Failure to file may result in contract cancellation. One 30-day extension may be granted if requested in writing.

B. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 37:2373 (August 2011), LR 40:494 (March 2014), LR 42:

##### **§721. Advance Notification**

A. An advance notification form, and a \$250 fee, shall be filed with business incentive services prior to the beginning of the project. All incentives for the same project must be indicated on one advance notification and be identified by one project number. It is not acceptable to apply for Enterprise Zone Program and use the same project in a miscellaneous capital addition application for the Industrial Tax Exemption Program. Internet filing of the advance notification may be made at the department website.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development LR 29:2302 (November 2003), amended LR 37:2373 (August 2011), LR 40:495 (March 2014), LR 42:

##### **§723. Application**

A. - B. ...

C. An application fee equal to 0.5 percent (0.005) of the total estimated tax relief shall be submitted with each application. Total estimated tax relief includes jobs tax credits, state sales and use tax rebates and investment tax credits. Jobs tax credits are calculated by multiplying the total new jobs estimated to be created within the five-year contract period by \$2,500 (\$5,000 for rubber, aerospace or auto parts manufacturers). An additional application fee will be due if a project's employment or investment is increased from that stated in the application, resulting in a minimum fee of \$100 more than previously paid. The minimum fee is \$500 and the maximum fee is \$15,000 per application. All fees shall be made payable to Louisiana Department of Economic Development.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2373 (August 2011), LR 40:495 (March 2014), LR 42:



**§729. Enterprise Zone Program Contract**

A. ...

B. Business incentive services must be notified, on the prescribed form, of any change that will affect the contract. A fee of \$250 shall be submitted with a request for any contract amendment. This includes, but is not limited to, changes in the ownership or operational name of the business holding a contract, or the suspension, closing, or abandonment of operations. Failure to report any changes within six months may constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 37:2374 (August 2011), amended LR 40:496 (March 2014), LR 42:

**§731. Project Completion**

A. Within six months after the project ending date or the governor’s signature on the contract, whichever is later, the business shall file with business incentive services, on the prescribed form, a project completion report and an affidavit of final cost. A project completion report fee of \$250 and an affidavit of final cost fee of \$250 shall be submitted with these forms or any amendments to these forms.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 37:2374 (August 2011), amended LR 40:496 (March 2014), LR 42:

Anne G. Villa  
Undersecretary

1511#026

**DECLARATION OF EMERGENCY**

**Department of Economic Development  
Office of Business Development**

Ports of Louisiana Tax Credits (LAC 13:I.3903 and 3923)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development has an immediate need for rules for the Ports of Louisiana Tax Credits (R.S. 47:6036 et seq., and R.S. 51:921 et seq.), to effect fees under the new fee schedule provided by HB 773 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 2015 edition, and which will be published a Notice of Intent in the November 2015 edition, with a public hearing expected in December 2015.

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part I. Financial Incentive Programs**

**Chapter 39. Ports of Louisiana Tax Credits**

**Subchapter A. Investor Tax Credit**

**§3903. Preliminary Certification**

A. - B.8. ...

C. An application fee shall be submitted with the application based on the following:

1. 0.5 percent (.005) times the estimated total incentive rebates (see application fee worksheet to calculate);

2. the minimum application fee is \$500 and the maximum application fee is \$15,000 for a single project.

D. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2544 (November 2010), amended by the Department of Economic Development, Office of Business Development, LR 42:

**Subchapter B. Import-Export Tax Credit**

**§3923. Application**

A. - E.3. ...

F. An application fee equal to 0.5 percent (0.005) times the total anticipated tax incentive, with a minimum application fee of \$500 and a maximum application fee of \$15,000, shall be submitted with each application for import-export credits. The fee shall be made payable to Louisiana Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2239 (November 2014), amended by the Department of Economic Development, Office of Business Development, LR 42:

Anne G. Villa  
Undersecretary

1511#022

**DECLARATION OF EMERGENCY**

**Department of Economic Development  
Office of Business Development**

Quality Jobs Program (LAC 13:I.Chapter 11)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development has an immediate need for rules for the Quality Jobs Program (R.S. 51:2451 et seq., and R.S. 51:921 et seq.), to effect fees under the new fee schedule provided by HB 773 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the

Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 2015 edition, and then subsequently as a Notice of Intent in the October 2015 edition, with a public hearing currently set for November 24, 2015.

### Title 13

## ECONOMIC DEVELOPMENT

### Part I. Financial Incentive Programs

#### Chapter 11. Quality Jobs Program

##### §1107. Application Fees, Timely Filing

A. The applicant shall submit an advance notification on the prescribed form before locating the establishment or the creation of any new direct jobs in the state. All financial incentive programs for a given project shall be filed at the same time, on the same advance notification form. An advance notification fee of \$250, for each program applied for, shall be submitted with the advance notification form. An advance notification filing shall be considered by the department to be a public record under Louisiana Revised Statutes, Title 44, Chapter 1, Louisiana Public Records Law, and subject to disclosure to the public.

B. ...

C. An application fee shall be submitted with the application based on the following:

1. 0.5 percent (.005) times the estimated total incentive rebates (see application fee worksheet to calculate);

2. the minimum application fee is \$500 and the maximum application fee is \$15,000 for a single project;

3. an additional application fee will be due if a project's employment or investment scope is or has increased, unless the maximum has been paid.

D. An application to renew a contract shall be filed within 60 days of the initial contract expiring. A fee of \$250 must be filed with the renewal contract.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011), LR 42:

##### §1117. The Contract

A. The board, after no objection from the executive director of the LWC and secretary of the LDR, and with the approval of the governor, may enter into a contract with an employer for a period up to five years.

1. - 5. ...

6. A fee of \$250 shall be filed with a request for any contract amendment, including but not limited to, a change of ownership, change in name, or change in location.

B. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended

by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011), LR 42:

##### §1123. Rebate Claim Filing

A. Payroll Rebate

1. An annual certification and a fee of \$250 shall be filed annually, commencing within six months after completion of the applicant's fiscal year or execution of the contract, whichever is later. The department may grant an extension of up to an additional six months provided the extension is requested prior to the filing deadline. Failure to file an annual certification within the prescribed timeframe may result in the annual rebate being denied or restricted. An annual certification is required in each year the contract is active, irrespective of whether annual rebates are being claimed.

2. - 6. ...

B. Sales and Use Tax Rebate or Investment Tax Credit

1. An annual employee certification report with a \$250 annual employee certification report fee must be filed on all active contracts for the employer to qualify for the sales and use tax rebate or investment tax credit under this Chapter. Employers must meet the requirements of the Enterprise Zone legislation and rules to qualify.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2311 (November 2003), amended by the Office of Business Development, LR 37:2594 (September 2011), LR 42:

Anne G. Villa  
Undersecretary

1511#027

## DECLARATION OF EMERGENCY

### Department of Economic Development Office of Business Development

Research and Development Tax Credit (LAC 13:I.2905)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development has an immediate need for rules for the Research and Development Tax Credit Program (R.S. 47:6015 and R.S. 51:921 et seq.), to effect fees under the new fee schedule provided by HB 773 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 2015 edition, and then subsequently as a Notice of Intent in the September 2015 edition, with a public hearing which occurred on October 26, 2015.

### **Title 13**

#### **ECONOMIC DEVELOPMENT**

##### **Part I. Financial Incentive Programs**

##### **Chapter 29. Research and Development Tax Credit**

##### **§2905. Certification of Amount of Credit**

A. ...

B. The application for a credit certification shall be submitted on a form provided by the LED and shall include, but not be limited to the following information:

1. an application fee equal to 0.5 percent (0.005) times the total anticipated tax incentive with a minimum application fee of \$500 and a maximum application fee of \$15,000, payable to Louisiana Department of Economic Development;

B.2. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004), amended by the Office of Business Development, LR 36:1768 (August 2010), LR 38:351 (February 2012), LR 40:51 (January 2014), LR 40:1526 (August 2014), LR 42:

Anne G. Villa  
Undersecretary

1511#025

#### **DECLARATION OF EMERGENCY**

##### **Department of Economic Development**

##### **Office of Business Development**

##### **Restoration Tax Abatement Program (LAC 13:I.Chapter 9)**

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development has an immediate need for rules for the Restoration Tax Abatement Program (LA Const. Art. 7, Sec. 21(H) and R.S. 47:4311 et seq.), to effect fees under the new fee schedule provided by HB 773 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule became effective on October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 2015 edition, and which will be published as a Notice of Intent in the November 2015 edition, with a public hearing expected in December 2015.

### **Title 13**

#### **ECONOMIC DEVELOPMENT**

##### **Part I. Financial Incentive Programs**

##### **Chapter 9. Restoration Tax Abatement Program**

##### **§903. Time Limits for Filing Application**

A. The applicant shall submit an "advance notification" on the prescribed form prior to the beginning of construction. An advance notification fee of \$250 shall be submitted with the advance notification form. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins.

B. ...

C. An application fee (effective May 4, 1988) shall be submitted with the application based on the following:

1. 0.5 percent of the estimated total five-year property tax exemption;

2. minimum application fee is \$500 for all projects except owner occupied residential properties which have no minimum application fee; maximum application fee is \$15,000;

3. please make checks payable to: Louisiana Economic Development.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992), amended by the Department of Economic Development, Office of Business Development, LR 42:

##### **§913. Affidavit of Final Cost**

A. Within six months after construction has been completed, an affidavit of final cost showing complete cost of the exempted project shall be filed on the prescribed form together with a fee of \$250 for the inspection which will be conducted by the Office of Commerce and Industry (make check payable to the Office of Commerce and Industry).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992), amended by the Department of Economic Development, Office of Business Development, LR 42:

##### **§921. Contract Renewal**

A. - B.2. ...

3. a renewal fee check for \$250, payable to the Office of Commerce and Industry.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, LR 18:252 (March 1992), amended by the Department of Economic Development, Office of Business Development, LR 42:

Anne G. Villa  
Undersecretary

1511#020

## DECLARATION OF EMERGENCY

### Department of Economic Development Office of Business Development

Technology Commercialization Credit and Jobs Program  
(LAC 13:I.2715)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development has an immediate need for rules for the Research and Development Tax Credit Program (R.S. 51:2351 et seq., and R.S. 51:921 et seq.) to effect fees under the new fee schedule provided by HB 773 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 2015 edition, and which will be published as a Notice of Intent in the November 2015 edition, with a public hearing expected in December 2015.

#### Title 13

### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

#### Chapter 27. Technology Commercialization Credit and Jobs Program

#### §2715. Application Fee

Editor's Note: This Section was formerly §2711.

A.1. An application fee in the amount equal to 0.5 percent (0.005) times the total anticipated tax incentive with a minimum application fee of \$500 and a maximum application fee of \$15,000 shall be submitted with each application.

2. All fees shall be made payable to: Louisiana Department of Economic Development

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353 and R.S. 51:936.2.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:980 (May 2004), amended LR 36:310 (February 2010), amended by the Department of Economic Development, Office of Business Development, LR 42:

Anne G. Villa  
Undersecretary

1511#021

## DECLARATION OF EMERGENCY

### Department of Economic Development Office of Entertainment Industry Development

Louisiana Digital Media and Software Act (LAC 61:I.1667)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development and the Office of Entertainment Industry Development have an immediate need for rules for the Louisiana Digital Media and Software Act (R.S. 47:6022 et seq.) to effect fees under the new fee schedule provided by HB 773 and HB 604 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 20 edition, and then subsequently as a Notice of Intent in the October 20 edition, with a public hearing currently set for November 30, 2015.

#### Title 61

### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

#### Subchapter D. Louisiana Digital Media and Software Act

#### §1667. Certification Procedures

##### A. Application

##### 1. - 1.d. ...

2. An application fee in the amount equal to 0.5 percent of the total estimated tax credits with a minimum fee of \$500 and a maximum fee of \$15,000 shall be submitted with each application.

3. Expenditure verification report fee. The department shall directly engage and assign a CPA to prepare an

expenditure verification report on an applicant's cost report of production or project expenditures. Applicants shall submit an advance deposit at the time of application, and shall later be assessed the department's actual cost based upon an hourly rate not to exceed \$250, in the amounts set forth below.

a. For applicants with project expenditures less than one million dollars, an advance deposit of \$7,500, with a maximum fee of \$15,000.

b. For applicants with project expenditures greater than one million dollar, an advance deposit of \$15,000, with a maximum fee of \$25,000.

c. Any unused balance shall be refunded to the applicant within sixty days following receipt of CPA's final invoice and payment of all CPA costs.

B. - D.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:633 (April 2009), amended LR 36:1983 (September 2010), LR 39:1011 (April 2013), amended by the Department of Economic Development, Office of Entertainment Industry Development LR 42:

Anne G. Villa  
Undersecretary

1511#018

## DECLARATION OF EMERGENCY

### Department of Economic Development Office of Entertainment Industry Development

#### Louisiana Sound Recording Investor Tax Credit Program (LAC 61:I.1635)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development and the Office of Entertainment Industry Development have an immediate need for rules for the Louisiana Sound Recording Investor Tax Credit Program (R.S. 47:6023 et seq.) to effect fees under the new fee schedule provided by HB 773 and HB 604 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 20 edition, and then subsequently as a Notice of Intent in the October 20 edition, with a public hearing currently set for November 25, 2015.

## Title 61

### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

#### Subchapter C. Louisiana Sound Recording Investor Tax Credit Program

#### §1635. Rules of Application

A. The sound recording investor tax credit authorized by R.S. 47:6023(C) may be earned and claimed as follows.

1. - 6. ...

7. An application fee in the amount equal to 0.5 percent of the total estimated tax credits with a minimum fee of \$500 and a maximum fee of \$15,000 shall be submitted with each application.

8. Expenditure verification report fee. The department shall directly engage and assign a CPA to prepare an expenditure verification report on an applicant's cost report of production or project expenditures. Applicants shall submit an advance deposit at the time of application, and shall later be assessed the department's actual cost based upon an hourly rate not to exceed \$250, in the amounts set forth below.

a. For applicants with project expenditures greater than \$5,000 but less than \$50,000, an advance deposit of \$2,500, with a maximum fee of \$5,000.

b. For applicants with project expenditures greater than \$50,000, an advance deposit of \$5,000, with a maximum fee of \$15,000.

c. Any unused balance shall be refunded to the applicant within sixty days following receipt of CPA's final invoice and payment of all CPA costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:305 (February 2010). amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 42:

Anne G. Villa  
Undersecretary

1511#019

## DECLARATION OF EMERGENCY

### Department of Economic Development Office of Entertainment Industry Development

#### Motion Picture Investor Tax Credit Program (LAC 61:I.1607)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development and the Office of Entertainment Industry Development have an immediate need for rules for the Motion Picture Investor Tax Credit Program (R.S. 47:6007 et seq.) to effect fees

under the new fee schedule provided by HB 773 and HB 604 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 20 edition, and then subsequently as a Notice of Intent in the October 20 edition, with a public hearing currently set for November 30, 2015.

#### **Title 61**

### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered by the Secretary of Revenue**

#### **Chapter 16. Louisiana Entertainment Industry Tax Credit Programs**

#### **Subchapter A. Motion Picture Investor Tax Credit Program**

#### **§1607. Certification Procedures**

##### **A. Application and Expenditure Verification Report Fees**

1. An application for initial certification shall be submitted with an application fee of 0.5 percent of the estimated total tax credits, with a minimum fee of \$500, and a maximum fee of \$15,000, payable to the office, as required by R.S. 36:104.

a. - b.ii.(j). ...

c. Expenditure verification report fee. The department shall directly engage and assign a CPA to prepare an expenditure verification report on an applicant's cost report of production or project expenditures. Applicants shall submit an advance deposit at the time of application, and shall later be assessed the department's actual cost based upon an hourly rate not to exceed \$250, in the amounts set forth below.

i. For applicants with project expenditures greater than \$50,000 but less than \$300,000, an advance deposit of \$5,000, with a maximum fee of \$10,000.

ii. For applicants with project expenditures greater than \$300,000 but less than \$25,000,000, an advance deposit of \$7,500, with a maximum fee of \$15,000.

iii. For applicants with project expenditures greater than \$25,000,000, an advance deposit of \$15,000, with a maximum fee of \$25,000.

iv. Any unused balance shall be refunded to the applicant within sixty days following receipt of CPA's final invoice and payment of all CPA costs.

B. - E.2.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:55 (January 2010), amended by the Department of Economic Development, Office of

the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, LR 37:514 (February 2011), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 42:

Anne G. Villa  
Undersecretary

1511#017

### **DECLARATION OF EMERGENCY**

#### **Department of Economic Development Office of Entertainment Industry Development**

Musical and Theatrical Production  
Income Tax Credit Program (LAC 61:I.1693)

This Emergency Rule is being published pursuant to emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). The Department of Economic Development and the Office of Entertainment Industry Development have an immediate need for rules for the Musical and Theatrical Production Income Tax Credit Program (R.S. 47:6034 et seq.) to effect fees under the new fee schedule provided by HB 773 and HB 604 of the 2015 Regular Session of the Louisiana Legislature. A delay in imposition of such fees would hinder effective administration of this program, impose unfunded and unrecoverable costs on the department, and delay access to the program by qualified applicants, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective October 29, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final Rule is promulgated in accordance with law, whichever occurs first.

This Emergency Rule is being promulgated in order to continue the provisions of the July 1, 2015 Emergency Rule (effective for 120 days), published in the *Louisiana Register*, as an Emergency Rule in the July 20 edition, and then subsequently as a Notice of Intent in the October 20 edition, with a public hearing currently set for November 25, 2015.

#### **Title 61**

### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered by the Secretary of Revenue**

#### **Chapter 16. Louisiana Entertainment Industry Tax Credit Programs**

#### **Subchapter E. Musical and Theatrical Production Income Tax Credit Program**

#### **§1693. Certification Procedures**

##### **A. Application and Expenditure Verification Report Fees**

1. An application for a state-certified production or a state-certified infrastructure project shall be submitted to the department, including:

a. all information required by R.S. 47:6034(E)(2)(a);

b. an application fee of 0.5 percent of the estimated total tax credits, with a minimum fee of \$500, and a maximum fee of \$15,000; and

c. the applicant shall provide additional information upon request.

2. Each application shall identify only one production or infrastructure project and only one contact person for such production or project.

3. Expenditure verification report fee. The department shall directly engage and assign a CPA to prepare an expenditure verification report on an applicant's cost report of production or project expenditures. Applicants shall submit an advance deposit at the time of application, and shall later be assessed the department's actual cost based upon an hourly rate not to exceed \$250, in the amounts set forth below:

a. For applicants with project expenditures greater than \$100,000, an advance deposit of \$5,000, with a maximum fee of \$15,000.

b. Any unused balance shall be refunded to the applicant within sixty days following receipt of CPA's final invoice and payment of all CPA costs.

B. - E.I.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6034(E) and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 35:2175 (October 2009), repromulgated LR 36:2238 (October 2010), amended LR 39:1016 (April 2013), amended by the Department of Economic Development, Office of Entertainment Industry Development, LR 42:

Anne G. Villa  
Undersecretary

1511#016

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment  
Standards and Practices

(LAC 28:CXI.Chapters 11, 13, 17, 18, 19, 23, and 24)

The Board of Elementary and Secondary Education (BESE) has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedure Act, and R.S. 17.6 to amend LAC 28:CXI, *Bulletin 118—Statewide Assessment Standards and Practices*: §1113, Achievement Levels; §1115, Performance Standards; §1701, Introduction; §1705, Introduction; and §1707, Performance Standards; and to repeal *Bulletin 118—Statewide Assessment Standards and Practices*: §1125, Introduction; §1127, Grade 4 Achievement Level Descriptors; §1129, Grade 8 Achievement Level Descriptors; §1141, Content Standards; §1143, English Language Arts Test Structure; §1145, Mathematics Test Structure; §1147, Science Tests Structure; §1149, Social Studies Tests Structure; §1335, Content Standards; §1337, English Language Arts Tests Structure; §1339, Mathematics Test Structure; §1341, Science Test Structure; §1343, Social Studies Tests Structure; §1349, Rescores; §1351, GEE Administration Rules; §1353, Summer Retest Administration; §1355, GEE Transfer Students; §1357, Student Membership Determination; §1703, Format; §1709, Introduction; §1711, Grade 3 Achievement Level Descriptors; §1713, Grade 5 Achievement Level Descriptors; §1715, Grade 6 Achievement Level

Descriptors; §1717, Grade 7 Achievement Level Descriptors; §1719, Grade 9 Achievement Level Descriptors; §1721, Content Standards; §1723, English Language Arts Tests Structure; §1725, Math Tests Structure; §1727, Science Tests Structure; §1729, Social Studies Tests Structure; §1805, Algebra I Test Structure; §1806, Biology Test Structure; §1807, English II Test Structure; §1808, Geometry Test Structure; §1809, U.S. History Test Structure; §1810, English III Test Structure; §1815, Introduction; §1817, EOCT Achievement Level Descriptors; §1907, Test Structure; §1909, Scoring; §1915, Introduction; §1917, Grade Span 3-4 Alternate Achievement Level Descriptors; §1919, Grade Span 5-6 Alternate Achievement Level Descriptors; §1921, Grade Span 7-8 Alternate Achievement Level Descriptors; §1923, Grade Span 9-10 Alternate Achievement Level Descriptors; §1925, LAA 1 Science Alternate Achievement Level Descriptors; §2305, Format; §2313, Introduction; §2315, Proficiency Level Descriptors; §2317, Listening Domain Structure; §2319, Speaking Domain Structure; §2321, Reading Domain Structure; §2323, Writing Domain Structure; §2401, Description; §2403, Introduction; §2405, Format; §2407, Membership; §2409, Achievement Levels; §2411, Performance Standards; §2412, Introduction; §2413, ASA Mathematics Achievement Level Descriptors; and §2415, ASA LAA2 Mathematics Achievement Level Descriptors. This Declaration of Emergency, effective October 13, 2015, will remain in effect for a period of 120 days, or until finally adopted as a Rule.

In Spring 2015, Louisiana students in grades three through eight participated in English language arts and mathematics assessments aligned to Louisiana academic content standards. As required by state law (R.S. 17:24.4), these assessments allow for the comparison of the results of Louisiana students with that of students in other states. The proposed policy revisions update *Bulletin 118—Statewide Assessment Standards and Practices*, to include such adequate test scores (achievement standards) for the assessments administered during the 2014-2015 school year in grades three through eight in English language arts and mathematics. Additional revisions remove outdated provisions throughout the bulletin. In order to expedite the release of student and school assessment results to parents and educators, BESE has exercised the emergency provision in the adoption of these policy revisions.

## Title 28 EDUCATION

### Part CXI. Bulletin 118—Statewide Assessment Standards and Practices

#### Chapter 11. Louisiana Educational Assessment Program

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

##### §1113. Achievement Levels

A.1. The Louisiana achievement levels are:

- a. advanced;
- b. mastery;
- c. basic;
- d. approaching basic; and
- e. unsatisfactory.

A.2. - B.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.24.4(F)(1) and (C).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1536 (July 2005), amended LR 42:

**§1115. Performance Standards**

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 100 and 500 for science and social studies, and between 650 and 850 for English language arts and mathematics.

B. LEAP Achievement Levels and Scaled Score Ranges—Grade 4

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Advanced	790-850	796-850	405-500	399-500
Mastery	750-789	750-795	360-404	353-398
Basic	725-749	725-749	306-359	301-352
Approaching Basic	700-724	700-724	263-305	272-300
Unsatisfactory	650-699	650-699	100-262	100-271

C. LEAP Achievement Levels and Scaled Score Ranges—Grade 8

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Advanced	794-850	801-850	400-500	404-500
Mastery	750-793	750-800	345-399	350-403
Basic	725-749	725-749	305-344	297-349
Approaching Basic	700-724	700-724	267-304	263-296
Unsatisfactory	650-699	650-699	100-266	100-262

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

**Subchapter C. LEAP Achievement Level Descriptors**

**§1125. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4 (B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1536 (July 2005), repealed LR 42:

**§1127. Grade 4 Achievement Level Descriptors**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, State Board of Elementary and Secondary Education, LR 31:1536 (July 2005), amended LR 36:968 (May 2010), LR 39:1423 (June 2013), repealed LR 42:

**§1129. Grade 8 Achievement Level Descriptors**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1540 (July 2005), amended LR 36:974 (May 2010), LR 39:1424 (June 2013), repealed LR 42:

**Subchapter D. LEAP Assessment Structure**

**§1141. Content Standards**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1545 (July 2005), amended LR 32:236 (February 2006), repealed LR 42:

**§1143. English Language Arts Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1545 (July 2005), repealed LR 42:

**§1145. Mathematics Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1545 (July 2005), repealed LR 42:

**§1147. Science Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1546 (July 2005), repealed LR 42:

**§1149. Social Studies Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1546 (July 2005), repealed LR 42:

**Chapter 13. Graduation Exit Examination**

**Subchapter D. GEE Assessment Structure**

**§1335. Content Standards**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1552 (July 2005), amended LR 32:237 (February 2006), repealed LR 42:

**§1337. English Language Arts Tests Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1552 (July 2005), repealed LR 42:

**§1339. Mathematics Tests Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1552 (July 2005), repealed LR 42:



**§1341. Science Test Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1553 (July 2005), repealed LR 42:

**§1343. Social Studies Tests Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1553 (July 2005), repealed LR 42:

**§1349. Rescores**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1554 (July 2005), amended LR 32:237 (February 2006), LR 36:977 (May 2010), repealed LR 42:

**§1351. GEE Administration Rules**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1554 (July 2005), amended LR 32:237 (February 2006), LR 32:391 (March 2006), LR 34:67 (January 2008), repealed LR 42:

**§1353. Summer Retest Administration**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1555 (July 2005), repealed LR 42:

**§1355. GEE Transfer Students**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1555 (July 2005), amended LR 32:238 (February 2006), LR 34:68 (January 2008), repealed LR 42:

**§1357. Student Membership Determination**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1556 (July 2005), repealed LR 42:

**§1707. Performance Standards**

A. *i*LEAP Achievement Levels and Scaled Score Ranges—Grades 3, 5, 6, and 7

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

**Chapter 17. Integrated LEAP**

**Subchapter A. General Provisions**

**§1701. Introduction**

A. The *i*LEAP is a criterion-referenced testing program that is directly aligned with the state content standards. The LEAP measures how well students in grades three, five, six and seven have mastered the state content standards. Test results are reported in terms of achievement levels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1556 (July 2005), amended LR 32:238 (February 2006), LR 33:265 (February 2007), LR 39:75 (January 2013), LR 42:

**§1703. Format**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:265 (February 2007), repealed LR 42:

**Subchapter B. Achievement Levels and Performance Standards**

**§1705. Introduction**

A On each test, English Language Arts, Math, Science, and Social Studies, student performance will be reported in terms of achievement level. The Louisiana achievement levels are:

1. advanced;
2. mastery;
3. basic;
4. approaching basic; and
5. unsatisfactory.

B. Achievement Levels Definitions

1. *Advanced*—a student at this level has demonstrated superior performance beyond the mastery level.

2. *Mastery* (formerly *Proficient*)—a student at this level has demonstrated competency over challenging subject matter and is well prepared for the next level of schooling.

3. *Basic*—a student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.

4. *Approaching Basic*—a student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.

5. *Unsatisfactory*—a student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:266 (February 2007), amended LR 42:

Achievement Level	Mathematics Scaled Score Ranges			
	Grade 3	Grade 5	Grade 6	Grade 7
Advanced	790-850	790-850	788-850	786-850
Mastery	750-789	750-789	750-787	750-785
Basic	725-749	725-749	725-749	725-749
Approaching Basic	700-724	700-724	700-724	700-724
Unsatisfactory	650-699	650-699	650-699	650-699

Achievement Level	Science Scaled Score Ranges				
	Grade 3	Grade 5	Grade 6	Grade 7	Grade 9
Advanced	382-500	378-500	380-500	388-500	Not Assessed
Mastery	342-381	341-377	343-379	348-387	
Basic	292-341	292-340	295-342	302-347	
Approaching Basic	249-291	248-291	251-294	259-301	
Unsatisfactory	100-248	100-247	100-250	100-258	

Achievement Level	Social Studies Scaled Score Ranges				
	Grade 3	Grade 5	Grade 6	Grade 7	Grade 9
Advanced	396-500	365-500	364-500	372-500	Not Assessed
Mastery	341-395	339-364	338-363	339-371	
Basic	287-340	289-338	292-337	293-338	
Approaching Basic	255-286	257-288	261-291	262-292	
Unsatisfactory	100-254	100-256	100-260	100-261	

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:266 (February 2007), amended LR 42:

**Subchapter D. iLEAP Achievement Level Descriptors**

**§1709. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:990 (June 2007), repealed LR 42:

**§1711. Grade 3 Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:991 (June 2007), amended LR 39:1425 (June 2013), repealed LR 42:

**§1713. Grade 5 Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:994 (June 2007), amended LR 39:1427 (June 2013), repealed LR 42:

**§1715. Grade 6 Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:999 (June 2007), amended LR 39:1428 (June 2013), repealed LR 42:

**§1717. Grade 7 Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:1002 (June 2007), amended LR 39:1429 (June 2013), repealed LR 42:

**§1719. Grade 9 Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:1006 (June 2007), repealed LR 42:

**Subchapter E. iLEAP Assessment Structure**

**§1721. Content Standards**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:267 (February 2007), repromulgated LR 33:1007 (June 2007), repealed LR 42:

**§1723. English Language Arts Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:267 (February 2007), repromulgated LR 33:1007 (June 2007), repealed LR 42:

**§1725. Math Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:268 (February 2007), repromulgated LR 33:1008 (June 2007), repealed LR 42:

**§1727. Science Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:269 (February 2007), repromulgated LR 33:1009 (June 2007), repealed LR 42:

#### **§1729. Social Studies Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:269 (February 2007), repromulgated LR 33:1009 (June 2007), repealed LR 42:

### **Chapter 18. End-of-Course Tests**

#### **Subchapter C. EOC Test Design**

##### **§1805. Algebra I Test Structure**

[Formerly §1807]

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), repromulgated LR 39:76 (January 2013), repealed LR 42:

##### **§1806. Biology Test Structure**

[Formerly §1808]

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:35 (January 2012), repromulgated LR 39:76 (January 2013), repealed LR 42:

##### **§1807. English II Test Structure**

[Formerly §1809]

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), repromulgated LR 39:76 (January 2013), repealed LR 42:

##### **§1808. Geometry Test Structure**

[Formerly §1810]

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:859 (March 2011), repromulgated LR 39:76 (January 2013), repealed LR 42:

##### **§1809. U.S. History Test Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:76 (January 2013), repealed LR 42:

##### **§1810. English III Test Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:76 (January 2013), repealed LR 42:

### **Subchapter E. Achievement Level Descriptors**

#### **§1815. Introduction**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), repealed LR 42:

#### **§1817. EOCT Achievement Level Descriptors**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:216 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:36 (January 2012), LR 39:76 (January 2013), LR 39:1020 (April 2013), repealed LR 42:

### **Chapter 19. LEAP Alternate Assessment, Level 1**

#### **Subchapter D. LAA 1 Test Design**

##### **§1907. Test Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1-17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:425 (March 2007), amended LR 35:209 (February 2009), repealed LR 42:

##### **§1909. Scoring**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1-17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), amended LR 35:209 (February 2009), repealed LR 42:

### **Subchapter F. Alternate Achievement Level Descriptors**

#### **§1915. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), amended LR 35:210 (February 2009), repealed LR 42:

#### **§1917. Grade Span 3-4 Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), amended LR 35:2210 (February 2009), repealed LR 42:

#### **§1919. Grade Span 5-6 Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:210 (February 2009), repealed LR 42:

**§1921. Grade Span 7-8 Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:211 (February 2009), repealed LR 42:

**§1923. Grade Span 9-10 Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:212 (February 2009), repealed LR 42:

**§1925. LAA 1 Science Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:212 (February 2009), repealed LR 42:

**Chapter 23. English Language Development Assessment (ELDA)**

**Subchapter C. ELDA Test Design**

**§2305. Format**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:259 (February 2007), amended LR 34:2556 (December 2008), repromulgated LR 35:61 (January 2009), repealed LR 42:

**Subchapter F. ELDA Proficiency Level Descriptors**

**§2313. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:261 (February 2007), repealed LR 42:

**§2315. Proficiency Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:261 (February 2007), repealed LR 42:

**Subchapter G. ELDA Assessment Structure**

**§2317. Listening Domain Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:261 (February 2007), repealed LR 42:

**§2319. Speaking Domain Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:261 (February 2007), repealed LR 42:

**§2321. Reading Domain Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:262 (February 2007), repealed LR 42:

**§2323. Writing Domain Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:262 (February 2007), repealed LR 42:

**Chapter 24. Academic Skills Assessment (ASA)**

**§2401. Description**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:36 (January 2012), repealed LR 42:

**Subchapter B. General Provisions**

**§2403. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:36 (January 2012), repealed LR 42:

**Subchapter C. ASA Test Design**

**§2405. Format**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:37 (January 2012), repealed LR 42:

**Subchapter D. Target Population**

**§2407. Membership**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:37 (January 2012), repealed LR 42:

**§2409. Achievement Levels**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(F)(1) and (C).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:78 (January 2013), repealed LR 42:

**§2411. Performance Standards**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:78 (January 2013), repealed LR 42:

## Subchapter F. Achievement Level Descriptors

### §2412. Introduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:78 (January 2013), repealed LR 42:

### §2413. ASA Mathematics Achievement Level Descriptors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:78 (January 2013), repealed LR 42:

### §2415. ASA LAA 2 Mathematics Achievement Level Descriptors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:79 (January 2013), repealed LR 42:

Charles E. "Chas" Roemer, IV  
President

1511#002

## DECLARATION OF EMERGENCY

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

Home and Community-Based Services Waivers  
Community Choices Waiver  
(LAC 50:XXI.8329 and 8601)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.8329 and §8601 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the Community Choices Waiver to add two new waiver services, to incorporate a new service delivery method and to clarify the provisions governing personal assistance services (*Louisiana Register*, Volume 40, Number 4). The department promulgated an Emergency Rule which amended the provisions governing the Community Choices Waiver in order to clarify the provisions of the April 20, 2014 Rule (*Louisiana Register*, Volume 40, Number 11). This

Emergency Rule is being promulgated to continue the provisions of the November 20, 2014 Emergency Rule.

This action is being taken to promote the health and welfare of waiver participants.

Effective November 29, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing the Community Choices Waiver.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

#### Subpart 7. Community Choices Waiver

#### Chapter 83. Covered Services§8329. Monitored In-Home Caregiving Services

A. Monitored in-home caregiving (MIHC) services are services 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. - B.6. ...

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. - 5. ...

D. Participants electing monitored in-home caregiving services shall not receive the following community choices waiver services during the period of time that the participant is receiving monitored in-home caregiving services:

1. - 3. ...

E. Monitored in-home caregiving providers must be licensed home and community based service 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 most current DHH HIPAA business associate addendum.

1. - 3. Repealed.

G. ...

1. Monitored in-home caregiving services under tier 1 shall be available to the following resource utilization

categories/scores as determined by the MDS-HC assessment:

- a. special rehabilitation 1.21;
- b. special rehabilitation 1.12;
- c. special rehabilitation 1.11;
- d. special care 3.11;
- e. clinically complex 4.31;
- f. clinically complex 4.21;
- g. impaired cognition 5.21;
- h. behavior problems 6.21;
- i. reduced physical function 7.41; and
- j. reduced physical function 7.31.

2. Monitored in-home caregiving services under tier 2 shall be available to the following resource utilization categories/scores as determined by the MDS-HC assessment:

- a. extensive services 2.13;
- b. extensive services 2.12;
- c. extensive services 2.11; and
- d. special care 3.12.

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 40:792 (April 2014), amended LR 41:

## **Chapter 86. Organized Health Care Delivery System**

### **§8601. General Provisions**

A. - C. ...

D. Prior to enrollment, an OHCDs must show the ability to provide all of the services available in the Community Choices Waiver on December 1, 2012, with the exceptions of support coordination, transition intensive support coordination, transition services, environmental accessibility adaptations, and adult day health care if there is no licensed adult day health care provider in the service area.

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 40:792 (April 2014), amended LR 41:

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

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1511#043

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Bureau of Health Services Financing**

Intermediate Care Facilities for Persons with Intellectual Disabilities—Supplemental Payments (LAC 50:VII.32917)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:VII.32917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals (DHH), Bureau of Health Services Financing provides Medicaid reimbursement to non-state intermediate care facilities for persons with intellectual disabilities (ICFs/ID) for services rendered to Medicaid recipients.

The department promulgated and Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/ID in order to adopt provisions to establish supplemental Medicaid payments for services provided to Medicaid recipients residing in privately-owned facilities that enter into a cooperative endeavor agreement with the department (*Louisiana Register*, Volume 41, Number 8). This action is being taken to secure new federal funding, and to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation.

Effective November 30, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state ICFs/ID to establish supplemental Medicaid payments.

### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part VII. Long Term Care**

#### **Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities**

#### **Chapter 329. Reimbursement Methodology**

#### **Subchapter A. Non-State Facilities**

#### **§32917. Supplemental Payments**

A. Effective for dates of service on or after August 1, 2015, monthly supplemental payments shall be made to qualifying privately-owned intermediate care facilities for persons with intellectual disabilities.

B. In order to qualify for the supplemental payment, the private entity must enter into a cooperative endeavor agreement with the department to lease state-owned ICF/ID beds.

C. Supplemental payments for services rendered to Medicaid recipients shall not exceed the facility's upper payment limit (UPL) pursuant to 42 CFR 447.272. The UPL will be based on the Centers for Medicare and Medicaid

Services' approved ICF transitional rate of \$329.26 including provider fee.

D. The supplemental payment will be the difference between the actual Medicaid payment and what would have been paid if the ICF/ID was paid up to the UPL 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 41:

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

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert  
Secretary

1511#044

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services  
Public-Private Partnerships  
Reimbursement Methodology  
(LAC 50:V.6703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.6703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative. The department promulgated an Emergency Rule which amended the provisions of the November 1, 2012 Emergency Rule to revise the reimbursement methodology in order to correct the federal citation (*Louisiana Register*, Volume 39, Number 3).

The department promulgated an Emergency Rule which amended the provisions governing reimbursement for Medicaid payments for outpatient services provided by non-

state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or reduced by a state owned and operated facility (*Louisiana Register*, Volume 38, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 15, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective December 9, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing Medicaid payments for outpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 5. Outpatient Hospital Services

#### Chapter 67. Public-Private Partnerships

#### §6703. Reimbursement Methodology

A. Payments to qualifying hospitals shall be made on a quarterly basis in accordance with 42 CFR 447.321.

B. Effective for dates of service on or after April 15, 2013, a major teaching hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide acute care hospital services to Medicaid and uninsured patients, and which assumes providing services that were previously delivered and terminated or reduced by a state owned and operated facility shall be reimbursed as follows.

1. Outpatient Surgery. The reimbursement amount for outpatient hospital surgery services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost.

2. Clinic Services. The reimbursement amount for outpatient clinic services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost.

3. Laboratory Services. The reimbursement amount for outpatient clinical diagnostic laboratory services shall be the Medicaid fee schedule amount on file for each service.

4. Rehabilitative Services. The reimbursement amount for outpatient clinic services shall be an interim payment equal to the Medicaid fee schedule amount on file for each service, and a final reimbursement amount of 95 percent of allowable Medicaid cost.

5. Other Outpatient Hospital Services. The reimbursement amount for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be an interim payment equal to 95 percent of allowable Medicaid cost.

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 41:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert  
Secretary

1507#047

## DECLARATION OF EMERGENCY

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

Personal Care Services—Long-Term  
Standards for Participation  
Electronic Visit Verification  
(LAC 50:XV.12909)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XV.12909 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, through collaborative efforts, provide enhanced long-term personal care services and supports to individuals with functional impairments.

The department promulgated an Emergency Rule which amended the provisions governing long-term personal care services (LT-PCS) in order to adopt requirements which mandate that LT-PCS providers must utilize the electronic visit verification (EVV) system designated by the department for automated scheduling, time and attendance tracking, and billing for long-term personal care services (*Louisiana Register*, Volume 41, Number 3). This Emergency Rule is being promulgated to continue the provisions of the April 1, 2015 Emergency Rule.

This action is being taken to promote the health and welfare of persons with a functional impairment by assuring that they receive the services they need, and to ensure that these services are rendered in an efficient and cost-effective manner.

Effective November 29, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing long-term personal care services to establish requirements for the use of an EVV system.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

#### Subpart 9. Personal Care Services

#### Chapter 129. Long Term Care

#### §12909. Standards for Participation

A. - D.2. ...

E. Electronic Visit Verification. Effective for dates of service on or after April 1, 2015, providers of long-term personal care services shall use the electronic visit verification (EVV) system designated by the department for automated scheduling, time and attendance tracking, and billing for certain home and community-based services.

I. Reimbursement shall only be made to providers with documented use of the EVV system.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), LR 39:2508 (September 2013), LR 41:

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

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert  
Secretary

1511#048

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Office of Public Health

Minimum Disinfectant Residual  
Levels in Public Water Systems

(LAC 51:XII.311, 355, 357, 361, 363, 367, 903, 1102,  
1105, 1113, 1117, 1119, 1125, 1133, 1135, 1139 and 1503)

The state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH-OPH), pursuant to the rulemaking authority granted by R.S. 40:4(A) (8) and (13) and in accordance with the intent of Act 573 of 2014, hereby adopts the following emergency rule to prevent an imminent peril to the public health and safety. This rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.).

The state health officer, through DHH-OPH, finds it necessary to promulgate an emergency rule effective October 29, 2015. This Emergency Rule increases the minimum disinfection residual levels that are required for public water systems. Among other items addressed as well, the rule increases the number of residual measurements taken monthly by 25 percent. The Rule clarifies that daily residual measurements are required at the point of maximum residence time in the distribution system and records of



chlorine residual measurements taken in the distribution system, besides from the treatment plant(s) itself, shall be recorded and retained by the public water system as required by the National Primary Drinking Water Regulations (as this term is defined in Part XII). This rule is based upon scientific data and recommendations from the federal Centers for Disease Control and Prevention (CDC) relative to the control of the *Naegleria fowleri* (brain-eating amoeba) parasite which has, thus far, been found in seven public water systems within Louisiana. Unless rescinded or terminated earlier, this Emergency Rule shall remain in effect for the maximum period authorized under state law. This Emergency Rule may be amended as additional research and science data becomes available.

**Title 51**

**PUBLIC HEALTH—SANITARY CODE**

**Part XII. Water Supplies**

**Chapter 3. Water Quality Standards**

**§311. Records**

**[formerly paragraph 12:003-2]**

A. Complete daily records of the operation of a public water system, including reports of laboratory control tests and any chemical test results required for compliance determination, shall be kept and retained as prescribed in the National Primary Drinking Water Regulations on forms approved by the state health officer. When specifically requested by the state health officer or required by other requirements of this Part, copies of these records shall be provided to the office designated by the state health officer within 10 days following the end of each calendar month. Additionally, all such records shall be made available for review during inspections/sanitary surveys performed by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1321 (June 2002), amended LR 30:1195 (June 2004), LR 41:

**§355. Mandatory Disinfection**

**[formerly paragraph 12:021-1]**

A. Routine, continuous disinfection is required of all public water systems.

1. Where a continuous chloramination (i.e., chlorine with ammonia addition) method is used, water being delivered to the distribution system shall contain a minimum concentration of 0.5 mg/l of chloramine residual (measured as total chlorine).

2. Where a continuous free chlorination method is used, water being delivered to the distribution system shall contain a minimum concentration of free chlorine residual in accordance with the following table.

pH Value	Free Chlorine Residual
up to 7.0	0.5 mg/l
7.0 to 8.0	0.6 mg/l
8.0 to 9.0	0.8 mg/l
over 9.0	1.0 mg/l

a. Table 355.A.2 does not apply to systems using chloramines.

b. pH values shall be measured in accordance with the methods set forth in §1105.D. of this Part.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1326 (June 2002), amended LR 28:2514 (December 2002), LR 35:1240 (July 2009), LR 38:2376 (September 2012), LR 41:

**§357. Minimum Disinfection Residuals**

**[formerly paragraph 12:021-2]**

A. Disinfection equipment shall be operated to maintain disinfectant residuals in each finished water storage tank and at all points throughout the distribution system at all times in accordance with the following minimum levels:

1. a free chlorine residual of 0.5 mg/l; or,
2. a chloramine residual (measured as total chlorine) of 0.5 mg/l for those systems that feed ammonia.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), amended LR 41:

**§361. Implementation of Disinfection Requirements**

A. A public water system not holding a disinfection variance on November 6, 2013 shall comply with the requirements of §355.A, §357, §367.C, and §367.G of this Part on the later of:

1. February 1, 2014; or
2. the expiration date of any additional time for compliance beyond February 1, 2014 granted by the state health officer. A request for additional time may be submitted in writing prior to February 1, 2014 only, and shall provide detailed justification and rationale for the additional time requested. The state health officer may grant such additional time if significant infrastructure improvements are required to achieve compliance with said requirements.

B. A public water system holding a disinfection variance on November 6, 2013 shall comply with one of the following options by February 1, 2014:

1. implement continuous disinfection that complies with the requirements of §355.A, §357, §367.C, and §367.G of this Part;
2. request additional time for complying with the requirements of §355.A, §357, §367.C, and §367.G of this Part by submitting a written request, if significant infrastructure improvements are required to achieve compliance therewith or extraordinary circumstances exist with regard to the introduction of disinfection to the system. Such written request shall provide detailed justification and rationale for the additional time requested;
3. (This option shall be available only if the public water system's potable water distribution piping is utilized for onsite industrial processes.) notify the state health officer in writing that in lieu of implementing continuous disinfection, the PWS has provided, and will thereafter provide on a quarterly basis, notification to all system users, in a manner compliant with §1907 of this Part, that the system does not disinfect its water. The notification shall state that because the water is not disinfected, the water quality is unknown in regard to the *Naegleria fowleri* amoeba. A public water system selecting this option must sign an acknowledgement form, to be developed by the state health officer, stating that the public water system

understands the risks presented by the lack of disinfection and that the public water system maintains responsibility for ensuring the safety of its water for end users; or

4. (This option shall be available only if the public water system's potable water distribution piping is utilized for onsite industrial processes.) request approval of an alternate plan providing water quality and public health protection equivalent to the requirements of §355.A and §357 of this Part. The state health officer may approve such a plan only if it is supported by peer reviewed, generally accepted research and science.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), repealed and re-promulgated LR 41:

### **§363. Revocation of Variances**

**[formerly paragraph 12:021-5]**

A. A variance from mandatory disinfection shall be revoked when a public water system has a bacteriological MCL violation. When a variance is revoked, the system shall install mandatory continuous disinfection as stated in §355 of this Part within the times specified in a compliance schedule submitted to and approved by the state health officer. Such schedule shall be submitted within 10 days of receipt of notice of revocation.

B. Except for variances held by qualifying public water systems that comply with §361.B.3 of this Part or receive approval of an alternate plan under §361.B.4 of this Part, any variance concerning the mandatory disinfection requirements of §355 and/or §357 of this Part held by a public water system as of November 6, 2013 shall be automatically revoked on the later of:

1. February 1, 2014;
2. the expiration date of any additional time for compliance granted by the state health officer under §361.B.2 of this Part; or
3. the denial of a request for approval of an alternate plan submitted under §361.B.4 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), amended LR 41:

### **§367. Disinfectant Residual Monitoring and Record Keeping**

**[formerly paragraph 12:021-7]**

A. Disinfectant Residual Monitoring in Treatment Plant. A public water system (PWS) shall measure the residual disinfectant concentration in water being delivered to the distribution system at least once per day.

B. Disinfectant Residual Monitoring in Distribution System. A PWS shall measure the residual disinfectant concentration within the distribution system:

1. by sampling at the same points in the distribution system and at the same times that samples for total coliforms are required to be collected by the PWS under this Part;
2. by sampling at an additional number of sites calculated by multiplying 0.25 times the number of total coliform samples the PWS is required under this Part to take on a monthly or quarterly basis, rounding any mixed

(fractional) number product up to the next whole number. These additional residual monitoring samples shall be taken from sites in low flow areas and extremities in the distribution system at regular time intervals throughout the applicable monthly or quarterly sampling period; and

3. by sampling at the site that represents the maximum residence time (MRT) in the distribution system at least once per day.

C. A PWS shall increase sampling to not less than daily at any site in the distribution system that has a measured disinfectant residual concentration of less than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine) until such disinfectant residual concentration is achieved at such site.

D. The records of the measurement and sampling required under Subsections A and B of this Section shall be maintained on forms approved by the state health officer and shall be retained as prescribed in the National Primary Drinking Water Regulations, and shall be made available for review upon request by the state health officer.

E. Each PWS shall submit a written monitoring plan to the state health officer for review and approval. The monitoring plan shall be on a form approved by the state health officer and shall include all the total coliform and disinfectant residual monitoring sites required under this Section and §903.A of this Part. Each PWS shall also submit a map of the distribution system depicting all total coliform and disinfectant residual monitoring sites required under this Section. The sites shall be identified along with a 911 street address (if there is no 911 street address, then the latitude/longitude coordinates shall be provided). A PWS in existence as of November 6, 2013 shall submit such a monitoring plan no later than January 1, 2014.

F. Chlorine residuals shall be measured in accordance with the analytical methods set forth in §1105.C of this Part.

G. Where a continuous chloramination (*i.e.*, chlorine with ammonia addition) method is used, a nitrification control plan shall be developed and submitted to the state health officer. A PWS in existence as of November 6, 2013 shall submit such a nitrification control plan no later than March 1, 2014.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), amended LR 30:1195 (June 2004), LR 41:

## **Chapter 9. Louisiana Total Coliform Rule [formerly Appendix C]**

### **§903. Coliform Routine Compliance Monitoring [formerly Coliform Routine Compliance Monitoring of Appendix C]**

A. Public water systems shall collect routine total coliform samples at sites which are representative of water throughout the distribution system in accordance with a written monitoring plan approved by the state health officer. Each public water system (PWS) shall submit a written monitoring plan on a form approved by the state health officer. The monitoring plan shall include a minimum number of point of collection (POC) monitoring sites calculated by multiplying 1.5 times the minimum number of

samples required to be routinely collected in accordance with Subsections C and D of this Section, rounding any mixed (fractional) number product up to the next whole number. The monitoring plan shall include a map of the system with each POC sampling site identified along with a 911 street address (if there is no 911 street address, then the latitude/longitude coordinates shall be provided). In accordance with requirements of Subsection E of this Section, the plan shall also indicate how the PWS will alternate routine sampling between all of the approved POC sampling sites.

B. - D. ...

E. Unless the state health officer specifies otherwise, the public water supply shall collect routine samples at regular time intervals throughout the month and shall alternate routine sampling between all of the approved POC sites. Routine samples shall not be collected from the same POC more than once per month.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1333 (June 2002), amended LR 41:

## Chapter 11. Surface Water Treatment Rule Subchapter A. General Requirements and Definitions

### §1102. Relationship with this Part

A. In those instances where the requirements of this Chapter are stricter than or conflict with the requirements of this Part generally, a public water system utilizing surface water or ground water under the direct influence of surface water (GWUDISW) shall comply with the requirements of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 41:

### §1105. Analytical Requirements

A. Analysis for total coliform, fecal coliform, or HPC which may be required under this Chapter shall be conducted by a laboratory certified by DHH to do such analysis. Until laboratory certification criteria are developed, laboratories certified for total coliform analysis by DHH are deemed certified for fecal coliform and HPC analysis.

B. - B.3. ...

C. Public water systems shall conduct analysis for applicable residual disinfectant concentrations in accordance with one of the analytical methods in Table I.

Residual	Methodology	Standard Methods <sup>1</sup>	ASTM Methods <sup>2</sup>	Other Methods
Free Chlorine	Amperometric Titration	4500-CI D, 4500-CI D-00	D 1253-03	
	DPD Ferrous Titrimetric	4500-CI F, 4500-CI F-00		
	DPD Colorimetric	4500-CI G, 4500-CI G-00		
	Syringaldazine (FACTS)	4500-CI H, 4500-CI H-00		
	On-line Chlorine Analyzer Amperometric Sensor			EPA 334.0 <sup>3</sup> ChloroSense <sup>4</sup>
Total Chlorine	Amperometric Titration	4500-CI D, 4500-CI D-00	D 1253-03	
	Amperometric Titration (low level measurement)	4500-CI E, 4500-CI E-00		
	DPD Ferrous Titrimetric	4500-CI F, 4500-CI F-00		
	DPD Colorimetric	4500-CI G, 4500-CI G-00		
	Iodometric Electrode	4500-CI I, 4500-CI I-00		
	On-line Chlorine Analyzer Amperometric Sensor			EPA 334.0 <sup>3</sup> ChloroSense <sup>4</sup>
Chlorine Dioxide	Amperometric Titration	4500-CIO <sub>2</sub> C		
	DPD Method	4500-CIO <sub>2</sub> D		
	Amperometric Titration II	4500-CIO <sub>2</sub> E, 4500-CIO <sub>2</sub> E-00		
	Lissamine Green Spectrophotometric			EPA 327.0 Rev 1.1 <sup>5</sup>
Ozone	Indigo Method	4500-O <sub>3</sub> B, 4500-O <sub>3</sub> B-97		

1. All the listed methods are contained in the 18th, 19th, 20th, 21st, and 22nd Editions of *Standard Methods for the Examination of Water and Wastewater*; the cited methods published in any of these editions may be used.

2. *Annual Book of ASTM Standards*, Vol. 11.01, 2004 ; ASTM International; any year containing the cited version of the method may be used. Copies of this method may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700 West Conshohocken, PA 19428-2959.

3. EPA Method 334.0. "Determination of Residual Chlorine in Drinking Water Using an On-line Chlorine Analyzer," August 2009. EPA 815-B-09-013. Available at

[http://epa.gov/safewater/methods/analyticalmethods\\_ogwdw.html](http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html).

4. ChloroSense. "Measurement of Free and Total Chlorine in Drinking Water by Palintest ChloroSense," September 2009. Available at <http://www.nemi.gov> or from Palintest Ltd, 21 Kenton Lands Road, PO Box 18395, Erlanger, KY 41018.

5. EPA Method 327.0, Revision 1.1, "Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry," USEPA, May 2005, EPA 815-R-05-008. Available online at <http://www.epa.gov/safewater/methods/sourcalt.html>.

D. - E.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8)(13) and 40:5 (5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1337 (June 2002), amended LR 28:2516 (December 2002), LR 41:

### **Subchapter B. Treatment Technique Requirements and Performance Standards**

#### **§1113. Treatment Technique Requirements**

A. - A.3. ...

4. the total reductions to be required by the DHH may be higher and are subject to the source water concentration of *Giardia lamblia*, viruses, and *Cryptosporidium*;

5. the residual disinfectant concentration in the water delivered to the distribution system is not less than 0.5 mg/l free chlorine or 0.5 mg/l total chlorine for more than 4 hours in any 24 hour period; and

6. the residual disinfectant concentration is not less than 0.5 mg/l free chlorine or 0.5 mg/l total chlorine in more than 5 percent of the samples collected each month from the distribution system for any two consecutive months.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1340 (June 2002), amended LR 28:2518 (December 2002), LR 35:1241 (July 2009), LR 41:

#### **§1117. Non-Filtering Systems**

A. - C.1. ...

a. A system shall demonstrate compliance with the inactivation requirements based on conditions occurring during peak hourly flow. Residual disinfectant measurements shall be taken hourly. Continuous disinfectant residual monitors are acceptable in place of hourly samples provided the accuracy of the disinfectant measurements are validated at least weekly in accord with §1109.B or C, as applicable, of this Chapter. If there is a failure in the continuous disinfectant residual monitoring equipment, the system shall collect and analyze a grab sample every hour in lieu of continuous monitoring.

b. ...

2. To avoid filtration, the system shall maintain minimum disinfectant residual concentrations in accordance with the requirements of §355 and §357 of this Part. Performance standards shall be as presented in §1119.B and C of this Chapter.

3. - 3.a. ...

b. an automatic shut off of delivery of water to the distribution system when the disinfectant residual level drops below 0.5 mg/l free chlorine residual or 0.5 mg/l chloramine residual (measured as total chlorine).

D. - D.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8)(13) and 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1341 (June 2002), amended LR 28:2520 (December 2002), LR 35:1242 (July 2009), LR 41:

#### **§1119. Disinfection Performance Standards**

A. ...

B. Except as otherwise specified by this Section and Chapter, disinfection treatment shall comply with the

minimum standards and requirements set forth in §355.A and §357 of this Part.

C. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8)(13) and 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1341 (June 2002), amended LR 28:2522 (December 2002), LR 35:1242 (July 2009), LR 41:

### **Subchapter C. Monitoring Requirements**

#### **§1125. Disinfection Monitoring**

A. ...

B. Disinfectant Residual Monitoring at Plant. To determine compliance with the performance standards specified in §1115 or 1119 of this Chapter, the disinfectant residual concentrations of the water being delivered to the distribution system shall be measured and recorded continuously. The accuracy of disinfectant measurements obtained from continuous disinfectant monitors shall be validated at least weekly in accord with §1109.B or C, as applicable, of this Chapter. If there is a failure of continuous disinfectant residual monitoring equipment, grab sampling every two hours shall be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment. Failure to have the continuous monitoring equipment replaced or repaired and put back into continuous service following the five working days allowed herein shall be deemed to constitute a violation of this Chapter. Systems shall maintain the results of disinfectant residual monitoring for at least 10 years.

C. Small System Disinfectant Residual Monitoring at Plant. Suppliers serving fewer than 3,300 people may collect and analyze grab samples of the water being delivered to the distribution system for disinfectant residual determination each day in lieu of the continuous monitoring, in accordance with Table 4 of this Chapter, provided that any time the residual disinfectant falls below 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine), the supplier shall take a grab sample every two hours until the residual concentrations is equal to or greater than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine).

\* \* \*

D. Disinfectant Residual Monitoring in Distribution System. The residual disinfectant concentrations in the distribution system shall be measured, recorded, and maintained in accordance with §367.B, C, D and E of this Part. A monitoring plan shall be developed, submitted, reviewed, and approved in accordance with §367.E of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8)(13) and R.S. 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1342 (June 2002), amended LR 28:2523 (December 2002), LR 35:1243 (July 2009), LR 41:

### **Subchapter E. Reporting**

#### **§1133. DHH Notification**

A. - A.4. ...

5. the disinfectant residual measured from any sample collected from water being delivered to the distribution system is found to be less than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine). The

notification shall indicate whether the disinfectant residual was restored to at least 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine) within 4 hours;

A.6. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8)(13) and 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2525 (December 2002), amended LR 35:1244 (July 2009), LR 41:

### §1135. Monthly Report

A. - B.5. ...

C. Disinfection Monitoring Results. The monthly report shall include the following disinfection monitoring results.

1. The date and duration of each instance when the disinfectant residual in water supplied to the distribution system is less than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine) and when the DHH was notified of the occurrence.

2. The following information on samples taken from the distribution system:

a. the number of samples where the disinfectant residual is measured; and

b. the number of measurements where the disinfectant residual is less than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine).

D. - F.2.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8)(13) and R.S. 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2526 (December 2002), amended LR 35:1244 (July 2009), LR 41:

### Subchapter F. Public Notification

#### §1139. Consumer Notification

A. Treatment Technique/Performance Standard Violations. The supplier shall notify persons served by the system whenever there is a failure to comply with the treatment technique requirements specified in §§1113 or 1141, or a failure to comply with the performance standards specified in §§1115, 1117, 1119.A or 1119.C of this Chapter. The notification shall be given in a manner approved by the DHH, and shall include the following mandatory language.

A.1 - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8)(13) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2527 (December 2002), amended LR 35:485 (March 2009), LR 35:1246 (July 2009), LR 41:

### Chapter 15. Approved Chemical

#### Laboratories/Drinking Water

#### Subchapter A. Definitions and General Requirements

#### §1503. General Requirements

A. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40: 4 (A)(8)(13) and 40: 5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:1199 (June 2004), amended LR 41:

Interested persons may submit written comments to Amanda Laughlin, Acting Chief Engineer, Engineering Services Section, Office of Public Health, P.O. Box 4489,

Baton Rouge, LA 70821-4489. She is responsible for responding to inquiries regarding this Emergency Rule.

Jimmy Guidry, M.D.

State Health Officer

and

Kathy H. Kliebert

Secretary

1511#003

### DECLARATION OF EMERGENCY

#### Department of Revenue

#### Policy Services Division

#### Administrative Fees (LAC 61:III.1701)

Under the authority of R.S. 47:1507 and R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopts by emergency process the attached Rule to collect fees as authorized by Act 130 (HB 774) of the 2015 Regular Session of the Louisiana Legislature. The department has an immediate need for rules to establish fees for searching for tax returns and other documents, authenticating records, and certifying copies of tax returns and other documents (R.S. 47:1507). A delay in imposition of the fees would impose unfunded and unrecoverable costs on the department, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective November 14, 2015 and shall remain in effect for a period of 120 days or until a final Rule is promulgated under the nonemergency rulemaking procedures of the Administrative Procedure Act, whichever occurs first.

#### Title 61

#### REVENUE AND TAXATION

#### Part. III. Administration Provisions and Miscellaneous

#### Chapter 17. Administrative Fees

#### §1701. Fees for Searching for Returns and Other Documents, Authenticating and Certifying Copies of Records

##### A. Definitions

*Authenticated Copy*—a copy of any public rule, decision or order of the secretary, paper or report bearing the original signature of the secretary of the Department of Revenue to establish that the copy is an exact duplicate of such rule, decision, order, paper or report in the records and files maintained by the secretary in the administration of subtitle II of the *Louisiana Revised Statutes* of 1950, as amended.

*Certified Copy*—a copy of any confidential and privileged document and which is signed by the secretary, or designee, and two witnesses before a notary public certifying that the copy is a true and correct copy of the original document in the records and files maintained by the secretary in the administration and enforcement of the tax laws of this state.

*Search*—an examination of the records and files maintained by the secretary in the administration and enforcement of the tax laws of this state in response to a

request made by a taxpayer, or their authorized representative, for a copy of any previously filed tax return or other document of the taxpayer which is subject to the provisions of R.S. 47:1508.

**B. Fees**

1. For authenticating a copy of any public rule, decision or order of the secretary, paper or report, the fee shall be \$25.

2. For a copy of any tax return or other document previously filed by the taxpayer, or authorized representative, the fee to search for the return or document shall be \$15 for each year or tax period requested, regardless of whether the requested return or document is located.

3. For a certified copy of a return or other document, the fee shall be \$25 for each return or document which is to be certified.

4. All fees shall be paid in advance by check, money order, or other authorized method of payment, made payable to the Department of Revenue. Cash cannot be accepted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1507 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 41:

Tim Barfield  
Secretary

1511#094

**DECLARATION OF EMERGENCY**

**Department of Revenue  
Policy Services Division**

**Installment Agreement for Payment of Tax; Fees  
(LAC 61:I.4919)**

Under the authority of R.S. 105 and R.S. 47:1576.2, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division adopts this Emergency Rule to provide the new fees and provisions to pay the tax due in installments provided by Act 130 (HB 774) of the 2015 Regular Session of the Louisiana Legislature. The department has an immediate need for rules for the Installment Agreement Program (R.S. 47:1576.2) to effect optimal collection, improve compliance and keep viable businesses operational. A delay in implementing Act 130 would impose unfunded and unrecoverable costs on the department, resulting in an adverse financial impact on the state and the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective November 14, 2015 and shall remain in effect for a period of 120 days or until a final Rule is promulgated under the nonemergency rulemaking procedures of the Administrative Procedure Act, whichever occurs first.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 49. Tax Collection**

**§4919. Installment Agreement for Payment of Tax**

A. Time Tax Payable. The total amount of tax due on a tax return shall be paid no later than the date the return is

required to be filed without regard to any extension of time for filing the return. An extension of time to file a return is not an extension of time to pay the tax due. The total amount of tax shown on the return as filed is an assessment, which is equivalent to a judgment, and shall be recorded as an assessment in the records of the secretary.

B. Installment Agreement. If a taxpayer qualifies for an installment agreement, the secretary may allow the taxpayer to pay the taxes, interest, and penalties due in installments subject, but not limited, to the following requirements or conditions:

1. The taxpayer shall pay a nonrefundable installment agreement fee in the amount of \$105, payable to the Department of Revenue, to establish an installment agreement for the payment of the tax debt. Payment of the fee is mandatory and cannot be waived by the secretary or applied against any tax debt. However, the secretary shall not charge the fee to enter into an installment payment agreement plan with any taxpayer whose adjusted gross income is less than or equal to \$25,000.

2. The taxpayer must be current in the filing of all returns and in the payment of all liabilities for all tax types and periods not covered in the installment agreement.

3. The taxpayer shall file returns for all tax periods in the installment agreement.

4. The taxpayer shall agree to waive all restrictions and delays on all liabilities not assessed and to timely file all returns and pay all taxes that become due after the periods included in the installment agreement.

5. The taxpayer may be required to pay a down payment of 20 percent and to make installment payments by automatic bank draft.

6. All installment agreement payments shall be applied to accounts, taxes, and periods as determined by the department.

7. Any and all future credits and overpayments of any tax shall be applied to outstanding liabilities covered by the installment agreement.

8. The taxpayer shall notify the department before selling, encumbering, alienating, or otherwise disposing of any of their real (immovable) or personal (movable) property.

9. Tax liens may be filed in any parish wherein the department has reason to believe the taxpayer owns immovable property.

10. A continuing guaranty agreement may be required on installment agreements requested by a corporation.

**C. Offset of Tax Refunds and Other Payments**

1. All state tax refunds issued to the taxpayer shall be applied to the tax debt until the balance is paid in full.

2. Monies received as an offset of the taxpayer's federal income tax refund shall be credited to the tax debt for the amount of the offset, less a deduction for the offset fee imposed by the Internal Revenue Service, until the balance is paid in full.

3. Other payments that the taxpayer may be entitled to receive shall be offset in accordance with applicable law.

4. Amounts of state or federal tax refunds offsets or other payments applied to the tax debt shall not reduce the amount of any installment payment due or extend the time for paying an installment payment.

D. Forms of Installment Agreements

1. Informal installment agreements shall be allowed only if the amount owed is less than \$25,000 and the payment period is 24 months or less.

2. Formal installment agreements shall be required if the amount owed is \$25,000 or more or the payment period exceeds 24 months. Information relative to the taxpayer's employment, bank account, credit, income statement, balance sheets, and cash-flow data, and other information shall be provided to the department upon request.

3. All installment agreements shall be made on forms and in the manner prescribed by the secretary.

E. Default; Reinstatement of Installment Agreement

1. If any installment payment is not paid on or before the dated fixed for its payment, the total outstanding balance shall be due and payable immediately upon notice and demand from secretary. All collection actions shall be reactivated.

2. Upon request of the taxpayer and the approval of the secretary, the installment agreement may be reinstated, provided the taxpayer pays the mandatory reinstatement fee in the amount of \$60, payable to the Department of Revenue. Payment of the fee is mandatory and cannot be waived by the secretary or applied against any tax debt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 105 and R.S. 47:1576.2.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 41:

Tim Barfield  
Secretary

1511#096

**DECLARATION OF EMERGENCY**

**Department of Revenue  
Policy Services Division**

**Issuance and Cancellation of a Lien; Fees  
(LAC 61:I.5302)**

Under the authority of R.S. 47:295, R.S. 47:1511, R.S. 47:1577, and R.S. 47:1578, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division adopts this Emergency Rule to provide for the fee and payment required to apply for compromises of judgments (offer in compromise) for taxes of \$500,000 or less exclusive of interest and penalty, including assessments for such amounts which are equivalent to judgments. The department has an immediate need to adopt rules for the Offer in Compromise Program (R.S. 47:1578) to implement the new fee and deposit requirements provided by Act 130 (HB 774) of the 2015 Regular Session of the Louisiana Legislature. A delay in collecting the required fee and payment would impose unfunded and unrecoverable costs on the department, resulting in an adverse financial impact on the state, the department, Louisiana businesses and taxpayers. This Emergency Rule shall become effective November 14, 2015 and shall remain in effect for a period of 120 days or until a final Rule is promulgated under the nonemergency rulemaking procedures of the Administrative Procedure Act, whichever occurs first.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 53. Miscellaneous Fees**

**§5302. Issuance and Cancellation of a Lien; Fees**

A. - B.7. ...

C. The secretary may authorize the release of a lien subject to the following terms and conditions:

1. - 2. ...

3. when the lien on the taxpayer's remaining real property is valued at not less than the amount of the remaining tax obligation, including all penalties, interest, and other costs incurred, plus the amount of all prior liens on the remaining property;

4. when the amount paid to the secretary in partial satisfaction of the liability is not less than the value of the interest of the state of Louisiana in the part of the property to be released or the secretary determines that the interest of the state of Louisiana in the part to be released has no value.

D. The secretary with the approval of two assistant secretaries may compromise any judgments for taxes of \$500,000 or less exclusive of interest and penalty, including assessments for such amounts that are equivalent to judgments, when any of the following conditions exist:

1. there is serious doubt as to the collectibility of the outstanding judgment;

2. there is serious doubt as to the taxpayer's liability for the outstanding judgment;

3. the administration and collection costs involved would exceed the amount of the outstanding liability.

E. The secretary may, upon making a record of his reasons, waive, reduce, or compromise individual income tax, penalties, interest, or other amounts.

F. Offers in Compromise

1. A taxpayer may have only one offer in compromise approved in a 10-year period. If an offer in compromise is approved, the secretary shall not consider or accept any other application for an offer in compromise from the taxpayer until the expiration of the 10-year period.

2. Each application for an offer in compromise shall be made on a form and in the manner prescribed by the secretary. A nonrefundable application fee of \$186 payable to Louisiana Department of Revenue shall be submitted with each application. The application fee shall not be applied to the tax liability.

3. A nonrefundable initial payment of 20 percent of the amount offered must be submitted with the offer in compromise application. This payment shall be applied to the tax liability.

4. The secretary shall keep a record of all such offers in compromise which shall be open to public inspection and, notwithstanding the provisions of R.S. 47:1508 and 1508.1, shall be published in the department's annual report.

G. The department shall assess a fee against the taxpayer for the filing of a tax lien and the cancellation of a lien. The amount of the fee to be assessed against the taxpayer shall be determined according to the amount charged the department by the parish in which the lien is filed. In the event a lien is filed in more than one parish for the same taxes, each lien shall be treated separately and the total charges per parish for the liens shall be assessed against the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:295, R.S. 47:1511, R.S. 47:1577, and R.S. 47:1578.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:347 (February 2002), amended LR 30:1045 (May 2004), LR 33:860 (May 2007), LR 41:

Tim Barfield  
Secretary

1511#095

## DECLARATION OF EMERGENCY

### Department of Revenue Office of the Secretary

#### Louisiana Tax Delinquency Amnesty Act of 2015 (LAC 61:I.4917)

The Department of Revenue, Office of the Secretary, is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B) to adopt this Emergency Rule pertaining to the Louisiana Tax Delinquency Amnesty Act of 2015 (Acts 2014, No. 822) in accordance with the provisions of R.S. 47:1511. The Rule is needed to provide guidelines for implementing and administering installment plans for the 2015 Louisiana Tax Delinquency Amnesty Program. The Emergency Rule shall be effective November 1, 2015, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

The Department of Revenue has established a Tax Amnesty Program, hereinafter referred to as "Amnesty Program", beginning November 16, 2015 and ending December 16, 2015. The Amnesty Program shall apply to all taxes administered by the Department except for Motor Fuel, Prepaid Cell Phone Sales Tax, Oil Field Restoration-Oil, Oil Field Restoration-Gas, Inspection and Supervision Fee and penalties for failure to submit information reports that are not based on an underpayment of tax. Amnesty will be granted only for eligible taxes to eligible Taxpayers who apply for amnesty during the amnesty period on forms prescribed by the Secretary and who pay or enter into an installment agreement for all of the tax, half of the interest due, all fees and costs, if applicable, for periods designated on the amnesty application. The amnesty application may include issues or eligible periods that are not in dispute. The Secretary reserves the right to require taxpayers to file tax returns with the amnesty application. If the amnesty application is approved, the secretary shall waive the remaining half of the penalties and the remaining half of the interest associated with the tax periods for which amnesty is applied.

### Title 61 REVENUE

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 49. Tax Collection

#### §4917. Louisiana Tax Delinquency Amnesty Act of 2015

A. A taxpayers' application to make installment payments of a delinquent tax and its interest, penalties, and fees shall, upon approval by the secretary, enter the taxpayer

into an installment agreement. In order to continue in the Amnesty Program, the taxpayer must make complete and timely payments of all installment payments. For the payment to be considered timely, all installment payments must be received no later than May 1, 2016.

B. All installment agreements approved by the secretary shall require the taxpayer to provide a down payment of no less than 20 percent of the total amount of delinquent tax, penalty, interest, and fees owed to the department at the time the installment agreement is approved by the secretary. Field audit and litigation are not eligible to enter into an installment agreement.

C. Every installment agreement shall include fixed equal monthly payments that shall not extend for more than six months. Applicants seeking to enter into an installment agreement with the department shall provide the following information:

1. bank routing number;
2. bank account number; and
3. Social Security number or LDR account number.

D. An installment payment will only be drafted from an account from which the taxpayer is authorized to remit payment. All payments shall be drafted through electronic automated transactions initiated by the department. taxpayers who cannot enter into an agreement to make payment by way of automated electronic transactions shall not be eligible for an installment agreement with the Department.

E. If for any reason a taxpayer subject to an installment agreement fails to fulfill his obligation under the agreement by remitting the last installment by May 1, 2016, no amnesty shall be granted and the installment agreement shall be null and void. All payments remitted to the department during the duration of the voided installment agreement shall be allocated to the oldest outstanding tax period as a regular payment. The payment will be applied in the following order: tax, penalty and interest. The taxpayer shall be obligated to pay the entirety of the delinquent tax, along with all applicable interest, penalties, and fees.

F. A Taxpayer who is approved to participate in the Amnesty Program who is also a party to an existing installment agreement with the department may be eligible to participate in an installment agreement under the Amnesty Program. Upon approval by the secretary of an installment agreement under the amnesty program, the original installment agreement with the department shall be cancelled in favor of the installment agreement under amnesty.

G. The secretary may procure Tax Amnesty Program collection services for the administration and collection of installment agreements. The fee for such services shall be in accordance with the fees authorized in R.S. 47:1516.1.

AUTHORITY NOTE: Promulgated in accordance with Act 822 of the 2014 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of the Secretary, LR 41:

Tim Barfield  
Secretary

1511#093



## DECLARATION OF EMERGENCY

### Department of State Elections Division

#### Appeal of Merit Evaluation for the Registrars of Voters (LAC 31:II.108)

The Department of State, pursuant to the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)], and under the authority of R.S. 18:18, R.S. 18:55, and R.S. 36:742, has adopted an Emergency Rule to amend LAC 31:II.Chapter 1 Section 108 to provide that appeals of merit evaluations of registrars of voters shall be determined by the State Board of Election Supervisors and repeals the Registrars of Voters Evaluation Appeals Committee. The members of the Subcommittee on House Resolution No. 94 (2015 Regular Session) for the House Committee on House and Governmental Affairs met on Wednesday, August 26, 2015, and approved the recommendation to have the appeals of merit evaluations of registrars of voters decided by the State Board of Election Supervisors. The adoption of the rule on an emergency basis is necessary, as the registrars of voters will be sent their merit evaluation forms on November 1, the evaluations will be due to the Department of State on December 15, and the appeals of evaluations that result in the registrars of voters not receiving their merit increases have to be submitted no later than January 31.

The Emergency Rule shall become effective on October 30, 2015 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until the final Rule is promulgated in accordance with law, whichever occurs first.

### Title 31 ELECTIONS

#### Part II. Voter Registration and Voter Education

#### Chapter 1. Registrar of Voters

#### §108. Appeal of Merit Evaluation for the Registrar of Voters

##### A. Submission of a Request for Appeal

1. A registrar of voters who does not receive an "excellent" rating on his or her annual merit evaluation may appeal that rating to the State Board of Election Supervisors.

2. The request for appeal shall be in writing and shall be postmarked or received by the human resources director in the Department of State, or the human resources director's designee, no later than January 31.

3. The request for appeal shall explain the reasons for the request and may provide supporting documentation.

4. If the request for appeal is timely and contains the required explanation, the human resources director shall submit a notification of the request to the chairman of the State Board of Election Supervisors and to the director of registration. The notification of request for appeal shall include copies of the written request of the registrar of voters, the original annual merit evaluation including attachments, and any supporting documentation provided by the registrar of voters with his or her written request for appeal.

5. The Department of State grievance process shall not be used to review or reconsider evaluations or a procedural violation of the evaluation process.

##### B. State Board of Election Supervisors

1. All written requests for appeal of annual merit evaluations that meet the requirements of Subsection A of this Section shall be considered by the State Board of Election Supervisors.

2. The chairman shall convene a meeting of the State Board of Election Supervisors within 15 days of receipt of notification of the request for appeal to discuss the request and render a decision regarding the rating. The commissioner of elections shall not vote on the decision regarding the rating. The board may vote to uphold the rating as originally certified by the commissioner of elections or to change the rating to "excellent".

3. The chairman of the board shall give written notice of the board's decision to the affected registrar of voters, the director of registration, and the human resources director within 15 days.

C. The annual merit evaluation form, the written request for appeal of the registrar of voters, the written notice of the board's decision, and all supporting documentation shall be maintained in the official confidential personnel file of the registrar of voters on file in the Department of State Human Resources office.

D. A written explanation shall be attached to the evaluation form for any registrar of voters who does not receive an "excellent" rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18, R.S. 18:55, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 41:759 (April 2015), amended LR 42:

Tom Schedler  
Secretary of State

1511#030

## DECLARATION OF EMERGENCY

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

#### 2016-2020 Waterfowl Hunting Zones

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

The boundaries for hunting Ducks and Coots during the 2016-2017 through 2020-2021 hunting seasons shall be as follows:

**East Zone:** The area of the state between the Mississippi State line and the line going south on Hwy 79 from the Arkansas border to Homer; then south on Hwy 9 to Arcadia; then south on Hwy 147 to Hodge; then south on Hwy 167 to Turkey Creek; then south on Hwy 13 to Eunice; then west on Hwy 190 to Kinder; then south on Hwy 165 to Iowa; then west on I-10 to its junction with Hwy 14 at Lake Charles; then south and east on Hwy 14 to its junction with Hwy 90 in New Iberia; then east on Hwy 90 to the Mississippi State line.

**West Zone:** The area between the Texas State line and the line going east on I-10 from the Texas border to Hwy 165 at Iowa; then north on Hwy 165 to Kinder; then east on Hwy

190 to Eunice; then north on Hwy 13 to Turkey Creek; then north on Hwy 167 to Hodge; then north on Hwy 147 to Arcadia; then north on Hwy 9 to Homer; then north on Hwy 79 to the Arkansas border.

**Coastal Zone:** Remainder of state.

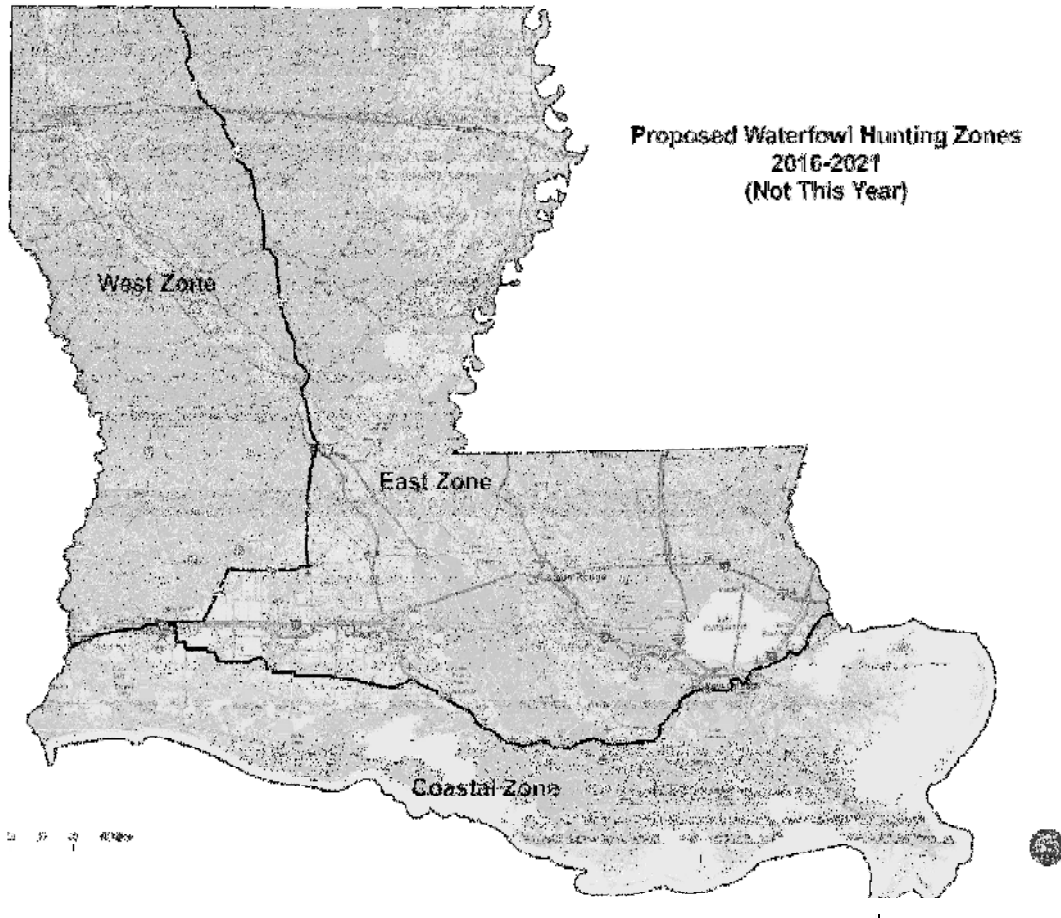
The boundaries for hunting Geese during the 2016-2017 through 2020-2021 hunting seasons shall be as follows:

**North Zone:** Portion of the state north of the line from the Texas border at Hwy 190/12 East to Hwy 49; then south on Hwy 49 to I-10; then East on I-10 to I-12; then East on I-12 to I-10; then East on I-10 to the Mississippi State line.

**South Zone:** Remainder of state.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of waterfowl hunting zones must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned boundaries for waterfowl hunting zones will take effect November 1, 2016 and extend through one-half hour after sunset on March 1, 2021.



Robert J. Barham  
Secretary

1511#034

**DECLARATION OF EMERGENCY**

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

**Opening Red Snapper Recreational Harvest**

The season for the recreational harvest of red snapper in Louisiana state waters as outlined in LAC 76:VII.335 was previously closed on September 8, 2015. The bag and possession limit, as established in LAC 76:VII.335 is two red snapper per person per day. The recreational season for the harvest of red snapper in Louisiana state waters is hereby

modified to be open during every day of the week effective from 12:01 a.m. November 20, 2015 until further notice.

In accordance with the emergency provisions of R.S. 49:953, the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures 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 of the department by the commission in LAC 76.VII.335.G.5 to modify the recreational red snapper seasons and possession limits in Louisiana state waters when he deems necessary, the secretary hereby declares:

The recreational fishery for red snapper in Louisiana state waters will open at 12:01 a.m. on November 20, 2015 and be open during every day of the week and shall remain

open until further notice. The recreational bag and possession limit and minimum size limit for red snapper shall remain as established in LAC 76.VII.335.

Robert Barham  
Secretary

1511#001

## **DECLARATION OF EMERGENCY**

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

Suspending Entry into the Louisiana  
Fisheries Forward Program (LAC 76.VII.347)

The Wildlife and Fisheries Commission hereby suspends entry into the Louisiana Fisheries Forward Program for the commercial crab industry until such time as the blue crab stock recovers or until more restrictive permanent rules may be adopted.

The Wildlife and Fisheries Commission finds that an imminent peril to the public welfare requires adoption of a Rule upon shorter notice than that provided in R.S. 49:953(A), since the most recent blue crab stock assessment indicates that the species may be undergoing “overfishing” and allowing new entrants into the fishery would likely imperil the commercial viability of the Louisiana blue crab industry. The most recent stock assessment indicates that the fishing mortality for the species has exceeded the threshold where additional management action is needed. It is necessary to adopt this Emergency Rule to temporarily prevent new entrants into the commercial crab fishery until the stock recovers, or until more restrictive apprenticeship

program rules can be adopted, in order to prevent harm to the resource or to the industry. This is the recommended action from LDWF biologists and representatives of the crab industry, as the least invasive regulatory action to prevent continued overfishing of the species. Failure to take emergency action would provide an opportunity for a large influx of new entrants to the commercial crab fishery and increased fishing pressure on the blue crab stock.

This Emergency Rule is promulgated in accordance with the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act (120 days) or until adoption of a final Rule to create more restrictive entry requirements for the program, whichever occurs first.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 3. Saltwater Sport and Commercial Fishery**

#### **§347. Louisiana Fisheries Forward Program**

A. - H.2.b. ...

##### **I. Suspension of Entry**

a. No new applications or applicants shall be accepted into the Louisiana Fisheries Forward Program after November 6, 2015 at 5 p.m. Applicants who are enrolled prior to that date will be allowed to complete the program in accordance with the rules established in this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:305.6.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 41:956 (May 2015), amended LR 41:

Pat Manuel  
Chairman

1511#033

# Rules

## RULE

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

#### Guardianship Subsidy Program (LAC 67:V.4101 and 4103)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) has amended LAC 67:V, Subpart 5, Foster Care, Chapter 41, Guardianship Subsidy Program, Sections 4101 and 4103.

Pursuant to United States Children's Bureau requirements for authorization of Louisiana's title IV-E state plan, adjustments to the foster care and guardianship subsidy programs are necessary to update required terminology related to the programs, types of available payments, and eligibility criteria. The Rule amends the option of subsidized guardianship and establishes successor guardianship as a permanency option, therefore promoting the establishment of permanent families for children within relative foster care placements where adoption is not an alternative.

The department considers this amendment necessary in order to fulfill title IV-E state plan requirements and to avoid sanctions and penalties from the United States Children's Bureau.

This action was made effective by an Emergency Rule dated and effective June 10, 2015.

#### Title 67

#### SOCIAL SERVICES

#### Part V. Child Welfare

#### Subpart 5. Foster Care

#### Chapter 41. Guardianship Subsidy Program

#### §4101. Subsidizing Guardianship Arrangements for Children in Foster Care

##### A. Overview of Program Purpose

1. The Subsidized Guardianship Program enables the Department of Children and Family Services (DCFS) to make payments to certified relative and fictive kin caregivers on behalf of a child who otherwise might not be able to achieve permanency outside of department custody because of special needs or other circumstances. Subsidy payments shall be limited to a child(ren) for whom guardianship is indicated due to other more permanent options such as reunification with the parents, immediate unsubsidized custody to a relative or other caregiver, or adoption being determined unfeasible for the child. The guardianship subsidy applies only to a child(ren) for whom the DCFS holds legal custody, only to potential caregivers with whom the child had an established familial or emotional relationship prior to entering DCFS custody, and when the kinship placement provider becomes a certified foster caregiver according to the certification standards of the state, and, the child(ren) remains in the certified kinship placement for at least six consecutive months immediately prior to entering the guardianship subsidy arrangement. The

guardianship subsidy also applies to successor guardian(s) who meet the following criteria:

- a. the successor guardian is named in the guardianship subsidy agreement with DCFS;
- b. the successor guardian and all adult household members have satisfactorily completed fingerprint based criminal and child abuse/neglect background clearances; and
- c. guardianship is transferred by a court to the successor guardian in accordance with *Louisiana Children's Code* articles 718 through 724.1.

2. The prospective guardianship family must meet basic foster care certification eligibility requirements or the successor guardianship criteria in all respects except for the ability to assume complete financial responsibility for the child's care.

B. Types of Subsidy Payments. The child may be subsidized for the following services up to age 18.

1. Maintenance. The maintenance subsidy includes basic living expenses such as board, room, clothing, spending money, and ordinary medical costs. The maintenance subsidy may be ongoing until the child reaches age 18, but must be renewed on a yearly basis. This renewal will be dependent upon the child remaining in the care of the guardian with whom the subsidy agreement was established. 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 of the regular foster care board rate for the corresponding age group. Monthly maintenance payments shall not be based on subsidized foster care arrangements such as specialized foster care, alternate family care, or therapeutic foster care. Changes in the maintenance subsidy rate routinely only occur once a year and the adjustment is typically made at the time of the subsidy renewal, or due to a change in the child's age. Adjustments to the maintenance subsidy rate may also occur due to availability of funds, legislative changes or adjustments to the regular foster care board rate.

2. Special Board Rate. Foster parents entering into a guardianship agreement for a foster child for whom a special board rate was received during the foster care episode may request up to a maximum of \$240 which is 80 percent of the special board rate amount of \$300. This is only provided if the care and needs of the child in the guardianship arrangement warrant this same special board rate. The continued need for the special board rate shall be reviewed at the time of the annual review. This review shall consist of a determination of whether the same level of specialized care by the guardian, for which the special board rate was being provided at the time of the subsidy agreement, continues to be necessary to meet the child's needs. Any reduction in the level of care required by the guardian should result in a decrease in the amount of special board rate compensation to the guardian.

##### 3. Special Services

a. The special services subsidy is time limited and in some cases may be a one-time payment. It is the special assistance given to handle an anticipated expense when no

other family or community resource is available. If needed, it can be offered in addition to the maintenance and special board rate subsidy. The special services subsidy must be established as a part of the initial guardianship subsidy agreement, and may not be provided or renegotiated based on any circumstances which develop or issues identified after that point. Special services subsidies include the following types of needs:

i. special medical costs deemed medically necessary for the daily functioning of the child for any condition existing prior to the date of the initial judgment establishing guardianship with the kinship caregiver and not covered by Medicaid or other insurance;

ii. ongoing therapeutic treatment costs to complete current therapy and future treatment costs on a time limited basis up to 18 years of age, as department resources allow, related to the abuse/neglect received by the child and impacting the child's capacity to function effectively as part of the child's educational, family or social environment. This does not include the cost of residential care or psychiatric hospitalization, nor does it include therapeutic intervention for the sole purpose of providing behavior management assistance to the guardian;

iii. legal and court costs to the potential guardian family up to \$1000 for children who are not title IV-E eligible and up to \$2000 for children who are title IV-E eligible for establishing the guardianship arrangement. This service is only available for costs distinct and separate from the routine costs of the child in need of care proceedings to provide for costs to the potential guardian in establishing the guardianship arrangement. This legal and/or court fee will be provided as a non-reoccurring, one-time payment for each guardianship episode.

b. Medicaid Eligibility. The child remains eligible for Medicaid coverage up to 18 years of age when entering a guardianship subsidy arrangement from foster care. This coverage will be eligible utilizing title IV-E federal benefits if the child was title IV-E eligible at the time of the subsidy arrangement. For children not eligible for title IV-E, this coverage will be provided through title XIX federal benefits or state general funds. For a Louisiana child who is placed out of state in a potential guardianship placement or who moves to another state after the establishment of a guardianship subsidy, if the child is eligible for title IV-E guardianship subsidy payments, the child is also categorically eligible for Medicaid in the state in which the child resides whether that state participates in the title IV-E Guardianship Subsidy Assistance Program or not.

c. Chaffee Foster Care Independent Living Skills Training and Education Training Voucher Eligibility. The child is eligible for consideration for participation in the Chaffee Foster Care Independent Living Skills Training and for Education Training Vouchers if the child enters a guardianship arrangement from foster care after reaching 16 years of age, as long as the child meets any other program eligibility requirements.

#### C. Exploration of Guardianship Resources

1. Before a child is determined by the Department of Children and Family Services (DCFS) as eligible for a guardianship subsidy, it must be determined the child cannot be reunited with the parents, and resources for adoptive placement must be explored by the child's worker. If the

kinship family with whom the child is placed refuses to adopt the child or is unable to be certified as an adoptive family, the department has to show efforts to achieve the more permanent case goal of adoption for the child and demonstrate the benefits of maintaining the child in the placement in a guardianship arrangement as opposed to ongoing efforts in pursuing adoption or any other long term permanency arrangement. It is also necessary for the child's worker to discuss plans for a guardianship arrangement with the child and document the outcome of that discussion with the child, including agreement with that plan by any child 14 years of age up to 18 years of age. Lack of agreement by any child 14 years of age up to 18 years of age should be an ongoing topic of counseling regarding the benefits of the arrangement between the worker and the child, until a permanency option is achieved for the child or until the child attains 18 years of age.

2. Whenever an eligible child in the custody of DCFS is legally placed based on the interstate compact on the placement of children guidelines with a certified kinship caregiver in another state, the family shall be eligible for a guardianship subsidy under the same conditions as Louisiana residents.

#### D. Eligibility Criteria

1. The DCFS, Guardianship Subsidy Program, will determine the appropriateness of subsidy benefits, the type of subsidy, and, the level of the subsidy. An agreement form between the DCFS and the prospective guardianship parent(s), with clearly delineated terms, including designation of a successor guardian, if desired, must be signed prior to the granting of the final decree for guardianship. This agreement will be reviewed on an annual basis thereafter by the DCFS to insure ongoing eligibility.

2. Subsidy payments shall be limited to a child(ren) for whom guardianship is indicated due to other more permanent options such as reunification with the parents, or adoption being determined unfeasible for the child. The exception would be any child who has been receiving a subsidy payment and enters a successor guardianship. A more permanent option for placement is not required as these children do not re-enter state custody.

3. The guardianship subsidy applies only to a child(ren) for whom the DCFS holds legal custody, only to potential caregivers with whom the child had an established familial or emotional relationship prior to entering DCFS custody, and when the kinship placement provider becomes a certified foster caregiver according to the certification standards of the State, and, the child(ren) remains in the certified kinship placement for at least six consecutive months immediately prior to entering the guardianship subsidy arrangement. The exception would be children entering a successor guardianship. There is no requirement for the child to be in DCFS custody, to be with a caregiver with an established relationship, for certification of the caregiver, nor for a child to be placed with the successor guardian for any length of time prior to entering the guardianship subsidy arrangement.

4. A family is considered eligible for participation in the Guardianship Subsidy Program if they are related to the child or family of the child through blood or marriage or if there exists a fictive kin relationship, which is defined as a relationship with those individuals connected to an

individual child or the family of that child through bonds of affection, concern, obligation, and/or responsibility prior to the child's original entry into the custody of the state, and the individual(s) are considered by the child or family to hold the same level of relationship with the child or family as those individuals related by blood or marriage. The exception would be an individual considered for the successor guardianship named by the guardian in the guardianship subsidy agreement with DCFS.

#### E. Effects of Deaths of Guardians on Guardianship Subsidy

1. When a child has been placed in an approved guardianship placement with a guardianship subsidy agreement in effect and the guardian dies prior to the child reaching the age of majority, the child's eligibility for a guardianship subsidy shall not be affected if a successor guardian was named in the guardianship subsidy agreement. The child may remain in the care of a duly designated tutor/guardian as established by the guardian family prior to their death, without further involvement of the department. If the "duly designated" tutor/guardian requires financial assistance to maintain the care of the child and the individual was named in the guardianship subsidy agreement as a successor guardian, it is not necessary for the child to return to state custody and those individuals to become certified foster parents.

2. If no successor guardian was named in the guardianship subsidy agreement, any individual otherwise legally designated as a tutor/guardian for the child and requiring financial assistance to sustain the care of the child would have to return the child to state custody and those individuals would have to become certified foster parents. Adoption of the child by the family should be explored as well, since adoption is a more permanent relationship for the child and family. If the family and home are determined to be safe for the care of the child through assessment of the home environment, fingerprint based criminal records clearance, and child abuse/neglect clearances, the child may remain in the care of the family while they are certified.

3. Where a guardianship subsidy agreement is in effect and the guardians both die prior to the child reaching the age of majority, the subsidy agreement will end. The child may remain in the care of a duly designated tutor/guardian as established by the family prior to their death, without further involvement of the department.

4.a. If the designated tutor/guardian requires financial assistance to maintain the care of the child, it will be necessary for the child to return to state custody and those individuals to become certified as foster parents and provide care to the child six consecutive months after certification and immediately prior to entering into a guardianship subsidy agreement with the department. During the process of becoming certified as foster parents the family may continue to provide care to the child, as long as they are determined to be safe caregivers through a minimum of:

- i. department assessment of the home environment;
- ii. fingerprint based criminal records clearances on all adults in the home; and
- iii. child abuse/neglect clearances on all adults in the home.

b. Adoption of the child by the family will be explored by the department as well. There can be no financial support of the child by the state while being cared for by the family until such family has been certified, other than incidental expenditures routinely reimbursed to other non-certified caregivers of children in foster care. Each guardianship arrangement is considered a new episode. Therefore, the department may provide legal and court costs to support the establishment of this new legal guardianship arrangement between the potential guardian and the child up to \$1000 for children who are not title IV-E eligible and up to \$2000 for children who are title IV-E eligible.

AUTHORITY NOTE: Promulgated in accordance with P.L. 110-351 and P.L. 113-183.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:552 (March 2010), amended by the Department of Children and Family Services, Division of Programs, Child Welfare Section, LR 41:2308 (November 2015).

#### §4103. Nonrecurring Expenses in Guardianship Arrangements

A. The Department of Children and Family Services (DCFS) sets forth criteria for reimbursement of nonrecurring expenses associated with establishing guardianship arrangements for children in foster care.

1. The amount of the payment made for nonrecurring expenses associated with establishing guardianship arrangements for children in foster care shall be determined through agreement between the guardian(s) and the DCFS. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

2. The agreement for nonrecurring expenses must be signed prior to the final decree granting guardianship.

3. There must be no income eligibility requirement for guardian(s) in determining whether payments for nonrecurring expenses associated with establishing guardianship arrangements for children in foster care shall be made. However, potential guardians cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

4. The maximum rate of reimbursement for nonrecurring expenses has been set at \$1000 for children who are not title IV-E eligible and up to \$2000 for children who are title IV-E eligible per guardianship arrangement.

5. In cases where siblings are placed and guardianship arrangements established, whether separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

6. In cases where a child has been returned to the custody of the state and a guardianship arrangement dissolved, the child is allowed separate and complete reimbursement for nonrecurring expenses up to the maximum amount allowable for establishing another guardianship arrangement.

7. Reimbursement is limited to costs incurred by or on behalf of guardian(s) not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made directly by the DCFS.

8. When the guardianship arrangement for the child involves interstate placement, Louisiana will only be responsible for paying the nonrecurring expenses for the

arrangement for the child when Louisiana is the child's legal custodian and enters into the guardianship subsidy agreement with the caregiver.

9. The term nonrecurring expenses in relation to guardianship arrangements means reasonable and necessary legal fees, court costs, attorney fees and other expenses which are directly related to the legal establishment of the guardianship arrangement for a child in foster care, which are not incurred in violation of state or federal law, and which have not been reimbursed from other sources or other funds. Other expenses which are directly related to the legal establishment of the guardianship arrangement for a child in foster care means the costs of the arrangement incurred by or on behalf of the guardians and for which guardians carry the ultimate liability for payment. Such costs may include but are not limited to travel costs for the child and/or guardians to be present for the legal proceedings to establish the guardianship arrangement.

AUTHORITY NOTE: Promulgated in accordance with P.L. 110-351 and P.L. 113-183.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:554 (March 2010), amended by the Department of Children and Family Services, Division of Programs, Child Welfare Section, LR 41:2310 (November 2015).

Suzy Sonnier  
Secretary

1511#036

**RULE**

**Department of Children and Family Services  
Division of Programs  
Economic Stability Section**

**Strategies to Empower People (STEP) Program  
(LAC 67:III.5721)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) has amended LAC 67:III, Subpart 16, Strategies to Empower People (STEP) Program, Chapter 57, Strategies to Empower People (STEP) Program, Section 5721, Job Readiness.

Pursuant to Louisiana's Temporary Assistance for Needy Families (TANF) block grant, amendment of Section 5721 is necessary to give the department more flexibility in operating the STEP program by eliminating the work-eligible FITAP applicant requirement of registering for work during the application period and prior to certification with Louisiana Workforce Commission (LWC). Work-eligible FITAP recipients will register for work when participating in job readiness activities. The Rule does not eliminate any work requirements as specified by law. Work activity requirements including job readiness activities are included in Section 5713, Work Activities.

This action was made effective by an Emergency Rule dated and effective July 1, 2015.

**Title 67**

**SOCIAL SERVICES**

**Part III. Economic Stability**

**Subpart 16. Strategies to Empower People (STEP)**

**Program**

**Chapter 57. Strategies to Empower People (STEP)**

**Program**

**Subchapter C. STEP Program Process**

**§5721. Job Readiness**

A. DCFS will ensure job readiness services are provided through other state partners or through performance-based contracts.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 285, 2013 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:499 (March 2004), amended by the Department of Children and Family Services, Division of Programs, Economic Stability Section, LR 40:1678 (September 2014), LR 41:2311 (November 2015).

Suzy Sonnier  
Secretary

1511#037

**RULE**

**Board of Trustees of the  
District Attorneys' Retirement System**

**District Attorneys' Retirement System  
(LAC 58:XXI.Chapters 1-7)**

The Board of Trustees of the District Attorneys' Retirement System ("DARS") has adopted LAC 58:XXI.Chapters 1-7 as interpretation of the provisions of the District Attorneys' Retirement System, as authorized by R.S. 11:1588(A), 1614(F), 1632(F), 1635(E), and 1636(E). This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of the Rule is compliance with requirements imposed by the Internal Revenue Service as a condition of its favorable determination letter on the qualification of the District Attorneys' Retirement System under *Internal Revenue Code* (IRC) §401(a).

**Title 58**

**RETIREMENT**

**Part XXI. District Attorneys' Retirement System**

**Chapter 1. General Provisions**

**§101. Compensation**

A. Definitions. As provided under R.S. 11:1581(5), effective for limitation years beginning on or after July 1, 2007, compensation is hereby defined as follows.

*Compensation*—the regular pay of the member, not including any overtime or bonuses.

*DARS*—the District Attorneys' Retirement System, as set forth in R.S. 11:1581 through 1702 and this Part.

*IRC §415 Compensation*—wages, tips and other compensation required to be reported under §§6041, 6051 and 6052 of the *Internal Revenue Code* (IRC) (wages, tips and other compensation box on IRS Form W-2), during the calendar year of the plan (the plan year or determination period).

B. Exclusions from Compensation. Compensation shall not include:

1. any amounts that are not includible in IRC §415 compensation;
2. employer contributions to a plan of deferred compensation to the extent contributions are not included in gross income of the employee for the taxable year in which contributed, or on behalf of an employee to a simplified employee pension plan and any distributions from a plan of deferred compensation;
3. amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an employee becomes freely transferable or is no longer subject to a substantial risk of forfeitures;
4. amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;
5. other amounts that receive special tax benefits, or contributions made by an employer (whether or not under a salary reduction agreement) towards the purchase of a IRC §403(b) annuity contract (whether or not the contributions are excludible from the gross income of the employee); and
6. pre-tax amounts contributed by the employee to an IRC §125 cafeteria plan.

C. Determination of IRC §415 Compensation. IRC §415 compensation must be determined without regard to any rules under IRC §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC §3401(a)(2)).

1. For plan years beginning on and after January 1, 2001:
  - a. IRC §415 compensation shall include elective amounts that are not includible in the gross income of the employee under IRC §§125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457.
2. For any plan year beginning after December 31, 2001:
  - a. IRC §415 compensation shall not exceed the maximum amount of compensation permitted to be taken into account under IRC §401(a)(17), \$200,000 adjusted for the cost of living increases in accordance with IRC §401(a)(17)(B).
    - i. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.
  3. If a determination period consists of fewer than 12 months, as a result of a change in plan year or in the year of the termination of the plan.
    - a. The IRC §415 compensation limit is an amount equal to the otherwise applicable IRC §415 compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.

4. If IRC §415 compensation for any prior determination period is taken into account in determining a participant's benefit for the current plan year, the IRC §415 compensation for such prior determination period is subject to the applicable IRC §415 compensation limit in effect for that prior period.

D. IRC §415 Compensation Paid After Severance from Employment

1. Adjusted Compensation. IRC §415 compensation shall be adjusted for the following types of compensation paid after a participant's severance from employment with the employer maintaining the plan (or any other entity that is treated as the employer pursuant to IRC §414(b), (c), (m) or (o)). However, amounts described in Paragraphs 2-8 of this Subsection may only be included in IRC §415 compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance from employment that is not described in the following types of compensation is not considered IRC §415 compensation within the meaning of IRC §415(c)(3), even if payment is made within the time period specified above.

2. Regular Pay. IRC §415 compensation shall include regular pay after severance from employment if:

- a. the payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
- b. the payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the employer.

3. Leave Cashouts. Leave cashouts shall be included in IRC §415 compensation if:

- a. those amounts would have been included in the definition of IRC §415 compensation if they were paid prior to the participant's severance from employment; and
- b. the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if:
  - i. the participant would have been able to use the leave if employment had continued.

4. Deferred Compensation. IRC §415 compensation will include deferred compensation if the compensation would have been included in the definition of IRC §415 compensation and if:

- a. it had been paid prior to the participant's severance from employment; and
- b. the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if:
  - i. the payment would have been paid at the same time if the participant had continued in employment with the employer and only to the extent that the payment is includible in the participant's gross income.

5. Qualified Military Service. IRC §415 compensation does not include payments to an individual who does not currently perform services for the employer by reason of qualified military service (as that term is used in IRC §414(u)(1)) to the extent those payments do not exceed the



amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

6. Permanently and Totally Disabled. IRC §415 compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in IRC §22(e)(3)).

7. Amounts Earned but not Paid. IRC §415 compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

8. Lost Wages. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate an employee for lost wages are IRC §415 compensation for the limitation year to which the back pay relates, but only to the extent such payments represent wages and compensation that would otherwise be included in IRC §415 compensation.

#### E. Limitation Year

1. The limitation year:

a. shall be the calendar year;

b. is the period that is used to apply the limitations of IRC §415.

2. The limitation year may only be changed by amendment to DARS. Furthermore, if DARS is terminated effective as of a date other than the last day of DARS's limitation year, then DARS is treated as if DARS had been amended to change its limitation year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1588(A), R.S. 11:1581(5)(b), and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2311 (November 2015).

### §103. Actuarial Equivalent

A. As provided under R.S. 11:1588(A), *actuarial equivalent* shall be defined using the following assumptions.

1. Interest shall be compounded annually at the rate of 7 1/2 percent per annum.

2. Annuity rates shall be determined on the basis of RP2000 combined healthy table set back three years for males and two years for females and uninsured.

B. For purposes of comparing benefits of the forms of distribution with the maximum limitation on benefits, the applicable mortality tables described in IRC §417(e)(3)(B) shall be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1588(A) and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2313 (November 2015).

### §105. Accumulated Contributions, Rollovers

A. Definitions. As provided in R.S. 11:1635(E), the following definitions are provided or revised.

*2009 RMDs of a Participant or Beneficiary*—amounts that the participant or beneficiary would have been required to receive as a required minimum distribution under IRC §401(a)(9) for the 2009 distribution calendar year.

*Eligible Retirement Plan*—shall include, in addition to the plans and accounts described in R.S. 11:1635(D)(3), the following.

a. Effective for distributions on or after January 1, 2007, eligible retirement plan shall include the individual

retirement account or annuity in the name of the deceased participant for the benefit of a nonspouse beneficiary, who receives an eligible rollover distribution from the plan on account of the death of a participant, provided that the individual retirement account or annuity is treated as an inherited IRA and that the minimum distribution rules applicable in the event the IRA owner dies before the entire interest is distributed shall apply to the transferee IRA and the transferee IRA does not provide the beneficiary with the special rules for surviving spouse beneficiaries.

b. If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments of distributions were made, or a Roth IRA of such individual. Effective January 1, 2007, a Roth IRA is an eligible retirement plan with respect to distributions from this plan that do not consist of designated Roth accounts, so long as the restrictions that apply to a transfer from a traditional IRA (non-Roth) to a Roth IRA are satisfied.

*Eligible Rollover Distribution*—shall include, in addition to the events set forth in R.S. 11:1635(D)(4), the following.

a. Effective January 1, 2003, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in §408(a) or (b) of the *Internal Revenue Code*, or a Roth individual retirement account or annuity described in §408A of the *Internal Revenue Code* (a "Roth IRA") or to a qualified defined contribution plan described in §§401(a) or 403(a) of the *Internal Revenue Code* that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion of such distribution that is not so includible.

b. Effective January 1, 2007, eligible rollover distributions shall include a distribution to a nonspouse beneficiary on account of the participant's death, so long as any rollover distribution is transferred to an individual retirement account or annuity that is treated as an inherited account of the deceased participant, or Roth IRA established on behalf of the nonspouse designated beneficiary for the purpose of receiving the distribution. Effective January 1, 2007, early rollover distribution shall include after-tax contributions held in a plan qualified under §401(a) of the *Internal Revenue Code*. Effective January 1, 2007, distributions from the plan that do not consist of designated Roth accounts shall be eligible rollover distributions with respect to a Roth IRA and may be rolled over to a Roth IRA, subject to the restrictions that apply to a transfer from a traditional (non-Roth) IRA to a Roth IRA.

c. During 2009, 2009 RMDs shall be treated as eligible rollover distributions for purposes of making available the direct rollover of eligible rollover distributions that include such amount, but not for purposes of withholding federal income taxes on the amount when it is distributed.

B. Rollover of Returned Contributions. As provided in R.S. 11:1635(E):

1. distributee, eligible retirement plan and eligible rollover distribution shall be defined as provided in Subsection A of this Section;

2. an eligible rollover distribution shall be transferred in a direct rollover to an eligible retirement plan if so directed by the distributee. The board shall provide distributees with the opportunity to direct such direct rollover by written notice at least 30 and not longer than 180 days prior to the distribution;

3. this rollover right shall apply to any eligible rollover distribution, including distributions of accumulated contributions, DROP accounts and back-DROP accounts.

C. Eligible Retirement Plan

1. Effective for distributions on or after January 1, 2007:

a. eligible retirement plan shall include the individual retirement account or annuity in the name of the deceased participant for the benefit of a nonspouse beneficiary, who receives an eligible rollover distribution from the plan on account of the death of a participant, provided that the individual retirement account or annuity is treated as an inherited IRA and that the minimum distribution rules applicable in the event the IRA owner dies before the entire interest is distributed shall apply to the transferee IRA and the transferee IRA does not provide the beneficiaries with the special rules for surviving spouse beneficiaries;

b. a Roth IRA is an eligible retirement plan with respect to distributions from the fund that do not consist of designated Roth accounts, so long as the restrictions that apply to a transfer from a traditional IRA (non-Roth) to a Roth IRA are satisfied.

D. Eligible Rollover Distribution

1. If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

2. Effective January 1, 2003, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in IRC §408(a) or (b), or to a qualified defined contribution plan described in IRC §§401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion of such distribution that is not so includible.

3. Effective January 1, 2007, eligible rollover distributions shall include:

a. a distribution to a nonspouse beneficiary on account of the participant's death, so long as any rollover distribution is transferred to an individual retirement account

or annuity that is treated as an inherited account of the deceased participant;

b. after-tax contributions held in a plan qualified under IRC §401(a).

4. Effective January 1, 2007, distributions from the plan that do not consist of designated Roth accounts shall be eligible rollover distributions with respect to a Roth IRA and may be rolled over to a Roth IRA, subject to the restrictions that apply to a transfer from a traditional (non-Roth) IRA to a Roth IRA.

5. During 2009, 2009 RMDs shall be treated as eligible rollover distributions for purposes of making available the direct rollover of eligible rollover distributions that include such amount, but not for purposes of withholding federal income taxes on the amount when it is distributed.

E. Repayment of Withdrawn Accumulated Contributions

1. As provided in R.S. 11:1617(B), payment may be made directly by the member or may be made on the member's behalf in a single sum payment by:

- a. an individual retirement account; or
- b. an individual retirement annuity; or
- c. a plan qualified under IRC §§401(a), 403(a), 403(b), or 457(g).

2. Source of Contribution. Amounts contributed under Paragraph 1 of this Subsection shall not consist of amounts for which additional recordkeeping is required, such as after tax or Roth accounts. The trustees shall have discretion whether to accept contributions in any particular form.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 11:1588(A), R.S. 11:1617(B), and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2313 (November 2015).

**Chapter 3. Creditable Service**

**§301. Benefits for Qualified Military Service**

A. Death and Disability. As provided under R.S. 11:1614(F), the following shall apply.

1. In the case of a death or disability occurring on or after January 1, 2007, if a member dies or becomes disabled while performing qualified military service (as defined in IRC §414(u)), the member or the member's beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan as if the participant had resumed and then terminated employment on account of death.

a. Moreover, the plan will credit the member's qualified military service as service for vesting purposes, as though the member had resumed employment under USERRA immediately prior to the member's death.

B. Differential Wage Payments. If the member's employer makes differential wage payments during the member's qualified military service, then the member shall be credited with compensation for purposes of the system.

C. Qualified Military Service—any service in the uniformed services (as defined in chapter 43 of title 38, *United States Code*), by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1588(A), R.S. 11:1614(F), and the provisions of the Administrative Procedure Act, R.S. 49.950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2314 (November 2015).

## **Chapter 5. Limitation on Payment of Benefits**

### **§501. Suspension of Benefits**

A. As provided in R.S. 11:1631(E) and (F), if a member has commenced to receive distributions under R.S. 11:1632 or 1633, then benefits to such member shall be suspended upon his reemployment by a contributing employer to the system, and the suspension shall continue so long as he is still employed. If such member later terminates employment, he shall commence to receive minimum distributions again and shall be entitled to elect the method of receiving such distributions, with his required beginning date to be determined based on the date of his termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1588(A) and R.S. 49.950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2315 (November 2015).

### **§503. Definitions**

A. Definitions. For purposes of this Title, the following definitions apply.

*Annual Benefit*—a benefit that is payable annually in the form of a straight life annuity.

*Defined Benefit Dollar Limitation*—effective for limitation years ending after December 31, 2001, \$160,000, automatically adjusted under IRC §415(d), effective January 1 of each year, as published in the *Internal Revenue Bulletin*, and payable in the form of a straight life annuity:

a. the new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year;

b. the automatic annual adjustment of the defined benefit dollar limitation under IRC §415(d) shall apply to participants who have had a separation from employment.

*Required Beginning Date of a Member*—April 1 of the calendar year following the year in which the plan member terminated employment with the employers that contribute to the system. Any required beginning date occurring in 2009 shall be extended for one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1588(A) and R.S. 49.950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2315 (November 2015).

### **§505. Benefit Limitations**

A. Maximum Permissible Benefit. As provided under R.S. 11:1632, the following provisions shall apply for limitation years beginning on or after July 1, 2007.

1. Annual Benefit—Maximum Permissible Benefit. The annual benefit, otherwise payable to a participant under the plan, at any time shall not exceed the maximum permissible benefit. If the benefit the participant would otherwise accrue in a limitation year would produce an

annual benefit in excess of the maximum permissible benefit, then the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the maximum permissible benefit.

2. Adjustment if in Two Defined Benefit Plans. If the participant is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the employer or a predecessor employer, the sum of the participant's annual benefit from all such plans may not exceed the maximum permissible benefit. Where the participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the maximum permissible benefit applicable at that age, the employer shall limit a participant's benefit in accordance with the terms of the plans.

3. Limits Grandfathered prior to July 1, 2007

a. The following sentence in Clause i of this Subparagraph applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to IRC §415 in effect as of the end of the last limitation year beginning before July 1, 2007, as described in U.S. Treasury regulations §1.415(a)-1(g)(4).

i. The application of the provisions of this Part shall not cause the maximum permissible benefit for any participant to be less than the participant's accrued benefit under all the defined benefit plans of the employer or a predecessor employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007.

B. Annual Benefit Determination

1. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Part.

2. For a participant who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Part as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates.

a. For this purpose, the determination of whether a new annuity starting date has occurred shall be made:

i. without regard to U.S. Treasury regulations §1.401(a)-20, Q and A-10(d); and

ii. with regard to U.S. Treasury regulations §1.415(b)1(b)(1)(iii)(B) and (C).

3. The determination of the annual benefit shall take into account Social Security supplements described in IRC §411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to U.S. Treasury regulations §1.411(d)-4, Q and A-3(c), but shall disregard benefits attributable to employee contributions or rollover contributions.

C. Actuarial Adjustment. No actuarial adjustment to the benefit shall be made for:

1. survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the participant's benefit were paid in another form;

2. benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or

3. the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to IRC §417(e)(3) and would otherwise satisfy the limitations of this Part, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this Part applicable at the annuity starting date, as increased in subsequent years pursuant to IRC §415(d).

a. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

D. Actuarial Equivalent—Straight Life Annuity

1. Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Subparagraph a of this Paragraph.

a. The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this Subparagraph if the form of the participant's benefit is either:

i. a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse); or

ii. an annuity that decreases during the life of the participant merely because of:

(a). the death of the survivor annuitant (but only if the reduction is not below 50 percent of the benefit payable before the death of the survivor annuitant); or

(b). the cessation or reduction of Social Security supplements or qualified disability payments (as defined in IRC §401(a)(11)).

2. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount:

a. the interest rate and mortality table (or other tabular factor) specified in the plan for adjusting benefits in the same form; and

b. 5 percent interest rate assumption and the applicable mortality table defined in the plan for that annuity starting date.

3. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

a. the annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the participant's form of benefit; and

b. the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in the plan for that annuity starting date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1588(A) and 11:1632(F).

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2315 (November 2015).

## Chapter 7. Required Minimum Distributions

### §701. Required Beginning Date

#### A. Definition

*Required Beginning Date of a Participant who is a 5 Percent Owner of an Adopting Employer*—the first day of April of the calendar year following the calendar year in which the participant attains age 70 1/2. The required beginning date for benefit distributions to a participant other than a 5 percent owner shall be the first day of April of the calendar year following the calendar year in which the later of the following occurs: the participant attains age 70 1/2, or the participant retires. Once distributions have begun to a 5 percent owner under this Section, they must continue to be distributed, even if the participant ceases to be a 5 percent owner in a subsequent year.

#### B. Annuity Distributions

1. Benefits due to a member who is eligible for retirement under R.S. 11:1632, 1633, or 1634 shall commence on or before the required beginning date.

2. Death before Date Distributions Begin. If the member dies before distribution of his or her interest begins, distribution of the member's interest in the applicable account(s) will be distributed or begin to be distributed, no later than as follows.

a. Member Survived by Designated Beneficiary. If the member dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the member's death is the quotient obtained by dividing the member's account balance by the remaining life expectancy of the member's designated beneficiary.

b. No Designated Beneficiary. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's interest in the applicable account(s) will be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

c. Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the member dies before the date distributions begin, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Paragraph C.6 of this Section, this Section will apply as if the surviving spouse were the member.

d. For purposes of this Section, any amount paid to a child of the member will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

e. For the purposes of this Section, distribution of a member's interest in the applicable account(s) is considered to begin on the member's required beginning date (or, if Subparagraph c of this Paragraph is applicable, the date distribution is required to begin to the surviving spouse pursuant to Subparagraph a of this Paragraph).

#### C. Applicable Accounts

1. This Subsection shall apply with respect to any account that is part of the system that is considered to be a defined contribution account within the system. This Subsection shall apply to the refund of accumulated contributions as provided in R.S. 11:1635, to the Back-Deferred Retirement Option Program account as provided in R.S. 11:1644 and to the Deferred Retirement Option Plan account as formerly provided in R.S. 11:1639-1643 before repeal (hereinafter referred to as "applicable account" or "accounts").

2. The applicable account(s) of a member must be distributed or begin to be distributed no later than the member's required beginning date. The first distribution calendar year shall be the calendar year in which the member attains age 70 1/2 or has a severance from employment with the employer maintaining this system, if later. Distribution shall be made over a period not longer than that provided under this Subsection.

3. Death of Member before Distributions Begin. If the member dies before distributions begin, the member's applicable account(s) will be distributed, or begin to be distributed, no later than as follows.

a. If the member's surviving spouse is the member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age 70 1/2, if later.

b. If the member's surviving spouse is not the member's sole designated beneficiary, then distributions to the designated beneficiary will be made or will begin by December 31 of the calendar year immediately following the calendar year in which the member died.

c. If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's applicable account will be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.

d. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse are required to begin, this Subsection (other than Subparagraph a of this Paragraph) will apply as if the surviving spouse were the member. For purposes of this Subsection, distributions are considered to begin on the member's required beginning date, or if applicable, on the date distributions are required to begin to the surviving

spouse. The date distributions are considered to begin is the date distributions actually commence.

4. Forms of Distribution. Unless the member's interest is distributed in a single-sum on or before the required beginning date, as of the first distribution calendar year, distributions will be made in accordance with this Subsection.

5. Required Minimum Distribution for each Distribution Calendar Year. If the member's interest in the applicable account(s) is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the required beginning date.

a. During the member's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

i. the quotient obtained by dividing the member's account balance by the distribution period in the uniform lifetime table set forth in 26 CFR §1.401(a)(9)-9, Q and A-2, using the member's age as of the member's birthday in the distribution calendar year; or

ii. if the member's sole designated beneficiary for the distribution calendar year is the member's spouse, the quotient obtained by dividing the member's account balance by the number in the joint and last survivor table set forth in 26 CFR §1.401(a)(9)-9, Q and A-3, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the distribution calendar year.

b. Required minimum distributions will be determined under this Section beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the member's date of death.

c. *Member's Benefit*—the account balance of the applicable account or accounts as of the last valuation date in the calendar year immediately preceding the distribution calendar year increased by the amount of any contributions allocated to the applicable account balance as of dates in the distribution calendar year with respect to the first distribution year, after the valuation date and decreased by distributions made in the distribution calendar year after the valuation date.

i. For purposes of Subparagraph c of this Paragraph, if any portion of the minimum distribution for the first distribution calendar year is made in the second distribution calendar year on or before the required beginning date, the amount of the minimum distribution made in the second distribution calendar year shall be treated as if it had been in the immediately preceding distribution calendar year.

6. Required Minimum Distributions after Member's Death. If the member dies after distribution of his or her applicable account(s) has begun, the remaining portion of such account(s) will continue to be distributed at least as rapidly as under the method of distribution being used prior to the member's death.

a. Member is Survived by Designated Beneficiary. If the member dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year

after the year of the member's death is the quotient obtained by dividing the member's account balance by the longer of the remaining life expectancy of the member or the remaining life expectancy of the member's designated beneficiary, determined as follows.

i. The member's remaining life expectancy is calculated using the age of the member in the year of death, reduced by one for each subsequent year.

ii. If the member's surviving spouse is the member's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the member's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

iii. If the member's surviving spouse is not the member's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the member's death, reduced by one for each subsequent year.

b. No Designated Beneficiary. If the member dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the member's death, the minimum amount that will be distributed for each distribution calendar year after the year of the member's death is the quotient obtained by dividing the member's account balance by the member's remaining life expectancy calculated using the age of the member in the year of death, reduced by one for each subsequent year.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 11:1588(A) and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the District Attorneys' Retirement System, LR 41:2316 (November 2015).

E. Pete Adams  
Director

1511#012

## RULE

### Department of Economic Development Office of Business Development

#### Industrial Ad Valorem Tax Exemption Program (LAC 13:I.Chapter 5)

These rules are being published in the *Louisiana Register* as required by R.S. 47:4351 et seq. The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104 has amended Sections 503, 505, 525, 527, 529, 533 and 535 for the administration of the Industrial Ad Valorem Tax Exemption Program in LAC 13:I.Chapter 5 to

implement fees under the new fee schedule provided for by Act 361 of the 2015 Regular Session of the Louisiana Legislature.

## Title 13

### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

#### Chapter 5. Industrial Ad Valorem Tax Exemption Program

##### §503. Advance Notification; Application

A. An advance notification of intent to apply for tax exemption shall be filed with the LED Office of Business Development (OBD) on the prescribed form prior to the beginning of construction or installation of facilities. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins. An advance notification fee of \$250 shall be submitted with the form. The advance notification will expire and become void if no application is filed within 12 months of the estimated project ending date stated in the advance notification (subject to amendment by the applicant).

B. - B.3. ...

C. An application fee shall be submitted with the application in the amount equal to 0.5 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$500 and in no case shall a fee exceed \$15,000 per project.

D. - F. ....

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2376 (August 2011), LR 41:2318 (November 2015).

##### §505. Miscellaneous Capital Additions

A. - B.2. ...

C. An application fee shall be submitted with the MCA application in the amount equal to 0.5 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$500 and in no case shall a fee exceed \$15,000 per project.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), LR 41:2318 (November 2015).

##### §525. Effective Date of Contract; Project Completion Report

A. The owner of a new manufacturing establishment or addition shall document the beginning date of operations and the date that construction is substantially complete. The

owner must file that information with OBD on the prescribed project completion report form not later than 90 days after the beginning of operations, completion of construction, or receipt of the fully executed contract, whichever occurs last. A project completion report fee of \$250 shall be submitted with the form. The deadline for filing the project completion report may be extended pursuant to §523.

B. ...

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development LR 37:2379 (August 2011), LR 41:2318 (November 2015).

#### **§527. Affidavit of Final Cost**

A. Within six months of the beginning of operations, completion of construction, or receipt of the executed contract, whichever occurs last, the owner of a manufacturing establishment or addition shall file on the prescribed form an affidavit of final cost showing complete cost of the exempted project. A fee of \$250 shall be filed with the affidavit of final cost or any amendment to the affidavit of final cost. Upon request by OBD, a map showing the location of all facilities exempted in the project shall be submitted in order that the exempted property may be clearly identifiable. The deadline for filing the affidavit of final cost may be extended pursuant to §523.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015).

#### **§529. Renewal of Tax Exemption Contract**

A. Application for renewal of the exemption must be filed with OBD on the prescribed form not more than six months before, and not later than, the expiration of the initial contract. A fee of \$250 shall be filed with the renewal application. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Upon proper showing of full compliance with the initial contract of exemption, the contract may be approved by the board for an additional period of up to but not exceeding five years.

B. ...

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015).

#### **§533. Reporting Requirements for Changes in Operations**

A. OBD is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract. A fee of \$250 shall be filed with a request for any contract amendment, including but not limited to, a change of ownership, change in name, or change in location. The board may consider restrictions or cancellation of a contract for cessation of the manufacturing operation, or retirement of any portion of the exempted equipment. Failure to report any material changes constitutes a breach of contract and, with approval by the board, shall result in restriction or termination.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015).

#### **§535. Sale or Transfer of Exempted Manufacturing Establishment**

A. In the event an applicant should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. A fee of \$250 shall be filed with a request to transfer the contract. The board shall consider all such applications for transfer of contracts of exemption strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change the name of the contracting applicant. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015).

Anne G. Villa  
Undersecretary

1511#064

#### **RULE**

#### **Department of Environmental Quality Office of the Secretary Legal Division**

Emission Reduction Credits (ERC) Banking Program  
(LAC 33:III.603)(AQ353)

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.603 (AQ353).

LAC 33:III.Chapter 6 currently precludes sources located in EPA-designated attainment areas from participating in the emissions banking program. This rulemaking allows owners or operators of stationary sources located in certain attainment areas to apply for emission reduction credits (ERC).

On December 17, 2014, the Environmental Protection Agency (EPA) proposed to revise the primary and secondary national ambient air quality standards (NAAQS) for ozone to a level within the range of 0.065 to 0.070 parts per million (ppm) (79 FR 75234). EPA is required by a federal court order to finalize its proposal no later than October 1, 2015.

Based on current (i.e., 2012-2014) design values, LDEQ anticipates that up to 17 parishes would be designated as ozone nonattainment areas should the standard be set at 0.070 ppm. If the final standard is less than 0.070 ppm, as many as 13 additional parishes could receive a nonattainment designation.

LAC 33:III.Chapter 6 currently precludes sources located in EPA-designated attainment areas from participating in the emissions banking program. Owners or operators of stationary sources located in the five parishes described above (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge) have had the ability to bank creditable reductions in NO<sub>x</sub> and VOC emissions.

In order to encourage prompt reductions in NO<sub>x</sub> and VOC emissions that will be needed to comply with the revised ozone NAAQS (and to address future scenarios analogous to this), LDEQ will amend Chapter 6 to allow an owner or operator of a stationary source located in an area currently designated as attainment, but which is not in compliance with a new or revised NAAQS, to bank creditable reductions in emissions of the noncompliant pollutant(s) realized on or after the date the new or revised NAAQS is promulgated. The basis and rationale for this rule are to allow owners or operators of stationary sources located in certain attainment areas to apply for ERC. 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 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits (ERC) Banking**

##### **§603. Applicability**

A. Major stationary sources are subject to the provisions of this Chapter for the purpose of utilizing emission reductions as offsets in accordance with LAC 33:III.504. Minor stationary sources located in nonattainment areas may submit ERC applications for purposes of banking. Sources located in EPA-designated attainment areas may not participate in the emissions banking program, except as specified in Subsection C of this Section. Any stationary point source at an affected facility is eligible to participate.

B. ...

C. The owner or operator of a stationary source located in an EPA-designated attainment area, but which is not in compliance with a new or revised national ambient air quality standard, may apply to bank reductions in emissions

of the noncompliant pollutant(s) realized on or after promulgation of the new or revised standard.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 41:2320 (November 2015).

Herman Robinson, CPM  
Executive Counsel

1511#054

### **RULE**

#### **Department of Environmental Quality Office of the Secretary Legal Division**

Physical Protection of Byproduct Material;  
Distribution of Source Material to Exempt Persons and  
General Licensees; Domestic Licensing of Special  
Nuclear Material; and Safeguards Information  
(LAC 33:XV.102, 103, 303, 321, 340, 1519, 1601,  
1603, 1605, 1607, 1609, 1611, 1613, 1615, 1617, 1619,  
1621, 1623, 1625, 1627, 1629, 1631, 1633, 1635, 1637,  
1641, 1643, 1645, 1647, 1649, 1651, 1661, 1663,  
1665 and 1699)(RP060ft)

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, 103, 303, 321, 340, 1519 and 1601, 1603, 1605, 1607, 1609, 1611, 1613, 1615, 1617, 1619, 1621, 1623, 1625, 1627, 1629, 1631, 1633, 1635, 1637, 1641, 1643, 1645, 1647, 1649, 1651, 1661, 1663, 1665 and 1699 (Log # RP060ft).

This Rule is identical to federal regulations found in 10 CFR 30, 37, 40 and 70, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule makes major changes to the requirements for physical protection of category 1 and category 2 quantities of radioactive materials. It also makes minor changes to the distribution of source material to exempt persons and general licensees. This Rule was promulgated by the Nuclear Regulatory Commission (NRC) as RATS IDs 2013-1, 2013-2, 2015-1 and 2015-2. This Rule will update the state regulations to be compatible with changes in the federal regulations. The changes in the state regulations are category A, B, C and H and S requirements for the state of Louisiana to remain an NRC agreement state. The basis and rationale



for this Rule are to mirror the federal regulations 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.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part XV. Radiation Protection**

**Chapter 1. General Provisions**

**§102. Definitions and Abbreviations**

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.

\* \* \*

*Agreement State*—any state with which the U.S. Nuclear Regulatory Commission or the U.S. Atomic Energy Commission has entered into an effective agreement under subsection 274.b of the Atomic Energy Act of 1954, as amended. Non-agreement State means any other state.

\* \* \*

*Atomic Energy Act*—Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

\* \* \*

*Becquerel*—the SI unit of measurement of radioactivity; it is equal to one disintegration per second. One curie is equal to  $3.7 \times 10^{10}$  becquerels (Bq).

\* \* \*

*Commission*—the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

\* \* \*

*Curie*—the amount of radioactive material that disintegrates at the rate of 37 billion atoms per second or  $3.7 \times 10^{10}$  disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie and the microcurie. One millicurie (mCi) is equal to 0.001 curie, which is equal to  $3.7 \times 10^7$  dps. One microcurie ( $\mu$ Ci) is equal to 0.000001 curie, which is equal to  $3.7 \times 10^4$  dps. One curie is equal to  $3.7 \times 10^{10}$  becquerels.

\* \* \*

*Government Agency*—any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.

\* \* \*

*License Issuing Authority*—the licensing agency that issued the license, i.e. the department, the U.S. Nuclear Regulatory Commission, or the appropriate agency of an agreement state.

\* \* \*

*Lost or Missing Licensed (or Registered) Material*—licensed (or registered) material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

\* \* \*

*State*—a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

\* \* \*

*United States*—when this term is used in a geographical sense, it includes Puerto Rico, all territories, and possessions of the United States.

\* \* \*

*Unrefined and Unprocessed Ore*—ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining. Processing does not include sieving or encapsulation of ore, or preparation of samples for laboratory analysis.

\* \* \*

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).

**§103. Exemptions**

A. - B.4.b. ...

C. Carriers. Common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from the regulations in this Part and the requirements for a license set forth in this Part to the extent that they transport or store byproduct material in the regular course of carriage for another or storage incident thereto.

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 18:34 (January 1992), amended by the Office of the Secretary, Legal Division, LR 41:2321 (November 2015).

**Chapter 3. Licensing of Byproduct Material**  
**Subchapter A. Exemptions**

**§303. Unimportant Quantities of Source Material**

A. - B. ...

C. Any person is exempt from the requirements for a license and from the regulations set forth in this Chapter to the extent that such person receives, possesses, uses, or transfers the following.

1. - 2. ...

a. glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20 percent by weight source material;

b. glassware containing not more than two percent by weight source material, or for glassware manufactured before August 27, 2013, 10 percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

2.c. - 5. ...

a. each counterweight has been impressed with the following legend, clearly legible through any plating or other covering: "DEPLETED URANIUM";

b. each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED";

c. the exemption contained in this Subsection shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other covering; and

d. the requirements specified in Subparagraphs C.5.a and b of this Section need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend required by 10 CFR 40.13(c)(5)(ii) in effect on June 30, 1969.

6. - 6.b. ...

7. Thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than 10 percent by weight thorium or uranium or, for lenses manufactured before August 27, 2013, 30 percent by weight of thorium, and that the exemption contained in this Subsection does not authorize either:

a. the shaping, grinding, or polishing of such lens or mirror or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or

b. the receipt, possession, use, or transfer of uranium or thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments.

8. Thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided that:

a. the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

b. the thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

9. No person shall initially transfer for sale or distribution a product containing source material to persons exempt under Subsection C of this Section, or equivalent regulations of an agreement state, unless authorized by a license issued under 10 CFR 40.52 to initially transfer such products for sale or distribution.

a. Persons initially distributing source material in products covered by the exemptions in Subsection C of this Section before August 27, 2013, without specific authorization may continue such distribution for one year beyond the aforementioned date. Initial distribution may also

be continued until the department takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than one year beyond this date.

b. Persons authorized to manufacture, process, or produce these materials or products containing source material by an agreement state, and persons who import finished products or parts, for sale or distribution, shall be authorized by a license issued under 10 CFR 40.52 for distribution only and are exempt from the requirements of 10 CFR 19 and 20, and LAC 33:XV.325.A.1 and 2.

D. ...

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 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1226 (August 2001), amended by the Office of the Secretary, Legal Division, LR 41:2321 (November 2015).

### **Subchapter C. General Licenses**

#### **§321. General Licenses: Source Material**

A. A general license is hereby issued authorizing commercial and industrial firms; research, educational, and medical institutions; and federal, state, and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, operational, or commercial purposes in the following forms and quantities:

1. no more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material shall be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under this paragraph may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year. Persons possessing source material in excess of these limits as of August 27, 2013, may continue to possess up to 7 kg (15.4 lb) of uranium and thorium at any one time for one year beyond this date, or until the department takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and receive up to 70 kg (154 lb) of uranium or thorium in any one calendar year until December 31, 2014, or until the department takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and

2. no more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under this Paragraph may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under this Paragraph unless it is accounted for under the limits of Paragraph A.1 of this Section; or

3. no more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A

person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under this Paragraph; or

4. no more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under this Paragraph may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

B. Any person who receives, possesses, uses, or transfers source material in accordance with the general license issued in Subsection A of this Section is exempt from the provisions of Chapters 4 and 10 of these regulations to the extent that such receipt, possession, use, and transfer are within the terms of such general license, except that such person shall comply with the provisions of LAC 33:XV.332.D.1.e.iii and LAC 33:XV.460 to the extent necessary to meet the provisions of Paragraph C.2 and Subsection F of this Section. However, this exemption does not apply to any person who also holds a specific license issued under this Chapter.

C. Any person who receives, possesses, uses, or transfers source material in accordance with the general license in Subsection A of this Section:

1. is prohibited from administering source material or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the department in a specific license;

2. shall not abandon such source material. Source material may be disposed of as follows:

a. a cumulative total of 0.5 kg (1.1 lb) of source material in a solid, nondispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material under this general license to persons receiving the material for permanent disposal. The recipient of source material transferred under the provisions of this Subparagraph is exempt from the requirements to obtain a license under this part to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under this Chapter; or

b. in accordance with LAC 33:XV.460;

3. is subject to the provisions in Chapter 3; and

4. shall not export such source material except in accordance with 10 CFR 110.

D. - E.5. ...

F. Any person who receives, possesses, uses, or transfers source material in accordance with Subsection A of this Section shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160 as soon as possible about such contamination and may consult with the department as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the

site where source material was used under this general license is not likely to result in exposures that exceed the limits in LAC 33:XV.332.D.1.e.iii.

G. No person may initially transfer or distribute source material to persons generally licensed under Paragraphs A.1 or 2 of this Section, or equivalent regulations of an agreement state, unless authorized by a specific license issued in accordance with Subsection H of this Section or equivalent provisions of an agreement state. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed by Subsection A of this Section before August 27, 2013, without specific authorization may continue for one year beyond this date. Distribution may also be continued until the department takes final action on a pending application for license or license amendment to specifically authorize distribution submitted on or before August 27, 2014.

H. Requirements for License to Initially Transfer Source Material for Use Under the Small Quantities of Source Material General License

1. An application for a specific license to initially transfer source material for use under this Section, or equivalent regulations of an agreement state, will be approved if the applicant satisfies the general requirements specified in LAC 33:XV.325.A and the applicant submits adequate information on, and the department approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

I. Conditions of Licenses to Initially Transfer Source Material for Use under the Small Quantities of Source Material General License: Quality Control, Labeling, Safety Instructions, and Records and Reports

1. Each person licensed under Subsection H of this Section shall label the immediate container of each quantity of source material with the type of source material, quantity of material, and the words, "radioactive material."

2. Each person licensed under Subsection H of this Section shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

3. Each person licensed under Subsection H of this Section shall provide the information specified in this Paragraph to each person to whom source material is transferred for use under this Section. This information shall be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

a. a copy of LAC 33:XV.321 and 340; and

b. appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

4. Each person licensed under Subsection H of this Section shall report transfers as follows:

a. file a report with the Office of Environmental Compliance. The report shall include the following information:

i. the name, address, and license number of the person who transferred the source material;

ii. for each general licensee under this Section to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter:

(a). the name and address of the general licensee to whom source material is distributed;

(b). a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and

(c). the type, physical form, and quantity of source material transferred; and

iii. the total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients;

b. file a report with each responsible agreement state agency that identifies all persons, operating under provisions equivalent to this Section, to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the agreement state being reported to:

i. the name, address, and license number of the person who transferred the source material;

ii. the name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

iii. the total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the agreement state;

c. submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under this Section during the current period, a report shall be submitted to the department indicating so. If no transfers have been made to general licensees in a particular agreement state during the reporting period, this information shall be reported to the responsible agreement state agency upon request of the agency.

5. Each person licensed under Subsection H of this Section shall maintain all information that supports the reports required by this Section concerning each transfer to a general licensee for a period of one year after the event is included in a report to the department.

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 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2567 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2524 (October 2005), LR 33:2177 (October 2007), amended by the Office of the Secretary, Legal Division, LR 41:2322 (November 2015).

#### **Subchapter D. Specific Licenses**

##### **§340. Transfer of Source or Byproduct Material**

A. No licensee shall transfer source or byproduct material except as authorized pursuant to this Section.

B. Except as otherwise provided in the license and subject to the provisions of LAC 33:XV.340.C and D, any licensee may transfer source or byproduct material:

1. to the department (a licensee may transfer source or byproduct material to the department only after receiving prior approval from the department);

2. to the agency in any agreement state which regulates radioactive material according to an agreement under section 274 of the Atomic Energy Act;

3. ...

4. to any person authorized to receive such material under terms of a general license or its equivalent, or a specific license or equivalent licensing document issued by the administrative authority, the U.S. Nuclear Regulatory Commission, any other agreement state, or any licensing state, or to any person otherwise authorized to receive such material by the federal government or any agency thereof, the administrative authority, any other agreement state, or any licensing state;

5. to any person in an agreement state, subject to the jurisdiction of that state, who has been exempted from the licensing requirements and regulations of that state, to the extent permitted under such exemption; or

6. as otherwise authorized by the department in writing.

C. Before transferring source or byproduct material to a specific licensee of the department, the U.S. Nuclear Regulatory Commission, another agreement state, or a licensing state, or to a general licensee who is required to register with the department, the U.S. Nuclear Regulatory Commission, any other agreement state, or a licensing state, prior to receipt of the source or byproduct material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of source or byproduct material to be transferred.

D. - D.1. ...

2. The transferor may have in his or her possession a written certification by the transferee that he or she is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date.

3. For emergency shipments, the transferor may accept oral certification by the transferee that he or she is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date, provided that the oral certification is confirmed in writing within 10 days.

4. ...

5. When none of the methods of verification described in Paragraphs D.1-4 of this Section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the department, the U.S. Nuclear Regulatory Commission, or the licensing agency of any other agreement state or licensing state that the transferee is licensed to receive the source or byproduct material.

E. Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of Chapter 15 of these regulations.

**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 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2573 (November 2000), amended by the Office of the Secretary, Legal Division, LR 41:2324 (November 2015).

## **Chapter 15. Transportation of Radioactive Material**

### **§1519. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste [Formerly §1516]**

A. - A.1. ...

B. Advance notification is also required for shipments of licensed material, other than irradiated fuel, meeting the following three conditions:

B.1. - F. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2104.B and 2113.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1269 (June 2000), LR 26:2602 (November 2000), amended by the Office of Environmental Assessment, LR 30:2029 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2190 (October 2007), LR 34:2111 (October 2008), amended by the Office of the Secretary, Legal Division, LR 40:1928 (October 2014), LR 41:2325 (November 2015).

## **Chapter 16. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material**

### **Subchapter A. General Provisions**

#### **§1601. Purpose and Scope**

A. Purpose. This Chapter has been established to provide the requirements for the physical protection program for any licensee who possesses an aggregated category 1 or category 2 quantity of radioactive material listed in Appendix A of this Chapter. These requirements provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, use of material, transfer of material, and transport of material are included. No provision of this Chapter authorizes possession of licensed material.

B. Scope

1. Subchapters B and C of this Chapter apply to any person who, under the regulations in this Chapter, possesses or uses at any site, an aggregated category 1 or category 2 quantity of radioactive material.

2. Subchapter D of this Chapter applies to any person who, under the regulations of this Chapter:

a. transports or delivers to a carrier for transport in a single shipment, a category 1 or category 2 quantity of radioactive material; or

b. imports or exports a category 1 or category 2 quantity of radioactive material; the provisions only apply to the domestic portion of the transport.

**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 Division, LR 41:2325 (November 2015).

#### **§1603. Definitions**

A. As used in this Chapter, the following definitions apply. Other definitions as used in this Chapter may be found in applicable Chapters of LAC 33:XV.

*Access Control*—a system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

*Aggregated*—accessible by the breach of a single physical barrier that would allow access to radioactive material in any form, including any devices that contain the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

*Approved Individual*—an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with Subchapter B of this Chapter and who has completed the training required by LAC 33:XV.1623.C.

*Background Investigation*—the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

*Carrier*—a person engaged in the transportation of passengers or property by land or water as a common, contract, private carrier, or by civil aircraft.

*Category 1 Quantity of Radioactive Material*—a quantity of radioactive material meeting or exceeding the category 1 threshold in Table 1 of Appendix A to this Chapter. This is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

*Category 2 Quantity of Radioactive Material*—a quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in Table 1 of Appendix A to this Chapter. This is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2 quantity. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

*Diversion*—the unauthorized movement of radioactive material subject to this Chapter to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

*Escorted Access*—accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

*Fingerprint Orders*—the orders issued by the U.S. Nuclear Regulatory Commission or the legally binding requirements issued by agreement states that require

fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or safeguards information-modified handling.

*Local Law Enforcement Agency (LLEA)*—a public or private organization that has been approved by a federal, state, or local government to carry firearms, make arrests, and has the capability and authority to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

*Mobile Device*—a piece of equipment containing licensed radioactive material that is either mounted on wheels, casters, or otherwise equipped for moving without a need for disassembly or dismounting; or equipment designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

*Movement Control Center*—an operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies, and can request and coordinate appropriate aid.

*No-Later-Than Arrival Time*—the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than 6 hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

*Reviewing Official*—the individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

*Sabotage*—deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

*Safe Haven*—a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

*Security Zone*—any temporary or permanent area determined and established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

*Telemetric Position Monitoring System*—a data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

*Trustworthiness and Reliability*—characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

*Unescorted Access*—solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

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 Division, LR 41:2325 (November 2015).

#### **§1605. Specific Exemptions**

A. The department may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this Chapter as it determines are authorized by law and will not endanger life, property, the common defense, or security, and are otherwise in the public interest.

B. Any licensee's NRC-licensed activities are exempt from the requirements of Subchapters B and C of this Chapter to the extent that its activities are included in a security plan required by 10 CFR 73.

C. A licensee who possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of Subchapters B, C, and D of this Chapter. However, any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kg (4,409 lbs) is not exempt from the requirements of this Chapter. The licensee shall implement the following requirements to secure the radioactive waste:

1. use continuous physical barriers that allow access to the radioactive waste only through established access control points;
2. use a locked door or gate with monitored alarm at the access control point;
3. assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and
4. immediately notify the LLEA and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

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 Division, LR 41:2326 (November 2015).

#### **Subchapter B. Background Investigations and Access Control Program**

##### **§1607. Personnel Access Authorization Requirements for Category 1 or Category 2 Quantities of Radioactive Material**

###### **A. General**

1. Each licensee who possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this Subchapter.

2. An applicant for a new license and each licensee who would become newly subject to the requirements of this Subchapter upon application for modification of its license shall implement the requirements of this Subchapter, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

3. Any licensee who has not previously implemented the Security Orders or been subject to the provisions of Subchapter B of this Chapter shall implement the provisions of this Subchapter B before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

B. General Performance Objective. The licensee's access authorization program shall ensure that the individuals specified in Paragraph C.1 of this Section are trustworthy and reliable.

C. Applicability

1. Licensees shall subject the following individuals to an access authorization program:

a. any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

b. reviewing officials.

2. Licensees need not subject the categories of individuals listed in LAC 33:XV.1615.A.1-13 to the investigation elements of the access authorization program.

3. Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

4. Licensees may include individuals needing access to safeguards information-modified handling under 10 CFR 73 in the access authorization program under Subpart 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, Office of the Secretary, Legal Division, LR 41:2326 (November 2015).

**§1609. Access Authorization Program Requirements**

A. Granting Unescorted Access Authorization

1. Licensees shall implement the requirements of this Subchapter for granting initial or reinstated unescorted access authorization.

2. Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by LAC 33:XV.1623.C before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

B. Reviewing Officials

1. Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

2. Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath, or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official shall be taken by a law enforcement agency, federal or state agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a state to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with LAC 33:XV.1611.C.

3. Reviewing officials shall be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

4. Reviewing officials cannot approve other individuals to act as reviewing officials.

5. A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

a. the individual has undergone a background investigation that included fingerprinting, a Federal Bureau of Investigation (FBI) criminal history records check, and has been determined to be trustworthy and reliable by the licensee; or

b. the individual is subject to a category listed in LAC 33:XV.1615.A.

C. Informed Consent

1. Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent shall include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of LAC 33:XV.1611.B. A signed consent shall be obtained prior to any reinvestigation.

2. The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

a. if an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

b. the withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

D. Personal History Disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by this Subchapter is sufficient cause for denial or termination of unescorted access.

E. Determination Basis

1. The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of this Subchapter.

2. The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of this Subchapter and determined that the

individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

3. The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

4. The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

5. Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

F. Procedures. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures shall include provisions for the notification of individuals who are denied unescorted access. The procedures shall include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures shall contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

#### G. Right to Correct and Complete Information

1. Prior to any final adverse determination, licensees shall provide each individual subject to this Subchapter with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification shall be maintained by the licensee for a period of one year from the date of the notification.

2. If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Attn: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation (FBI) shall forward the challenge to the agency that submitted the data, and shall request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency.

Licensees shall provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

#### H. Records

1. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

2. The licensee shall retain a copy of the current access authorization program procedures as a record for three years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

3. The licensee shall retain the list of persons approved for unescorted access authorization for three years after the list is superseded or replaced.

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 Division, LR 41:2327 (November 2015).

### §1611. Background Investigations

A. Initial Investigation. Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation shall encompass at least the seven years preceding the date of the background investigation or since the individual's 18th birthday, whichever is shorter. The background investigation shall include at a minimum:

1. fingerprinting and an FBI identification and criminal history records check in accordance with LAC 33:XV.1613;

2. verification of true identity. Licensees shall verify the true identity of the individual who is applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with LAC 33:XV.1617. Licensees shall certify in writing that the identification was properly reviewed, and shall maintain the certification and all related documents for review upon inspection;

3. employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent seven years before the date of application;



4. verification of education. Licensees shall verify that the individual participated in the education process during the claimed period;

5. character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under this Subchapter shall be limited to whether the individual has been and continues to be trustworthy and reliable;

6. the licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (e.g., seek references not supplied by the individual); and

7. if a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee but at least after 10 business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation; and attempt to obtain the information from an alternate source.

#### B. Grandfathering

1. Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the fingerprint orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

2. Individuals who have been determined to be trustworthy and reliable under the provisions of 10 CFR 73 or the security orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of 10 CFR 73 or a security order. Security order, in this context, refers to any order that was issued by the NRC that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

C. Reinvestigations. Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with LAC 33:XV.1613. The reinvestigations shall be completed within 10 years of the date on which these elements were last completed.

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 Division, LR 41:2328 (November 2015).

### **§1613. Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to Category 1 or Category 2 Quantities of Radioactive Material**

#### A. General Performance Objective and Requirements

1. Except for those individuals listed in LAC 33:XV.1615 and those individuals grandfathered under LAC 33:XV.1611.B, each licensee subject to the provisions of this Subchapter shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

2. The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record, and shall inform him or her of the procedures for revising the record or adding explanations to the record.

3. Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

a. the individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

b. the previous access was terminated under favorable conditions.

4. Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this Subchapter, the Fingerprint Orders, or 10 CFR 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of LAC 33:XV.1617.C.

5. Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

#### B. Prohibitions

1. Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

a. an arrest more than one year old for which there is no information of the disposition of the case; or

b. an arrest that resulted in dismissal of the charge or an acquittal.

2. Licensees may not use information received from a criminal history records check obtained under this Subchapter in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

C. Procedures for Processing of Fingerprint Checks

1. For the purpose of complying with this Subchapter, licensees shall use an appropriate method listed in 10 CFR 37.7 to submit all information and fees regarding fingerprinting to the U.S. Nuclear Regulatory Commission.

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 Division, LR 41:2329 (November 2015).

**§1615. Relief from Fingerprinting, Identification, and Criminal History Records Checks and Other Elements of Background Investigations for Designated Categories of Individuals Permitted Unescorted Access to Certain Radioactive Materials**

A. Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

1. an employee of the Nuclear Regulatory Commission or of the executive branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;
2. a member of Congress;
3. an employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;
4. the governor of a state or his or her designated state employee representative;
5. federal, state, or local law enforcement personnel;
6. state Radiation Control Program directors and state Homeland Security advisors or their designated state employee representatives;
7. agreement state employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the Atomic Energy Act;
8. representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA safeguards agreement who have been certified by the NRC;
9. emergency response personnel who are responding to an emergency;
10. commercial vehicle drivers for road shipments of category 2 quantities of radioactive material;
11. package handlers at transportation facilities such as freight terminals and railroad yards;
12. any individual who has an active federal security clearance, provided that he or she makes available the

appropriate documentation. Written confirmation from the agency/employer that granted the federal security clearance or reviewed the criminal history records check shall be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

13. any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider shall be provided to the licensee. The licensee shall retain the documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

B. Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last five years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check shall be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

1. national agency check;
2. transportation worker identification credentials (TWIC) under 49 CFR 1572;
3. Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR 555;
4. Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR 73;
5. hazardous material security threat assessment for hazardous material endorsement to commercial drivers license under 49 CFR 1572; and
6. Customs and Border Protection's Free and Secure Trade (FAST) 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 the Secretary, Legal Division, LR 41:2330 (November 2015).

**§1617. Protection of Information**

A. Each licensee who obtains background information on an individual under this Subchapter shall establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

B. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those

who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

C. The personal information obtained on an individual from a background investigation may be provided to another licensee:

1. upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

2. the recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

D. The licensee shall make background investigation records obtained under this Subchapter B of this Chapter available for examination by an authorized representative of the department to determine compliance with the regulations and laws.

E. The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI, or a copy of these records if the individual's file has been transferred, on an individual for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

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 Division, LR 41:2330 (November 2015).

#### **§1619. Access Authorization Program Review**

A. Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of this Subchapter and that comprehensive actions are taken to correct any noncompliance that is identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access program content and implementation.

B. The results of the reviews, along with any recommendations, shall be documented. Each review report shall identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

C. Review records shall be maintained for three years.

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 Division, LR 41:2331 (November 2015).

### **Subchapter C. Physical Protection Requirements During Use**

#### **§1621 Security Program**

##### **A. Applicability**

1. Each licensee who possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of Subchapter C of this Chapter.

2. An applicant for a new license and each licensee who would become newly subject to the requirements of this Subchapter upon application for modification of its license shall implement the requirements of this Subchapter, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

3. Any licensee who has not previously implemented the Security Orders or been subject to the provisions of Subchapter C of this Chapter shall provide written notification to the Office of Environmental Compliance at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

B. General Performance Objective. Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

C. Program Features. Each licensee's security program shall include the program features, as appropriate, described in LAC 33:XV.1623, 1625, 1627, 1629, 1631, 1633, and 1635.

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 Division, LR 41:2331 (November 2015).

#### **§1623. General Security Program Requirements**

##### **A. Security Plan**

1. Each licensee identified in LAC 33:XV.1621.A shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this Subchapter. The security plan shall, at a minimum:

a. describe the measures and strategies used to implement the requirements of this Subchapter; and

b. identify the security resources, equipment, and technology used to satisfy the requirements of this Subchapter.

2. The security plan shall be reviewed and approved by the individual with overall responsibility for the security program.

3. A licensee shall revise its security plan as necessary to ensure the effective implementation of department requirements. The licensee shall ensure that:

a. the revision has been reviewed and approved by the individual with overall responsibility for the security program; and

b. the affected individuals are instructed on the revised plan before the changes are implemented.

4. The licensee shall retain a copy of the current security plan as a record for three years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

#### B. Implementing Procedures

1. The licensee shall develop and maintain written procedures that document how the requirements of this Subchapter and the security plan will be met.

2. The implementing procedures and revisions to these procedures shall be approved in writing by the individual with overall responsibility for the security program.

3. The licensee shall retain a copy of the current procedure as a record for three years after the procedure is no longer needed. Superseded portions of the procedure shall be retained for three years after the record is superseded.

#### C. Training

1. Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training shall include instruction in:

a. the licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

b. the responsibility to report promptly to the licensee any condition that causes or may cause a violation of department requirements;

c. the responsibility of the licensee to report promptly to the local law enforcement agency and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

d. the appropriate response to security alarms.

2. In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training shall be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

3. Refresher training shall be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training shall include:

a. review of the training requirements of Subsection C of this Section and any changes made to the security program since the last training;

b. reports on any relevant security issues, problems, and lessons learned;

c. relevant results of department inspections; and

d. relevant results of the licensee's program review and testing and maintenance.

4. The licensee shall maintain records of the initial and refresher training for three years from the date of the training. The training records shall include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

#### D. Protection of Information

1. Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

2. Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

3. Before granting an individual access to the security plan or implementing procedures, licensees shall:

a. evaluate an individual's need to know the security plan or implementing procedures; and

b. if the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee shall complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in LAC 33:XV.1611.A.2-7.

4. Licensees need not subject the following individuals to the background investigation elements for protection of information:

a. the categories of individuals listed in LAC 33:XV.1615.A.1-13; or

b. security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in LAC 33:XV.1611.A.2-7, has been provided by the security service provider.

5. The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

6. Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

7. When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in nonremovable electronic form shall be password protected.

8. The licensee shall retain as a record for three years after the document is no longer needed:

a. a copy of the information protection procedures; and

b. the list of individuals approved for access to the security plan or implementing procedures.

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 Division, LR 41:2331 (November 2015).

## **§1625. Local Law Enforcement Agency (LLEA)**

### **Coordination**

A. A licensee subject to this Subchapter shall coordinate, to the extent practicable, with a local law enforcement agency (LLEA) for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA shall include:

1. a description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with Subchapter C of this Chapter; and

2. a notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

B. The licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160 within three business days if:

1. the LLEA has not responded to the request for coordination within 60 days of the coordination request; or

2. the LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

C. The licensee shall document its efforts to coordinate with the LLEA. The documentation shall be kept for three years.

D. The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

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 Division, LR 41:2333 (November 2015).

## **§1627. Security Zones**

A. Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee established security zones. Security zones may be permanent or temporary.

B. Temporary security zones shall be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

C. Security zones shall, at a minimum, allow unescorted access only to approved individuals through:

1. isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

2. direct control of the security zone by approved individuals at all times; or

3. a combination of continuous physical barriers and direct control.

D. For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange,

the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

E. Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material shall be escorted by an approved individual when in a security zone.

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 Division, LR 41:2333 (November 2015).

## **§1629. Monitoring, Detection, and Assessment**

### **A. Monitoring and Detection**

1. Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source, or provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries.

2. Monitoring and detection shall be performed by:

a. a monitored intrusion detection system that is linked to an on-site or off-site central monitoring facility;

b. electronic devices for intrusion detection alarms that will alert nearby facility personnel;

c. a monitored video surveillance system;

d. direct visual surveillance by approved individuals located within the security zone; or

e. direct visual surveillance by a licensee designated individual located outside the security zone.

3. A licensee subject to this Subchapter shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability shall provide:

a. for category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability shall be provided by: electronic sensors linked to an alarm; continuous monitored video surveillance; or direct visual surveillance; or

b. for category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

B. Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

### **C. Personnel Communications and Data Transmission**

1. For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

a. maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

b. provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary

means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

D. Response. Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

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 Division, LR 41:2333 (November 2015).

### **§1631. Maintenance and Testing**

A. Each licensee subject to this Subchapter shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and are capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this Chapter shall be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no suggested manufacturer's suggested frequency, the testing shall be performed at least annually, not to exceed 12 months.

B. The licensee shall maintain records on the maintenance and testing activities for three years.

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 Division, LR 41:2334 (November 2015).

### **§1633. Requirements for Mobile Devices**

A. Each licensee who possesses mobile devices containing category 1 or category 2 quantities of radioactive material shall:

1. have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

2. for devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

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 Division, LR 41:2334 (November 2015).

### **§1635. Security Program Review**

A. Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of Subchapter C of this Chapter and that comprehensive actions are taken to correct any noncompliance that is identified. The review shall include the radioactive material security program content and implementation. Each licensee shall periodically (at least annually) review the security program content and implementation.

B. The results of the review, along with any recommendations, shall be documented. Each review report shall identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

C. The licensee shall maintain the review documentation for three years.

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 Division, LR 41:2334 (November 2015).

### **§1637. Reporting of Events**

A. The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160 as soon as possible. In no case shall the notification to the department be later than four hours after the discovery of any attempted or actual theft, sabotage, or diversion.

B. The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than four hours after notifying the LLEA, the licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160.

C. The initial telephonic notification required by Subsection A of this Section shall be followed within a period of 30 days by a written report submitted to the Office of Environmental Compliance. The report shall include sufficient information for departmental analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

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 Division, LR 41:2334 (November 2015).

## **Subchapter D. Physical Protection in Transit**

### **§1641. Additional Requirements for Transfer of Category 1 and Category 2 Quantities of Radioactive Material**

A. A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the Nuclear Regulatory Commission or an agreement state shall meet the license verification provisions listed below instead of those listed in LAC 33:XV.340.D.

1. Any licensee transferring category 1 quantities of radioactive material to a licensee of the Nuclear Regulatory Commission or an agreement state, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

2. Any licensee transferring category 2 quantities of radioactive material to a licensee of the Nuclear Regulatory Commission or an agreement state, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

3. In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification shall include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification shall be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

4. The transferor shall keep a copy of the verification documentation as a record for three years.

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 Division, LR 41:2335 (November 2015).

### **§1643. Applicability of Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material during Transport**

A. For shipments of category 1 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in LAC 33:XV.1645.A and E; LAC 33:XV.1647; LAC 33:XV.1649.A.1, B.1, and C; and LAC 33:XV.1651.A, C, E, G, and H.

B. For shipments of category 2 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in LAC 33:XV.1645.B-E; LAC 33:XV.1649.A.2, A.3, B.2, and C; and LAC 33:XV.1651.B, D, and F-H. For those shipments of category 2 quantities of radioactive material that meet the criteria of LAC 33:XV.1519.B, the shipping licensee shall also comply with the advance notification provisions of LAC 33:XV.1519.

C. The shipping licensee shall be responsible for meeting the requirements of this Subchapter unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under this Subchapter.

D. Each licensee who imports or exports category 1 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in LAC 33:XV.1645.A.2 and E; LAC 33:XV.1647; LAC 33:XV.1649.A.1, B.1, and C; and LAC 33:XV.1651.A, C, E, G, and H for the domestic portion of the shipment.

E. Each licensee who imports or exports category 2 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in LAC 33:XV.1649.A.2, A.3, and B.2; and LAC 33:XV.1651.B, D, and F-H for the domestic portion of the shipment.

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 Division, LR 41:2335 (November 2015).

### **§1645. Preplanning and Coordination of Shipment of Category 1 or Category 2 Quantities of Radioactive Material**

A. Each licensee who plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

1. preplan and coordinate shipment arrival and departure times with the receiving licensee;

2. preplan and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to discuss the state's intention to provide law enforcement escorts, and identify safe havens; and

3. document the preplanning and coordination activities.

B. Each licensee who plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

C. Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

D. Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-

later-than arrival time provided in accordance with Subsection B of this Section, shall promptly notify the receiving licensee of the new no-later-than arrival time.

E. The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof, as a record for three years.

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 Division, LR 41:2335 (November 2015).

#### **§1647. Advance Notification of Shipment of Category 1 Quantities of Radioactive Material**

A. As specified in Paragraphs A.1 and A.2 of this Section, each licensee shall provide advance notification to the Office of Environmental Compliance by telephone at (225) 765-0160, and in writing, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport, or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

##### **1. Procedures for Submitting Advance Notification**

a. A notification shall be made to the Office of Environmental Compliance by telephone at (225) 765-0160.

b. A written notification delivered by mail shall be postmarked at least seven days before transport of the shipment commences at the shipping facility.

c. A written notification delivered by any means other than mail shall reach the Office of Environmental Compliance at least four days before the transport of the shipment commences and shall reach the Office of Environmental Compliance at least four days before transport of a shipment within or through the state.

2. Information to be Furnished in Advance Notification of Shipment. Each advance notification of shipment of category 1 quantities of radioactive material shall contain the following information, if available at the time of notification:

a. the name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

b. the license numbers of the shipper and receiver;

c. a description of the radioactive material contained in the shipment, including the radionuclides and quantity;

d. the point of origin of the shipment and the estimated time and date that shipment will commence;

e. the estimated time and date that the shipment is expected to enter each state along the route;

f. the estimated time and date of arrival of the shipment at the destination; and

g. a point of contact, with a telephone number, for current shipment information.

##### **3. Revision Notice**

a. The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the Office of Environmental Compliance by telephone at (225) 765-0160.

b. A licensee shall promptly notify the Office of Environmental Compliance by telephone at (225) 765-0160

of any changes to the information provided in accordance with Paragraph A.2 and Subparagraph A.3.a of this Section.

4. Cancellation Notice. Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the Office of Environmental Compliance by telephone at (225) 765-0160. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

5. Records. The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for three years.

6. Protection of Information. State officials, state employees, and other individuals, whether or not licensees of the Nuclear Regulatory Commission or an agreement state, who receive schedule information of the kind specified in LAC 33:XV.1647.A.2 shall protect that information against unauthorized disclosure as specified in LAC 33:XV.1623.D.

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 Division, LR 41:2336 (November 2015).

#### **§1649. Requirements for Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material During Shipment**

##### **A. Shipments by Road**

1. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

a. ensure that movement control centers are established that maintain position information from a remote location. These control centers shall monitor shipments 24 hours a day, seven days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies;

b. ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication;

c. ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center shall provide positive confirmation of the location, status, and control over the shipment. The movement control center shall be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route;

d. provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver;



e. develop written normal and contingency procedures to address:

i. notifications to the communication center and law enforcement agencies;

ii. communication protocols that shall include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

iii. loss of communications; and

iv. responses to an actual or attempted theft or diversion of a shipment; and

f. ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

2. Each licensee who transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

3. Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall use carriers that:

a. have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system shall allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

b. maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

c. have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

#### B. Shipments by Rail

1. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

a. ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route; and

b. ensure that periodic reports to the communications center are made at preset intervals.

2. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall use carriers that:

a. have established package tracking systems. An established package tracking system is a documented,

proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system shall allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

b. maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

c. have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

C. Investigations. Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

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 Division, LR 41:2336 (November 2015).

#### §1651. Reporting of Events

A. The shipping licensee shall notify the appropriate LLEA and the Office of Environmental Compliance by telephone at (225) 765-0160 within one hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by LAC 33:XV.1649.C, the shipping licensee will provide agreed upon updates to the Office of Environmental Compliance by telephone at (225) 765-0160 on the status of the investigation.

B. The shipping licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160 within four hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the Office of Environmental Compliance by telephone at (225) 765-0160.

C. The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160 upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of category 1 radioactive material.

D. The shipping licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160 as soon as possible upon discovery of any actual or

attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

E. The shipping licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160 and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

F. The shipping licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160 as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

G. The initial telephonic notification required by Subsections A-D of this Section shall be followed within a period of 30 days by a written report submitted to the Office of Environmental Compliance. A written report is not required for notifications on suspicious activities required by Subsections C and D of this Section. The report shall set forth the following information:

1. a description of the licensed material involved, including kind, quantity, and chemical and physical form;
2. a description of the circumstances under which the loss or theft occurred;
3. a statement of disposition, or probable disposition, of the licensed material involved;
4. actions that have been taken, or will be taken, to recover the material; and
5. procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

H. Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

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 Division, LR 41:2337 (November 2015).

**Subchapter E. Reserved**

**Subchapter F. Records and Inspections**

**§1661. Form of Records**

A. Each record required by this Chapter shall be legible throughout the retention period specified by each department regulation. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, shall include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

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 Division, LR 41:2338 (November 2015).

**§1663. Record Retention**

A. Licensees shall maintain the records that are required by the regulations in this Chapter for the period specified by the appropriate regulation. If a retention period is not

otherwise specified, these records shall be retained until the department terminates the facility's license. All records related to this Chapter may be destroyed upon department termination of the facility license.

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 Division, LR 41:2338 (November 2015).

**§1665. Inspections**

A. Each licensee shall afford to the department at all reasonable times opportunity to inspect category 1 or category 2 quantities of radioactive material and the premises and facilities wherein the nuclear material is used, produced, or stored.

B. Each licensee shall make available to the department for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, use, acquisition, import, export, or transfer of category 1 or category 2 quantities of radioactive material.

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 Division, LR 41:2338 (November 2015).

**Subchapter Z. Appendices**

**§1699. Appendices**

Appendix A—Category 1 and Category 2 Threshold

Radioactive Material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only.

Note: *Calculations Concerning Multiple Sources or Multiple Radionuclides*

The "sum of fractions" methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a location meets or exceeds the threshold and is thus subject to the requirements of this Chapter.

I. If multiple sources of the same radionuclide and/or multiple radionuclides are aggregated at a location, the sum of the ratios of the total activity of each of the radionuclides shall be determined to verify whether the activity at the location is less than the category 1 or category 2 thresholds of Table 1, as appropriate. If the calculated sum of the ratios, using the equation below, is greater than or equal to 1.0, then the applicable requirements of this Chapter apply.

II. First determine the total activity for each radionuclide from Table 1. This is done by adding the activity of each individual source, material in any device, and any loose or bulk material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from Table 1 in the numerator of the equation and the

corresponding threshold activity from Table 1 in the denominator of the equation.

Calculations shall be performed in metric values (i.e., TBq) and the numerator and denominator values shall be in the same units.

R<sub>1</sub> = total activity for radionuclide 1

R<sub>2</sub> = total activity for radionuclide 2

R<sub>N</sub> = total activity for radionuclide n

AR<sub>1</sub> = activity threshold for radionuclide 1

AR<sub>2</sub> = activity threshold for radionuclide 2

AR<sub>N</sub> = activity threshold for radionuclide n



**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 Division, LR 41:2338 (November 2015).

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1511#052

## RULE

### Office of the Governor Board of Home Inspectors

#### Home Inspectors (LAC 46:XL.309 and 501)

*Editor's Note:* Sections 309 and 501 are being repromulgated to correct manifest citation errors that resulted in incorrect text compilation. The original Rule may be viewed in its entirety on pages 919-924 of the May 20, 2015 edition of the *Louisiana Register*.

The Board of Home Inspectors has amended LAC 46:XL.107, 109, 115, 117, 119, 120, 123, 125, 127, 133, 135, 137, 139, 141, 303, 307, 309, 311, 313, 315, 317, 319, 321, 325, 329, 501, 701, 705, 711 and 713 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana home inspector licensing law, R.S. 37:1471 et seq. The text has been amended primarily as an overhaul of the rules to correct any typographical errors, render rules consistent with each other and phrase the rules more properly. Other rules have been amended non-substantively to provide consistency with other rules. In addition, §§309, 325 and 501 are being revised to comport with Act 2014 No. 572, revising R.S. 37:1478.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XL. Home Inspectors

#### Chapter 3. Standards of Practice

#### §309. General Exclusions

A. Home inspectors are not required to inspect or report on:

1. - 6. ...

7. the presence or absence of any suspected or actual adverse environmental condition or hazardous substance, including but not limited to asbestos, radon lead, mold, contaminated drywall or building components, carcinogens, noise, or contaminants, whether in the building or in soil,

water, or air; however, if during the course of inspecting the systems and components of the building in accordance with the law and these rules, the home inspector discovers visually observable evidence of suspected mold or microbial growth, he shall report it;

8. - 11. ...

B. Home inspectors are not required to:

1. - 5. ...

6. disturb or move insulation, personal items, panels, furniture, equipment, soil, snow, ice, plant life, debris or other items that may obstruct access or visibility;

7. - 13. ...

14. dismantle any system or component, except as specifically required by these standards of practice; or

15. perform air or water intrusion tests or other tests upon roofs, windows, doors or other components of the structure to determine its resistance to air or water penetration.

C. Home inspectors shall not:

1. - 4. ...

5. report on the presence or absence of pests such as wood damaging organisms, rodents or insects; however the home inspector may advise the client of damages to the building and recommend further inspection by a licensed wood destroying insect inspector;

6. solicit to perform repair services on any system or component of the home which the inspector noted as significantly deficient, non-functioning or unsafe in his home inspection report for a period of one year from the date of the inspection.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1475 and R.S. 37:1478.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2746 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1690 (August 2004), LR 36:2862 (December 2010), LR 38:2532 (October 2012), LR 41:922 (May 2015), repromulgated LR 41:2339 (November 2015).

#### Chapter 5. Code of Ethics

#### §501. Code of Ethics

A. ...

B. Ethical Obligations

1. - 5. ...

6. The LHI shall not accept compensation, directly or indirectly, for referring or recommending contractors or other service providers or products to inspection clients or other parties having an interest in inspected properties, unless disclosed and scheduled prior to the home inspection.

7. The LHI shall not solicit to repair, replace or upgrade for compensation, any system or component of the home which the inspector noted as deficient or unsafe in his home inspection report, or any other type of service on the home upon which he has performed a home inspection, for a period of one year from the date of the inspection.

8. - 9. ...

11. The LHI shall not disclose inspection results or a client's personal information without approval of the client or the clients designated representative. At his discretion, the LHI may immediately disclose to occupants or interested parties safety hazards observed to which they may be exposed.

12. The LHI shall avoid activities that may harm the public, discredit him or reduce public confidence in the profession.

13. - 15. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2749 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1693 (August 2004), LR 36:2863 (December 2010), LR 37:2406 (August 2011), LR 41:924 (May 2015), repromulgated LR 41:2339 (November 2015).

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## RULE

### Office of the Governor Board of Professional Geoscientists

Professional Geoscientists (LAC 46:LXII.Chapters 1-19)

The Louisiana Board of Professional Geoscientists, pursuant to R.S. 37:711.8(C)(1), has adopted LAC 46:LXII in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Professional Geoscience Practice Act, R.S. 37:711.1 et seq.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXII. Professional Geoscientists

#### Chapter 1. General Provisions

##### §101. Definitions

A. The words and phrases defined in R.S. 37:711.2 and as referenced below shall apply to these rules. In addition, the following words and phrases when used in this Chapter shall have the inferred meanings, unless the context clearly requires otherwise.

*Accredited Institutions or Programs*—an institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) or other appropriate accrediting entity accepted by the board.

*Act*—cited as the Louisiana Geoscience Practice Act.

*Address of Record*—in the case of a person licensed or certified by the board, the address which is filed by the licensee or certificant with the board.

*APA*—the Administrative Procedure Act.

*Application*—the forms, information, attachments, and fees necessary to obtain a license as a professional geoscientist or a certification as a geoscientist-in-training.

*Certificate*—the credential granted by the board signifying the holder has met the requirements as set out in the Act and this Chapter and is qualified to be a geoscientist-in-training.

*Certification, Certified, Certificant or Certificate Holder*—the recognition granted by the board and its issuance of a Credential to any individual seeking such recognition as geoscientist-in-training, who has been successfully examined and is otherwise in good standing with the board.

*Cheating*—attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

*Complainant*—any person, staff member, or member of the board who, after becoming aware of information that may indicate a violation, has filed a sworn, written complaint with the board against any person whose activities are subject to the jurisdiction of the board.

*Complaint*—an allegation or allegations of wrongful activity related to the practice or offering of geoscience services in Louisiana.

*Contested Case or Proceeding*—a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

*Continuing Education Program (CEP)*—the types of credit hours acceptable to qualify for meeting the continuing education requirements for license renewal. The types are:

a. *professional development hour (PDH)*—a contact hour (clock hour) of CEP activity. The PDH is the basic unit for CEP reporting. One hour equals one PDH;

b. *accredited continuing education unit (ACEU)*—unit of credit customarily used for ACEU. One ACEU equals 10 hours (10 PDH) of class in the accredited continuing education course;

c. *college semester hour (CSH)/college quarter hour (CQH)*—credit for a college course in a discipline of geoscience or other related technical elective of the discipline. One CSH equals 15 hours (15 PDH) of class in a college semester course. One CQH equals 10 hours (10 PDH) of class in a college quarter course;

d. *continuing education course/activity (CECA)*—any qualifying course/activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice. One CECA hour equals one PDH.

*Credential*—the endorsed document of legal authority issued by the board showing that a license or certificate has been granted by the board. A credential is not valid unless it is accompanied by a registration card issued by the board which shows the expiration date of the license or certificate.

*Direct Supervision*—critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of:

a. exertion of significant control over the geoscience work;

b. regular personal presence;

c. reasonable geographic proximity to the location of the performance of the work; and

d. an acceptable employment relationship with the supervised persons.

*Discipline*—a branch of instruction or learning focused on a field of specialty training. In this instance involving courses of study centered primarily on geology, but including one or more of the many sub-disciplines of the geologic sciences.

*Electronic Signature*—the method of affirming the accuracy of the information submitted in the online

application procedure for licensure as a professional geoscientist or certification as a geoscientist-in-training.

*Executive Secretary*—the executive secretary of the board.

*Filed Date*—the date that the application is first submitted online or that documents have otherwise been received by the board either by date stamp if hand-delivered or by postmark date if the document has been mailed to the board.

*Geology*—

a. the founding discipline of the geosciences that encompasses the study of the origin, composition, structure, and history of the earth. See geoscience under R.S. 37:711.2 for descriptive detail;

b. there are many specialized sub-disciplines of geology, which include, but are not limited to the following: historical geology, physical geology, economic geology, mineralogy, paleontology, structural geology, mining geology, petroleum geology, geochemistry, geophysics, hydrogeology, petrography, petrology, volcanology, stratigraphic geology, engineering geology, and environmental geology.

*Geoscience*—the application of professional judgment in the integration of all subdivisions of the discipline of geology necessary for the safe economic development of projects where the recognition, understanding and utilization of geologic agents, forces, and processes are required for the benefit of the public. Clarified from definition under R.S. 37:711.2.

*License*—the credential granted by the board signifying the holder has met the requirements as set out in the Act and is qualified to actively perform the practice of geoscience.

*Membership*—the board or committee members present and constituting a quorum at an official business meeting.

*Party*—a person admitted to participate in a case before the board.

*Practice for the Public*—the action of providing professional geoscience services to the public.

*Professional Geoscience*—a professional service which may include consultation, investigation, evaluation, planning, designing, or direct supervision of construction, in connection with any public or private projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of geoscience principles and the interpretation of geoscience data.

*Professional Geoscience Services* or *Professional Geoscientific Services*—those services which must be performed by or under the direct supervision of a professional geoscientist and which meet the definition of the practice of geoscience as defined in R.S. 37:711.2.

*Professional Geoscientist* or *P.G.*—a person who holds a license issued by the board.

*Qualifying Work Experience*—a detailed description of specific geoscientific activities performed by an applicant in the course of performing his duties as a geoscientist in the practice of geoscience, including consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work and/or the responsible supervision of those tasks.

*Quorum*—a simple majority of members required to be present at a meeting to be able to officially conduct business.

*Reference*—an individual attesting to the character and/or validating the required work experience of an applicant. The term is often used synonymously with the term "sponsor".

*Reference Response*—the documentation attesting to the character and/or validating the required work experience of an applicant. The term is often used synonymously with the term "letter of reference".

*Registration Card*—a card issued on an annual renewal basis that validates the license credential as active for the purpose of conducting the practice of geoscience in the state of Louisiana.

*Rule*—any board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the board and is filed with the Office of the State Register.

*Sanction*—a penalty imposed in a disciplinary process. An imposed disciplinary action is a sanction.

*Sponsor*—an individual attesting to the character and/or validating the required work experience of an applicant. The term is often used synonymously with the term "reference".

*The Public*—any individual(s), client(s), business or public entities whose normal course of life might reasonably include an interaction of any sort with or be impacted by geoscientific work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2340 (November 2015).

### **§103. Geoscience Disciplines**

A. Geoscience license required:

1. environmental projects, as provided in R.S. 37:711.3(G);

2. engineering projects, as provided in R.S. 37:711.3(H).

B. Geoscience license not required:

1. subordinate of a licensed geoscientist, as provided in R.S. 37:711.12(D);

2. officer or employee of the United States, as provided in R.S. 37:711.12(D);

3. private industry natural resource exploration/development, as provided in R.S. 37:711.12(D);

4. research, as provided in R.S. 37:711.12(D);

5. teaching, as provided in R.S. 37:711.12(D);

6. archaeological investigation, as provided in R.S. 37:711.12(D);

7. hearing testimony or evaluation; as provided in R.S. 37:711.12(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2341 (November 2015).

### **Chapter 3. Application of Chapter**

#### **§303. Exemptions**

A. Non geoscience disciplines not requiring a license unless practicing geoscience in Louisiana:

1. land surveying, as provided in R.S. 37:711.3(A);

2. engineering, as provided in R.S. 37:711.3(B), (C), (D), (E), and (F);

3. water well drilling; as provided in R.S. 37:711.3(J).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2341 (November 2015).

## **Chapter 5. The Board**

### **§501. Meetings—Board and/or Committee**

A. A quorum of members (the membership) must be physically present for official business to be recorded.

1. A motion before the membership is then carried by an affirmative vote of the majority of the voting members present.

2. The membership will determine on a case-by-case basis, the number and location of cameras and/or recording devices in order to maintain order during board/committee meetings.

B. Meetings will be conducted as public meetings under the Open Meetings Act.

1. The membership welcomes appropriate citizen input and communications at meetings, and shall provide the public a reasonable opportunity to appear and address the membership on any issue under the jurisdiction of the membership.

2. Subject to the statutory requirement of a "reasonable opportunity," the membership may limit the amount of time that each speaker may speak on a given topic.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2342 (November 2015).

### **§503. Rules**

A. The rules adopted by the board under the authority apply to every licensee, geoscientist-in-training, and unlicensed individual providing or offering to provide public geoscience services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2342 (November 2015).

## **Chapter 7. License/Certificate Processes**

### **§701. Professional Geoscientist Application for**

#### **Licensure**

A. To be eligible for a professional geoscientist (P.G.) license, an applicant must submit the following to the board:

1. completed application;

2. documentation of having passed an examination as specified in R.S. 37:711.14 and R.S. 37:711.15(A)(4); a request for waiver from examination(s) must be accompanied by substantiating documentation to determine eligibility for waiver;

3. a minimum of three reference responses to the applicant's request for reference from sponsors as specified in R.S. 37:711.15(A)(1);

4. official transcript(s), as specified in R.S. 37:711.15(A)(2), unless the applicant is applying for the license on the basis of work experience as qualifying in lieu of educational training;

5. documentation of having met the experience requirements as specified in R.S. 37:711.15(A)(3) and R.S. 37:711.16;

6. verification of every licensure, current or expired, in any regulated profession in any jurisdiction issued to the applicant; and

7. the application/first year licensing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2342 (November 2015).

### **§703. Geoscientist-in-Training Application for Certification**

A. To be eligible for a geoscientist-in-training (GIT) certification an applicant must submit the following to the board:

1. a completed application;

2. documentation of having passed an examination of the fundamentals of geology administered by the National Association of State Boards of Geology (ASBOG) as established in R.S. 37:711.14 and R.S. 37:711.15(A)(4). A request for waiver from examination will not be considered;

3. one reference of support attesting to the individual's moral and ethical character;

4. official academic transcript as confirmation of meeting the educational requirements as established in R.S. 37:711.15(A)(2); and

5. the application/first year certification fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2342 (November 2015).

### **§705. Relationship of GIT Certification to PG Licensure**

A. The geoscientist-in-training (GIT) certification is intended as a stepping stone toward licensure as individuals are gaining acceptable geoscience experience.

1. Upon accruing five years of post-graduate geoscience work experience, individuals who are GIT certified and in good standing with the board may to apply for licensure as a professional geoscientist.

a. Individuals who are certified as a geoscientist-in-training may use "GIT" or "geoscientist-in-training" as a title after their name, providing these designations are not used in conjunction with or preceded by the work "licensed" or any other words that might lead one to believe they are licensed as a professional geoscientist.

b. This certification does not entitle an individual to practice as a licensed professional geoscientist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2342 (November 2015).

### **§707. Application Review Process**

A. Applications are not reviewed until the application with all supporting documentation has been received and the appropriate fee(s) have been processed.

B. Upon receipt of all required materials and fees, the application will be reviewed by the application review committee with one of the following results:

1. recommendation to the board for issuance of a credential (license/certificate);

2. recommendation to the board for denial of a credential; or

3. deficiency notice requesting additional information and/or substantiation of the application documents.

C. An application will remain active for one year beginning on the date the application is first filed with the board.

D. Application Special Circumstances

1. With the initial filing of an application or at any time that the application remains open, an applicant may request, in writing, licensure by the waiver of one or more qualifications for licensure. Upon written request and a showing of good cause, if the board determines that the applicant is otherwise qualified for a license, the board may waive a licensure requirement except for the payment of required fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2342 (November 2015).

**Chapter 9. Minimum Requirements to Qualify for Licensure/Certification.**

**§901. Professional Geoscientist Licensure Requirements**

A. Examinations—receive a passing score on any or all examinations required by the board covering the fundamentals and practice of the discipline of geoscience documented as specified in R.S. 37:711.14; the board may exempt applicants from the examination if applying under the grandfathering provision in R.S. 37:711.15(A)(4)(b) or for reciprocal licensure as specified in R.S. 37:711.17.

B. Education—complete the academic requirements for licensure as specified in R.S. 37:711.15.A(2); the board may accept qualifying work experience in lieu of the education requirement.

C. Ethics—submit three reference letters attesting to the good moral and ethical character of the applicant as specified in R.S. 37:711.15(A)(1) or as otherwise determined by the board.

D. Experience—document a minimum of five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscientific work as specified in R.S. 37:711.15(A)(3) and R.S. 37:711.16.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2343 (November 2015).

**§903. Geoscientist-in-Training Certification Requirements**

A. Examinations—submit evidence of a passing score on the fundamentals of geoscience as specified in R.S. 37:711.14 and R.S. 37:711.15(A)(4).

B. Education—complete the academic requirements for licensure as specified in R.S. 37:711.15(A)(2).

C. Ethics—submit a minimum of one reference response attesting to the good moral and ethical character of the applicant as specified in R.S. 37:711.15(A)(1) or as otherwise determined by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2343 (November 2015).

**§905. Examinations**

A. The examinations will be administered to applicants in a form and location determined by the board.

B. An applicant for licensure as a professional geoscientist requiring examination must pass both parts of the ASBOG test.

C. An applicant for certification as a geoscientist-in-training requiring examination must pass the fundamentals of geology examination of the ASBOG test.

D. Applicants taking the ASBOG test must also abide by the rules and regulations of ASBOG.

E. An applicant who does not timely arrive at and complete a scheduled examination will forfeit the examination fee.

F. An applicant may request an accommodation in accordance with the Americans with Disabilities Act.

1. The request must be in writing on a form approved by the board.

2. Proof of disability may be required.

G. Cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2343 (November 2015).

**§907. Examination Process**

A. Applicants who have not passed the qualifying examination(s), as specified in R.S. 37:711.14 and R.S. 37:711.15(A)(4), may access the following procedures to sit for the necessary qualifying examination(s):

1. ASBOG fundamentals of geology examination requirement—the applicant is applying for licensure/certification and has:

a. completed the education qualifications for licensure/certification as specified in R.S. 37:711.13 and R.S. 37:711.15(A)(4); or

b. is currently enrolled in a course of study that meets the education requirements for licensure/certification and is within two regular semesters of completion of the qualifying course of study;

2. ASBOG practice of geology examination requirements—the applicant has:

a. submitted an application for licensure as a professional geoscientist with the board;

b. met all qualifications for licensure in section R.S. 37:711.15, with the exception of the examination requirement;

c. passed the ASBOG fundamentals of geology examination, but not the practice of geology examination.

**B. Examination Application Procedure**

1. The applicant shall complete and submit the application for geology examination, any required attachments and the appropriate fee to the board.

2. The board will review the examination application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have

been met, the board will mail an ASBOG examination application form to the applicant.

3. The applicant shall submit the completed ASBOG examination application form along with the examination fee to ASBOG. A copy of this examination application form shall be provided to the board.

4. The applicant shall follow all examination administration procedures and take the examination.

5. The board shall notify the applicant of the results of the examination after the board receives the results from ASBOG.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2343 (November 2015).

### **§909. Education**

A. An applicant must have graduated from a course of study from an accredited university or program in geology or in one of the sub-disciplines of geoscience (as listed below) satisfactory to the board. This course must consist of at least 4 years of study and includes at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit must be in upper-level college courses in that discipline. The following will qualify:

1. geology; or
2. sub-discipline of geology including but not limited to geophysics, engineering geology, petroleum geology, hydrogeology, environmental geology and soil science; or
3. other equivalent educational requirements as determined by the board.

B. It is the applicant's responsibility to request their official college transcript be sent directly from the college registrar's office to the board.

1. Official transcripts shall be forwarded directly to the board office by the applicant.

2. Additional academic information including but not limited to grades and transfer credit shall be submitted to the board at the request of the application review committee.

C. If transcripts cannot be transmitted directly to the board from the issuing institution, the application review committee may recommend alternatives to the board for its approval. Such alternatives may include validating transcripts in the applicant's possession through a board-approved commercial evaluation service.

D. Degrees and coursework earned at foreign universities shall be acceptable if the degree conferred and coursework has been determined by a member of the National Association of Credential Evaluation Services (NACES) to be equivalent to a degree conferred by or coursework completed in an accredited institution or program.

1. It is the applicant's responsibility to have degrees and coursework so evaluated.

2. The commercial evaluation of a degree shall be accepted in lieu of an official transcript only if the credential evaluation service has indicated that the credential evaluation was based on a verified official academic record or transcript.

E. The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course

descriptions in official school catalogs, bulletins, syllabi, or by other means.

F. The board shall accept no coursework which an applicant's transcript indicates was not completed with a passing grade or for credit.

G. In evaluating two or more sets of transcripts from a single applicant, the board shall consider a quarter hour of academic credit as two-thirds of a semester hour.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2344 (November 2015).

### **§911. References**

A. Applicants for a license shall provide to the board at least three references from professional geoscientists or other professionals acceptable to the board who have knowledge of the applicant's relevant work experience. One or more of the references shall verify the geoscience experience claimed by the applicant to meet the minimum five years of experience required. Professional geoscientists who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may provide a reference for geoscience; such review shall be noted in the reference response. Individuals providing reference responses shall not be compensated.

B. All reference/sponsors shall be individuals with personal knowledge of the applicant's character, reputation, and general suitability for holding a license. References should include one or more individuals who have directly supervised or maintained responsible charge of the applicant.

C. Professional geoscientists who provide reference statements and who are licensed in a jurisdiction other than Louisiana may be asked to provide a copy of their pocket card or other verification to confirm that their license is current and valid.

D. The references for professional geoscience work experience must be submitted in sufficient detail to allow a board reviewer to:

1. verify and document at least a minimum five year work history of geoscience experience needed by the applicant for issuance of a license;
2. recognize and verify the quality of the experience claimed during the accepted work period; and
3. attest to the moral and ethical character of the applicant.

E. The board members and staff may, at their discretion, consider any, all or none of the responses from the sponsors.

F. Procedure

1. The applicant shall submit an email request for reference including the applicable portion(s) of their experience record to each potential sponsor.

2. Applicants shall ensure all required reference responses have been submitted to the board.

G. Additional references may be required of the applicant when the application review committee finds it necessary to adequately verify the applicant's experience or character. The board and/or staff may at their discretion communicate with any reference or seek additional information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.



HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2344 (November 2015).

### **§913. Experience**

A. The applicant must provide the board with a documented record of at least five years of qualifying work experience, as provided by R.S. 37:711.15(A)(3), that demonstrates that the applicant is qualified to assume responsible charge of geoscientific work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2345 (November 2015).

### **§915. Qualifying Work Experience**

A. The work experience record shall describe the geoscience work that the applicant personally performed, and shall delineate the role of the applicant in any group geoscience activity.

B. The work experience record should provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the geoscience work personally performed by the applicant.

C. The work experience record must demonstrate evidence of the applicant's competency to be placed in responsible charge of geoscience work of a similar character.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2345 (November 2015).

## **Chapter 11. Types of Licenses**

### **§1101. Classification**

A. The classifications of a professional geoscientist license may be one of the following:

1. active—a license that is current with all fees paid, as provided in R.S. 37:711.8(F);

2. inactive—a license that is not current, i.e. renewal fees have not been paid, but has been inactive for less than one year as provided in R.S. 37:711.8(F);

3. expired—a license that has been inactive for more than one year but less than three years as provided in R.S. 37:711.8(F);

4. retired—a license that has been expired for more than three years as provided in R.S. 37:711.8(F);

5. revoked—a license that has been rescinded and nullified as a consequence of disciplinary action by the board as provided in R.S. 37:711.23.9;

6. suspended—a license that has been discontinued and rendered invalid for some period pending further disciplinary action by the board as provided in R.S. 37:711.23.9;

7. temporary—a license issued for temporary qualified professional geoscience service work in Louisiana as provided in R.S. 37:711.18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2345 (November 2015).

### **§1103. Reciprocal license**

#### **A. Licensure by Reciprocity Agreement**

1. Licensure by reciprocity agreement is the process whereby an individual currently licensed as a professional geoscientist (or equivalent license) in another United States jurisdiction (state, commonwealth or territory) applies for reciprocity licensure as a professional geoscientist in Louisiana, or the process whereby an individual currently licensed as a professional geoscientist in Louisiana applies for reciprocity licensure as a professional geoscientist (or equivalent license) in another United States jurisdiction (state, commonwealth or territory).

2. After reciprocity agreements are established, any applicant who holds a current license in a jurisdiction with which the board has a reciprocity agreement may apply for licensure under the terms of the specific reciprocity agreement between the two boards.

3. A person who is licensed or registered to practice a discipline of geoscience under the law of another state, a territory or possession of the United States, the District of Columbia, or a foreign country which has a reciprocity agreement with the board may apply to the board for licensure without meeting the examination requirements of R.S. 37:711.14.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2345 (November 2015).

### **§1105. Issuance of License**

A. The board shall issue a license to an applicant who meets the requirements of this Chapter. The applicant shall be licensed with a unique professional geoscientist license number assigned to the license.

B. When a license is issued, a license credential and the first registration card are provided to the new licensee. The license credential is not valid proof of licensure unless the registration card is accompanying the license credential and the date on the registration card is not expired.

C. The license credential shall include all of the following:

1. the full name of the license holder;
2. the licensee's unique professional geoscientist license number;
3. the date the license was originally issued;
4. a signature of an appropriate officer of the board under the board's seal.

D. The registration card shall include all of the following:

1. the full name of the license holder;
2. the licensee's unique professional geoscientist license number;
3. the date the license will expire;
4. a signature of an appropriate officer of the board under the board's seal.

E. A license that is renewed late (one day after the expiration date of the license through the end of the 36th month past the expiration date of the license) is renewed in accordance to the rules set forth in R.S. 37:711.20.

F. The issuance by the board of a license is prima facie evidence that during the term of the license the license holder is entitled to all the rights and privileges of a licensed geoscientist.

G. A licensed geoscientist may engage in the practice of any discipline of geoscience.

H. A license number is not transferable.

I. Altering a license credential or registration card in any way is prohibited and is grounds for a sanction and/or penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2345 (November 2015).

### **§1107. Expiration and Renewals**

A. A professional geoscientist license expires and shall become inactive at the end of the month one year from the date of issuance, but can be renewed annually if the individual:

1. accumulates 15 or more of personal development hours (PDH) throughout the prior certification year to include one hour of ethics training;

2. remains in good standing with the board; and

3. files for renewal of a PG license and pays the fee established by the board.

B. A geoscientist-in-training certificate expires and shall become inactive at the end of the month one year from the date of issuance, and can be renewed annually, if the individual:

1. accumulates five or more of personal development hours (PDH) throughout the prior certification year to include one hour of ethics training;

2. remains in good standing with the board; and

3. files for renewal of GIT certification and pays the fee established by the board.

C. A geoscientist-in-training (GIT) certification may only be renewed annually for a period of up to eight years. Renewals after the eighth year of certification will only be granted at the discretion of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2346 (November 2015).

### **§1109. License/Certificate Renewal and Reinstatement**

A. The executive secretary of the board will mail a renewal notice and the requirements for renewal to the last recorded address of each license/certificate holder, at least 30 days prior to the expiration date of the license. Regardless of whether the renewal notice is received, it is the sole responsibility of the license/certificate holder to apply for renewal and to pay any applicable fee(s).

1. An applicant may renew a current license/certificate up to 60 days in advance of its expiration.

2. Licenses/certificates become inactive the day after their expiration date.

3. The renewal fee for a license that is renewed within 60 days of inactivation is the fee in place at the time the license was due to expire.

4. A completed renewal application including applicable fees received or postmarked 61 days after the

license/certificate expiration date is considered late. The then current application fee increase will be assessed in addition to a late penalty fee.

5. A license/certificate that has been inactive for 12 months but less than 3 years after the expiration date is considered expired but may be renewed by submitting to the board a renewal application, the annual renewal fee for each year missed plus the current year's renewal fee, and the late penalty fee. An expired license/certificate may be renewed within three years of the expiration date by paying all delinquent fees.

6. A license/certificate that has been expired for a period greater than three years after the expiration date is considered permanently retired and may not be renewed. The former license holder may re-apply for a new license as provided by the Act at the time of re-application.

B. The board may refuse to renew a license/certificate if the license/certificate holder is the subject of a lawsuit regarding his/her practice of geoscience or is found censurable for a violation of board laws or rules that would warrant such disciplinary action under R.S. 37:711.23.

C. Licensees must complete a statement of affirmation indicating whether the licensee practiced as a P.G. during the period when the license was inactive/expired. Information regarding unlicensed non-exempt public geoscience practice received under this section shall be referred to the compliance committee for appropriate action that could include the initiation of a complaint by the board.

D. As per R.S. 37:711.23, the board may suspend or revoke a license/certificate as disciplinary action against a license/certificate holder who is found censurable for a violation or rules.

1. A license/certificate that has been suspended can be reinstated by the board only if the suspended license/certificate holder complies with all conditions of the suspension, which may include payment of fines, continuing education requirements, participation in a peer review program or any other disciplinary action outlined in the Act.

2. A license/certificate that has been revoked can be re-instated only if a majority vote by the board approves reinstatement, after the applicant:

a. re-applies and submits all required application materials and fees;

b. successfully completes an examination in the discipline of geoscience if the applicant has not previously passed said examination(s); and

c. provides evidence to demonstrate competency and that future compliance with the Act and rules of the board.

E. A license/certificate holder is exempt from any increased fee or other penalty imposed in this Section for failing to renew the license in a timely manner if the license holder provides adequate documentation, including copies of orders, to establish to the satisfaction of the board that the license holder failed to renew in a timely manner due to active duty service in the United States Armed Forces outside of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2346 (November 2015).

## **§1111. Replacement License/Certificate Credential or License Registration Cards**

A. A new or duplicate license/certificate credential, or a new registration card to replace one lost, destroyed, or mutilated, may be issued, subject to the rules of the board, upon payment of the established fee(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2347 (November 2015).

## **Chapter 13. Continuing Education Program (CEP)**

### **§1301. Requirements**

A. Each license holder shall meet the continuing education program (CEP) requirements for professional development by earning professional development credit hours (PDH) as a condition for license renewal.

1. Every P.G. license holder is required to obtain 15 PDH hours of continuing education credit per year for license renewal.

2. A minimum of one PDH hour per renewal period must be in the area of professional ethics, roles and responsibilities of professional geoscientists.

3. If a license holder exceeds the annual requirement in any renewal period, a maximum of 30 PDH hours may be carried forward into subsequent renewal periods, but not beyond three years. Credits earned more than three years prior to the renewal year will not be accepted for fulfilling continuing education requirements.

B. Definition of Terms. Terms used in this Section are as follows.

*Accredited Continuing Education Unit (ACEU)*—unit of credit customarily used for ACEU. One ACEU equals 10 hours (10 PDH) of class in the accredited continuing education course.

*College Semester Hour (CSH)/College Quarter Hour (CQH)*—credit for a college course in a discipline of geoscience or other related technical elective of the discipline. One CSH equals 15 hours (15 PDH) of class in a college semester course. One CQH equals 10 hours (10 PDH) of class in a college quarter course.

*Continuing Education Course/Activity (CECA)*—any course/activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice. One CECA hour equals one PDH.

*Professional Development Hour (PDH)*—a contact hour (clock hour) of CEP activity. The PDH is the basic unit for CEP reporting. One hour equals one PDH.

#### **C. Earned Credits**

1. All activities described in this Subsection shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content. The following activities will earn PDH credits pending board approval at the time of audit:

a. successful completion, auditing or teaching/instructing of college credit courses (CSH/CQH). Credit for college or community college approved courses will be based upon course credit established by the college;

b. successful completion or teaching/instructing of continuing education courses (ACEU or CECA), either

offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group;

c. successful completion or teaching/instructing of correspondence, on-line, televised, videotaped, and other short courses/tutorials (CSH/CQH, ACEU or CECA);

d. registered attendance or teaching/instructing of seminars, courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group (CECA).

i. Credit for qualifying seminars, short courses and workshops will be based on one PDH credit for each hour of attendance.

ii. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH credits for the actual time of each program.

iii. A maximum of 12 PDH credits can be earned at society meetings each renewal period.

2. Teaching or instructing as listed in Paragraphs 1-4 of this Subsection will earn triple PDH credits. Teaching credit is valid for teaching a course or seminar for the first time only.

3. Authoring (as lead author) Published Papers, Articles, Books, or Accepted Licensing Examination Items. Credit determination for authorship as described in this subsection is the responsibility of the license holder and subject to review as required by the board. Maximum 10 PDH per paper and 45 PDH per book.

4. Active Participation (CECA) in Professional or Technical Societies, Associations, Agencies, or Organizations in Activities such as those Described Below. PDH credits are not earned until the end of each year of service is completed. Maximum of five PDH per renewal period:

a. serving as an elected or appointed official of the organization;

b. serving and actively participating on a committee of the organization; or

c. serving in other official positions such as making or attending a presentation at a meeting or writing a paper presented at a meeting.

5. Engaging in Self-Directed Course Work (ACEU or CECA). Credit determination for self-directed course work is the responsibility of the license holder and subject to review as required by the board. Credit for self-directed course work will be based on one PDH credit for each hour of study and is not to exceed five PDH per renewal period.

6. Patents issued—maximum 15 PDH per patent.

7. Software programs published—maximum 15 PDH per program.

#### **D. Determination of Credit**

1. The board shall be the final authority with respect to whether a course or activity meets the requirements of this Chapter.

2. It is the responsibility of each license holder to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the

continuing education requirement. However, a course provider may contact the board for an opinion for whether or not a course or technical presentation would meet the CEP requirements.

#### E. Record Keeping

1. The license holder is responsible for maintaining records to be used to support credits claimed. CEP records for each license holder must be maintained for a period of three years by the license holder. Records required include, but are not limited to:

a. a log, on a form provided by the board, showing the type of activity claimed, the sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits claimed; and

b. attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

#### F. CEP Audit

1. The records for each license holder are subject to audit by the board or its authorized representative.

a. The license holder must submit CEP certification on the log form provided by the board and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.

b. Copies must be furnished, if requested, to the board or its authorized representative for audit verification purposes.

c. If upon auditing a license holder, the board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience; the board may require the license holder to acquire additional PDH credits as needed to fulfill the minimum CEP requirements before said license will be renewed.

#### G. Exemptions

1. A license holder may be exempt from the professional development educational requirements for one of the following reasons.

a. A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding 120 consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

b. A license holder employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding 300 consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five hours of self-directed course work.

c. License holders experiencing long term physical disability or illness may be exempt. Supporting documentation must be furnished to the board.

#### H. Noncompliance

1. If a license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

2. A license holder may bring an expired license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required.

3. A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2347 (November 2015).

### **Chapter 15. Seal** **§1501. Use of Seals**

A. License holders must obtain a seal as per R.S. 37:711.22.

B. The following rules for the use of seals to identify work performed by a professional geoscientist shall be binding on every licensee.

#### 1. Seal Possession

a. Each professional geoscientist, upon licensure, shall obtain an official seal.

i. In the case of a temporary permit issued to a licensee of another jurisdiction, the licensee shall affix the seal of his/her jurisdiction of licensure, his/her signature, the date of execution, and his/her Louisiana temporary permit number to all of his/her work.

#### 2. Seal Responsibility

a. The application of the licensee's seal, signature, and date shall constitute certification that the work thereon was done by the licensee or under his/her responsible charge. The licensee shall be personally and professionally responsible and accountable for the care, custody, control and use of his/her seal, professional signature and identification. A seal which has been lost, misplaced or stolen shall, upon discovery of its loss, be reported immediately to the board by the licensee. The board may invalidate the licensure number of said licensee, if it deems this necessary, and issue another licensure number to the licensee.

#### 3. Seal Use

a. The licensee shall affix his/her seal, sign his/her name, and place the date of execution on all documents that have been issued by the licensee to a client or any public or governmental agency as completed work.

#### 4. Electronic Transmission

a. Documents which require a seal may be transmitted electronically provided the seal, signature and date of the licensee is transmitted in a secure mode that precludes the seal, signature and date being produced or modified.

b. Originally-sealed documents which no longer require a seal may be transmitted electronically but shall have the generated seal, if any, removed before transmitting and shall have the following inserted in lieu of the signature and date: "This document originally issued and sealed by (name of licensee and license number) on (date of sealing). This document should not be considered a certified document."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2348 (November 2015).

**Chapter 17. Fees**

**§1701. Payment of Fees**

A. The board fees are non-refundable and are in accordance with the limits specified in R.S. 37:711.13(D) and 711.20(C):

1. initial application and license fee—\$200;
2. examination processing fee of \$25 and examination fee as determined by ASBOG;
3. issuance of a revised or duplicate license—\$25;
4. renewal fee—\$150. The fee for annual renewal of licensure for any person 60 years of age or older as of the renewal date shall be \$100;
5. late renewal fee—\$50;
6. fee for affidavit of licensure—\$15;
7. verification of licensure—\$15;
8. temporary license—\$200;
9. insufficient funds fee—\$25;
10. initial application for geoscientist-in-training certificate—\$100;
11. annual renewal of geoscientist-in-training certificate—\$75.

B. Charges for providing copies of public information are those provided in LAC 4:I.301.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2349 (November 2015).

**Chapter 19. Disciplinary proceedings**

**§1901. Disciplinary and Enforcement Proceedings**

A. Any disciplinary or enforcement proceedings initiated by or with the board will be governed by the substantive and procedural provisions of the licensure law and by the provisions of the APA (R.S. 49:950 et seq.).

B. Disciplinary proceedings against licensees and certificate holders are subject to R.S. 37:711.23.

C. Disciplinary proceedings against nonlicensees or noncertificate holders are subject to R.S. 37:711.24.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:711.8(C)(1) and R.S. 37:711.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Professional Geoscientists, LR 41:2349 (November 2015).

John E. Johnston III  
Chairman

1511#009

**RULE**

**Office of the Governor  
Division of Administration  
Office of Group Benefits**

Employee Benefits (LAC 32:I.Chapters 3, 7, and 11)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and

pursuant to the authority granted by R.S. 42:801(C) and 802(B)(1), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to chapter 12 of title 42 of the *Louisiana Revised Statutes*, and granting the power to adopt and promulgate rules with respect thereto, OGB has amended several provisions of Title 32 in the *Louisiana Administrative Code*. This action enhances member clarification and provides for the administration, operation, and management of health care benefits effectively for the program and member. Accordingly, OGB has adopted the following rules to become effective January 1, 2016.

**Title 32**

**EMPLOYEE BENEFITS**

**Part I. General Provisions**

**Chapter 3. Uniform Provisions—Participation in the Office of Group Benefits**

**§303. Enrollment Procedures for Participation in OGB Health Coverage and Life Insurance**

A. - A.2. ...

3. The requesting agency shall obtain an experience rating from OGB.

a. The requesting agency shall submit claims experience under its prior plan for the 36-month period immediately prior to its application together with the required advance payment for the experience rating.

A.3.b. - B. ...

C. Any state agency, school board, political subdivision, or other eligible entity that elects to participate in the OGB health program remains responsible for its own compliance with enrollment and coverage requirements of the federal Patient Protection and Affordable Care Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:338 (February 2015), effective March 1, 2015, amended LR 41:2349 (November 2015), effective January 1, 2016.

**§305. Retiree Eligibility**

A. For the purpose of determining eligibility to participate in OGB health coverage and life insurance, the term *retiree* shall refer only to an individual who was an enrollee immediately prior to the date of retirement and who, upon retirement, satisfied one of the following categories:

1. immediately received a retirement plan distribution from an approved state or governmental agency defined benefit plan;

2. - 2.c. ...

d. maintained continuous coverage with an OGB plan of benefits as an eligible dependent until he/she became eligible to receive a retirement plan distribution from an approved state governmental agency defined benefit plan as a former state employee; or

3. immediately received a retirement plan distribution from a state-approved or state governmental agency approved defined contribution plan and has accumulated the total number of years of creditable service which would have entitled him/her to receive a retirement plan distribution from the defined benefit plan of the retirement system for which the employee would have otherwise been eligible. The appropriate state governmental agency or retirement

system responsible for administration of the defined contribution plan is responsible for certification of eligibility to OGB.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:339 (February 2015), effective March 1, 2015, amended LR 41:2349 (November 2015), effective January 1, 2016.

### §307. Persons to be Covered

A. - A.1. ...

2. Covered Persons, Both Employees. No one may be enrolled simultaneously as an employee and as a dependent under an OGB plan, nor may a dependent be covered as a dependent of more than one employee. If a covered dependent is eligible for coverage as an employee, he/she may choose to be covered separately at a later OGB designated enrollment period. Coverage shall be effective as directed by the OGB designated enrollment period.

3. - 3.d. ...

4. Effective Dates of Coverage, Existing Employee. Existing employees may only enroll in a plan during open enrollment or as otherwise specified by the OGB health plan document. Coverage for the employee will be effective on the first day of the new plan year or on the date set forth in the OGB health plan document.

5. Re-Enrollment Previous Employment for Health Benefits and Life Insurance

a. An employee whose employment terminated while covered who is re-employed within 12 months of the date of termination will be considered a re-enrollment previous employment applicant.

b. If an employee acquires an additional dependent during the period of termination, that dependent may be covered if added within 30 days of re-employment.

6. Members of Boards and Commissions. Except as otherwise provided by law, members of boards or commissions are not eligible for participation in an OGB plan of benefits. This Section does not apply to members of school boards or members of state boards or commissions who are determined by the participating employer and in accordance with federal and state law to be full-time employees.

7. Legislative Assistants. Legislative assistants are eligible to participate in an OGB plan if they are determined to be full-time employees by the participating employer under applicable federal and state law or pursuant to R.S. 24:31.5(C), either:

a. receive at least 60 percent of the total compensation available to employ the legislative assistant if a legislator employs only one legislative assistant; or

b. is the *primary legislative assistant* as defined in R.S. 24:31.5(C) when a legislator employs more than one legislative assistant.

B. - B.1.b. ...

c. Coverage for re-employed retirees is governed by LAC 32:I.323.B, Employer Responsibility.

2. Effective Date of Coverage

a. Retiree coverage will be effective on the first day of the month following the date of retirement if the retiree and participating employer have agreed to make and are

making the required contributions. For purposes of eligibility, the date of retirement shall be the date the person is eligible to receive a retirement plan distribution. (For example, if date of retirement is July 15, retiree coverage will begin August 1; if date of retirement is August 1, retiree coverage will begin September 1.)

C. Documented Dependent Coverage

1. Eligibility. A documented dependent, in the OGB primary plan document, of an eligible employee or retiree will be eligible for dependent coverage on the later of the following dates:

1.a. - 2.b. ...

D. Special Enrollments—HIPAA. Certain eligible persons may enroll as provided for by HIPAA under circumstances, terms, and conditions for special enrollments.

E. ...

F. Medicare Advantage Option for Retirees (effective January 1, 2016)

1. Retirees who are eligible to participate in an OGB sponsored Medicare Advantage plan who cancel participation in an OGB plan of benefits upon enrollment in an OGB sponsored Medicare Advantage plan may re-enroll in an OGB offered plan of benefits upon withdrawal from or termination of coverage in the Medicare Advantage plan at Medicare's open enrollment or OGB's open enrollment period.

2. Retirees who elect to participate in a Medicare Advantage plan not sponsored by OGB will not be allowed to re-enroll in a plan offered by OGB upon withdrawal from or termination of coverage in the Medicare Advantage plan.

G. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:339 (February 2015), effective March 1, 2015, amended LR 41:2350 (November 2015), effective January 1, 2016.

### §313. Enrollee Coverage Termination

A. An enrollee may terminate coverage as set forth in the applicable OGB health plan document. Applications made by active enrollees shall be provided to their HR liaison and applications made by retired enrollees shall be provided to OGB.

B. An Enrollee may terminate coverage during an OGB designated enrollment period. Application is required to be made as directed for the OGB designated enrollment period.

C. Subject to continuation of coverage and COBRA rules, all benefits of an enrollee will terminate, without application, under plans offered by OGB on the earliest of the following dates:

1. date OGB terminates;

2. date the group or agency employing the enrollee terminates or withdraws from OGB;

3. date contribution is due if the group or agency fails to pay the required contribution for the enrollee;

4. date contribution is due if the enrollee fails to make any contribution which is required for the continuation of coverage;

5. last day of the month of the enrollee's death; or

6. last day of the month in which the enrollee is eligible for OGB plan coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:341 (February 2015), effective March 1, 2015, amended LR 41:2350 (November 2015), effective January 1, 2016.

### **§315. Dependent Coverage Termination**

A. An enrollee may terminate dependent coverage as set forth in the applicable OGB health plan document. Applications made by active enrollees shall be provided to their HR liaison and applications made by retired enrollees shall be provided to OGB.

B. An enrollee may terminate dependent coverage during an OGB designated enrollment period. Application is required to be made as directed for the OGB designated enrollment period.

C. Subject to continuation of coverage and COBRA rules, dependent coverage will terminate, without application, under any OGB plan of benefits on the earliest of the following dates:

1. last day of the month the enrollee is covered;
2. last day of the month in which the dependent, as defined by OGB, is an eligible dependent of the enrollee;
3. for grandchildren for whom the enrollee does not have court ordered legal custody or has not adopted, on the date the child's parent loses eligibility under the respective OGB health; or
4. upon discontinuance of all dependent coverage under OGB plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:341 (February 2015), effective March 1, 2015, amended LR 41:2351 (November 2015), effective January 1, 2016.

### **§317. Change of Classification**

A. Adding or Deleting Dependents. When a dependent is added to the enrollee's coverage due to a HIPAA special enrollment event or deleted from the enrollee's coverage consistent with a change in the dependent's status, as set forth in the applicable OGB health plan document, applications made by active enrollees shall be provided to their HR liaison and applications made by retired enrollees shall be provided to OGB. Application is required to be made within 30 days of the event.

B. When a dependent is added to or deleted from the enrollee's coverage during an OGB designated enrollment period, application is required to be made as directed for the OGB designated enrollment period.

C. Effective Date of Change in Classification

1. When adding a dependent due to a HIPAA special enrollment event or deleting a dependent due to a change in the dependent's status results in a change in classification, the change in classification will be effective on the date of the event. Application for adding or deleting a dependent is required to be made within 30 days of the date of the event.

2. When the addition or deletion of a dependent changes the classification of coverage, the new premium rate will be charged for the entire month if the date of the HIPAA special enrollment event or the date of the change in the dependent's status occurs before the fifteenth day of the month. If the date of the HIPAA special enrollment event or the date of the change in the dependent's status occurs on or

after the fifteenth day of the month, the new premium rate will not be charged until the first day of the following month.

D. Notification of Change. It is the enrollee's responsibility to make application for any change in classification of coverage that affects the enrollee's contribution amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:341 (February 2015), effective March 1, 2015, amended LR 41:2351 (November 2015), effective January 1, 2016.

### **§323. Employer Responsibility**

A. It is the responsibility of the participating employer to submit timely enrollment and coverage changes using OGB's electronic enrollment system or other approved submission method, and to review and certify all necessary documentation to OGB on behalf of its employees. Employees of a participating employer will not, by virtue of furnishing any documentation to OGB be considered agents of OGB, and no representation made by any participating employer at any time will change the provisions of an OGB plan of benefits.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:345 (February 2015), effective March 1, 2015, amended LR 41:2351 (November 2015), effective January 1, 2016.

## **Chapter 7. Group Benefits Policy and Planning Board**

### **§701. Elected Board Member Seats**

A. Per R.S. 42:882, the Group Benefits Policy and Planning Board (OGB board) shall be composed of 11 voting members, with 2 members elected by retired participants of OGB plans of benefits, as follows:

1. one retiree member who shall be elected from among retired teachers or other school employees;
2. one retiree member who shall be elected from among retired state employees.

B. Elected members shall be confirmed by the Senate.

C. The chief executive officer shall certify election results to the Secretary of State and to the Senate for confirmation.

D. Upon appointment or election, each member for an elected seat shall serve with authority to act until his/her term expires or until the secretary of the Senate communicates that a member is rejected or not confirmed, whichever occurs first. Upon notice that a member for an elected seat is rejected or not confirmed, the respective member shall cease all member acts immediately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:2351 (November 2015), effective January 1, 2016.

### **§703. Candidate Eligibility**

A. A candidate for a position on the OGB board must be a participant in an OGB plan of benefits as of the specified nomination date.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:347 (February 2015), effective March 1, 2015, LR 41:2351 (November 2015), effective January 1, 2016.

**§705. Petitions for Candidacy**

A. To become a candidate, a person must be nominated by petition of 25 or more OGB plan enrollees from the constituency he/she will represent.

B. Each enrollee's signature must be accompanied by his/her printed name, the last four digits of their Social Security number, and the agency they are affiliated with.

C. Each petition for candidacy must be signed by the OGB chief executive officer or his/her designated representative certifying that each candidate and each petitioner is a plan participant from the constituency he/she will represent, on the specified nomination date.

D. Petitions for candidacy must be received by OGB on or before the date indicated on the nomination materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:347 (February 2015), effective March 1, 2015, LR 41:2352 (November 2015), effective January 1, 2016.

**§709. Balloting Procedure**

A. All retired enrollees in an OGB plan of benefits on the specified election date are eligible to vote.

B. Each eligible retired enrollee may cast only one vote for any candidate listed on the ballot for his respective retiree group.

C. Each eligible retired enrollee must follow the voting directions provided by OGB. In the event OGB contracts with an election vendor for a particular election, each eligible retired enrollee must follow the voting directions provided by OGB's election vendor for his/her vote to be counted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:347 (February 2015), effective March 1, 2015, LR 41:2352 (November 2015), effective January 1, 2016.

**§713. Election Results**

A. The chief executive officer will certify the election results to the Senate for confirmation.

B. The chief executive officer will notify the successful candidates of his/her election.

C. The chief executive officer will announce the election results at the first regularly scheduled board meeting following the election.

D. The chief executive officer will certify the election results to the Secretary of State.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:348 (February 2015), effective March 1, 2015, LR 41:2352 (November 2015), effective January 1, 2016.

**§715. Uniform Election Dates**

A. For each election date, the following dates will apply:

1. On second Wednesday in January, OGB submits nomination sheets to each agency benefits coordinator.

2. The second Wednesday in February is the nomination cutoff date. Nominees must be certified by the OGB chief executive officer or his/her designee before nominations can be accepted by OGB.

3. On the third Wednesday in February, OGB will hold the drawing at its principal office to determine the position each candidate will have on the ballot. All candidates are invited to attend or send a representative.

4. Prior to the first Wednesday in March, ballots will be sent to the proper authority for distribution.

5. The second Wednesday in April is the deadline for OGB to receive completed ballots.

6. By the third Wednesday in April, all completed ballots shall be counted.

7. By the first Wednesday in May, the chief executive officer shall certify the election results to the Senate for confirmation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 7:122 (March 1981), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:348 (February 2015), effective March 1, 2015, LR 41:2352 (November 2015), effective January 1, 2016.

**§717. Petition Form**

A. Nominating Petition. Nominations will be submitted on a form substantially in compliance with the following.

We the undersigned OGB enrollees are retired teachers or retired school employees/retired state employees and hereby nominate _____ for membership on the Office of Group Benefits Policy and Planning Board.				
Signature	Printed Name	Last 4 of SSN	Agency	Date
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				



We the undersigned OGB enrollees are retired teachers or retired school employees/retired state employees and hereby nominate \_\_\_\_\_ for membership on the Office of Group Benefits Policy and Planning Board.

Signature	Printed Name	Last 4 of SSN	Agency	Date
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25.				

I hereby certify the persons signing this petition are retired teachers or other school employees/retired state employees and OGB retired enrollees as of the specified nomination date.

\_\_\_\_\_  
OGB Chief Executive Officer or his/her designated representative

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 7:50 (February 1981), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:348 (February 2015), effective March 1, 2015, LR 41:2352 (November 2015), effective January 1, 2016.

**Chapter 11. Contributions**

**§1105. Penalty for Late Payment of Premiums**

A. If any participating employer fails to remit, in full, both the employer and employee contributions to OGB within 30 days after receipt of the monthly invoice premium statement, then at the request of OGB, the state treasurer shall withhold from state funds due the participating employer the full amount of the delinquent employer and employee contributions. The participating employer shall also pay a penalty equal to 1 percent of the total amount due and unpaid, compounded monthly. The state treasurer shall remit this amount directly to OGB.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

**HISTORICAL NOTE:** Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 26:2788 (December 2000), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:349 (February 2015), effective March 1, 2015, LR 41:2353 (November 2015), effective January 1, 2016.

Susan T. West  
Chief Executive Officer

1511#029

**RULE**

**Department of Health and Hospitals  
Board of Medical Examiners**

Physician Practice; Unprofessional Conduct  
(LAC 46:XLV.7603)

Editor's Note: This Rule is being repromulgated to correct a publication error. The original Rule can be viewed in its entirety on page 2146-2147 of the October 20, 2015 *Louisiana Register*. Pursuant to a substantive change hearing, Paragraph 9 was not amended. The effective date of this Rule is October 20, 2015.

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, the board has amended its rules governing unprofessional conduct of physicians, LAC 46:XLV.7603. The changes are set forth below.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Professions  
Subpart 3. Practice**

**Chapter 76. Definition of Enforcement Terms**

**Subchapter B. Unprofessional Conduct**

**§7603. Unprofessional Conduct**

A. - A.10.f. ...

11. *Self-Treatment; Treatment of Immediate Family Members*—except in cases of emergency, physicians shall not prescribe controlled substances for themselves or their immediate family members. As respects a physician, *immediate family members* include the physician's spouse, children, parents, and siblings.

B. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:336 (January 2011), amended LR 41:2146 (October 2015), repromulgated LR 41:2353 (November 2015).

Cecilia Mouton, M.D.  
Executive Director

1511#011

**RULE**

**Department of Health and Hospitals  
Bureau of Health Services Financing  
and**

**Office of Behavioral Health**

Behavioral Health Services  
Louisiana Bayou Health and  
Coordinated System of Care Waiver  
(LAC 50:XXXIII.Chapters 1-9)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health have amended LAC 50:XXXIII.Chapters 1-9 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.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXXIII. Behavioral Health Services**

**Subpart 1. Louisiana Bayou Health and Coordinated System of Care Waiver**

**Chapter 1. Managed Care Organizations and Coordinated System of Care Contractor**

**§101. General Provisions**

A. The Medicaid Program hereby adopts provisions to establish a comprehensive system of delivery for specialized

behavioral health and physical health services. These services shall be administered through the Louisiana Bayou Health and Coordinated System of Care (CSoC) Waiver under the authority of the Department of Health and Hospitals (DHH), in collaboration with managed care organizations (MCOs) and the coordinated system of care (CSoC) contractor, which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. The provisions of this Rule shall apply only to the services provided to Medicaid recipients/enrollees by or through an MCO or the CSoC contractor.

C. Managed care organizations shall operate as such, and the CSoC contractor shall operate as a prepaid inpatient health plan (PIHP). The MCOs were procured through a competitive request for proposal (RFP) process. The CSoC contractor was procured through an emergency process consistent with 45 CFR part 92. The MCOs and CSoC contractor shall assist with the state's system reform goals to support individuals with behavioral health and physical health needs in families, homes, communities, schools, and jobs.

D. Through the utilization of MCOs and the CSoC contractor, it is the department's goal to:

1. - 4. ...

E. The CSoC contractor shall be paid on a non-risk basis for specialized behavioral health services rendered to children/youth enrolled in the Coordinated System of Care Waiver. The MCOs shall be paid on a risk basis for specialized behavioral health and physical health services rendered to adults and children/youth.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:360 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2353 (November 2015).

### **§103. Recipient Participation**

A. The following Medicaid recipients shall be mandatory participants in the coordinated specialized behavioral health and physical health system of care:

1. children who are blind or have a disability and related populations, under age 18;
2. aged and related populations, age 65 and older who are not blind, do not have a disability, and are not members of the §1931 adult population;
3. children who receive foster care or adoption assistance (title IV-E), or who are in foster care or who are otherwise in an out-of-home placement;
4. children with special health care needs as defined in §1932(a);
5. Native Americans;
6. full dual eligibles (for behavioral health services only);
7. children residing in an intermediate care facility for persons with developmental disabilities (for behavioral health services only);
  - a. - b. Repealed.
8. all enrollees of waiver programs administered by the DHH Office for Citizens with Developmental

Disabilities (OCDD) or the DHH Office of Aging and Adult Services (OAAS) (mandatory for behavioral health services only);

9. all Medicaid children functionally eligible for the CSoC;

10. adults residing in a nursing facility (for behavioral health services only);

11. supplemental security income/transfer of resources/long-term care related adults and children (for behavioral health services only); and

12. transfer of resources/long-term care adults and children (for behavioral health services only).

NOTE: Recipients qualifying for retroactive eligibility are enrolled in the waiver.

B. Mandatory participants shall be automatically enrolled and disenrolled from the MCOs or the CSoC contractor.

C. Notwithstanding the provisions of Subsection A of this Section, the following Medicaid recipients are excluded from enrollment in the MCOs and the CSoC contractor:

1. - 3. ...

4. recipients of refugee medical assistance;

5. recipients enrolled in the Spend-Down Medically Needy Program;

6. - 7. ...

8. recipients enrolled in the Take Charge Plus Program;

9. recipients enrolled in the Greater New Orleans Community Health Connection (GNOCHC) program; and

10. recipients enrolled in the Long-Term Care Medicare Co-Insurance program.

D. Any Medicaid eligible person is suspended from participation during a period of incarceration.

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 38:361 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:1286 (July 2015), LR 41:2354 (November 2015).

### **§105. Enrollment Process**

A. The MCOs and the CSoC contractor shall abide by all enrollment and disenrollment policies and procedures as outlined in the contract entered into by department.

B. The MCOs and the CSoC contractor shall ensure that mechanisms are implemented to assess each Medicaid enrollee identified as having special health care needs in order to identify any ongoing conditions that require a course of treatment or regular care monitoring. The assessment mechanism shall incorporate appropriate health care professionals.

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 38:361 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2354 (November 2015).

### **§107. Enrollee Rights and Responsibilities**

A. The enrollee's rights shall include, but are not limited to the right to:

1. - 2. ...
  3. appeal an MCO and CSoc contractor decision through the MCO's and CSoc contractor's internal process and/or the state fair hearing process;
  4. receive a response about a grievance or appeal decision within a reasonable period of time determined by the department;
  5. - 8. ...
- B. The Medicaid recipient/enrollee's responsibilities shall include, but are not limited to:
1. informing their MCO or CSoc contractor of the loss or theft of their Medicaid identification card;
  2. ...
  3. being familiar with their MCO's or CSoc contractor's procedures to the best of his/her abilities;
  4. contacting their MCO or CSoc contractor, by telephone or in writing (formal letter or electronically, including email), to obtain information and have questions clarified;
  5. - 7. ...
  8. accessing services only from specified providers contracted with their MCO or CSoc contractor.

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 38:361 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2354 (November 2015).

### **Chapter 3. Managed Care Organizations and the Coordinated System of Care Contractor Participation**

#### **§301. Participation Requirements and Responsibilities**

A. In order to participate in the Medicaid Program, an MCO and the CSoc contractor shall execute a contract with the department, and shall comply with all of the terms and conditions set forth in the contract.

B. MCOs and the CSoc contractor shall:

1. manage contracted services;
2. establish credentialing and re-credentialing policies consistent with federal and state regulations;
3. ensure that provider selection policies and procedures do not discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment;
  - a. Repealed.
4. maintain a written contract with subcontractors that specifies the activities and reporting responsibilities delegated to the subcontractor, and such contract shall also provide for the MCOs' or CSoc contractor's right to revoke said delegation, terminate the contract, or impose other sanctions if the subcontractor's performance is inadequate;
5. contract only with providers of services who are licensed and/or certified and meet the state of Louisiana credentialing criteria;
6. ensure that contracted rehabilitation providers are employed by a rehabilitation agency or clinic licensed and/or certified, and authorized under state law to provide these services;
7. sub-contract with a sufficient number of providers to render necessary services to Medicaid recipients/enrollees;

8. require each provider to implement mechanisms to assess each Medicaid enrollee identified as having special health care needs in order to identify special conditions of the enrollee that require a course of treatment or regular care monitoring;

9. ensure that treatment plans or plans of care meet the following requirements:

- a. are developed by the enrollee's primary care provider (PCP) with the enrollee's participation and in consultation with any specialists' providing care to the enrollee, with the exception of treatment plans or plans of care developed for recipients in the Home and Community Based Services (HCBS) Waiver. The wraparound agency shall develop plans of care according to wraparound best practice standards for recipients who receive behavioral health services through the HCBS Waiver;
- b. are approved by the MCO or CSoc contractor in a timely manner, if required;
- c. are in accordance with any applicable state quality assurance and utilization review standards; and
- d. allow for direct access to any specialist for the enrollee's condition and identified needs, in accordance with the contract; and

10. ensure that Medicaid recipients/enrollees receive information:

- a. in accordance with federal regulations and as described in the contract and departmental guidelines;
- b. on available treatment options and alternatives in a manner appropriate to the enrollee's condition and ability to understand; and
- c. about available experimental treatments and clinical trials along with information on how such research can be accessed even though the Medicaid Program will not pay for the experimental treatment.

11 - 12.c. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:362 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2355 (November 2015).

#### **§303. Benefits and Services**

A. Benefits and services shall be rendered to Medicaid recipients/enrollees as provided under the terms of the contract and department-issued guidelines.

B. The MCO and CSoc contractor:

1. shall ensure that medically necessary services are sufficient in amount, duration, or scope to reasonably be expected to achieve the purpose for which the services are being furnished;
2. - 3.b....
4. shall provide benefits and services as outlined and defined in the contract and shall provide medically necessary and appropriate care to enrollees; and

C. The benefits and services provided to enrollees shall include, but are not limited to, those services specified in the contract between the MCOs and the CSoc contractor and the department.

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, Bureau of Health Services Financing, LR 38:362 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2355 (November 2015).

### **§305. Service Delivery**

A. The MCOs and CSoc contractor shall ensure that services rendered to enrollees are medically necessary, are authorized or coordinated, and are provided by professionals according to their scope of practice and licensing in the state of Louisiana.

B. ...

C. MCOs shall offer a contract to all federally qualified health centers (FQHCs), rural health clinics (RHCs), and tribal clinics. Enrollees shall have a choice of available providers in the plan's network to select from. The CSoc contractor shall be required to contract with at least one FQHC in each medical practice region of the state (according to the practice patterns within the state) if there is an FQHC which can provide substance use disorder services or specialty mental health services under state law and to the extent that the FQHC meets the required provider qualifications.

D. MCOs and the CSoc contractor shall ensure that the recipient is involved throughout the planning and delivery of services.

1. Services shall be:
  - a. delivered in a culturally and linguistically competent manner; and
  - b. respectful of the individual receiving services.
2. Services shall be appropriate to individuals of diverse racial, ethnic, religious, sexual, and gender identities and other cultural and linguistic groups.
3. Services shall be appropriate for:
  - a. age;
  - b. development; and
  - c. education.

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 38:363 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2356 (November 2015).

## **Chapter 5. Reimbursement**

### **§501. General Provisions**

A. For recipients enrolled with the CSoc contractor, reimbursement for services shall be based upon the established Medicaid fee schedule for specialized behavioral health services.

B. For recipients enrolled in one of the MCOs, the department or its fiscal intermediary shall make monthly capitation payments to the MCOs. The capitation rates paid to the MCOs shall be actuarially sound rates and the MCOs will determine the rates paid to its contracted providers. No payment shall be less than the minimum Medicaid rate.

C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:363 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 39:317 (February 2013), LR 41:2356 (November 2015).

### **§503. Reimbursement Methodology (Reserved)**

## **Chapter 7. Grievance and Appeals Process**

### **§701. General Provisions**

A. The MCOs and the CSoc contractor shall be required to have an internal grievance system and internal appeal process. The appeal process allows a Medicaid recipient/enrollee to challenge a decision made, a denial of coverage, or a denial of payment for services.

B. - C. ...

D. An enrollee must exhaust the MCO or the CSoc contractor grievance and appeal process before requesting a state fair hearing.

E. The MCO and CSoc contractor shall provide Medicaid enrollees with information about the state fair hearing process within the timeframes established by the department and in accordance with the state fair hearing policies.

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 38:363 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2356 (November 2015).

## **Chapter 9. Monitoring Activities**

### **§901. General Provisions**

A. The contracted MCOs and the CSoc contractor shall be accredited by an accrediting body that is designated in the contract, or agrees to submit an application for accreditation at the earliest possible date as allowed by the accrediting body. Once accreditation is achieved, it shall be maintained through the life of this agreement.

B. The MCOs and CSoc contractor shall be required to track grievances and appeals, network adequacy, access to services, service utilization, quality measure and other monitoring and reporting requirements in accordance with the contract with the department.

C. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:363 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2356 (November 2015).

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.

Kathy H. Kliebert  
Secretary

1511#038

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Behavioral Health Services  
Substance Use Disorders Services  
(LAC 50:XXXIII.Chapters 141-147)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health have amended LAC 50:XXXIII.Chapters 141-147 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXXIII. Behavioral Health Services

#### Subpart 15. Substance Use Disorders Services

#### Chapter 141. General Provisions

#### §14101. Introduction

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid state plan for substance use disorders (SUD) services rendered to children and adults. These services shall be administered under the authority of the Department of Health and Hospitals, in collaboration with managed care organizations (MCOs) and the coordinated system of care (CSoC) contractor, which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery. The CSoC contractor shall only manage specialized behavioral health services for children/youth enrolled in the CSoC program.

B. The SUD services rendered shall be those services which are medically necessary to reduce the disability resulting from the illness and to restore the individual to his/her best possible functioning level in the 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, Bureau of Health Services Financing, LR 38:426 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2357 (November 2015).

#### §14103. Recipient Qualifications

A. Children and adults who meet Medicaid eligibility and clinical criteria shall qualify to receive medically necessary SUD services.

B. Qualifying children and adults with an identified SUD diagnosis shall be eligible to receive SUD services covered under the Medicaid 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, Bureau of Health Services Financing, LR 38:426 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2357 (November 2015).

#### Chapter 143. Services

#### §14301. General Provisions

A. ...

B. SUD services are subject to prior approval by the MCO or the CSoC contractor.

C. - D. ...

1. The agency or individual who has the decision making authority for a child or adolescent in state custody must approve the provision of services to the recipient.

E. Children who are in need of SUD services shall be served within the context of the family and not as an isolated unit.

1. Services shall be:

a. delivered in a culturally and linguistically competent manner; and

b. respectful of the individual receiving services.

2. Services shall be appropriate to individuals of diverse racial, ethnic, religious, sexual, and gender identities, and other cultural and linguistic groups.

3. Services shall also be appropriate for:

a. age;

b. development; and

c. education.

4. Repealed.

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, Bureau of Health Services Financing, LR 38:426 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2357 (November 2015).

#### §14303. Covered Services

A. The following SUD services shall be reimbursed under the Medicaid Program:

A.1. - B.2. ...

3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving services;

4. - 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 and Hospitals, Bureau of Health Services Financing, LR 38:426 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2357 (November 2015).

#### Chapter 145. Provider Participation

#### §14501. Provider Responsibilities

A. Each provider of SUD services shall enter into a contract with one or more of the MCOs or the CSoC contractor in order to receive reimbursement for Medicaid covered services.

B. All services shall be delivered in accordance with federal and state laws and regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department. Providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes.

C. Providers of SUD services shall ensure that all services are authorized and any services that exceed established limitations beyond the initial authorization are approved for re-authorization prior to service delivery.

D. Anyone providing SUD services must be certified by the department, or its designee, in addition to operating within their scope of practice license. To be certified or recertified, providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes.

E. Residential addiction treatment facilities shall be accredited by an approved accrediting body and maintain such accreditation. Denial, loss of or any negative change in accreditation status must be reported to the MCO or CSoc contractor in writing within the time limit established by the department.

F. - F.6. ...

**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 38:427 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2357 (November 2015).

#### **Chapter 147. Reimbursement**

##### **§14701. General Provisions**

A. For recipients enrolled with the CSoc contractor, reimbursement for services shall be based upon the established Medicaid fee schedule for SUD services.

B. For recipients enrolled in one of the MCOs, the department or its fiscal intermediary shall make monthly capitation payments to the MCOs. The capitation rates paid to the MCOs shall be actuarially sound rates and the MCOs will determine the rates paid to its contracted providers. No payment shall be less than the minimum Medicaid 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 38:427 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 39:3301 (December 2013), LR 41:2358 (November 2015).

##### **§14703. Reimbursement Methodology**

A. Effective for dates of service on or after July 1, 2012, the reimbursement rates for outpatient SUD services provided to children/adolescents shall be reduced by 1.44 percent of the rates in effect on June 30, 2012.

**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 Behavioral Health, LR 41:2358 (November 2015).

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.

Kathy H. Kliebert  
Secretary

1511#039

## **RULE**

### **Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health**

Children's Behavioral Health Services  
(LAC 50:XXXIII.Chapters 21-27)

The Department of Health and Hospitals, Bureau of Health Services Financing and Office of Behavioral Health have amended LAC 50:XXXIII Chapters 21-27 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### **Title 50**

#### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

##### **Part XXXIII. Behavioral Health Services**

##### **Subpart 3. Children's Mental Health Services**

##### **Chapter 21. General Provisions**

##### **§2101. Introduction**

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for mental health services rendered to children and youth with behavioral health disorders. These services shall be administered under the authority of the Department of Health and Hospitals, in collaboration with a managed care organizations (MCOs) and the coordinated system of care (CSoc) contractor, which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery. The CSoc contractor shall only manage specialized behavioral health services for children/youth enrolled in the coordinated system of care.

B. The specialized behavioral health services rendered to children with emotional or behavioral disorders are those services necessary to reduce the disability resulting from the illness and to restore the individual to his/her best possible functioning level in the 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, Bureau of Health Services Financing, LR 38:364 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2358 (November 2015).

##### **Chapter 23. Services**

##### **§2301. General Provisions**

A. All specialized behavioral health services must be medically necessary. The medical necessity for services shall be determined by a licensed mental health practitioner (LMHP) or physician who is acting within the scope of his/her professional license and applicable state law.

B. All services shall be authorized. Services which exceed the initial authorization must be approved for re-authorization prior to service delivery.

C. - C.1. ...

D. Children who are in need of specialized behavioral health services shall be served within the context of the family and not as an isolated unit.

1. Services shall be:
  - a. delivered in a culturally and linguistically competent manner; and
  - b. respectful of the individual receiving services.
2. Services shall be appropriate to children and youth of diverse racial, ethnic, religious, sexual, and gender identities and other cultural and linguistic groups.
3. Services shall also be appropriate for:
  - a. age;
  - b. development; and
  - c. education.
4. Repealed.

E. - 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, Bureau of Health Services Financing, LR 38:364 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2358 (November 2015).

### **§2303. Covered Services**

A. The following behavioral health services shall be reimbursed under the Medicaid Program:

1. therapeutic services delivered by licensed mental health professionals (LMHP), including diagnosis and treatment;
2. rehabilitation services, including community psychiatric support and treatment (CPST) and psychosocial rehabilitation;
3. crisis intervention services; and
4. crisis stabilization services.

B. Service Exclusions. The following services shall be excluded from Medicaid reimbursement:

1. components that are not provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual;
2. services provided at a work site which are job tasks oriented and not directly related to the treatment of the recipient's needs;
3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving services;
4. services rendered in an institute for mental disease; and
5. the cost of room and board associated with crisis stabilization.

C. - C.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 and Hospitals, Bureau of Health Services Financing, LR 38:364 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2359 (November 2015).

## **Chapter 25. Provider Participation**

### **§2501. Provider Responsibilities**

A. Each provider of specialized behavioral health services shall enter into a contract with one or more of the MCOs and with the CSoC contractor for youth enrolled in

the Coordinated System of Care program in order to receive reimbursement for Medicaid covered services.

B. ...

C. Providers of specialized behavioral health services shall ensure that all services are authorized and any services that exceed established limitations beyond the initial authorization are approved for re-authorization prior to service delivery.

D. Anyone providing specialized behavioral health services must be certified by the department, or its designee, in addition to operating within their scope of practice license. To be certified or recertified, providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes. The provider shall create and maintain documents to substantiate that all requirements are met.

E. Providers shall maintain case records that include, at a minimum:

1. a copy of the plan of care or treatment plan,;
2. - 5. ...
6. the goals of the plan of care or treatment 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, Bureau of Health Services Financing, LR 38:364 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2359 (November 2015).

## **Chapter 27. Reimbursement**

### **§2701. General Provisions**

A. For recipients enrolled with the CSoC contractor, reimbursement for services shall be based upon the established Medicaid fee schedule for specialized behavioral health services.

B. For recipients enrolled in one of the MCOs, the department or its fiscal intermediary shall make monthly capitation payments to the MCOs. The capitation rates paid to MCOs shall be actuarially sound rates and the MCOs will determine the rates paid to its contracted providers. No payment shall be less than the minimum Medicaid rate.

1. - 3. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:365 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 39:317 (February 2013), LR 41:2359 (November 2015).

### **§2703. Reimbursement Methodology**

A. Effective for dates of service on or after July 1, 2012, the reimbursement rates for the following behavioral health services provided to children/adolescents shall be reduced by 1.44 percent of the rates in effect on June 30, 2012:

1. therapeutic services;
2. rehabilitation services; and
3. crisis intervention 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, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2359 (November 2015).

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.

Kathy H. Kliebert  
Secretary

1511#040

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing

#### Free-Standing Birthing Centers (LAC 50:XV.Chapters 265-271)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:XV.Chapters 265-271 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

#### Subpart 18. Free-Standing Birthing Centers

#### Chapter 265. General Provisions

##### §26501. Purpose

A. The Medicaid Program shall provide coverage and reimbursement for labor and delivery services rendered by free-standing birthing centers (FSBCs). Stays for delivery at the FSBC are typically less than 24 hours and the services rendered for labor and delivery are very limited, or non-existent, in comparison to delivery services rendered during inpatient hospital stays.

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 41:2360 (November 2015).

##### §26503. Definitions

*Birthing Center*—a facility, for the primary purpose of performing low-risk deliveries, that is not a hospital or licensed as part of a hospital, where births are planned to occur away from the mother's usual residence following a low-risk pregnancy.

*Low-Risk Pregnancy*—a normal, uncomplicated prenatal course as determined by documentation of adequate prenatal care and the anticipation of a normal, uncomplicated labor and birth, as defined by reasonable and generally accepted criteria adopted by professional groups for maternal, fetal, and neonatal health care.

*Surrounding Hospital*—a hospital located within a 20-mile radius of the birthing center in urban areas and within a 30-mile radius of the birthing center in rural areas.

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 41:2360 (November 2015).

#### Chapter 267. Services

##### §26701. Scope of Services

A. Free-standing birthing centers shall be reimbursed for labor and low-risk delivery services provided to Medicaid eligible pregnant women by an obstetrician, family practitioner, certified nurse midwife, or licensed midwife. FSBC services are appropriate when a normal, uncomplicated labor and birth is anticipated.

B. Services shall be provided by the attending practitioner from the time of the pregnant woman's admission through the birth and the immediate postpartum period.

C. Service Limitation. FSBC staff shall not administer general or epidural anesthesia 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, Bureau of Health Services Financing, LR 41:2360 (November 2015).

#### Chapter 269. Provider Participation

##### §26901. General Provisions

A. In order to enroll to participate in the Louisiana Medicaid Program as a provider of labor and delivery services, the FSBC must:

1. be accredited by the Commission for Accreditation of Birth Centers; and
2. be approved/certified by the Medicaid medical director.

B. The FSBC shall be located within a ground travel time distance from a general acute care hospital with which the FSBC shall maintain a contractual relationship, including a transfer agreement, that allows for an emergency caesarian delivery to begin within 30 minutes of the decision a caesarian delivery is necessary.

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 41:2360 (November 2015).

##### §26903. Staffing Requirements

A. The FSBC shall have on staff:

1. a licensed obstetrician, family practitioner, certified nurse midwife, or licensed midwife who shall attend each woman in labor from the time of admission through birth and the immediate postpartum period.

- a. A licensed midwife providing birthing services within the FSBC must:

- i. have passed the national certification exam through the North American Registry of Midwives; and
- ii. hold a current, unrestricted state license with the Louisiana State Board of Medical Examiners.

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 41:

#### Chapter 271. Reimbursement

##### §27101. Reimbursement Methodology

A. Effective for dates of service on or after November 20, 2015, a FSBC shall be reimbursed a one-time payment for labor and delivery services at a rate equal to 90 percent



of the average per diem rates of surrounding hospitals providing the same services.

1. Attending physicians shall be reimbursed for birthing services according to the published fee schedule rate for physician services rendered in the Professional Services Program.

2. Certified nurse midwives providing birthing services within a FSBC shall be reimbursed at 80 percent of the published fee schedule rate for physician services rendered in the Professional Services Program.

3. Licensed midwives providing birthing services within a FSBC shall be reimbursed at 75 percent of the published fee schedule rate for physician services in the Professional Services Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:2360 (November 2015).

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.

Kathy H. Kliebert  
Secretary

1511#041

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Home and Community-Based Behavioral Health Services  
Waiver (LAC 50:XXXIII.Chapters 81-85)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health have amended LAC 50:XXXIII.Chapters 81-85 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXXIII. Behavioral Health Services

#### Subpart 9. Home and Community-Based Services Waiver

#### Chapter 81. General Provisions

#### §8101. Introduction

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for behavioral health services rendered to children with mental illness and severe emotional disturbances (SED) by establishing a home and community-based services (HCBS) waiver. This HCBS waiver shall be administered under the authority of the Department of Health and Hospitals, in

collaboration with the coordinated system of care (CSoC) contractor, which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. - C. ...

D. Local wraparound agencies will be the locus of treatment planning for the provision of all services. Wraparound agencies are the care management agencies for the day-to-day operations of the waiver in the parishes they serve. The wraparound agencies shall enter into a contract with the CSoC contractor and are responsible for the treatment planning for the HCBS waiver in their areas, in accordance with 42 CFR 438.208(c).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:366 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2361 (November 2015).

#### §8103. Recipient Qualifications

A. The target population for the Home and Community-Based Behavioral Health Services Waiver program shall be Medicaid recipients who:

1. ...
2. have a qualifying mental health diagnosis;
3. are identified as seriously emotionally disturbed (SED), which applies to youth under the age of 18 or seriously mentally ill (SMI) which applies to youth ages 18-21;

A.4. - B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:366 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2361 (November 2015).

#### Chapter 83. Services

#### §8301. General Provisions

A. - C. ...

1. The agency or individual who has the decision making authority for a child or adolescent in state custody must approve the provision of services to the recipient.

D. Children who are in need of behavioral health services shall be served within the context of the family and not as an isolated unit.

1. Services shall be:
  - a. delivered in a culturally and linguistically competent manner; and
  - b. respectful of the individual receiving services.
2. Services shall be appropriate to children and youth of diverse racial, ethnic, religious, sexual, and gender identities and other cultural and linguistic groups.
3. Services shall also be appropriate for:
  - a. age;
  - b. development; and
  - c. education.
4. Repealed.

E. - G.1.f. ...

2. The family member must become an employee of the provider agency or contract with the CSoC contractor and must meet the same standards as direct support staff that are not related to the individual.

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 38:367 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2361 (November 2015).

### **§8303. Service Plan Development**

A. The wraparound facilitator is responsible for convening the child and family team to develop the initial waiver specific plan of care within 30 days of receipt of referral from the managed care organization.

B. If new to the system, the recipient will be receiving services based upon the preliminary plan of care (POC) while the wraparound process is being completed.

C. ...

D. The wraparound agency will facilitate development and implementation of a transition plan for each recipient beginning at the age of 15 years old, as he/she approaches adulthood.

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, Bureau of Health Services Financing, LR 38:367 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2362 (November 2015).

### **§8305. Covered Services**

A. The following behavioral health services shall be provided in the HCBS waiver program:

1. short-term respite care;
2. independent living/skills building;
3. youth support and training; and
4. parent support and training.
5. - 7. Repealed.

B. Service Limitations

1. - 2. ...
3. Repealed.

C. Service Exclusions. The following services shall be excluded from Medicaid reimbursement:

1. - 2. ...
3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving services; and
4. services rendered in an institution for mental disease.
5. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:367 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2362 (November 2015).

## **Chapter 85. Provider Participation**

### **§8501. Provider Responsibilities**

A. Each provider of home and community-based behavioral health waiver services shall enter into a contract

with the CSoC contractor in order to receive reimbursement for Medicaid covered services.

B. - C. ...

D. Anyone providing behavioral health services must be certified by the department, or its designee, in addition to operating within their scope of practice license. To be certified or recertified, providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes. The provider shall create and maintain documents to substantiate that all requirements are met.

E. Providers shall maintain case records that include, at a minimum:

1. a copy of the plan of care;
2. - 5. ...
6. the goals of 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, Bureau of Health Services Financing, LR 38:368 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2362 (November 2015).

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.

Kathy H. Kliebert  
Secretary

1511#042

## **RULE**

### **Department of Health and Hospitals Bureau of Health Services Financing**

Managed Care for Physical and Basic Behavioral Health  
Behavioral Health Integration  
(LAC 50:I.Chapters 31-37)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:I.Chapters 31-40 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part I. Administration**

#### **Subpart 3. Managed Care for Physical and Basic Behavioral Health**

#### **Chapter 31. General Provisions**

#### **§3101. Introduction**

A. - A.5. ...

B. Effective for dates of service on or after December 1, 2015, the department will operate a managed care delivery system for an expanded array of services to include comprehensive, integrated physical and behavioral health (basic and specialized) services, named the Bayou Health program, utilizing one model, a risk bearing managed care organization (MCO), hereafter referred to as an "MCO".

C. It is the department's intent to procure the provisions of healthcare services statewide to Medicaid enrollees participating in the Bayou Health program from risk bearing MCOs through the competitive bid process.

1. The number of MCOs shall be no more than required to meet the Medicaid enrollee capacity requirements and ensure choice for Medicaid recipients as required by federal statute.

D. - D.1. 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 37:1573 (June 2011), amended LR 41:928 (May 2015), LR 41:2362 (November 2015).

### §3103. Recipient Participation

A. The following Medicaid recipients shall be mandatory participants in coordinated care networks:

1. mandatory enrollees:

a. children up to 19 years of age who are eligible under §1902 and §1931 of the Social Security Act (hereafter referred to as the Act) as poverty-level related groups and optional groups of older children;

b. parents and caretaker relatives who are eligible under §1902 and §1931 of the Act;

c. Children's Health Insurance Program (CHIP) (title XXI) children enrolled in Medicaid expansion program (LaCHIP Phase I, II, III);

d. CHIP (title XXI) prenatal care option (LaCHIP Phase IV) and children enrolled in the separate, stand-alone CHIP program (LaCHIP Phase V);

e. pregnant women whose basis for eligibility is pregnancy, who are only eligible for pregnancy-related services, and whose eligibility extends until 60 days after the pregnancy ends;

f. non-dually eligible aged, blind, and disabled adults over the age of 19;

g. uninsured women under the age of 65 who have been screened through the Centers for Disease Control National Breast and Cervical Cancer Early Detection Program and identified as being in need of treatment for breast and/or cervical cancer, including pre-cancerous conditions and early stage cancer, and are not otherwise eligible for Medicaid;

h. individuals eligible through the Tuberculosis Infected Individual Program;

i. former foster care children eligible under §1902(a)(10)(A)(i)(IX) and (XVII) of the Act; or

i. - v. Repealed.

j. individuals and families who have more income than is allowed for Medicaid eligibility, but who meet the standards for the Regular Medically Needy Program.

2. - 3. Repealed.

B. Mandatory, Voluntary Opt-In Participants

1. Participation in an MCO for the following participants is mandatory for specialized behavioral health and non-emergency medical transportation (NEMT) services only, and is voluntary for physical health services:

a. individuals who receive services under the authority of the following 1915(c) home and community-based services waivers; and

- i. Adult Day Health Care (ADHC) waiver;
- ii. Community Choices Waiver (CCW);
- iii. New Opportunities Waiver (NOW);
- iv. Children's Choice (CC) waiver;
- v. Residential Options Waiver (ROW); and
- vi. Supports Waiver (SW);

b. individuals under the age of 21 who are otherwise eligible for Medicaid, and who are listed on the DHH Office for Citizens with Developmental Disabilities' request for services registry. These children are identified as *Chisholm* class members:

- i. ...
- ii. Repealed.

C. Mandatory, voluntary opt-in populations may initially elect to receive physical health services through Bayou Health at any time.

D. Mandatory, voluntary opt-in populations who elected to receive physical health services through Bayou Health, but returned to legacy Medicaid for physical health services, may return to Bayou Health for physical health services only during the annual open enrollment period.

1. - 1.f. Repealed.

E. Mandatory MCO Populations—Specialized Behavioral Health Services Only

1. The following populations are mandatory enrollees in Bayou Health for specialized behavioral health services only:

a. individuals residing in nursing facilities; and

b. individuals under the age of 21 residing in intermediate care facilities for persons with intellectual disabilities (ICF/ID).

F. Mandatory MCO Populations—Specialized Behavioral Health and NEMT Services Only

1. Individuals who receive both Medicare and Medicaid (e.g. Medicaid dual eligibles) are mandatory enrollees in Bayou Health for specialized behavioral health and non-emergency medical transportation services only.

G. The enrollment broker will ensure that all participants are notified at the time of enrollment that they may request dis-enrollment from the MCO at any time for cause.

H. Participation Exclusion

1. The following Medicaid and/or CHIP recipients are excluded from participation in an MCO and cannot voluntarily enroll in an MCO. Individuals who:

a. reside in an ICF/ID (adults);

b. are partial dual eligibles;

c. receive services through the Program for All-Inclusive Care for the Elderly (PACE);

d. have a limited period of eligibility and participate in either the Spend-Down Medically Needy Program or the Emergency Services Only program;

e. receive services through the Take Charge Plus program; or

f. are participants in the Greater New Orleans Community Health Connection (GNOCHC) Waiver program.

1. The department reserves the right to institute a medical exemption process for certain medically high risk recipients that may warrant the direct care and supervision of a non-primary care specialist on a case by case basis.

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 36:2465 (November 2010), LR 37:680 (February 2011), LR 37:1573 (June 2011), amended LR 40:310 (February 2014), LR 40:1096 (June 2014), LR 40:2258 (November 2014), LR 41:929 (May 2015), LR 41:2363 (November 2015).

### **§3105. Enrollment Process**

A. - C.3. ...

D. Special Open Enrollment Period for Specialized Behavioral Health Integration

1. The department, through its enrollment broker, will provide an opportunity for all populations to be mandatorily enrolled into Bayou Health for specialized behavioral health services. These populations will be given a 60-day choice period to proactively choose an MCO.

2. Each potential MCO member shall receive information and the offer of assistance with making informed choices about the participating MCOs and the availability of choice counseling.

a. - b. Repealed.

3. During the special enrollment period, current members who do not proactively request reassignment will remain with their existing MCO.

4. These new members will be encouraged to make a choice among the participating MCOs. When no choice is made, auto-assignment will be used as outlined in §3105.G.2.a.

E. Special Enrollment Provisions for Mandatory, Opt-In Population Only

1. Mandatory, opt-in populations may request participation in Bayou Health for physical health services at any time. The effective date of enrollment shall be no later than the first day of the second month following the calendar month the request for enrollment is received. Retroactive begin dates are not allowed.

2. The enrollment broker will ensure that all mandatory, opt-in populations are notified at the time of enrollment of their ability to disenroll for physical health at any time. The effective date will be the first day of a month, and no later than the first day of the second month following the calendar month the request for disenrollment is received.

a. - a.i. Repealed.

3. Following an opt-in for physical health and selection of an MCO and subsequent 90-day choice period, these members will be locked into the MCO for 12 months from the effective date of enrollment or until the next annual enrollment period unless they elect to disenroll from physical health.

4. - 5.b. Repealed.

F. Enrollment of Newborns. Newborns of Medicaid eligible mothers, who are enrolled at the time of the newborn's birth, will be automatically enrolled with the mother's MCO, retroactive to the month of the newborn's birth.

1. If there is an administrative delay in enrolling the newborn and costs are incurred during that period, the member shall be held harmless for those costs and the MCO shall pay for these services.

a. - c. Repealed.

2. The MCO and its providers shall be required to:

a. report the birth of a newborn within 48 hours by requesting a Medicaid identification (ID) number through the department's online system for requesting Medicaid ID numbers; and

b. complete and submit any other Medicaid enrollment form required by the department.

2.c. - 3. Repealed.

G. Selection of an MCO

1. As part of the eligibility determination process, Medicaid and LaCHIP applicants, for whom the department determines eligibility, shall receive information and assistance with making informed choices about participating MCOs from the enrollment broker. These individuals will be afforded the opportunity to indicate the plan of their choice on their Medicaid financial application form or in a subsequent contract with the department prior to determination of Medicaid eligibility.

a. - c. Repealed.

2. All new recipients who have made a proactive selection of an MCO shall have that MCO choice transmitted to the enrollment broker immediately upon determination of Medicaid or LaCHIP eligibility. The member will be assigned to the MCO of their choosing unless the plan is otherwise restricted by the department.

a. Recipients who fail to choose an MCO shall be automatically assigned to an MCO by the enrollment broker, and the MCO shall be responsible to assign the member to a primary care provider (PCP) if a PCP is not selected at the time of enrollment into the MCO.

b. For mandatory populations for all covered services as well as mandatory, specialized behavioral health populations, the auto-assignment will automatically enroll members using a hierarchy that takes into account family/household member enrollment, or a round robin method that maximizes preservation of existing specialized behavioral health provider-recipient relationships.

3. All new recipients shall be immediately, automatically assigned to an MCO by the enrollment broker if they did not select an MCO during the financial eligibility determination process.

4. All new recipients will be given 90 days to change plans if they so choose.

5. The following provisions will be applicable for recipients who are mandatory participants.

a. If there are two or more MCOs in a department designated service area in which the recipient resides, they shall select one.

b. Recipients may request to transfer out of the MCO for cause and the effective date of enrollment into the new plan shall be no later than the first day of the second month following the calendar month that the request for disenrollment is filed.

H. Automatic Assignment Process

1. The following participants shall be automatically assigned to an MCO by the enrollment broker in accordance with the department's algorithm/formula and the provisions of §3105.E:

a. mandatory MCO participants, with the exceptions noted in §3105.G.2.a.i;

b. pregnant women with Medicaid eligibility limited to prenatal care, delivery and post-partum services; and

c. other recipients as determined by the department.

2. MCO automatic assignments shall take into consideration factors including, but not limited to:

a. assigning members of family units to the same MCO;

b. existing provider-enrollee relationships;

c. previous MCO-enrollee relationship;

d. MCO capacity; and

e. MCO performance outcome indicators.

3. MCO assignment methodology shall be available to recipients upon request to the enrollment broker.

I. Selection or Automatic Assignment of a Primary Care Provider for Mandatory Populations for All Covered Services

1. The MCO is responsible to develop a PCP automatic assignment methodology in accordance with the department's requirements for the assignment of a PCP to an enrollee who:

a. does not make a PCP selection after being offered a reasonable opportunity by the MCO to select a PCP;

b. selects a PCP within the MCO that has reached their maximum physician/patient ratio; or

c. selects a PCP within the MCO that has restrictions/limitations (e.g. pediatric only practice).

2. The PCP automatically assigned to the member shall be located within geographic access standards, as specified in the contract, of the member's home and/or who best meets the needs of the member. Members for whom an MCO is the secondary payor will not be assigned to a PCP by the MCO, unless the member requests that the MCO do so.

3. If the enrollee does not select an MCO and is automatically assigned to a PCP by the MCO, the MCO shall allow the enrollee to change PCP, at least once, during the first 90 days from the date of assignment to the PCP. Effective the ninety-first day, a member may be locked into the PCP assignment for a period of up to nine months beginning from the original date that he/she was assigned to the MCO.

4. If a member requests to change his/her PCP for cause at any time during the enrollment period, the MCO must agree to grant the request.

J. Lock-In Period

1. Members have 90 days from the initial date of enrollment into an MCO in which they may change the MCO for any reason. Medicaid enrollees may only change MCOs without cause within the initial 90 days of enrollment in an MCO. After the initial 90-day period, Medicaid enrollees/members shall be locked into an MCO until the annual open enrollment period, unless disenrolled under one of the conditions described in this Section, with the exception of the mandatory, opt-in populations, who may disenroll from Bayou Health for physical health and return to legacy Medicaid at any time.

K. Annual Open Enrollment

1. The department will provide an opportunity for all MCO members to retain or select a new MCO during an

annual open enrollment period. Notification will be sent to each MCO member and voluntary members who have opted out of participation in Bayou Health at least 60 days prior to the effective date of the annual open enrollment. Each MCO member shall receive information and the offer of assistance with making informed choices about MCOs in their area and the availability of choice counseling.

2. Members shall have the opportunity to talk with an enrollment broker representative who shall provide additional information to assist in choosing the appropriate MCO. The enrollment broker shall provide the individual with information on each MCO from which they may select.

3. During the open enrollment period, each Medicaid enrollee shall be given the option to either remain in their existing MCO or select a new MCO.

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 37:1574 (June 2011), amended LR 40:310 (February 2014), LR 40:1097 (June 2014), LR 41:929 (May 2015), LR 41:2364 (November 2015).

### **§3107. Disenrollment and Change of Managed Care Organization**

A. - D.1.e.ii. ...

iii. the member's active specialized behavioral health provider ceases to contract with the MCO; or

iv. documented lack of access to providers experienced in dealing with the enrollee's health care needs.

E. Involuntary Disenrollment

1. The MCO may submit an involuntary disenrollment request to the enrollment broker, with proper documentation for fraudulent use of the MCO identification card. In such cases, the MCO shall report the incident to the Bureau of Health Services Financing.

a. - b. Repealed.

2. - 4.f. ...

g. uncooperative or disruptive behavior resulting from his or her special needs;

h - i. ...

F. Department Initiated Disenrollment

1. The department will notify the MCO of the member's disenrollment or change in eligibility status due to the following reasons:

F.1.a. - G.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 37:1575 (June 2011), amended LR 40:311 (February 2014), LR 41:931 (May 2015), LR 41:2365 (November 2015).

### **§3109. Member Rights and Responsibilities**

A. - A.10. ...

11. be furnished health care services in accordance with all other applicable federal regulations.

B. - C.8. ...

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 37:1576 (June 2011), amended LR 40:311 (February 2014), LR 41:930 (May 2015), LR 41:2365 (November 2015).

## **Chapter 35. Managed Care Organization Participation Criteria**

### **§3501. Participation Requirements**

A. - B.5. ...

6. have a network capacity to enroll a minimum of 250,000 Medicaid and LaCHIP eligibles; and

7. - 9. ...

C. An MCO shall ensure the provision of core benefits and services to Medicaid enrollees as specified in the terms of the contract.

D. - I.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 and Hospitals, Bureau of Health Services Financing, LR 37:1583 (June 2011), amended LR 41:933 (May 2015), LR 41:2366 (November 2015).

### **§3503. Managed Care Organization Responsibilities**

A. - P.1. ...

a. The MCO must submit all proposed changes to the member handbooks and/or provider handbooks to the department for review and approval in accordance with the terms of the contract and the department issued guides.

b. ...

Q. The member handbook shall include, but not be limited to:

1. - 3. ...

a. a member's right to disenroll from the MCO, including disenrollment for cause;

3.b. - 4.c. ...

5. the amount, duration, and scope of benefits available under the MCO's contract with the department in sufficient detail to ensure that members have information needed to aid in understanding the benefits to which they are entitled including, but not limited to:

a. specialized behavioral health;

b. information about health education and promotion programs, including chronic care management;

c. the procedures for obtaining benefits, including prior authorization requirements and benefit limits;

d. how members may obtain benefits, including family planning services, from out-of-network providers;

e. how and where to access any benefits that are available under the Louisiana Medicaid state plan, but are not covered under the MCO's contract with the department;

f. information about early and periodic screening, diagnosis and treatment (EPSDT) services;

g. how transportation is provided, including how to obtain emergency and non-emergency medical transportation;

h. the post-stabilization care services rules set forth in 42 CFR 422.113(c);

i. the policy on referrals for specialty care, including specialized behavioral health services and other benefits not furnished by the member's primary care provider;

j. for counseling or referral services that the MCO does not cover because of moral or religious objections, the MCO is required to furnish information on how or where to obtain the service;

k. how to make, change, and cancel medical appointments and the importance of canceling and/or rescheduling rather than being a "no show";

l. the extent to which and how after-hour crisis and emergency services are provided; and

m. information about the MCO's formulary and/or preferred drug list (PDL), including where the member can access the most current information regarding pharmacy benefits;

6. - 7. ...

8. instructions on how to request multi-lingual interpretation and translation services when needed at no cost to the member. This information shall be included in all versions of the handbook in English and Spanish;

9. grievance, appeal, and state fair hearing procedures and time frames as described in 42 CFR §438.400 through §438.424 and the MCO's contract with the department; and

10. information regarding specialized behavioral health services, including but not limited to:

a. a description of covered behavioral health services;

b. where and how to access behavioral health services and behavioral health providers, including emergency or crisis services;

c. general information on the treatment of behavioral health conditions and the principles of:

i. adult, family, child, youth and young adult engagement;

ii. resilience;

iii. strength-based and evidence-based practices;

and

iv. best/proven practices;

d. description of the family/caregiver or legal guardian role in the assessment, treatment, and support for individuals with an emphasis on promoting engagement, resilience, and the strengths of individuals and families; and

e. any limitations involving the provision of information for adult persons who do not want information shared with family members, including age(s) of consent for behavioral health treatment, as per 42 CFR part 2.

R. The provider handbook shall include, but not be limited to:

1. - 4. ...

5. grievance and appeals procedures and process;

6. other policies, procedures, guidelines, or manuals containing pertinent information related to operations and pre-processing claims;

7. description of the MCO;

8. core benefits and services the MCO must provide, including a description of all behavioral health services;

9. information on how to report fraud, waste and abuse; and

10. information on obtaining transportation for members.

S. The provider directory for members shall be developed in four formats:

1. ...

2. an accurate electronic file refreshed weekly of the directory in a format to be specified by the department and used to populate a web-based online directory for members and the public;

3. an accurate electronic file refreshed weekly of the directory for use by the enrollment broker; and

4. a hard copy abbreviated version, upon request by the enrollment broker.

T. - T.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, Bureau of Health Services Financing, LR 37:1583 (June 2011), amended LR 39:92 (January 2013), LR 40:66 (January 2014), LR 41:933 (May 2015), LR 41:2366 (November 2015).

### §3507. Benefits and Services

A. - C.4. ...

D. The following is a summary listing of the core benefits and services that an MCO is required to provide:

1. - 5. ...

6. EPSDT/well child visits, excluding applied behavior analysis (ABA) therapy services and dental services;

7. - 12. ...

13. basic and specialized behavioral health services, excluding Coordinated System of Care services;

14. - 18. ...

19. pharmacy services (outpatient prescription medicines dispensed, with the exception of those who are enrolled in Bayou Health for behavioral health services only, or the contractual responsibility of another Medicaid managed care entity):

a. specialized behavioral health only members will receive pharmacy services through legacy Medicaid;

20. ...

21. personal care services (age 0-20);

22. pediatric day healthcare services;

23. audiology services;

24. ambulatory surgical services;

25. laboratory and radiology services;

26. emergency and surgical dental services;

27. clinic services;

28. pregnancy-related services;

29. pediatric and family nurse practitioner services;

30. licensed mental health professional services, including advanced practice registered nurse (APRN) services;

31. federally qualified health center (FQHC)/rural health clinic (RHC) services;

32. early stage renal disease (ESRD) services;

33. optometry services;

34. podiatry services;

35. rehabilitative services, including crisis stabilization;

36. respiratory services; and

37. section 1915(i) services.

NOTE: ...

E. Transition Provisions

1. In the event a member transitions from an MCO included status to an MCO excluded status or MCO specialized behavioral health only status before being discharged from a hospital and/or rehabilitation facility, the cost of the entire admission will be the responsibility of the MCO. This is only one example and does not represent all situations in which the MCO is responsible for cost of services during a transition.

E.2. - F.1. ...

G. Excluded Services

1. The following services will continue to be reimbursed by the Medicaid Program on a fee-for-service basis, with the exception of dental services which will be reimbursed through a dental benefits prepaid ambulatory health plan under the authority of a 1915(b) waiver. The MCO shall provide any appropriate referral that is medically necessary. The department shall have the right to incorporate these services at a later date if the member capitation rates have been adjusted to incorporate the cost of such service. Excluded services include:

a. ...

b. intermediate care facility services for persons with intellectual disabilities;

c. personal care services (age 21 and over);

d. nursing facility services;

e. individualized education plan services provided by a school district and billed through the intermediate school district, or school-based services funded with certified public expenditures;

f. ABA therapy services;

g. targeted case management services; and

h. all OAAS/OCDD home and community-based §1915(c) waiver services.

i. Repealed.

H. Utilization Management

1. ...

a. The MCO shall submit UM policies and procedures to the department for written approval annually and subsequent to any revisions.

2. - 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 and Hospitals, Bureau of Health Services Financing, LR 37:185 (June 2011), amended LR 39:92 (January 2013), repromulgated LR 39:318 (February 2013), LR 41:936 (May 2015), LR 41:2367 (November 2015).

### §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 plans and the LBHP statewide management organization, supplemental ad hoc data, and actuarial analyses with appropriate adjustments.

2. ...

3. Capitation rates will be set for all MCOs at the beginning of each contract period and will be periodically reviewed and adjusted as deemed necessary by the department.

a. - d. Repealed.

4. Capitation rates for physical and basic behavioral health will be risk-adjusted for the health of Medicaid

enrollees enrolled in the MCO. Capitation rates for specialized behavioral health will not be risk-adjusted.

a. The health risk of the Medicaid enrollees enrolled in the MCO will be measured using a national-recognized risk-assessment model.

b. Utilizing this information, the capitation rates will be adjusted to account for the health risk of the enrollees in each MCO relative to the overall population being measured.

c. The health risk of the members and associated MCO risk scores will be updated periodically to reflect changes in risk over time.

d. The department will provide the MCO with advance notice of any major revision to the risk-adjustment methodology.

5. An MCO shall be reimbursed a one-time supplemental lump sum payment, hereafter referred to as a “maternity kick payment”, for each obstetrical delivery in the amount determined by the department’s actuary.

a. The maternity kick payment is intended to cover the cost of prenatal care, the delivery event, and postpartum care. Payment will be paid to the MCO upon submission of satisfactory evidence of the occurrence of a delivery.

b. Only one maternity kick payment will be made per delivery event. Therefore, multiple births during the same delivery will still result in one maternity kick payment being made.

c. The maternity kick payment will be paid for both live and still births. A maternity kick payment will not be reimbursed for spontaneous or induced abortions.

6. Capitation rates related to pharmacy services will be adjusted to account for pharmacy rebates.

B. - E. ...

F. An MCO shall have a medical loss ratio (MLR) for each MLR reporting year, which shall be a calendar year.

1. Following the end of the MLR reporting year, an MCO shall provide an annual MLR report, in accordance with the financial reporting guide issued by the department.

2. The annual MLR report shall be limited to the MCO’s medical loss ratio for services provided to Medicaid enrollees and payment received under the contract with the department, separate from any other products the MCO may offer in the state of Louisiana.

3. An MLR shall be reported in the aggregate, including all services provided under the contract.

a. The aggregate MLR shall not be less than 85 percent using definitions for health care services, quality initiatives and administrative cost as specified in 45 CFR Part 158. If the aggregate MLR is less than 85 percent, the MCO will be subject to refund the difference, within the timeframe specified, to the department. The portion of any refund due the department that has not been paid, within the timeframe specified, will be subject to interest at the current Federal Reserve Board lending rate or in the amount of 10 percent per annum, whichever is higher.

b. The department may request MLR reporting that distinguishes physical and basic behavioral health from specialized behavioral health. Neither the 85 percent minimum nor the refund applicable to the aggregate shall apply to distinct MLRs reported.

4. The department shall provide for an audit of the MCO’s annual MLR report and make public the results within 60 calendar days of finalization of the audit.

G. - 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), repromulgated LR 39:318 (February 2013), LR 41:937 (May 2015), LR 41:2367 (November 2015).

**Chapter 37. Grievance and Appeal Process**  
**Subchapter A. Member Grievances and Appeals**

**§3705. General Provisions**

A. ...

B. Filing Requirements

1. Authority to File. A member, or a representative of his/her choice, including a network provider acting on behalf of the member and with the member’s consent, may file a grievance and an MCO level appeal. Once the MCO’s appeals process has been exhausted, a member or his/her representative, with the member’s written consent, may request a state fair hearing.

B.1.a. - 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, Bureau of Health Services Financing, LR 37:1590 (June 2011), amended LR 41:939 (May 2015), LR 41:2368 (November 2015).

Kathy H. Kliebert  
Secretary

1511#045

**RULE**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Medicaid Eligibility  
Louisiana Health Insurance Premium Payment Program  
Termination (LAC 50:III.2311)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 50:III.2311 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part III. Eligibility**

**Subpart 3. Eligibility Groups and Factors**

**Chapter 23. Eligibility Groups and Medicaid Programs**

**§3211. Louisiana Health Insurance Premium Payment Program**

Repealed.

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



HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1111 (June 2009), repealed LR 41:2368 (November 2015).

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.

Kathy H. Kliebert  
Secretary

1511#046

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Psychiatric Residential Treatment Facilities  
(LAC 50:XXXIII.Chapters 101-107)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health have amended LAC 50:XXXIII.Chapters 101-107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXXIII. Behavioral Health Services

#### Subpart 11. Psychiatric Residential Treatment Facility Services

#### Chapter 101. General Provisions

##### §10101. Introduction

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for behavioral health services rendered to children and youth in an inpatient psychiatric residential treatment facility (PRTF). These services shall be administered under the authority of the Department of Health and Hospitals, in collaboration with managed care organizations and the coordinated system of care (CSoC) contractor, which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:369 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2369 (November 2015).

##### §10103. Recipient Qualifications

A. Individuals under the age of 21 with an identified mental health or substance use diagnosis, who meet Medicaid eligibility and clinical criteria, shall qualify to receive inpatient psychiatric residential treatment facility 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, Bureau of Health Services Financing, LR 38:369 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2369 (November 2015).

#### Chapter 103. Services

##### §10301. General Provisions

A. - C.1. ...

D. Children who are in need of behavioral health services shall be served within the context of the family and not as an isolated unit.

1. Services shall be:

a. delivered in a culturally and linguistically competent manner; and

b. respectful of the individual receiving services.

2. Services shall be appropriate to children and youth of diverse racial, ethnic, religious, sexual, and gender identities and other cultural and linguistic groups.

3. Services shall also be appropriate for:

a. age;

b. development; and

c. education.

4. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:369 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2369 (November 2015).

##### §10303. Covered Services

A. - B.1. ...

2. group education, including elementary and secondary education; and

3. activities not on the inpatient psychiatric active treatment plan.

4. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:369 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2369 (November 2015).

#### Chapter 105. Provider Participation

##### §10501. Provider Responsibilities

A. Each provider of PRTF services shall enter into a contract with one or more of the MCOs and the CSOC contractor in order to receive reimbursement for Medicaid covered services.

B. - C. ...

D. Anyone providing PRTF services must be certified by the department, or its designee, in addition to operating within their scope of practice license. To be certified or recertified, providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes. The provider shall create and maintain documents to substantiate that all requirements are met.

E. PRTF facilities shall be accredited by an approved accrediting body and maintain such accreditation. Denial, loss of or any negative change in accreditation status must be reported to its contracted MCOs and the CSOC contractor in writing within the time limit established by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:369 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2369 (November 2015).

## **Chapter 107. Reimbursement**

### **§10701. General Provisions**

A. For recipients enrolled with the CSoc contractor, reimbursement for services shall be based upon the established Medicaid fee schedule for behavioral health services. For recipients enrolled in one of the MCOs, the department or its fiscal intermediary shall make monthly capitation payments to the MCOs. The capitation rates paid to the MCOs shall be actuarially sound rates and the MCOs will determine the rates paid to its contracted providers. No payment shall be less than the minimum Medicaid rate. Covered inpatient, physician-directed PRTF services rendered to children and youth shall be reimbursed according to the following criteria:

1. Free-Standing PRTF Facilities. The per diem rate shall include reimbursement for the following services when included on the active treatment plan:

a. - e. ...

2. A free-standing PRTF shall arrange through contract(s) with outside providers to furnish dental, vision, and diagnostic/radiology treatment activities as listed on the treatment plan. The treating provider will be directly reimbursed by the MCO or the CSoc contractor.

3. Hospital-Based PRTF Facilities. A hospital-based PRTF facility shall be reimbursed a per diem rate for covered services. The per diem rate shall also include reimbursement for the following services when included on the active treatment plan:

a. - d. ...

4. Pharmacy and physician services shall be reimbursed when included on the recipient's active plan of care and are components of the Medicaid covered PRTF services. The MCO or the CSoc contractor shall make payments directly to the treating physician. The MCO shall also make payments directly to the pharmacy. These payments shall be excluded from the PRTF's contracted per diem rate for the facility.

B. All in-state Medicaid participating PRTF providers are required to file an annual Medicaid cost report in accordance with Medicare/Medicaid allowable and non-allowable costs.

C. Cost reports must be submitted annually. The due date for filing annual cost reports is the last day of the fifth month following the facility's fiscal year end. Separate cost reports must be filed for the facility's central/home office when costs of that entity are reported on the facility's cost report. If the facility experiences unavoidable difficulties in preparing the cost report by the prescribed due date, a filing extension may be requested. A filing extension must be submitted to Medicaid prior to the cost report due date.

1. Facilities filing a reasonable extension request will be granted an additional 30 days to file their 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 38:370 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2370 (November 2015).

### **§10703. In-State Publicly Owned and Operated Psychiatric Residential Treatment Facilities**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:370 (February 2012), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2370 (November 2015).

### **§10703. Reimbursement Methodology (Reserved)**

### **§10705. In-State Psychiatric Residential Treatment Facilities**

A. In-state publicly and privately owned and operated PRTFs shall be reimbursed for covered PRTF services according to the following provisions. The rate paid by the MCO or the CSoc contractor shall take into consideration the following ownership and service criteria:

1. free-standing PRTFs specializing in sexually-based treatment programs;

2. free-standing PRTFs specializing in substance use treatment programs;

3. free-standing PRTFs specializing in behavioral health treatment programs;

4. hospital-based PRTFs specializing in sexually-based treatment programs;

5. hospital-based PRTFs specializing in substance use treatment programs; and

6. hospital-based PRTFs specializing in behavioral health treatment programs.

B. - 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, LR 38:370 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2370 (November 2015).

### **§10707. Out-of-State Psychiatric Residential Treatment Facilities**

A. Out-of-state PRTFs shall be reimbursed in accordance with the MCO or CSoc contractor's established 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 38:370 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health LR 41:2370 (November 2015).

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.

Kathy H. Kliebert  
Secretary

1511#049

**RULE**

**Department of Health and Hospitals  
Bureau of Health Services Financing  
and  
Office of Behavioral Health**

Therapeutic Group Homes  
Behavioral Health Integration  
(LAC 50:XXXIII.Chapters 121-127)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health have amended LAC 50:XXXIII.Chapters 121-127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXXIII. Behavioral Health Services**

**Subpart 13. Therapeutic Group Homes**

**Chapter 121. General Provisions**

**§12101. Introduction**

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid state plan for behavioral health services rendered to children and youth in a therapeutic group home (TGH). These services shall be administered under the authority of the Department of Health and Hospitals, in collaboration with managed care organizations (MCOs) and the coordinated system of care (CSoC) contractor, which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery. The CSoC contractor shall only manage specialized behavioral health services for children/youth enrolled in the CSoC program.

B. The specialized behavioral health services rendered shall be those services medically necessary to reduce the disability resulting from the illness and to restore the individual to his/her best possible functioning level in the community.

C. A therapeutic group home provides a community-based residential service in a home-like setting of no greater than 10 beds under the supervision and program oversight of a psychiatrist or psychologist.

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 38:427 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2371 (November 2015).

**§12103. Recipient Qualifications**

A. ...

B. Qualifying children and adolescents with an identified mental health or substance use diagnosis shall be eligible to receive behavioral health services rendered by a TGH.

C. - C.3. ...

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 38:427 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2371 (November 2015).

**Chapter 123. Services**

**§12301. General Provisions**

A. - C.1. ...

D. Children who are in need of behavioral health services shall be served within the context of the family and not as an isolated unit.

1. Services shall be:

a. delivered in a culturally and linguistically competent manner; and

b. respectful of the individual receiving services.

2. Services shall be appropriate to children and youth of diverse racial, ethnic, religious, sexual, and gender identities and other cultural and linguistic groups.

3. Services shall also be appropriate for:

a. age;

b. development; and

c. education.

4. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:428 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2371 (November 2015).

**§12303. Covered Services**

A. - B.2. ...

3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving services;

4. - 6. ...

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 38:428 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2371 (November 2015).

**Chapter 125. Provider Participation**

**§12501. Provider Responsibilities**

A. Each provider of TGH services shall enter into a contract with one or more of the MCOs and the CSoC contractor for youth enrolled in the CSoC program in order to receive reimbursement for Medicaid covered services. Providers shall meet the provisions of this Rule, the provider manual, and the appropriate statutes.

B. All services shall be delivered in accordance with federal and state laws and regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department. The provider shall create and maintain documents to substantiate that all requirements are met.

C. Any services that exceed established limitations beyond the initial authorization must be approved for re-authorization prior to service delivery.

D. Anyone providing TGH services must be certified by the department, or its designee, in addition to operating within their scope of practice license.

E. TGH facilities shall be accredited by an approved accrediting body and maintain such accreditation. Denial, loss of or any negative change in accreditation status must be reported to their contracted MCOs and the CSoc contractor for youth enrolled in the CSoc program in writing within the time limit established by the department.

F. Providers of TGH services shall be required to perform screening and assessment services upon admission and within the timeframe established by the department thereafter to track progress and revise the treatment plan to address any lack of progress and to monitor for current medical problems and concomitant substance use issues.

G. A TGH must ensure that youth are receiving appropriate therapeutic care to address assessed needs on the child's treatment plan.

1. Therapeutic care may include treatment by TGH staff, as well as community providers.

2. Treatment provided in the TGH or in the community should incorporate research-based approaches appropriate to the child's needs, whenever possible.

H. For TGH facilities that provide care for sexually deviant behaviors, substance abuse, or dually diagnosed individuals, the facility shall submit documentation to their contracted MCOs and the CSoc contractor for youth enrolled in the CSoc program regarding the appropriateness of the research-based, trauma-informed programming and training, as well as compliance with ASAM level of care being provided.

I. A TGH must incorporate at least one research-based approach pertinent to the sub-populations of TGH clients to be served by the specific program. The specific research-based model to be used should be incorporated into the program description. The research-based models must be approved by OBH.

J. A TGH must provide the minimum amount of active treatment hours established by the department, and performed by qualified staff per week for each child, consistent with each child's plan of care and meeting assessed needs.

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 38:428 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2371 (November 2015).

## **Chapter 127. Reimbursement**

### **§12701. General Provisions**

A. For recipients enrolled with the CSoc contractor, reimbursement for services shall be based upon the established Medicaid fee schedule for specialized behavioral health services. For recipients enrolled in one of the MCOs, the department or its fiscal intermediary shall make monthly capitation payments to the MCOs. The capitation rates paid to the MCOs shall be actuarially sound rates and the MCOs will determine the rates paid to its contracted providers. No payment shall be less than the minimum Medicaid rate.

1. Reimbursement for covered TGH services shall be inclusive of, but not limited to:

a. - d. ...

2. Allowable and non-allowable costs components, as defined by the department.

B. All in-state Medicaid participating TGH providers are required to file an annual Medicaid cost report according to the department's specifications and departmental guides and manuals.

C. Costs reports must be submitted annually. The due date for filing annual cost reports is the last day of the fifth month following the facility's fiscal year end. Separate cost reports must be filed for the facilities central/home office when costs of that entity are reported on the facilities cost report. If the facility experiences unavoidable difficulties in preparing the cost report by the prescribed due date, a filing extension may be requested. A filing extension must be submitted to Medicaid prior to the cost report due date.

1. Facilities filing a reasonable extension request will be granted an additional 30 days to file their cost report.

D. Services provided by psychologists and licensed mental health practitioners shall be billed to the MCO or CSoc contractor separately.

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 38:429 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2372 (November 2015).

### **§12703. In-State Privately Owned and Operated Therapeutic Group Homes**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:429 (February 2012), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR:41:2372 (November 2015).

### **§12703. Reimbursement Methodology (Reserved)**

#### **§12705. In-State Therapeutic Group Homes**

A. In-state publicly and privately owned and operated therapeutic group homes shall be reimbursed according to the MCO or CSoc contractor established rate within their contract.

B. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:429 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR:41:2372 (November 2015).

#### **§12707. Out-of-State Therapeutic Group Homes**

A. Out-of-state therapeutic group homes shall be reimbursed for their services according to the rate established by the MCO or CSoc contractor.

B. Payments to out-of-state TGH facilities that provide covered services shall not be subject to TGH cost reporting requirements.

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 38:429 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 41:2372 (November 2015).

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.

Kathy H. Kliebert  
Secretary

1511#050

**RULE**

**Department of Natural Resources  
Office of Coastal Management**

Fisherman's Gear Compensation Fund  
Assessment of Fees (LAC 43:I.1515)

Under the authority of R.S. 49:214.21-49:214.42 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:450 et seq., the Department of Natural Resources, Office of Coastal Management has amended LAC 43:I.1515 relative to the administration of the Fisherman's Gear Compensation Fund.

The Rule change adjusts the rules for the assessment of fees to reflect the amount specified in the statute. This action is not required by federal regulation.

**Title 43**

**NATURAL RESOURCES**

**Part I. Office of the Secretary**

**Subpart 1. General**

**Chapter 15. Administration of the Fisherman's Gear  
Compensation Fund**

**§1515. Assessment of Fees**

A. - A.1.b. ...

B. The balance in the Fishermen's Gear Compensation Fund is less than \$250,000 and, pursuant to R.S. 56:700.2, (as amended, Act 337 of 1991) an additional fee of \$1,000 will be assessed on each lessee of a state mineral lease and each grantee of a state pipeline right-of-way located in the coastal zone of Louisiana, effective April 20, 1993.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.2.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 5:328 (October 1979), amended LR 9:15 (January 1983), LR 10:546 (July 1984), LR 11:1178 (December 1985), LR 12:602 (September 1986), LR 13:360 (June 1987), LR 15:497 (June 1989), LR 16:320 (April 1990), LR 17:605 (June 1991), LR 18:391 (April 1992), LR 19:501 (April 1993), amended by the Department of Natural Resources, Office of Coastal Management, LR 41:2373 (November 2015).

Keith Lovell  
Assistant Secretary

1511#058

**RULE**

**Department of Natural Resources  
Office of Conservation**

Expedited Permit Processing Program  
(LAC 43:XIX.Chapter 47)

The Department of Natural Resources, Office of Conservation has adopted LAC 43:XIX, Subpart 20, consisting of Sections 4701, 4703, 4705, 4707 and 4709, 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 Rule is made to implement an expedited permit processing program as authorized by Act 362 of the 2015 Legislative Session.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation—General Operations**

**Subpart 20. Expedited Permit Processing Program**

**Chapter 47. Expedited Permit Processing Program**

**§4701. Scope**

A. This Chapter establishes a program to expedite the processing of permits, modifications, orders, licenses, registrations, or variances for Office of Conservation applicants who request such services. Expedited processing of an application for a permit, modification, order, license, registration, or variance is an exercise of the discretion of the commissioner and is subject to the availability of resources needed in order to process the permit, modification, order, license, registration, or variance. Applications approved for expedited processing must meet all regulatory requirements, including required public comment periods and any required review by other agencies.

**B. Eligibility**

1. An application for a permit, modification, order, license, registration, or variance necessary for new construction or continued operations as required by R.S. 30:4 et seq., or regulation for any matter under the jurisdiction of the commissioner of conservation is eligible for expedited processing.

2. Applications for permits, modifications, orders, licenses, registrations, or variances will be considered for expedited processing pursuant to the provisions of this Chapter on a case-by-case basis.

3. A request for expedited processing submitted prior to submittal of the associated application for a permit, modification, order, license, registration, or variance will not be considered.

4. Expedited processing will not be considered for partial review of an application for a permit, modification, order, license, registration, or variance except in accordance with LAC 43:XIX.4703.D.

5. Requests for waivers, exceptions, regulatory interpretations, letters of no further action, review of data and/or work plans, and other miscellaneous letters of response are not eligible for expedited processing.

C. All applications for permits, modifications, orders, licenses, registrations, or variances reviewed under the expedited process are required to meet all applicable

standards and technical requirements of permits, orders, modifications, licenses, registrations, or variances reviewed under the standard application review process.

D. Approval of a request for expedited processing in no way guarantees issuance of a decision on the application/permit by the date requested.

E. The commissioner may deny a request for expedited processing for any reason, including but not limited to the following:

1. the applicant's failure to pay outstanding fees or penalties;
2. compliance history concerns regarding the applicant;
3. an infeasible date requested for application action;
4. an insufficient maximum amount the applicant is willing to pay;
5. insufficient workforce resources available to assign to the task; or
6. a request not in line with office priorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:2373 (November 2015).

#### **§4703. Procedures**

A. Requests for expedited processing shall be submitted using the approved form. The approved form is available on the official website of the Office of Conservation.

B. As soon as practicable after receipt of a request for expedited processing of any permit, modification, order, license, registration, or variance, the commissioner shall issue a decision to grant or deny the expedited processing request.

C. For applications reviewed under expedited processing prior to commencement of the standard review process, the expedited review by Office of Conservation employees will be performed outside of the normal business hours of the applicable Office of Conservation employee(s) performing the expedited review.

D. An applicant may request expedited processing of an application for a permit, modification, order, license, registration, or variance at any time in the application process.

1. For applications for which the expedited process has been requested after the standard review has commenced, the commissioner will make a decision whether to grant the request in accordance with §4701.

2. If the applicant is granted expedited processing for a permit, modification, order, license, registration, or variance after the standard review has commenced, the standard review will continue and expedited processing will proceed in accordance with §4705 and all other requirements of this Chapter for any work performed outside of normal business hours of the applicable Office of Conservation employee performing the expedited review.

E. Requests for Additional Information

1. If at any time during the review process of an application the commissioner determines that additional information or revisions to previously submitted information is necessary, the commissioner shall notify the applicant and require a response from the applicant within a specified time.

2. The applicant shall respond to the request for additional information or revisions within the time specified by the commissioner. Such a response shall contain all information and revisions required by the commissioner.

3. The Office of Conservation may cease expedited processing of an application for a permit, modification, order, license, registration, or variance in accordance with the provisions of this Chapter if the applicant fails to supply the requested additional information or revisions by the specified time or any extension thereof granted by the commissioner at the request of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:2374 (November 2015).

#### **§4705. Fees**

A. In addition to the fees charged pursuant to LAC 43:XIX.703 or successor regulations, a fee shall be charged for each application for a permit, modification, order, license, registration, or variance that is processed on an expedited basis in accordance with this Chapter.

1. A total estimated cost for the expedited processing shall be computed by the commissioner based upon the estimated number of expedited processing hours required to complete the administrative review and/or permitting process multiplied times the hourly overtime salary of the applicable Office of Conservation employees or the hourly rate of applicable contractors, including associated related benefits, plus an administrative fee of twenty percent of the total costs. The overtime salary of the Office of Conservation employees shall be the normal hourly wage times one and one-half.

a. Prior to commencement of the expedited application process, the applicant shall deposit with the Office of Conservation no less than 50 percent of the estimated cost provided to the applicant computed in Paragraph A.1 of this Section. All costs associated with the expedited review, including overtime wages, hourly contractor wages, associated related benefits paid, and the administrative fee, will be deducted from the credited amount as incurred.

b. The required amount to be deposited with the Office of Conservation in order to initiate the expedited application process will be determined on a case-by-case basis considering the type of application, estimated length of review, available resources, compliance history of the applicant, and any other factors considered pertinent by the commissioner.

c. When the applicant's credited deposit reaches less than 10 percent of the total cost estimated in accordance with Paragraph A.1 of this Section, or when otherwise required by the commissioner, the applicant will be notified, invoiced, and shall deposit with the Office of Conservation the remaining estimated required sum to complete the expedited application process.

d. If the applicant's credited deposits are exhausted before the expedited application process is completed, additional funds will be required to continue the review on an expedited basis.

e. If it is determined after an application decision is rendered that the applicant owes funds in addition to that

previously deposited in accordance with this Section, an invoice will be issued, and the applicant will pay the balance due to the Office of Conservation within 20 days.

f. Any funds remaining to the credit of the applicant upon completion of the expedited application process will be refunded within 30 days.

2. In the event that the Office of Conservation ceases processing an application for a permit, modification, order, license, registration, or variance at the request of the applicant or in accordance with LAC 43:XIX.4703.C.3 of this Section, any unused funds on deposit credited to the applicant for expedited processing of the subject application for a permit, modification, order, license, registration, or variance shall be refunded to the applicant within 30 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:2374 (November 2015).

#### **§4707. Invoicing and Failure to Pay**

A. An invoice for no less than 50 percent of the estimated expedited processing fee shall be transmitted to the applicant after the Office of Conservation has made a decision to grant expedited application processing.

1. An invoice for continued expedited application processing shall be transmitted to the applicant when it is determined by the commissioner that additional funds are needed to complete the review and application process.

2. If it is determined that the applicant owes additional funds after a decision on the application has been rendered, an invoice shall be transmitted to the applicant for the outstanding balance owed.

3. Each invoice shall be accompanied by the Office of Conservation's detailed calculation of the amount owed and, if the invoice is for additional funds, by the Office of Conservation's detailed calculation of the expedited processing funds previously spent.

B. If the Office of Conservation has ceased processing the application in accordance with LAC 43:XIX.4703.C.3 or §4705.A.2, and it is found that the applicant owes additional funds in accordance with this Chapter, an invoice for the appropriate expedited processing fee shall be transmitted to the applicant.

C. Failure to pay the expedited processing fee by the due date specified on the invoice constitutes a violation of these regulations and shall subject the applicant to relevant enforcement action under R.S. 30:18 including, but not limited to civil penalty, denial, revocation, or suspension of the permit, modification, order, license, registration, or variance.

D. A permit appeal, whether by the applicant or a third party, shall not stay the requirement to timely pay any fees owed to the Office of Conservation for the expedited application processing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:2375 (November 2015).

#### **§4709. Public Notice and Availability of Records**

A. Requirement to Provide Public Notice. The Office of Conservation shall provide notice of each request for expedited processing of an application for a permit,

modification, order, license, registration, or variance that is processed pursuant to the provisions of this Chapter.

1. Separate notice of expedited processing shall be provided in the same form and manner of public notice as required by other statute or rule for each application type, or if no public notice is required, on the official website of the Office of Conservation.

2. For draft or proposed application actions subject to public notice requirements under other regulations or program requirements, such public notice shall indicate that the draft or proposed permit, modification, order, license, registration, or variance was processed under the expedited processing provisions of this Chapter.

3. The expedited review process shall not shorten any existing time delays for public notice, comment period, hearing, or in any way shorten or impinge upon the public participation process required by statute, regulation, or rule for any application for a permit, modification, order, license, registration, or variance.

#### **B. Content of the Notice**

1. For draft or proposed application actions subject to public notice requirements under other regulations or program requirements, in addition to such requirements, the public notice shall contain a statement that the draft or proposed permit, modification, order, license, registration, or variance was processed under the expedited processing provisions of this Chapter.

2. Any notice placed on the official website of the Office of Conservation shall contain the name of the applicant/permittee, the application number, or when applicable, the well serial number, the parish in which the facility is physically located, the application/permit type, the date the request for expedited processing was received, and the date of the decision to approve or deny the request for expedited processing.

C. Availability of Records. All recorded information concerning a request for expedited processing (completed permit application form, attachments, draft and proposed permits, or any other public document) not classified as confidential by statute or designated confidential in accordance with applicable regulations shall be made available to the public for inspection and copying in accordance with the Public Records Act, R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(P).

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 41:2375 (November 2015).

James H. Welsh  
Commissioner

1511#061

#### **RULE**

#### **Department of Natural Resources Office of Conservation**

Fees (LAC 43:XIX.Chapter 7)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly title 30 of the *Louisiana Revised Statutes* of 1950, as amended, the Office of Conservation has

amended LAC 43:XIX.701, 703, 705, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The action adopts Statewide Order No. 29-R-15/16 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation fee schedule for the collection of application, production, and regulatory fees, and will replace the existing Statewide Order No. 29-R-14/15.

#### **Title 43**

### **NATURAL RESOURCES**

## **Part XIX. Office of Conservation—General Operations**

### **Subpart 2. Statewide Order No. 29-R**

#### **Chapter 7. Fees**

#### **§701. Definitions**

\* \* \*

*Application for Alternate Unit Well*—an administrative application for authority to drill one or more wells within a commissioner's unit to efficiently and economically drain a portion of the oil and gas within the pool underlying the unit which cannot be efficiently and economically drained by any existing well as authorized by the commissioner, R.S. 30:9 and 10 and LAC 43:XIX.103.

\* \* \*

*Application for Commercial Facility Exclusive of an Associated Well*—a permit application to construct and operate a commercial treatment or disposal facility exclusive of utilizing a UIC permitted well as defined by LAC 43:XIX.523 and 525.

*Application for Critical Date Order*—an application to request an expedited commissioner's order due to specific circumstances, such as lease expirations or rig standby rates that present a significant financial burden on the operator or other interested parties, if a commissioner's order is not issued by the requested date.

*Application for Downhole Combinations*—an application for authority to complete a well so as to permit simultaneous production from two or more pools through a single wellbore or tubing string R.S. 30:4, LAC 43:XIX.1301 et seq.

*Application for Exception to 29-B (Engineering Divisions)*—any application or request to waive or suspend the provisions of Statewide Order 29-B.

*Application for Exception to 29-B (Injection and Mining Division)*—any application or request for an exception to the rules and regulations for disposal of E and P waste or enhanced oil recovery by class II injection as authorized by Statewide Order 29-B (LAC 43:XIX.319.A et seq.), or successor regulations.

*Application for Exception to 29-E*—any application or request to waive or suspend the provisions of Statewide Order 29-E.

\* \* \*

*Application for Pilot Projects*—an application for authority to conduct a six month enhanced recovery project for the purpose of testing the method. R.S. 30:4, 5, and 6 and LAC 43:XIX.407

\* \* \*

*Application for Selective Completion*—an application for authority to allow the completion of any well utilizing downhole equipment so as to permit production to be changed from one separate pool to another without the necessity of a workover or additional perforating as

authorized by Statewide Order No. 29-C-4 (LAC 43:XIX.1301)

*Application for Severance Tax Relief*—an application to allow the suspension of all severance taxes due on production from a qualifying well as authorized by R.S. 47:633 et seq., and/or successor regulations.

\* \* \*

*Application for Waiver of Production Test*—an application to request a waiver of the Office of Conservation policy of requiring a production test on a well in the subject field prior to approving a pre-drilled unit in that field.

*Application for Well Product Reclassification*—an application for authority to change the primary product of a unit based on administrative authority granted by commissioner's order and evidence of change in producing characteristics of said unit, R.S. 30:4.

*Application for Work Permit (Injection or Other)*—an application to perform work activities as outlined on injection well work permit Form UIC-17 on a well under the jurisdiction of the Underground Injection Control program of the Injection and Mining Division/Office of Conservation as authorized by Statewide Order 29-N-1 (LAC 43:XVII.109 et seq.), 29-N-2 (LAC 43:XVII.209 et seq.), 29-M (LAC 43:XVII.309 and 319 et seq.), 29-M-2 (LAC 43:XVII.3121 et seq.), 29-M-3 (LAC 43:XVII.3309 et seq.), 29-B (LAC 43:XIX.Chapter 4) or successor regulations.

*Application for Work Permit (Minerals)*—an application to perform certain operations on an existing well, as required in LAC 43:XIX.105.

\* \* \*

*Application to Amend Permit to Drill (Minerals) (\$126 amount)*—an application to alter, amend, or change a permit to drill for minerals after its initial issuance as authorized by R.S. 30:28, excluding the amendments described in application to amend permit to drill (minerals) (lease to unit, unit to lease, unit to unit, stripper, incapable, other). Additionally, application to amend operator (transfer of ownership, including any other amendment action requested at that time) for any orphaned well or any multiply-completed well which has reverted to a single completion shall not be subject to the application fees provided herein.

*Application to Amend Permit to Drill (Minerals) (lease to unit, unit to lease, unit to unit, stripper, incapable, other) (\$50 amount)*—an application to alter, amend, or change a permit to drill for minerals after its initial issuance as authorized by R.S. 30:28 for any lease to unit, unit to unit, and unit to lease changes; and, application to amend operator (transfer of ownership, including any other amendment action requested at that time) for any stripper crude oil well or incapable gas well so certified by the Department of Revenue.

\* \* \*

*Application/Request for Commercial Facility Reuse*—application/request to determine if E and P material which has been treated physically, chemically, or biologically so that the material is physically, chemically or biologically distinct from the original material and meets the criteria in LAC 43:XIX.565.F.

\* \* \*

*Applications/Requests for Reuse Not Associated with Commercial Facility*—application/request to determine if E and P material has been treated physically, chemically, or



biologically so that the material is physically, chemically or biologically distinct from the original material and meets the criteria in LAC 43:XIX.565.F.

*Authorization for After Hours Disposal of E and P Waste*—a permit granting approval for after-hours receipt of E and P waste by a commercial facility or transfer station when an emergency condition exists which may endanger public health or safety or the environment and to minimize the potential for the same as granted under LAC 43:XIX.537.B.

\* \* \*

*BOE*—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 28.0.

*Capable Gas*—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2014.

*Capable Oil*—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2014.

\* \* \*

*Class I Well Fee*—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on class I wells in an amount not to exceed \$1,000,000 for fiscal year 2015-2016 and thereafter.

*Class II CO2 EOR Project (AOR Review and Updates)*—an enhanced recovery project permitted by the Office of Conservation injecting carbon dioxide (CO2) down the wellbore of permitted class II injection wells under the authority of the Office of Conservation/Injection and Mining Division in conformance with Statewide Order 29-B (LAC 43:XIX.411.C et seq.) or successor regulations.

*Class II Hydrocarbon Storage and E and P Waste Cavern Compliance Review Fee*—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on each class II hydrocarbon storage and E and P waste cavern in the amount of \$2,000 for fiscal year 2015-2016 and thereafter for the compliance review required by Statewide Order 29-M (LAC 43:XIX.309.K et seq.) or successor regulations.

\* \* \*

*Class III Solution Mining Cavern Compliance Review Fee*—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on each class III solution mining cavern in the amount of \$2,000 for fiscal year 2015-2016 and thereafter for the compliance review required by Statewide Order 29-M-3 (LAC 43:XVII.3309.K et seq.) or successor regulations.

\* \* \*

*Class V Permit Waiver/Exemption Request*—a request for a waiver or exemption from the permitting requirements of class V injection wells for certain remediation wells/projects of short duration where remediation is accomplished by one time injection into shallow wells where casing is not installed as authorized by Statewide Order 29-N-1 (LAC 43:XVII.111 et seq.) or successor regulations.

*Commercial Facility Annual Closure Plan and Cost Estimate Review*—closure bond or letter of credit amounts for permitted E and P waste commercial facilities and transfer stations will be reviewed each year as required by LAC 43:XIX.513.C and 567.B.

*Community Saltwater Disposal System Initial Notification*—an application to designate a class II SWD for injection of produced saltwater from multiple operators by the submittal of the community saltwater disposal system application Form UIC-13 and submittal of an acceptable operating agreement specifying cost sharing of operating expenses as authorized by Statewide Order 29-B (LAC 43:XIX.317 et seq.) or successor regulations.

*E and P Waste Determination*—a determination as to whether a material meets the definition of exploration and production waste as defined in LAC 43:XIX.501

\*\*\*

*Operator Annual Registration*—annual application form filed by entity with whom the Office of Conservation has jurisdiction to obtain/maintain organizational ID.

*Production Fee*—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by oil and gas operators on capable oil wells and capable gas wells based on a tiered system to establish parity on a dollar amount between the wells. The tiered system shall be established annually by rule on capable oil and capable gas production, including nonexempt wells reporting zero production during the annual base period, in an amount not to exceed \$3,675,000 for fiscal year 2015-2016 and thereafter.

*Production Well*—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2014.

*Regulatory Fee*—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on class II wells, class III wells, storage wells, type A facilities, and type B facilities in an amount not to exceed \$2,187,500 for fiscal year 2015-2016 and thereafter. No fee shall be imposed on a class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47:633 by the Severance Tax Section of the Department of Revenue as of December 31, 2014, and located in the same field as such class II well. operators of record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

*Request to Transport E and P Waste to Commercial Facilities or Transfer Stations*—other oil and gas industry companies (i.e. companies that do not possess a current Office of Conservation producer/operator code or a current offshore/out-of-state waste generator code) must obtain authorization by submitting a completed (acceptable) Form

UIC-23 to transport E and P waste to commercial facilities or transfer stations as required by LAC XIX.545.B.

*Requests to Modify Well Permit (Injection)*—requests made by operators of record to change the operating conditions of their injection wells as authorized by Statewide Order 29-N-1 (LAC 43:XVII.113 et seq.), 29-N-2(LAC 43:XVII.213 et seq.), 29-M (LAC 43:XVII.311 et seq.), 29-M-2 (LAC 43:XVII.3111 et seq.), 29-M-3 (LAC 43:XVII.3311 et seq.) , 29-B (LAC 43:XIX.Chapter 4) or successor regulations.

*Transfer Stations Regulatory Fee (E and P Waste)*—a regulatory fee established for all permitted E and P waste transfer stations as defined by LAC 43:XIX.501.

\*\*\*

*Witnessed Verification of Mechanical Integrity Tests (MIT)*—a mechanical integrity test (MIT) performed on a permitted injection well that is witnessed by a conservation enforcement agent or other designated employee of the Office of Conservation as authorized by Statewide Order 29-N-1 (LAC 43:XVII.109 et seq.), 29-N-2 (LAC 43:XVII.209 et seq.), 29-M (LAC 43:XVII.327 et seq.), 29-M-2 (LAC 43:XVII.3129 et seq.), 29-M-3 (LAC 43:XVII.3327 et seq.), 29-B (LAC 43:XIX.Chapter 4 et seq.) or successor regulations.

*Work Permit to Plug and Abandon a Well Utilized for NORM Disposal*—an application to plug and abandon a well which is utilized for downhole disposal of NORM solids and/or NORM contaminated tubing/equipment by the submittal of Form UIC-30, work permit to perform a NORM plug and abandonment in conformance with Statewide Order 29-B (LAC 43:XIX.137 et seq.) or successor regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:2461 (November 2007), LR 34:2404 (November 2008), LR 35:2463 (November 2009), LR 36:2567 (November 2010), LR 37:3271 (November 2011), LR 38:2930 (November 2012), LR 39:3099 (November 2013), 40:2266 (November 2014), LR 41:2376 (November 2015).

**§703. Fee Schedule for Fiscal Year 2015-2016**

**A. Application Fees**

Application Fees	Amount
Application for Alternate Unit Well	\$504
***	
Application to Amend Permit to Drill - Minerals (LUW, Stripper, Incapable, Other)	\$50
***	
Application for Commercial Facility Exclusive of an Associated Well	\$3,000
Application for Commercial Facility Reuse Material	\$300
Application for Commercial Facility Transfer Station	\$1,500
***	
Application for Critical Date Order	\$504
Application for Downhole Combinations	\$504

Application Fees	Amount
Application for Exception to 29-E	\$504
Application for Exception to 29-B	\$504
***	
Application for Pilot Projects	\$504
***	
Application for Reuse Material not Associated with a Commercial Facility	\$400
Application for Selective Completion	\$504
Application for Severance Tax Relief	\$504
***	
Application for Waiver of Production Test	\$504
Application for Well Product Reclassification	\$504
Application for Work Permit - Injection or Other	\$125
Application for Work Permit - Minerals	\$75
***	
Authorization for After Hours Disposal of E and P Waste	\$150
Class II Hydrocarbon Storage and E and P Waste Cavern Annual Compliance Review Fee	\$2,000
Class II CO2 EOR Project (AOR Review and Updates)	\$5,000
Class III Solution Mining Cavern Annual Compliance Review Fee	\$2,000
Class V Permit Waiver/Exemption Request	\$250
Commercial Facility Annual Closure Plan and Cost Estimate Review	\$300
Community Saltwater Disposal System Initial Notification	\$125
E and P Waste Determination	\$300
Operator Registration	\$105
Requests to Modify Well Permit - change MASIP, work prognosis, etc.	\$300
Request to Transport E and P Waste to Commercial Facilities or Transfer Stations	\$150
Transfer Stations Regulatory Fee (E and P Waste) - Annual	\$2,500
Witnessed Verification of MIT Tests	\$250
Work permit to Plug and Abandon a Well utilized for NORM disposal	\$500

**B. Regulatory Fees**

1. Operators of each permitted type A facility are required to pay an annual regulatory fee of \$15,742 per facility.

2. Operators of each permitted type B Facility are required to pay an annual regulatory fee of \$7,873 per facility.

3. Operators of record of permitted non-commercial class II injection/disposal wells are required to pay \$1,571 per well.

4. Operators of record of permitted class III and storage wells are required to pay \$1,571 per well.

C. Class I Well Fees. Operators of permitted class I wells are required to pay \$29,850 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers.

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	26
Tier 2	1 - 5,000	151
Tier 3	5,001 - 15,000	432
Tier 4	15,001 - 30,000	718
Tier 5	30,001 - 60,000	1,131
Tier 6	60,001 - 110,000	1,575
Tier 7	110,001 - 9,999,999	1,965

E. Exceptions

1. Operators of record of each class I injection/disposal well and each type A and B commercial facility and transfer station that is permitted, but has not yet been constructed, are required to pay an annual fee of 50 percent of the applicable fee for each well or facility.

2. - 3. ...

4. Operators of record of each inactive transfer station which have voluntarily ceased the receipt and transfer of E and P waste and are actively implementing an Office of Conservation approved closure plan are required to pay an annual Regulatory Fee of 50 percent of the annual fee for each applicable facility.

5. Operators of record of each inactive transfer station which have voluntarily ceased the receipt and transfer of E and P waste and are actively implementing an Office of Conservation approved closure plan are required to pay an annual regulatory fee of 50 percent of the annual fee for each applicable facility.

F. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2461 (November 2007), LR 34:2405 (November 2008), LR 35:2463 (November 2009), LR 36:2569 (November 2010), LR 37:3273 (November 2011), LR 38:2931 (November 2012), LR 39:3099 (November 2013), LR 40:2267 (November 2014), LR 41:2378 (November 2015).

**§705. Failure to Comply**

A. Operators of operations and activities defined in §701 are required to timely comply with this order. Failure to comply by the due date of any required fee payment will subject the operator to civil penalties provided in title 30 of the *Louisiana Revised Statutes* of 1950, including but not limited to R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2501 (November 2003), LR 34:2406 (November 2008), LR 36:2569 (November 2010), LR 37:3274 (November 2011), LR 38:2931 (November 2012), LR 39:3100 (November 2013), LR 40:2267 (November 2014), LR 41:2379 (November 2015).

**§707. Severability and Effective Date**

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-15/16 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This order (Statewide Order No. 29-R-15/16) supersedes Statewide Order No. 29-R-15/16 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34:2406 (November 2008), LR 35:2464 (November 2009), LR 36:2570 (November 2010), LR 37:3274 (November 2011), LR 38:2931 (November 2012), LR 39:3100 (November 2013), LR 40:2267 (November 2014), LR 41:2379 (November 2015).

James H. Welsh  
Commissioner

1511#062

**RULE**

**Department of Natural Resources  
Office of Conservation**

**Thirty-Day Work History Report (LAC 43:XIX.118)**

The Department of Natural Resources, Office of Conservation has amended LAC 43:XIX.Subpart 1 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 Rule is made to extend the time frame for submitting the work history report following a hydraulic fracture stimulation operation from 20 days to 30 days.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation—General Operations  
Subpart 1. Statewide Order No. 29-B**

**Chapter 1. General Provisions**

**§118. Hydraulic Fracture Stimulation Operations**

A. - B. ...

C.1. No later than 30 days following completion of the hydraulic fracture stimulation operation, the operator shall, for purposes of disclosure, report the following information on or with the well history and work resume report (Form WH) in accordance with the requirements of LAC 43:XIX.105:

1.a. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:3064 (October 2011), amended LR 37:3064, LR 39:1824 (July 2013), LR 41:2379 (November 2015).

James H. Welsh  
Commissioner

1511#060

**RULE**

**Department of Public Safety and Corrections  
Office of State Fire Marshal**

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) hereby adopted and amended the adopted construction codes by adding and amending the current solar provisions in the *International Building Code*, *International Residential Code* and the *National Electrical Code*. This provides a greater level of safety for the first responders using proven methods for firefighting and new technology in the electric codes.

There are additional changes to reformat the codification of LAC 55:VI.Chapter 3. The formatting changes do not alter the substance of the rules. The changes are intended to make the rules easier to read.

**Title 17**

**CONSTRUCTION**

**Part I. Uniform Construction Code**

**Chapter 1. Adoption of the Louisiana State Uniform Construction Code**

**(Formerly LAC 55:VI.Chapter 3)**

**§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 January 1, 2015 the following is hereby adopted as an amendment to the Louisiana State Uniform Construction Code. (The “Louisiana State plumbing code” shall replace all references to the “International Plumbing Code” in the following codes.)

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), DPSC, Office of State Fire Marshall, LR 41:2380 (November 2015).

**§103. International Building Code (Formerly LAC 55:VI.301.A.1)**

A. *International Building Code* (IBC), 2012 Edition, not including Chapter 1, Administration, Chapter 11, Accessibility, Chapter 27, Electrical and Chapter 29, Plumbing Systems. 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*.

1. Delete Chapter 4, Section 403.5.5, Luminous Egress Path Markings.

2. Amend Chapter 9 to adopt and amend 2012 *International Building Code*, Section 903.2.1.2, Group A-2 (2.). The fire area has an occupant load of 300 or more.

3. Amend chapter 10, Section 1018.5, Air Movement in corridors. Corridors that require protection under Table 1018.1—Corridor Fire-Resistance Rating, shall not serve as supply, return, exhaust, relief or ventilation air ducts.

4. Amend Chapter 10 Section 1026.5.

a. Exception: 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.

5. Amend Section 1505.1, General. Roof assemblies shall be divided into the classes defined below. Class A, B and C roof assemblies and roof coverings required to be listed by this section shall be tested in accordance with ASTM E 108 or UL 790. In addition, fire-retardant-treated wood roof coverings shall be tested in accordance with ASTM D 2898. The minimum roof coverings installed on buildings shall comply with Table 1505.1 based on the type of construction of the building.

a. Exception: skylights and sloped glazing that comply with Chapter 24 or Section 2610.

6. Table 1505.1a, b

Minimum Roof Covering Classification for Types of Construction								
IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
B	B	B	C <sup>c</sup>	B	C <sup>c</sup>	B	B	C <sup>c</sup>

For SI: 1 foot = 304.8 mm, 1 square foot = 0.0929 m<sup>2</sup>.

a. Unless otherwise required in accordance with the *International Wildland—Urban Interface Code* or due to the location of the building within a fire district in accordance with Appendix D.

b. Nonclassified roof coverings shall be permitted on buildings of Group R-3 and Group U occupancies, where there is a minimum fire-separation distance of 6 feet measured from the leading edge of the roof.

c. Buildings that are not more than two stories above grade plane and having not more than 6,000 square feet of projected roof area and where there is a minimum 10-foot fire-separation distance from the leading edge of the roof to a lot line on all sides of the building, except for street fronts or public ways, shall be permitted to have roofs of No. 1 cedar or redwood shakes and No. 1 shingles constructed in accordance with Section 1505.7.

7. Amend Section 1509.7, Photovoltaic panels and modules. Rooftop mounted photovoltaic panels and modules shall be designed in accordance with this section.

8. Amend Section 1509.7.1, Wind resistance. Rooftop-mounted photovoltaic panels and modules shall be designed for component and cladding wind loads in accordance with Chapter 16 using an effective wind area based on the dimensions of a single unit frame.

a. Amend Section 1509.7.2, Fire classification. Rooftop-mounted photovoltaic panels and modules shall have the fire classification in accordance with Section 1505.9.

9. Amend Section 1509.7.3, Installation. Rooftop-mounted photovoltaic panels and modules shall be installed in accordance with the manufacturer's instructions.

10. Amend Section 1509.7.4, Photovoltaic panels and modules. Rooftop-mounted photovoltaic panels and modules shall be listed and labeled in accordance with UL 1703 and shall be installed in accordance with the manufacturer's instructions.

11. Add 1509.7.4.1, Building-integrated photovoltaic products. Building-integrated photovoltaic products installed as the roof covering shall be tested, listed and labeled for fire classification in accordance with Section 1505.1.

12. Add Section 1505.9.7.4.2, Photovoltaic panels and modules. Rooftop mounted photovoltaic panel systems shall be tested, listed and identified with a fire classification in accordance with UL 1703. The fire classification shall comply with Table 1505.1 based on the type of construction of the building.

13. Amend Section 1511.1, Photovoltaic panels and modules. Photovoltaic panels and modules installed upon a roof or as an integral part of a roof assembly shall comply with the requirements of this code and the *International Fire Code*.

14. Add Section 1511.2, Solar photovoltaic power systems. Solar photovoltaic power systems shall be installed in accordance with Sections 1511.2 through 1511.1.1., the *International Building Code* or *International Residential Code*, and NFPA 70.

15. Add Section 1511.2.1, Access and pathways. Roof access, pathways, and spacing requirements shall be provided in accordance with Sections 1511.2.1 through 1511.2.1.1

1. Exceptions:

i. detached, nonhabitable Group U structures including, but not limited to, parking shade structures, carports, solar trellises and similar structures;

ii. roof access, pathways and spacing requirements need not be provided where the fire chief has determined that rooftop operations will not be employed.

16. Add Section 1511.2.1.1, Roof access points. Roof access points shall be located in areas that do not require the placement of ground ladders over openings such as windows or doors, and located at strong points of building construction in locations where the access point does not conflict with overhead obstructions such as tree limbs, wires or signs.

17. Add Section 1511.3, Solar photovoltaic systems for Group R-3 buildings. Solar photovoltaic systems for Group R-3 buildings shall comply with Sections 1511.3 through 1511.3.5.

a. Exception:

i. these requirements shall not apply to structures designed and constructed in accordance with the *International Residential Code*.

18. Add Section 1511.3.1, Size of solar photovoltaic array. Each photovoltaic array shall be limited to 150 feet

(45 720 mm) by 150 feet (45 720 mm). Multiple arrays shall be separated by a 3-foot-wide (914 mm) clear access pathway.

19. Add Section 1511.3.2, Hip roof layouts. Panels and modules installed on Group R-3 buildings with hip roof layouts shall be located in a manner that provides a 3-foot-wide (914 mm) clear access pathway from the eave to the ridge on each roof slope where panels and modules are located. The access pathway shall be at a location on the building capable of supporting the fire fighters accessing the roof.

a. Exception:

i. these requirements shall not apply to roofs with slopes of two units vertical in 12 units horizontal (2:12) or less.

20. Add Section 1511.3.3, Single-ridge roofs. Panels and modules installed on Group R-3 buildings with a single ridge shall be located in a manner that provides two, 3-foot-wide (914 mm) access pathways from the eave to the ridge on each roof slope where panels and modules are located.

a. Exception:

i. this requirement shall not apply to roofs with slopes of two units vertical in 12 units horizontal (2:12) or less.

21. Add Section 1511.3.4, Roofs with hips and valleys. Panels and modules installed on Group R-3 buildings with roof hips and valleys shall not be located closer than 18 inches (457 mm) to a hip or a valley where panels/ modules are to be placed on both sides of a hip or valley. Where panels are to be located on only one side of a hip or valley that is of equal length, the panels shall be permitted to be placed directly adjacent to the hip or valley.

a. Exception:

i. these requirements shall not apply to roofs with slopes of two units vertical in 12 units horizontal (2:12) or less.

22. Add Section 1511.3.5, Allowance for smoke ventilation operations. Panels and modules installed on Group R-3 buildings shall be located not less than 3 feet (914 mm) from the ridge in order to allow for fire department smoke ventilation operations.

a. Exception:

i. panels and modules shall be permitted to be located up to the roof ridge where an alternative ventilation method *approved* by the fire chief has been provided or where the fire chief has determined vertical ventilation techniques will not be employed.

23. Add Section 1511.4, Other than Group R-3 buildings. Access to systems for buildings, other than those containing Group R-3 occupancies, shall be provided in accordance with Sections 1511.4.1 through 1511.4.2.1

a. Exception:

i. where it is determined by the fire code official that the roof configuration is similar to that of a Group R-3 occupancy, the residential access and ventilation requirements in Sections 1511.3.1 through 1511.3.5 shall be permitted to be used.

24. Add Section 1511.4.1, Access. There shall be a minimum 6-foot-wide (1829 mm) clear perimeter around the edges of the roof.

- a. Exception:
  - i. where either axis of the building is 250 feet (76 200 mm) or less, the clear perimeter around the edges of the roof shall be permitted to be reduced to a minimum 4 foot wide (1290 mm).

25. Add Section 1511.4.2, Pathways. The solar installation shall be designed to provide designated pathways. The pathways shall meet the following requirements:

- a. The pathway shall be over areas capable of supporting fire fighters accessing the roof.
- b. The centerline axis pathways shall be provided in both axes of the roof. Centerline axis pathways shall run where the roof structure is capable of supporting fire fighters accessing the roof.
- c. Pathways shall be a straight line not less than 4 feet (1290 mm) clear to roof standpipes or ventilation hatches.
- d. Pathways shall provide not less than 4 feet (1290 mm) clear around roof access hatch with not less than one singular pathway not less than 4 feet (1290 mm) clear to a parapet or roof edge.

26. Add Section 1511.4.2.1, Smoke ventilation. The solar installation shall be designed to meet the following requirements:

- a. Arrays shall be not greater than 150 feet (45 720 mm) by 150 feet (45 720 mm) in distance in either axis in order to create opportunities for fire department smoke ventilation operations.
- b. Smoke ventilation options between array sections shall be one of the following:
  - i. a pathway 8 feet (2438 mm) or greater in width;
  - ii. a 4-foot (1290 mm) or greater in width pathway and bordering roof skylights or gravity-operated dropout smoke and heat vents on not less than one side;
  - iii. a 4-foot (1290 mm) or greater in width pathway and bordering all sides of nongravity-operated dropout smoke and heat vents;
  - iv. a 4-foot (1290 mm) or greater in width pathway and bordering 4-foot by 8-foot (1290 mm by 2438 mm) "venting cutouts" every 20 feet (6096 mm) on alternating sides of the pathway.

27. Amend Chapter 16 Section 1603.1, General. Construction documents shall show the size, section and relative locations of structural members with floor levels, column centers and offsets dimensioned. The design loads and other information pertinent to the structural design required by Sections 1603.1.1 through 1603.1.9 shall be indicated on the construction documents.

- a. Exception: Construction documents for buildings constructed in accordance with the conventional light-frame construction provisions of Section 2308 shall indicate the following structural design information:
  - i. floor and roof live loads;
  - ii. ground snow load,  $P_g$ ;
  - iii. basic wind speed (3-second gust), miles per hour (mph) (km/hr) and wind exposure;
  - iv. seismic design category and site class., unless excepted by Sections 1603.1.5 or 1613.1;
  - v. flood design data, if located in flood hazard areas established in Section 1612.3;

- vi. design load-bearing values of soils.

28. Amend Chapter 16 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;
- g. analysis procedure used;
- h. exceptions:
  - i. construction documents that are not required to be prepared by a registered design professional;
  - ii. construction documents for structures that are assigned to Seismic Design Category A.

29. Amend Chapter 16, 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.

- c. Exceptions:
  - i. 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 precut 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).
  - ii. 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;
  - iii. 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.

30. Chapter 16 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.

a. Exceptions:

i. detached one- and two-family dwellings, assigned to Seismic Design Category A, B or C, or located where the mapped short-period spectral response acceleration, *SS*, is less than 0.4 g;

ii. the seismic-force-resisting system of wood-frame buildings that conform to the provisions of Section 2308 are not required to be analyzed as specified in this Section;

iii. agricultural storage structures intended only for incidental human occupancy;

iv. structures that require special consideration of their response characteristics and environment that are not addressed by this code or ASCE 7 and for which other regulations provide seismic criteria, such as vehicular bridges, electrical transmission towers, hydraulic structures, buried utility lines and their appurtenances and nuclear reactors;

v. structures that are not required to have a registered design professional in responsible charge;

vi. structures that are assigned to Seismic Design Category A.

b. Amend Chapter 16, 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.

31. Amend chapter 23, section 2308.2, exceptions 4. Wind speeds shall not exceed 110 miles per hour (mph)(48.4m/s)(3 second gust) for buildings in exposure category B.

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), DPSC, Office of State Fire Marshal, LR 41:2380 (November 2015).

## **§105. *International Existing Building Code* (Formerly LAC 55:VI.301.A.2)**

A. *International Existing Building Code* (IEBC), 2012 Edition, not including Chapter 1, Administration, and the standards referenced in that code for regulation of construction within this state.

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), DPSC, Office of State Fire Marshal, LR 41:2383 (November 2015).

## **§107. *International Residential Code* (Formerly LAC 55:VI.301.A.3.a)**

A.1. *International Residential Code*, 2012 Edition, not including Parts I-Administrative, VII-Plumbing 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. Appendix G, Swimming Pools, Spas and Hot Tubs is adopted and at the option of a parish, municipality, or regional planning commission, Section AG105, Barrier Requirements may be altered. Appendix J, Existing Buildings and Structures, may be adopted and enforced only at the option of a parish, municipality, or regional planning commission.

a. Adopt and amend 2012 IRC Section R301.2.1., Part IV-Energy Conservation of the latest edition of the *International Residential Code* is hereby amended to require that supply and return ducts be insulated to a minimum of R-6. Furthermore, 2012 IRC R301.2.1.1 (Design Criteria) shall be amended as follows and shall only apply to the *International Residential Code*:

i. Delete Figure R301.2(4)B and replace all references to this figure with Figure R301.2(4)A.

b. Amend 2012 IRC Section R301.2.1.1 (Design Criteria); R301.2.1.1, Wind limitations and wind design required. The wind provisions of this code shall not apply to the design of buildings where the basic wind speed from Figure R301.2(4)A equals or exceeds 110 miles per hour (49 m/s).

i. Exceptions:

(a) for concrete construction, the wind provisions of this code shall apply in accordance with the limitations of Sections R404 and R611;

(b) for structural insulated panels, the wind provisions of this code shall apply in accordance with the limitations of Section R613.

ii. In regions where the basic wind speed shown on Figure R301.2(4)A equals or exceeds 110 miles per hour (49 m/s), the design of buildings for wind loads shall be in accordance with one or more of the following methods:

(a). AF and PA Wood Frame Construction Manual (WFCM);

(b). ICC Standard for Residential Construction in High-Wind Regions (ICC 600);

(c). ASCE Minimum Design Loads for Buildings and Other Structures (ASCE 7);

(d). AISI Standard for Cold-Formed Steel Framing—Prescriptive Method for One- and Two-Family Dwellings (AISI S230);

(e). International Building Code; or

(f). SSTD 10-99 Hurricane Resistant Construction Standard.

iii. The elements of design not addressed by the methods in Clauses (i) through (vi) shall be in accordance with the provisions of this code. When ASCE 7 or the *International Building Code* is used for the design of the building, the wind speed map and exposure category requirements as specified in ASCE 7 and the *International Building Code* shall be used.

c. Adopt and amend 2012 IRC Section R301.2.1.2, Protection of Openings. Exterior glazing in buildings located in windborne debris regions shall be protected from windborne debris. Glazed opening protection for windborne debris shall meet the requirements of the Large Missile Test of ASTM E 1996 and ASTM E 1886 referenced therein. The applicable wind zones for establishing missile types in ASTM E 1996 are shown on Figure R301.2(4)F. Garage door glazed opening protection for windborne debris shall meet the requirements of an approved impact-resisting standard or ANSI/DASMA115.

i. Exceptions:

(a). wood structural panels with a minimum thickness of 7/16 inch (11 mm) and a maximum span of 8 feet (2438 mm) shall be permitted for opening protection in one- and two-story buildings.;

(b). panels shall be precut and attached to the framing surrounding the opening containing the product with the glazed opening;

(c). panels shall be predrilled as required for the anchorage method and shall be secured with the attachment hardware provided;

(d). attachments shall be designed to resist the component and cladding loads determined in accordance with either Table R301.2(2) or ASCE 7, with the permanent corrosion-resistant attachment hardware provided and anchors permanently installed on the building;

(e). attachment in accordance with Table R301.2.1.2 is permitted for buildings with a mean roof height of 33 feet (10 058 mm) or less where wind speeds do not exceed 130 miles per hour (58 m/s).

d. Adopt 2012 IRC Figure R301.2(4)A and delete Figure R301.2(4)B and Figure R301.2(4)C.

e. Adopt 2012 IRC Section R301.2.1.4, Exposure Category.

2. Additionally, Section 302, R302.1, Exterior Walls shall be amended to add the following exception:

a. 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:

i. a projection 2 feet from the property line with a 1 hour minimum fire-resistance rating on the underside;

ii. a wall 3 feet or more from the property with a 0 hour minimum fire-resistance rating.

3. Amend Section R302.5.1 Opening Protection.

a. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 13/8 inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than 13/8 inches (35 mm) thick, or 20-minute fire-rated doors.

4. Amend Section R303.4 Mechanical Ventilation. When a blower door test is performed, and the air infiltration rate of a dwelling unit is less than 5 air changes per hour when tested in accordance with the 2009 IRC Section N1102.4.2.1, the dwelling unit shall be provided with whole-house mechanical ventilation in accordance with Section M1507.3.

5. Additionally, IRC shall be amended as follows and shall only apply to the *International Residential Code*.

a. Adopt and amend 2012 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 *International Residential Code* 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. Where no sprinkler system is installed a common 2-hour fire-resistance-rated wall is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. Electrical installations shall be installed in accordance with the 2011 NEC. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

i. Exception: If an owner voluntarily chooses to install an automatic residential fire sprinkler system it shall be installed per Section R313.1.1 Design and installation. Automatic residential fire sprinkler systems for *townhouses* shall be designed and installed in accordance with NFPA 13D and Table 302.1 (2) Exterior Walls-Dwellings with Fire sprinklers may be used for separation requirements.

b. Adopt and amend 2012 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 *International Residential Code* 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.

i. Exception: 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. Automatic residential fire sprinkler systems shall be designed and installed in accordance with NFPA 13D and Table 302.1(2) Exterior Walls-Dwellings with Fire sprinklers may be used for separation requirements.

c. Amend Chapter 3, Section R315.2, Where Required in Existing Dwellings. When alterations, repairs or additions occur or where one or more sleeping rooms are



added or created in existing dwellings that have attached garages or in existing dwellings within which fuel fired appliances exist, carbon monoxide alarms shall be provided in accordance with Section R315.1.

d. Substitute Chapter 3, Section R317, Dwelling Unit Separation of the 2006 IRC, in lieu of the Section 313, Automatic Fire Sprinkler Systems of the 2009 IRC. In addition, Chapter 3, Section R 302.2, Townhouses of the 2009 IRC, is amended as follows.

i. Exceptions:

(a). a common 2-hour fire-resistance-rated wall is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall;

(b). electrical installations shall be installed in accordance with Chapters 34 through 43. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4;

(c). Chapter 3, Section R302.2.4, Structural Independence of the 2009 IRC, is amended as follows: Exception: Number 5, Townhouses, separated by a common 2-hour fire-resistance-rated wall as provided in Section R302.2.

e. Add 2015 IRC Section 324 to the 2012 IRC.

i. Amend Section R324.7.2 Solar photovoltaic systems. Solar photovoltaic systems shall comply with Sections R324.7.2.1 through R324.7.2.5. Installer shall provide structural analysis, from a design professional, of solar panels, components and their loading on existing and new roofs.

f. Adopt 2012 IRC Table 602.3 (1), Fastening Requirements.

g. Amend 2012 IRC Section R703.8, Flashing. Approved corrosion-resistant flashing shall be applied shingle-fashion in a manner to prevent entry of water into the wall cavity or penetration of water to the building structural framing components. Self-adhered membranes used as flashing shall comply with AAMA 711. The flashing shall extend to the surface of the exterior wall finish. Approved corrosion-resistant flashings shall be installed at all of the following locations:

i. exterior window and door openings. Flashing at exterior window and door openings shall extend to the surface of the exterior wall finish or to the water-resistive barrier for subsequent drainage;

ii. at the intersection of chimneys or other masonry construction with frame or stucco walls, with projecting lips on both sides under stucco copings;

iii. under and at the ends of masonry, wood or metal copings and sills;

iv. continuously above all projecting wood trim;

v. where exterior porches, decks or stairs attach to a wall or floor assembly of wood-frame construction;

vi. at wall and roof intersections;

vii. at built-in gutters.

h. Adopt 2012 IRC Section R802.11, Roof tie-down.

i. Adopt 2012 IRC Table R802.11, Rafters.

j. Amend Section R806.1, Ventilation Required.

i. Enclosed attics and enclosed rafter spaces formed where ceilings are applied directly to the underside of roof rafters shall have cross ventilation for each separate

space by ventilating openings protected against the entrance of rain or snow. Ventilation openings shall have a least dimension of 1/16 inch (1.6 mm) minimum and 1/4 inch (6.4 mm) maximum. Ventilation openings having a least dimension larger than 1/4 inch (6.4 mm) shall be provided with corrosion-resistant wire cloth screening, hardware cloth, or similar material with openings having a least dimension of 1/16 inch (1.6 mm) minimum and 1/4 inch (6.4 mm) maximum. Openings in roof framing members shall conform to the requirements of Section R802.7. Required ventilation openings shall open directly to the outside air.

k. 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.

6. Substitute Chapter 11, Energy Efficiency of the 2009 IRC, in lieu of Chapter 11 Energy Efficiency of the 2012 IRC.

a. 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.

b. 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.

c. 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.

i. During testing:

(a). exterior windows and doors, fireplace and stove doors shall be closed, but not sealed;

(b). dampers shall be closed, but not sealed; including exhaust, intake, makeup air, back draft, and flue dampers;

(c). interior doors shall be open;

(d). exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;

(e). heating and cooling system(s) shall be turned off;

(f). HVAC ducts shall not be sealed; and

(g). supply and return registers shall not be sealed.

d. Amend Section N1102.4.3, Fireplaces, New wood-burning fireplaces shall have outdoor combustion air.

e. 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.

i. Exception: HVAC Contractors. 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.

ii. Joints and seams shall comply with section M1601.4. Duct tightness shall be verified by either for the following:

(a). 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.

(b). 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.

iii. Exception: duct tightness test is not required if the air handler and all ducts are located within *conditioned space*.

f. Amend Section N1103.8.3, Pool Covers. Pool covers shall not be required to meet the energy efficiency requirements of this Section.

g. 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

h. 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.

i. 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.

j. Amend Section M1507.3.3, Mechanical Ventilation Rate. The whole-house mechanical ventilation system shall be able to provide outdoor air at a continuous rate of at least that determined in accordance with Table M1507.3.3(1).

k. 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.

i. Kitchen: 100 cfm intermittent or 25 cfm continuous, a balanced ventilation system is required for continuous exhaust.

ii. Bathrooms: exhaust capacity of 50 cfm intermittent or 20 cfm continuous, a balanced ventilation system is required for continuous exhaust.

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), LR 41:2383.

### **§109. International Mechanical Code (Formerly LAC 55:VI.301.A.4)**

A.1. *International Mechanical Code* (IMC), 2012 Edition, and the standards referenced in that code for regulation of construction within this state.

2. Amend Chapter 6 Section 603.4, Metallic ducts. All metallic ducts shall be constructed as specified in the SMACNA HVAC Duct Construction Standards-Metal and Flexible.

a. Exception: ducts installed within single dwelling units shall have a minimum thickness as specified in the 2006 International Mechanical Code Table 603.4.

b. Amend Chapter 6, Section 606.4.1, Supervision. The duct smoke detectors shall be connected to a fire alarm system where a fire alarm system is required by Section 907.2 of the *International Fire Code* or locally adopted fire code. The actuation of a duct smoke detector shall activate a visible and audible supervisory signal at a constantly attended location.

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), DPSC, Office of State Fire Marshal, LR 41:2386 (November 2015).

### **§111. The Louisiana State Plumbing Code (Formerly LAC 55:VI.301.A.5)**

A. *The Louisiana State Plumbing Code* [Part XIV (Plumbing) of the State Sanitary Code] as amended by the state health officer acting through the Office of Public Health of the Department of Health and Hospitals. Nothing in this Part shall be construed so as to prevent the state health officer from enforcing Part XIV (Plumbing) of the State Sanitary Code, the enforcement of which is his statutory and regulatory responsibility.

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), DPSC, Office of State Fire Marshal, LR 41:2386 (November 2015).

**§113. International Fuel Gas Code  
(Formerly LAC 55:VI.301.A.6)**

A. *International Fuel Gas Code* (IFCG), 2012 Edition, and the standards referenced in that code for regulation of construction within this state.

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), DPSC, Office of State Fire Marshal, LR 41:2387 (November 2015).

**§115. National Electric Code  
(Formerly LAC 55:VI.301.A.7)**

A. *National Electric Code* (NEC), 2011 Edition, and the standards referenced in that code for regulation of construction in this state. This Code is to become effective on January 1, 2013.

1. Amend and replace 2011 NEC Article 690 with 2014 NEC Article 690.

a. Exception:

i. amend 690.12 to become effective September 1, 2015;

ii. until September 1, 2015, all solar installations shall have an approved manual disconnect located within 5 feet of the array structure to disconnect all DC conductors from the power source.

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), DPSC, Office of State Fire Marshal, LR 41:2387 (November 2015).

Jill P. Boudreaux  
Undersecretary

1511#080

# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Agricultural Chemistry and Seed Commission

Seeds (LAC 7:XIII.121, 123, 519, 749 and 763)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Agriculture and Forestry (“department”) intends to amend LAC 7:XIII.121, 123, 519, 749 and 763. The proposed amendment to LAC 7:XIII.121 increases the fee for licensure as a seed dealer from \$100 to \$150 and is authorized by R.S. 3:1437. The proposed amendment to LAC 7:XIII.123 increases the seed regulatory fee from \$0.25 to \$0.25 per 100 pounds of seed sold at first point of sale within the state. This fee increase is authorized by R.S. 3:1448. In addition, the proposed amendment to this Rule changes the word “inspection” to “regulatory” to create language consistency between the Rule and law. The proposed amendment to LAC 7:XIII.519 removes the security seal requirement for registered class of certified rice and small grains packaged in superbags or Q-bit containers because standard industry practices no longer require the use of security seals when packaging certified rice and small grains. The proposed amendment to LAC 7:XIII.749 increases the land requirements for certified seed rice fields previously planted to hybrid rice to five years to ensure that the rice seed certification standards are reflective of the most current industry practices and challenges. The proposed amendment to LAC 7:XIII.763 increases by one year the source of registered sugarcane seed stock, includes and establishes tolerance levels for eastern black nightshade as a noxious weed, removes browntop panicum as a noxious weed, broadens the scope of harmful diseases by removing the word “virus” from sugarcane mosaic virus, broadens the scope of harmful insects by removing Mexican rice borer, and changing sugarcane stem borer to sugarcane stem borers.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XIII. Seeds

#### Chapter 1. General Provisions

#### Subchapter B. Fees

#### §121. License Fee; Laboratory and Sampling Fees (Formerly §113)

A. Seed Dealer's License. The annual fee for a seed dealer's license shall be \$150. The seed dealer's license shall be renewed annually, and is based on the fiscal year July 1 through June 30.

B. - B.10. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended LR 7:164 (April 1981), amended by the Department of Agriculture

and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 14:603 (September 1988), LR 29:2632 (December 2003), LR 36:1220 (June 2010), LR 37:1373 (May 2011), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2704 (October 2013), amended LR 40:745 (April 2014), LR 41:911 (May 2015), LR 42:

#### §123. Regulatory Fee on Seeds (Formerly §115)

A. A regulatory fee of \$0.25 for each 100 pounds of agricultural and vegetable seed sold, within this state shall be paid to the commission. The regulatory fee shall be due at the first point of sale in this state. However, the payment of a regulatory fee is not required upon the sale of Louisiana certified tagged seed upon which the regulatory fee has already been paid.

B. - B.4. ...

C. Each seed dealer shall file a quarterly report with LDAF on a form approved by the commission and submit the regulatory fees collected during that quarter.

1. The reports shall cover the following periods:

- a. 1st quarter—July, August, September;
- b. 2nd quarter—October, November, December;
- c. 3rd quarter—January, February, March;
- d. 4th quarter—April, May, June.

2. Reports and fees shall be filed with LDAF no later than 30 days following the end of each quarter. If a seed dealer has no sales during the quarterly reporting period the LDAF must be notified accordingly.

D. LDAF may assess a 10 percent additional charge as a late payment for failure to timely pay any regulatory fee.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Seed Commission, LR 14:603 (September 1988), amended LR 29:2632 (December 2003), LR 38:1558 (July 2012), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2704 (October 2013), amended LR 40:745 (April 2014), LR 42:

#### Chapter 5. General Seed Certification Requirements §119. Processing of Certified Seed (Formerly §141)

A. Bagging

1. All seed approved for certification must be packaged in new 100 pound containers or less, except as provided by this Subsection.

2. Registered class of rice and small grains (wheat and oats):

a. new super-bags or Q-bit bulk containers (or its equivalent as determined by LDAF).

3. Certified class of rice and small grains (wheat and oats):

a. new or reusable super-bags or Q-bit bulk containers (or its equivalent as determined by LDAF). Reusable containers shall be cleaned in a manner approved by LDAF.

B. - B.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and R.S. 3:1434.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 9:196 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 20:643 (June 1994), LR 31:35 (January 2005), LR 31:1510 (July 2005), LR 39:1758 (July 2013), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2713 (October 2013), amended LR 40:750 (April 2014), LR 42:

**Chapter 7. Certification of Specific Crops/Varieties**

**Subchapter B. Grain and Row Crop Seeds**

**§749. Rice Seed Certification Standards**

**(Formerly §185)**

A. - A.3. ...

B. Field Standards

Factor	Breeder	Foundation	Registered	Certified
Land Requirement				
Conventional Varieties	1 yr.	1 yr.	1 yr.	1 yr.
Hybrid Varieties	5 years	5 years	5 years	5 years
Other Varieties	None	None	10 Plants per Acre	25 Plants per Acre
*Harmful Diseases	None	None	None	None
Noxious Weeds: Red Rice (including Black Hull Rice)	None	None	None	1 Plant per 10 Acres
Spearhead	None	None	None	2 Plants per Acre
Curly Indigo	None	None	4 Plants per Acre	4 Plants per Acre
*Diseases seriously affecting quality of seed and transmissible by planting stock.				

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:576 (November 1982), amended LR 9:201 (April 1983), LR 9:754 (November 1983), LR 10:495 (July 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 13:157 (March 1987), LR 13:233 (April 1987), LR 14:606 (September 1988), LR 14:694 (October 1988), LR 15:613 (August 1989), LR 19:888 (July 1993), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2724 (October 2013), LR 42:

**§763. Sugarcane (Tissue Culture) Certification**

**Standards**

**(Formerly §207)**

A. - A.2. ...

3. Source of registered stock is limited to plantlets produced through tissue culture of foundation material or the

second ratoon. Stock that meets all standards except insect and/or weeds standards be maintained in the program as seed increase fields only, but may not be marketed to producers. Such stocks are eligible for re-certification once they come in compliance with applicable regulations.

4. Source of certified stock is limited to:

a. three consecutive years from planting of registered stock; and

b. two consecutive harvests of certified stock.

B. - D. ...

E. Field Standards

Factor	Foundation	Registered	Certified
Isolation	10 ft.	10 ft.	10 ft.
Other Varieties (obvious)	None	1.00%	1.00%
Off-Type (definite)	None	1.00%	1.00%
Noxious Weeds:			
Johnsongrass	None	5 Plants/Acre	5 Plants/Acre
Itchgrass	None	1 Plant/Acre	1 Plant/Acre
Eastern Black Nightshade	None	3 Plants/Acre	3 Plants/Acre
Harmful Diseases:			
*Sugarcane Yellow Leaf Virus	None	10.00%	10.00%
**Sugarcane Mosaic	None	10.00%	10.00%
**Sugarcane Smut	None	0.50%	0.50%
Harmful Insects:			
***Sugarcane Stem Borers	None	5.00%	5.00%
*Determined by lab analysis for the LSU Sugarcane Disease Detection Lab			
**Plants exhibiting symptoms			
***Determined by percentage of internodes bored			

F. - G.2.c. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 23:1284 (October 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Seed Commission, LR 30:1143 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 33:1609 (August 2007), LR 36:1223 (June 2010), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2729 (October 2013), amended LR 40:756 (April 2014), LR 42:

**Family Impact Statement**

The proposed Rule does 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 does 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 Statement

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

### Provider Impact Statement

The proposed Rule does 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, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Lester Cannon, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 3004, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on January 4, 2016. No preamble is available.

Mike Strain, DVM  
Commissioner

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Seeds

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

The proposed amendment to LAC 7:XIII.519 removes the security seal requirement for the registered class of certified rice and small grains packaged in superbags or Q-bit containers and will result in savings to the state related to the purchase of the seals. LDAF purchases approximately 1,000 seals annually at a cost of \$0.75 per seal, totaling \$750 each year. The proposed rule change will result in a savings of \$750 annually.

The proposed rule changes to LAC 7:XIII.121, 123, 749, and 763 will have no associated costs or savings to state or local governmental entities other than the cost of promulgation for FY 16. The proposed rule change to LAC 7:XIII.121 raises permit fees for a seed dealer's license. The proposed rule change to LAC 7:XIII.123 raises the regulatory fee per 100 lbs. (hundredweight) of seed sold at the first point of sale in Louisiana. The proposed rule change to LAC 7:XIII.749 modifies the requirements for certified seed rice fields. The proposed rule change to LAC 7:XIII.763 increases the

evaluation period for a source of registered sugarcane seed stock by one year, includes and establishes tolerance levels for Eastern Black Nightshade as a noxious weed, removes Browntopp panicum as a noxious weed, broadens the scope of harmful diseases by removing the word "virus" from Sugarcane Mosaic Virus, and broadens the scope of harmful insects by changing the standard of "Sugarcane Stem Borer" to include all stem boring insects.

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

Pursuant to existing authority in LA R.S. 3:1437, the proposed rule change to LAC 7:XIII.121 increases the fee for a seed dealer's license by \$50, from \$100 to \$150. Based upon LDAF's three-year average of issuing 1,300 seed dealer licenses annually, the permit fee increase will generate approximately \$65,000 annually, increasing total revenue from \$130,000 to \$195,000. LDAF will remit revenues received from permit fees to the statutorily dedicated Seed Commission Fund. LDAF will not realize any additional revenue collections from this source in FY 16 because the license fee increase will take effect at the beginning of FY 17.

Pursuant to existing authority in LA R.S. 3:1448, the proposed amendment to LAC 7:XIII.123 will increase the seed regulatory fee by \$0.05, from \$0.20 to \$0.25 per 100lbs. (hundredweight) of seed sold at first point of sale within Louisiana. Based upon a three-year average of approximately 180 M lbs. (1.8 M hundredweights) of seed being sold annually, the regulatory fee increase will generate approximately \$90,000 in additional revenue for LDAF annually, increasing total revenue from approximately \$360,000 to \$450,000. LDAF will remit revenues received from permit fees to the statutorily dedicated Seed Commission Fund. Due to this rule being in effect only for the 4th quarter of FY 16, when seed sales total approximately 64.4 M lbs. (644,359 hundredweights) on average, LDAF anticipates a revenue increase for the current fiscal year of approximately \$32,000.

The proposed amendments to LAC 7:XIII.519, 749, and 763 will not have an impact on 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 amendment to LAC 7:XIII.121 will result in an increase in costs for persons applying for a seed dealer's license from \$100 to \$150. The estimated cost increase incurred by persons seeking seed dealer permits is approximately \$65,000, an annual increase in total cost from \$130,000 to \$195,000.

The proposed amendment to LAC 7:XIII.123 will increase the fee paid per 100lbs. of seed sold at the first point of sale within the state from \$0.20 to \$0.25. Seed sales vary significantly across seed dealers, but LDAF estimates the aggregate cost paid at the first point of sale in Louisiana to be approximately \$450,000, and increase of approximately \$90,000 from the previous total of approximately \$360,000.

The proposed amendment to LAC 7:XIII.519 removes the security seal requirement for the registered class of certified rice and small grains packaged in superbags or Q-bit containers will result in an annual \$750 loss to the American Casting & Manufacturing Corp., the vendor LDAF purchased the security seals from.

The proposed amendment to LAC 7:XIII.749 outlines new standards for certifying rice seed fields throughout Louisiana. In the event that rice seed fields do not meet the new criteria, LDAF can disqualify them for the purpose of growing rice seed, which may result in an indeterminable economic loss for the persons owning the field.

There are no anticipated costs to directly affected persons or non-governmental groups as a result of the proposed amendments to LAC 7:XIII.763.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes will not have an effect on competition and employment.

Dane K. Morgan  
Assistant Commissioner  
1511#070

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Office of Agro Consumer Services  
Division of Weights and Measures**

**Metrology Laboratory Fee Structure (LAC 7:XXXV.125)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Agriculture and Forestry (“department”), through the Office of Agro-Consumer Services, Division of Weights and Measures, intends to amend LAC 7:XXXV.125. This proposed amendment increases the fees which the metrology laboratory may charge for tolerance testing of weights up to and including 10 pounds and for weights over ten pounds and up to and including 100 pounds. It also institutes a fee of \$10 per weight for adjusting weights that are found to be out of tolerance.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXXV. Agro-Consumer Services**

**Chapter 1. Weights and Measures**

**§125. Metrology Laboratory Fee Structure**

A. Fees for the tolerance testing of weights shall be as follows.

	<b>Class F</b>	<b>Class P</b>
1. Weights up to and including 10 pounds or 5 kilograms	\$7	\$9
2. Weights over 10 pounds or 5 kilograms and including 100 pounds or 60 kilograms	\$10	\$15
3. Weights over 100 pounds or 60 kilograms and including 1000 pounds or 500 kilograms	\$25	\$50
4. Weights over 1000 pounds or 500 kilograms	\$50	\$75

B. Any tolerance adjustment will be charged an additional fee of \$10 per weight.

C. Fees for mass calibration with report of calibration stating corrections and uncertainties shall be as follows.

1. Weights up to and including 3 kilograms or 5 pounds	\$25
2. Weights over 3 kilograms or 5 pounds and including 30 kilograms or 50 pounds	\$50

D All tape certification, volumetric testing and calibration or special tests not listed in the fee schedule shall be performed at a rate of \$30 per hour.

E. Incurred costs for return shipment shall be assessed when applicable.

F. The registration fee for each location utilizing scanning devices shall be as follows.

<b>Category</b>	<b>Number of Point-of-Sale Devices</b>	<b>Fee</b>
A	1 to 10	\$50
B	11 to 25	\$100
C	Over 25	\$150

G. The annual fee for registration of taxi meters is \$50.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608 and 3:4622.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 19:1534 (December 1993), amended LR 23:857 (July 1997), LR 30:1142 (June 2004), LR 42:

**Family Impact Statement**

The proposed Rule does 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 does 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 Statement**

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

**Provider Impact Statement**

The proposed Rule does 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, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Dr. Steven O. Sessums, Director of the Division of Weights and Measures,

Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 5000, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on January 4, 2016. No preamble is available.

Mike Strain, DVM  
Commissioner

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Metrology Laboratory Fee Structure

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

The proposed rule change will have no fiscal impact to the state or local governmental units other than the cost of promulgation for FY 16.

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

The proposed increase of \$5 for tolerance tests on weights of 100 lbs. or less will result in an increase of approximately \$23,095 collected by the department annually. LDAF collected \$21,813 from performing tolerance tests for weights 100 lbs. and under in FY 15. The proposed rule also adds a \$10 fee to perform tolerance adjustments of weights, which will result in increased annual revenue of approximately \$19,220. LDAF does not currently charge for weight tolerance adjustments.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule increases costs for persons who use the services of the metrology lab such as commercial scale companies and fuel pump service companies. This rule increases the fees for tolerance testing of weights by \$5 in Classes F and P for weights up to 100 lbs. The proposed rule also charges \$10 per weight to make tolerance adjustments.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of the proposed rule will have no effect on employment or competition.

Dane K. Morgan  
Assistant Commissioner  
1511#073

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Agriculture and Forestry Office of Animal Health and Food Safety Egg Commission

#### Sale or Offering for Sale of Eggs within Louisiana (LAC 7:V.919)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority in R.S. 3:839, notice is hereby given that the Department of Agriculture and Forestry ("department") intends to amend LAC 7:V.919. Act 523 of the 2003 Regular Session of the Louisiana Legislature amended R.S. 3:842 to provide that "every person who produces, processes, distributes, or sells eggs or egg products in Louisiana shall obtain a license to do so from the department" and increased the fee for obtaining or

renewing such license from \$10 to \$100. The proposed amendment to §919 will change the fee for obtaining or renewing this license from \$10 to \$100 to make the Rule consistent with R.S. 3:842.

### Title 7

### AGRICULTURE AND ANIMALS

#### Part V. Advertising, Marketing and Processing

#### Chapter 9. Market Commission—Poultry and Eggs

#### Subchapter B. Egg Grading and Marketing

#### §919. Sale or Offering for Sale of Eggs within

#### Louisiana

A. - E.3. ...

F. Licenses

1. - 2. ...

3. Application forms for license shall be furnished by the Department of Agriculture and Forestry. Each license application shall be accompanied by a fee of \$100 payable to the Louisiana Egg Commission. Upon approval of the application, a license will be issued to the applicant. A license will be valid for a period of one year-September 1 through August 31.

F.4. - G.2. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 3:405.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Market Commission, May 1969, promulgated by the Department of Agriculture and Forestry, Market Commission, LR 19:1122 (September 1993), amended LR 23:293 (March 1997), Department of Agriculture and Forestry, Office of Animal Health and Food Safety, Egg Commission LR 42:

#### Family Impact Statement

The proposed Rule does 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 does 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 Statement

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.



### Provider Impact Statement

The proposed Rule does 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, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Eric Lee, Assistant Director of the Poultry and Egg Division, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 4004, Baton Rouge, LA 70806 and must be received no later than 12 p.m. on the fourth day of January 2016. No preamble is available.

Mike Strain, DVM  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Sale or Offering for Sale of Eggs within Louisiana**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule change will not result in any costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule change will not have an effect on revenue collections of state or local governmental units. The proposed rule amends LAC 7:V.919 to be consistent with LA R.S. 3:842(A), changing the fee for a license through the LA Egg Commission from \$10 to \$100. However, the department has been charging \$100 for this license since FY 04 under the authority of LA R.S. 3:842(A) as amended by Act 523 of 2003, which originally raised the fee for a license from the LA Egg Commission from \$10 to \$100. Therefore, the proposed rule change is technical in nature and will have no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed rule change will not have an effect on persons or non-governmental groups as it is amending LAC 7:V.919 to make fees for licenses through the LA Egg Commission consistent with statute.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule will not have an effect on competition and employment.

Dane Morgan  
Assistant Commissioner  
1511#072

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

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

Structural Pest Control  
(LAC 7:XXV.Chapter 1)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority set forth in R.S. 3:1652, notice is hereby given that the Department of Agriculture and Forestry ("department"), through the Office of Agricultural and Environmental Sciences and Structural Pest Control Commission, intends to amend and adopt the rules set forth below. The amendments to §101 define and clarify regulated terms used by the structural pest control industry. The amendments to §105 raise the fee from \$125 to \$150 for issuance of a permit for firms which employ two or less employees and from \$175 to \$200 for firms which employ three or more employees. The amendments to §107 require written notification to the department if telephone answering services or call centers are utilized. The amendments to §113 raise the fee from \$20 to \$25 for administrative processing of a technician registration certificate. The amendments to §117 make the following changes:

- (i). raise the annual fee for licensed pest control operations from \$5 to \$10 for each phase in which the pest control operator is licensed;
  - (ii). raise the fees for wood destroying insect reports and contracts from \$8 to \$12; and
  - (iii). obligate the licensed operator to use backflow prevention to protect water sources, to use listed telephone numbers, and to record completion date for new construction.
- Finally, the amendments to §141 do the following:
- (i). provide homeowners and pest control operators additional treatment options for control of termites while still providing for minimum treatment specifications and include pier type construction in pre-construction;
  - (ii). modify the required information on pre-treatment notifications;
  - (iii). modify the requirements of pest control operators when bait contracts are terminated;
  - (iv). remove the requirement of a pilot program for bait and baiting system products; and
  - (v). permit the use of rodding around utility equipment.

### Title 7

### AGRICULTURE AND ANIMALS

### Part XXV. Structural Pest Control

### Chapter 1. Structural Pest Control Commission

### §101. Definitions

- A. The definitions in R.S. 3:3362 are applicable to this Part.
- B. The following words and terms are defined for the purposes of this Part.

\* \* \*

*Structural Fumigation*—the fumigation by covering or sealing churches, schools, homes or any other buildings in which people are normally housed or work or is frequented by people. This also includes the covering or sealing of small boats or ships under 100 feet.

*Supervision*—see definition of *direct supervision* in this Section.

*Supplemental Treatment*—when used in connection with termite work, “supplemental treatment” means a localized application of chemicals or other substances and/or placement of baits to control, prevent or eradicate termites in a residence or other structure that is under a current contract.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3362 and R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission LR 15:954 (November 1989), 17:251 (March 1991), LR 23:855 (July 1997), LR 30:1143 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 32:796 (May 2006), repromulgated LR 32:1015 (June 2006), amended LR 33:39 (January 2007), LR 35:204 (February 2009), LR 35:1468 (August 2009), LR 37:272 (January 2011), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 39:300 (February 2013), LR 41:333 (February 2015), LR 42:

**§105. Permit for Operation of Structural Pest Control Business; Changes in Structural Pest Control Business**

A. - C. ...

D. The fee for issuance of a permit for operation shall be \$150 for firms which employ two or less employees and \$200 for firms which employ three or more employees.

E. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and R.S. 3:3374.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:325 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:954 (November 1989), LR 33:40 (January 2007), LR 37:275 (January 2011), LR 42:

**§107. License to Engage in Structural Pest Control Work Required**

A. - O. ...

P. Any permittee/licensee utilizing telephone answering services and/or call centers other than at locations holding a place of business permit shall submit written notification to the department.

Q. - R. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3368.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:326 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:955 (November 1989), LR 19:1009 (August 1993), LR 23:855 (July 1997), LR 23:1493 (November 1997), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 31:2761 (November 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 32:796 (May 2006),

repromulgated LR 32:1016 (June 2006), amended LR 37:276 (January 2011), LR 42:

**§113. Registration of Employees; Duties of Licensee and Registered Employee with Respect to Registration**

A. - B.7. ...

C. The fees for the registration of technician shall be as follows.

1. The fee of the administrative processing of the registration certificate shall be \$25. This fee shall be paid at the time of initial registration.

C.2. - P.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366, 3368 and 3369.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 32:797 (May 2006), repromulgated LR 32:1016 (June 2006), amended LR 35:207 (February 2009), LR 37:279 (January 2011), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 39:301 (February 2013), LR 42:

**§117. Obligations of the Licensee/Permittee**

A. - I. ...

J. The annual fee for licensed pest control operators shall be \$10 for each phase in which the pest control operator is licensed.

K. ...

L. The fee for each standard contract and wood-destroying insect report that has been issued is \$12. All such fees are due and payable to the department at the time the reports required by §119.E are due.

M. ...

N. The pest control operator shall provide for an air space or a backflow preventer on the water hose used in supplying water to the chemical tank.

O. Signage of Vehicles

1. General. A motor vehicle being operated by a place of business that is engaged in the transport or application of pesticides shall be marked as specified below:

- a. magnetic or removable signs may be used;
- b. size, shape, location and color of marking. The marking shall contain the following:

- i. appear on both sides of the vehicle;
- ii. be in letters that contrast sharply in color with the background;
- iii. be readily legible during daylight hours;
- iv. lettering shall be a minimum of 2 inches in height;

- v. be kept and maintained in a manner that retains the legibility of the information required by §117.O.1.c;

- c. nature of marking. The marking shall display the following information:

- i. the name or trade name of the place of business operating the vehicle.

P. No employee shall use a telephone number, other than the place of business permit phone number, to advertise or solicit business unless approved, in writing, by the permittee or licensee and reported in writing to the department.

Q. The pest control operator shall record the nature and date of the completion of new construction, as found in

§101.B within the definition of *construction*, and maintain the date as part of the application records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3368.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 21:930 (September 1995), LR 23:855 (July 1997), LR 26:2437 (November 2000), LR 29:1062 (July 2003), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004), LR 31:2761 (November 2005), LR 35:1468 (August 2009), LR 37:280 (January 2011), LR 39:301 (February 2013), LR 42:

**§141. Minimum Specifications for Termite Control Work**

A. - B.3. ...

4. Rodding shall be acceptable only when trenching will damage irrigation equipment, utility equipment flowers and/or shrubs.

B.5. - C.7.c. ...

d. drill holes into each compartment of the lowest accessible block of hollow concrete (or other lightweight aggregate) blocks and apply chemical into the openings under sufficient time and pressure to treat the area of the bottom of the foundation. When hollow concrete (or other lightweight aggregate) blocks have been filled with mortar, additional holes may be drilled below the sill plate and apply chemical into the openings using reduced pressure to treat the area of the bottom of the foundation. On T-shaped or L-shaped piers the connecting mortar joints (crotches) shall be drilled and treated. Drilling is not required if the opening in the block is accessible.

8. Ground treatment:

a. ...

b. all trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage irrigation equipment, utility equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches;

c. ...

d. rod under or drill through the slab and treat all areas beneath expansion joints and cracks of adjoining or abutting slab(s) as per label and labeling instructions. When the slab is drilled, the holes shall be no more than 18 inches (unless label requires closer distance) apart along the above stated areas.

9. - 10. ...

\*\*\*

D. Treatment of Existing Slab-Type Construction

1. - 1.a. ...

b. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable only where trenching will damage irrigation equipment, utility

equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

c. ...

d. Rod under or drill through the slab and treat all areas beneath expansion joints and cracks of adjoining or abutting slab(s) as per label and labeling instructions. When the slab is drilled, the holes shall be no more than 18 inches (unless label requires closer distance) apart along the above stated areas.

2. - 4.c. ....

E. Pre-Construction Treatment

1. The permittee or primary licensee shall pre-treat all slab and pier type construction using the required chemical and making the application of the product mixture at a rate and manner prescribed on the label and labeling.

2. The permittee or primary licensee shall report the completion of the application to the outside of the foundation slab or pier type construction to the department on the termite perimeter application form. Within 12 months after initial treatment, the outside perimeter of the foundation slab or pier type construction will be treated as follows:

a. trench around the entire perimeter of the structure being treated, adjacent to the foundation wall or pier type construction. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage irrigation equipment, utility equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches;

b. rod under or drill through any slab(s) adjoining or abutting the initial pre-treated slab or pier type construction and treat all areas beneath adjoining or abutting slab(s) as per label and labeling instructions. When any slab(s) is drilled, the holes shall be no more than 18 inches (unless label requires closer distance) apart along the above stated areas;

c. in lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

3. If, during the treatment of any area which will be beneath a slab foundation or pier type construction, the operator shall leave the site for any reason prior to the completion of the application, the operator shall prominently display a poster, approved by the department, which states that the treatment of the area under the slab or pier type construction is not complete.

4. All pre-treatment of slabs or pier type construction shall be called or faxed to the department's district office in which the pretreat occurs, a minimum of 1 hour prior to beginning the application of termiticides. The information provided shall include treatment company name; treatment structure street address, city, zip code, parish; if available; and/or directions to the property being pre-treated; date and time of beginning the application of termiticides to the property; estimated square or linear footage of each structure to be treated; and number of reported structures. All pest

control operators shall keep a log of all pretreats including the information noted. The following is a list of parishes in each of the department's seven district offices. Pretreatments in a parish shall be called into the corresponding district office:

a. Shreveport District—Caddo, Bossier, Webster, Claiborne, Bienville, Red River, and Desoto;

b. Monroe District—Union, Morehouse, West Carroll, East Carroll, Madison, Richland, Ouachita, Lincoln, Jackson, Winn, Caldwell, Franklin, Tensas, Concordia, and Catahoula;

c. Alexandria District—Sabine, Natchitoches, Grant, LaSalle, Avoyelles, Rapides, and Vernon;

d. Crowley District—Beauregard, Allen, Acadia, Jefferson Davis, Cameron, Calcasieu;

e. Opelousas District—Evangeline, St. Landry, St. Martin, Iberia, St. Mary, Vermilion, and Lafayette;

f. Baton Rouge District—Pointe Coupee, West Feliciana, East Feliciana, St. Helena, Tangipahoa, Washington, St. Tammany, Livingston, St. James, Lafourche, Terrebonne, Assumption, Ascension, Iberville, West Baton Rouge, and East Baton Rouge;

g. New Orleans District—St. John the Baptist, St. Charles, Jefferson, Orleans, St. Bernard, and Plaquemines.

#### F. Spot Treatment

1. Spot treatments shall not be done on pier-type or slab construction except where a waiver of minimum specifications has been obtained from the owner of the property. All buildings that cannot be treated according to the minimum specifications shall have a waiver of the item or items signed by the owner prior to the treatment. A copy of the signed waiver shall be filed with the department with the monthly termite eradication report.

2. Treatment will be allowed to any additions to the main structure or exterior slab enclosures and a fee shall be paid and a contract issued on this addition unless the main structure is under contract with the firm performing the treatment on this addition.

3. Each spot treatment reported on the wood-destroying insect eradication report shall include a waiver of minimum specifications and a complete diagram of the area(s) treated.

#### G. Infested Properties

1. Whenever any agent of the department finds that any property is infested with termites, the pest control operator who treated the property or who has a current contract shall retreat within 30 days after receipt of notification from the department.

2. When the pest control operator completes the retreatment, he shall notify the department within 5 working days.

#### H. Waiver of Requirements of Minimum Specifications for Termite Control Work

1. A pest control operator may request from the owner/agent of the structure(s) to be treated, a waiver of the requirements set out in these regulations whenever it is impossible or impractical to treat one or more areas of the structure in accordance with these minimum specifications for initial treatment. The waiver shall be signed by the owner/agent of the structure(s) to be treated prior to or during treatment. A signed copy of the waiver shall be given to the owner/agent and shall be sent to the department with

the company's monthly eradication report. The waiver shall include, but not be limited to, the following information:

a. a graph identifying the structure and the specific area(s) where treatment is waived;

b. a description of each area where treatment is waived; and

c. for each area, the reason treatment is being waived.

2. A pest control operator may request, from the owner/agent of the structure(s) to be treated, a waiver of the requirements set out in these regulations whenever it is impossible or impractical to treat one or more areas of the structure in accordance with these minimum specifications for retreat(s). The waiver shall be signed by the owner/agent of the structure(s) to be treated prior to or during treatment. A signed copy of the waiver shall be given to the owner/agent and shall be made available to the department upon reasonable request. The waiver shall include, but not be limited to, the following information:

a. a graph identifying the structure and the specific area(s) where treatment is waived;

b. a description of each area where treatment is waived; and

c. for each area, the reason treatment is being waived.

3. The requirements specified in §141.B.1-3 shall not be waived.

#### I. Requirements for Baits and Baiting Systems

1. Any licensee or any person working under the supervision of a licensee, who applies baits and/or baiting systems, shall be certified in the use of the baits and baiting systems, by the manufacturer of the product, prior to any application of the bait or baiting system. Manufacturer certification and training programs shall have department approval of the agenda prior to the program presentation.

2. All baits and baiting systems applications shall be contracted and reported according to R.S. 3:3370 and LAC 7:XXV.119.D and pay the fee as described in LAC 7:XXV.119.E.

3. Bait and baiting systems shall be used according to label and labeling.

4. Above-ground bait stations shall be used according to their label and labeling when the presence of subterranean termites are detected in the contracted structure and shall be monitored not less than quarterly.

5. All bait stations shall be monitored/inspected according to the label and labeling.

6. Monitoring and ground bait stations shall surround the contracted structure and shall not be more than 20 feet apart, where soil is available unless the label requires stations closer and/or does not allow for "where soil is available."

7. Monitoring and ground bait stations, where soil is available, shall be no further than 20 feet from the slab or pier's outside perimeter except for non-structural wood elements including but not limited to trees, stumps, wood piles, landscape timbers and detached fences.

8. Records of contracts, graphs, monitoring, and bait applications shall be kept according to LAC 7:XXV.117.I.

9. A consumer information sheet, supplied by the manufacturer and approved by the commission, shall be supplied to the registered pest control operator. The pest

control operator shall, in turn, supply a copy of the consumer information sheet to all persons contracted.

10. All monitoring and bait stations shall be removed by the pest control operator from the contracted property within 90 days of the termination of the contract, unless denied access to the property. In the event the bait and baiting system manufacturer stops the use by the pest control operator of their bait and baiting system; all monitoring and bait stations shall be removed by the pest control operator from the contracted property within 90 days of the stop use notification, unless denied access to the property.

J. Requirements for Combination Liquid Spot and Baits and Baiting Systems Treatments

1. Any licensee or any person working under the supervision of a licensee, who applies a combination liquid spot and baits and/or baiting systems treatments, shall be certified in the use of the baits and baiting systems, by the manufacturer of the product, prior to any application of the bait or baiting system.

2. Combination of liquid spot and bait and baiting systems treatments shall be used according to label and labeling. Above-ground bait stations shall be monitored not less than quarterly.

3. All combination liquid spot and baits and baiting systems treatments shall be contracted and reported according to R.S. 3:3370 and LAC 7:XXV.119.E and pay the fee as described in LAC 7:XXV.119.F.

4. Records of contracts, graphs, monitoring (if required), and applications shall be kept according to LAC 7:XXV.117.I. At termination of the contract, the pest control operator shall remove all components of bait and baiting systems.

5. All structures that cannot be treated according to the combination liquid spot and bait and baiting systems treatment minimum specifications shall have a waiver of the listed item or items signed by the owner prior to the baiting treatment. A copy of signed waiver shall be filed with the department with the monthly termite eradication reports.

6. A bait and baiting systems consumer information sheet, supplied by the manufacturer and approved by the commission, shall be supplied to the registered pest control operator. The pest control operator shall, in turn, supply a copy of the consumer information sheet to all persons contracted

7. Combination liquid spot and bait and baiting systems treatment of existing slab-type construction shall bait following the label and labeling and liquid spot treat to the following minimum specifications:

a. Trench and treat 10 feet on both sides of live subterranean termite infestation site(s) around the perimeter of the structure, adjacent to the foundation wall. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (minimum 6 inches) to permit application of the required chemical. Apply the emulsion into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable only where trenching will damage irrigation equipment, utility equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

b. Rod under or drill through abutting slab(s) and treat all areas in the abutting slab(s) within the 20 feet as required in LAC 7:XXV.141.K.7.a. When the abutting slab

is drilled, the holes shall be no more than 18 inches apart, unless label requires closer distance along the above stated areas.

c. Treat bath trap(s) as per label and labeling. Bath trap(s) access hole of a minimum of 6 x 8 inches shall be provided to all bathtub plumbing.

i. If the soil in a trap does not reach the bottom of the slab, the trap shall be filled to within 2 inches of the top of the slab with soil prior to treatment. Treat bath trap(s) as required by label and labeling.

ii. A tar filled bath trap shall also be drilled and treated as required by label and labeling.

iii. If bath trap is solid concrete pore, it shall be drilled and treated as close as practical to the bathtub plumbing.

d. All showers shall be drilled and treated as close as practical to shower plumbing according to label and labeling.

e. All other openings (plumbing, etc.) shall be treated as required by label and labeling.

f. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

8. Combination liquid spot and bait and baiting systems treatments of existing pier-type construction with live subterranean termite infestation(s) shall bait following the label and labeling and liquid treat to the following minimum specifications.

a. Trench and treat 10 feet on both sides of infestation site(s) on brick/block chain wall(s) and all piers within 10 feet of an infested pier or chain wall. Trench, drill, and treat as required in LAC 7:XXV.141.

b. Above-ground bait stations shall be monitored not less than quarterly.

c. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

9. Combination liquid spot and bait and baiting systems treatment of existing slab-type construction and pier-type construction without live subterranean termite infestation(s) shall bait following the label and labeling and liquid treat as required in LAC 7:XXV.141.K.7.c-e.

10. Whenever any property under a combination liquid spot and bait and baiting systems treatment contract becomes infested with subterranean termites, the operator shall treat the property according to the minimum specifications as stated in LAC 7:XXV.141.K.

K. Requirements for Retreats

1. Retreatment of existing slab-type construction shall treat following the label and labeling and the following minimum specifications.

a. Trench and treat 10 feet on both sides of live subterranean termite infestation site(s) and/or a breach(s) in the treated zone around the perimeter of the structure, adjacent to the foundation wall. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (minimum 6 inches) to permit application of the required chemical. Apply the

emulsion into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable only where trenching will damage irrigation equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

b. Rod under or drill through abutting slab(s) and treat all areas in the abutting slab(s) within the 20 feet as required in LAC 7:XXV.141.L.1.a. When the abutting slab is drilled, the holes shall be no more than 18 inches apart along the above stated areas unless the label requires closer distance.

c. Treat bath trap(s) as per label and labeling when live subterranean termites or a breach(s) in the treated zone occur. Bath trap(s) access hole of a minimum of 6 x 8 inches shall be provided to all bathtub plumbing.

i. If the soil in a trap does not reach the bottom of the slab, the trap shall be filled to within 2 inches of the top of the slab with soil prior to treatment. Treat bath trap(s) as required by label and labeling.

ii. A tar filled bath trap shall also be drilled and treated as required by label and labeling.

iii. If bath trap is solid concrete pour, it shall be drilled and treated as close as practical to the bathtub plumbing.

d. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

2. Retreatments of existing pier-type construction with a live subterranean termite infestation(s) and/or a breach(s) in the treated zone shall liquid treat to the following minimum specifications.

a. Trench and treat 10 feet on both sides of a breach(s) in the treated zone or an infestation site(s) on chain wall(s) and all piers within 10 feet of an infested or breached pier or chain wall. Trench, drill, and treat as required in LAC 7:XXV.141.

b. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

3. Minimum specification treatments shall not include areas properly waived in initial treatment contract.

#### L. Requirements for Borates Pre-Construction Treatments

1. Treat according to the borate label.

2. A perimeter soil treatment shall be applied within 12 months after initial treatment, the outside perimeter of the foundation, shall be treated as follows:

a. trench around the entire perimeter of the structure being treated, adjacent to the foundation wall. All trenches shall be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage irrigation equipment, utility equipment, flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches;

b. rod under or drill through any slab(s) adjoining or abutting the slab and treat all areas beneath adjoining or abutting slab(s) as per label and labeling instructions. When any slab(s) is drilled, the holes shall be no more than 18 inches (unless label requires closer distance) apart along the above stated areas;

c. in lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

3. treat bath traps as per termiticide label and labeling or as follows:

a. if the soil in a trap does not reach the bottom of the slab, the trap shall be filled to within 2 inches of the top of the slab with soil prior to treatment. Treat bath trap(s) as required by label and labeling;

b. a tar filled bath trap shall also be drilled and treated as required by label and labeling;

c. if bath trap is solid concrete pour, it shall be drilled and treated as close as practical to the bathtub plumbing;

4. if, during the treatment of any area, the operator shall leave the site for any reason prior to the completion of the application, the operator shall prominently display a poster at the treatment site, which states that the treatment of the area is not complete;

5. the treatments of structures required in this section shall be called or faxed to the department's district office in which the treatment occurs, a minimum of one hour prior to beginning the application of termiticides. The information provided shall include: treatment company name; treatment structure street address, city, parish; directions to the property being pre-treated; date and time of beginning the application of termiticides to the property; square or linear footage of the each structure to be treated; and number of structures. Permittees or licensees shall keep a log of all pretreats including the information noted. The following is a list of parishes in each of the department's seven district offices. Treatments in a parish shall be called into the corresponding district office:

a. Shreveport District—Caddo, Bossier, Webster, Claiborne, Bienville, Red River, and Desoto;

b. Monroe District—Union, Morehouse, West Carroll, East Carroll, Madison, Richland, Ouachita, Lincoln, Jackson, Winn, Caldwell, Franklin, Tensas, Concordia, and Catahoula;

c. Alexandria District—Sabine, Natchitoches, Grant, LaSalle, Avoyelles, Rapides, and Vernon;

d. Crowley District—Beauregard, Allen, Acadia, Jefferson Davis, Cameron, Calcasieu;

e. Opelousas District—Evangeline, St. Landry, St. Martin, Iberia, St. Mary, Vermilion, and Lafayette;

f. Baton Rouge District—Pointe Coupee, West Feliciana, East Feliciana, St. Helena, Tangipahoa, Washington, St. Tammany, Livingston, St. James, Lafourche, Terrebonne, Assumption, Ascension, Iberville, West Baton Rouge, and East Baton Rouge;

g. New Orleans District—St. John the Baptist, St. Charles, Jefferson, Orleans, St. Bernard, and Plaquemines;

6. all borate treatments shall be contracted and reported as provided by R.S. 3:3370 and §119.E of this Part and the fee for each such contract shall be paid in accordance with §119.F of this Part;

7. records of contracts, graphs, monitoring (if required), and applications shall be kept as required by §117.I;

8. all retreatments shall be as required by §141.L of this Part;

9. the permittee or licensee shall report the completion of the application to the outside of the foundation to the department on the termite perimeter application form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:1285 (October 1997), LR 25:235 (February 1999), LR 25:1620 (September 1999), LR 26:2437 (November 2000), LR 27:1180 (August 2001), LR 29:1063 (July 2003), LR 30:1145 (June 2004), repromulgated LR 30:1614 (August 2004), amended LR 35:207 (February 2009), LR 35:1469 (August 2009), repromulgated LR 35:1872 (September 2009), amended, LR 37:286 (January 2011), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 39:301 (February 2013), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 39:1413 (June 2013), LR 41:333 (February 2015), LR 42:

#### **Family Impact Statement**

The proposed Rule does 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 does 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 Statement**

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### **Provider Impact Statement**

The proposed Rule does 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, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Kevin Wofford, Director of the Structural Pest Control Commission, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 3003, Baton Rouge, LA 70806 and must be received no later than 12 p.m. on January 4, 2016. No preamble is available.

#### **Public Hearing**

A public hearing will be held on December 28, 2015, at 1 p.m. in the Veterans' Auditorium at the Louisiana Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 3003, Baton Rouge, LA 70806. 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 Kevin Wofford at the address given or at (225) 922-1234.

Mike Strain, DVM  
Commissioner

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Structural Pest Control**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will not result in any costs or savings to state or local governmental units.

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

Pursuant to Act 201 of 2015 and existing authority in LA R.S. 3:3374, LDAF anticipates the proposed rule changes will result in a revenue increase of approximately \$335,000 annually beginning in FY 17. Due to the proposed rules being in effect for only a portion of FY 16, LDAF anticipates a revenue increase of approximately \$175,400.

The proposed amendment for Rule 105 increases permit fees for operators of structural pest control (SPC) businesses by \$25. LDAF issues two permits for SPC firms, one for firms that employ two or less employees, and one for firms that employ three or more employees. Permit fees for firms employing two or less employees will increase from \$125 to \$150. Similarly, permit fees for firms employing three or more employees will increase from \$175 to \$200. Based upon three-year averages of

permit issuances for firms that employ two or less employees (205) and firms that employ three or more employees (341), LDAF will generate an additional \$13,700 in revenue, increasing total revenue from approximately \$85,300 to \$99,000. Due to the rule being in effect only for the 3rd and 4th quarters of FY 16, when the department issues 170 permits on average for firms with two or less employees and 284 permits on average for firms with three or more employees, LDAF anticipates a revenue increase of approximately \$11,300 for the current fiscal year.

The proposed amendment for Rule 113 raises the administrative fee for processing of a technician registration certificate by \$5, from \$20 to \$25. Based upon a three-year average of LDAF processing 1,574 technician registration certificates annually, the fee increase will generate an additional \$8,000 each fiscal year, raising total revenue from approximately \$31,000 to \$39,000. Due to the rule being in effect only for the 3rd and 4th quarters of FY 16, when LDAF processes 1,371 pest control certificates on average, the department anticipates a revenue increase of \$6,900 for the current fiscal year.

The first proposed amendment for Rule 117 raises the annual fee for licensed pest control operations by \$5, from \$5 to \$10 per phase in which the pest control operator is licensed. Based upon a three-year average of LDAF issuing licenses for 2,256 phases annually, the fee increase will generate an additional \$11,300 each fiscal year, raising total revenue from approximately \$11,300 to \$22,600. Due to the rule being in effect only for the 3rd and 4th quarters of FY 16, when LDAF licenses 1,915 pest control phases on average, the department anticipates a revenue increase of \$9,600 for the current fiscal year.

The second proposed amendment for Rule 117 raises the fee for wood destroying insect reports and contracts by \$4, from \$8 to \$12 per contract. Based upon a four-year average of LDAF receiving 75,605 contracts and reports combined annually, the fee increase will generate an additional \$302,000 each fiscal year, raising total revenue from approximately \$605,000 to \$907,000. Due to the rule being in effect only for the 3rd and 4th quarters of FY 16, when LDAF receives 36,907 reports and contracts on average, the department anticipates a revenue increase of \$147,600 for the current fiscal year.

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

Pest control companies will be charged an additional \$4 per reported contract and report filed with LDAF, an additional \$25 for place of business permits, and an additional \$5 for registering a technician. The anticipated cost to pest control operators will be an additional \$5 per phase in which they are licensed. Based upon the department's current activity, the proposed rule changes will result in an aggregate amount of approximately \$175,400 paid by industry in FY 16 and approximately \$335,000 in FY 17 and subsequent fiscal years.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not have an effect on competition and employment.

Dane K. Morgan  
Assistant Commissioner  
1511#071

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Children and Family Services  
Division of Programs  
Licensing Section**

Reasonable and Prudent Parent Standards  
(LAC 67:V.6703, 6708, 7105, 7111, 7305, 7311, and 7313)

In accordance with the provisions of the Administrative Procedures Act R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:V, Subpart 8, Chapter 67, Maternity Home, Sections 6703 and 6708; Chapter 71, Child Residential Care Class A, Sections 7105 and 7111; and Chapter 73, Child Placing Agencies, Sections 7305, 7311, and 7313.

Pursuant to Public Law 113-183 and Act 124 of the 2015 Regular Legislative Session, the use of the "reasonable and prudent parent standard" is permitted, under certain circumstances, by a foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed. Reasonable and prudent parent standard is the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities. Standards mandated in this Rule shall be met at all times. Any violation of the provisions of this Rule may result in sanctions against the facility, including but not limited to, removal of any and all children placed in or by the facility; ineligibility to receive state or federal funding for the care and/or supervision of such children or for services related thereto, whether directly or indirectly; revocation of the facility's license; and legal action to immediately remove any child in the facility's care or under the facility's supervision.

The department considers this amendment necessary in order to comply with Public Law 113-183 and Act 124 of the 2015 Regular Legislative Session.

This action was made effective by an Emergency Rule dated and effective September 1, 2015.

**Title 67**

**SOCIAL SERVICES**

**Part V. Child Welfare**

**Subpart 8. Residential Licensing**

**Chapter 67. Maternity Home**

**§6703. Definition**

- A. ...
- B. Additional Definitions
  - 1. Definitions, as used in this Chapter:

\* \* \*

*Age or Developmentally Appropriate Activities or Items*—activities or items that are generally accepted as suitable for children of the same chronological age or level



of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

\* \* \*

*Reasonable and Prudent Parent Standard*—standard that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities. The standard is characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child.

*Reasonable and Prudent Parent Training*—training that includes knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities. This includes knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a child and knowledge and skills relating to applying the standard to decisions such as whether to allow the child to engage in social, extracurricular, enrichment, cultural, and social activities. Activities include sports, field trips, and overnight activities lasting one or more days. Also included is knowledge and skills in decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, and social activities.

\* \* \*

2 - 2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009), amended LR 36:799, 835 (April 2010), repromulgated LR 36:1275 (June 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:2521 (November 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:968 (April 2012), LR 42:

## §6708. General Provisions

A. - B.4. ...

C. Reasonable and Prudent Parent Standard

1. The provider shall designate in writing at least one on-site staff person as the authorized representative to apply the reasonable and prudent parent standard to decisions involving the participation of a child who is in foster care and placed in the facility in age or developmentally appropriate activities. The staff person(s) designated as the authorized representative shall be at the licensed location at all times during the facility's hours of operation. Licensing shall be notified in writing within five calendar days if there is a change to one of the designated representatives.

2. The authorized representative shall utilize the reasonable and prudent parent standard when making any

decision involving the participation of a child who is in foster care and placed in the facility in age or developmentally appropriate activities.

3. The authorized representative shall receive training or training materials shall be provided on the use of the reasonable and prudent parent standard. Documentation of the reasonable and prudent parenting—training shall be maintained. The reasonable and prudent parent training or training materials, as developed or approved by DCFS, shall include, but is not limited to the following topic areas:

- a. age or developmentally appropriate activities or items;
- b. reasonable and prudent parent standard;
- c. role of the provider and of DCFS; and
- d. allowing for normalcy for the child while respecting the parent's residual rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:969 (April 2012), amended LR 42:

## Chapter 71. Child Residential Care, Class A

### §7105. Definitions

A. As used in this Chapter:

\* \* \*

*Age or Developmentally Appropriate Activities or Items*—activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

\* \* \*

*Reasonable and Prudent Parent Standard*—standard that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities. The standard is characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child.

*Reasonable and Prudent Parent Training*—training that includes knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities. This includes knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a child and knowledge and skills relating to applying the standard to decisions such as whether to allow the child to engage in social, extracurricular, enrichment, cultural, and social activities. Activities include sports, field trips, and overnight activities lasting one or more days. Also included is knowledge and skills in decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, and social activities.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:805 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:976 (April 2012), LR 42:

**§7111. Provider Responsibilities**

A. - A.9.a.v. ...

10. Reasonable and Prudent Parent Standard

a. The provider shall designate in writing at least one on-site staff person as the authorized representative to apply the reasonable and prudent parent standard to decisions involving the participation of a child who is in foster care and placed in the facility in age or developmentally appropriate activities. The staff person(s) designated as the authorized representative shall be at the licensed location at all times during the facility's hours of operation. Licensing shall be notified in writing within five calendar days if there is a change to one of the designated representatives.

b. The authorized representative shall utilize the reasonable and prudent parent standard when making any decision involving the participation of a child who is in foster care and placed in the facility in age or developmentally appropriate activities.

c. The authorized representative shall receive training or training materials shall be provided on the use of the reasonable and prudent parent standard. Documentation of the reasonable and prudent parent training shall be maintained. The reasonable and prudent parent training or training materials, as developed or approved by DCFS, shall include, but is not limited to the following topic areas:

- i. age or developmentally appropriate activities or items;
- ii. reasonable and prudent parent standard;
- iii. role of the provider and of DCFS; and
- iv. allowing for normalcy for the child while respecting the parent's residual rights.

B. - H.1....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:811 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:979, 984 (April 2012), LR 42:

**Chapter 73. Child Placing Agencies**

**§7305. Definitions**

\* \* \*

*Age or Developmentally Appropriate Activities or Items*—activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

\* \* \*

*Reasonable and Prudent Parent Standard*—standard that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities. The standard is characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child.

*Reasonable and Prudent Parent Training*—training that includes knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities. This includes knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a child and knowledge and skills relating to applying the standard to decisions such as whether to allow the child to engage in social, extracurricular, enrichment, cultural, and social activities. Activities include sports, field trips, and overnight activities lasting one or more days. Also included is knowledge and skills in decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, and social activities.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:821 (March 2011), amended LR 42:

**§7311. Provider Responsibilities**

A. - A.7.a.iii. ...

8. Reasonable and Prudent Parent Standard

a. The provider shall designate in writing at least one on-site staff person as the authorized representative to apply the reasonable and prudent parent standard to decisions involving the participation of a child who is in foster care and placed in the facility in age or developmentally appropriate activities. The staff person(s) designated as the authorized representative shall be at the licensed location at all times during the facility's hours of operation. Licensing shall be notified in writing within five calendar days if there is a change to one of the designated representatives.

b. The authorized representative shall utilize the reasonable and prudent parent standard when making any decision involving the participation of a child who is in foster care and placed in the facility in age or developmentally appropriate activities.

c. The authorized representative shall receive training or training materials shall be provided on the use of the reasonable and prudent parent standard. Documentation of the reasonable and prudent parent training shall be maintained. The reasonable and prudent parent training or training materials, as developed or approved by the DCFS, shall include, but is not limited to the following topic areas:

- i. age or developmentally appropriate activities or items;
- ii. reasonable and prudent parent standard;
- iii. role of the provider and of DCFS;

iv. allowing for normalcy for the child while respecting the parent's residual rights.

B. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:828 (March 2011), LR 42:

### §7313. Foster Care Services

A. - B.3.c. ...

d. Documentation of reasonable and prudent parent training for all foster parents shall be maintained. This training shall be completed or training materials provided prior to certification for all foster parents certified after August 31, 2015. All foster parents certified on or prior to September 1, 2015 shall receive training or be provided training materials prior to September 29, 2015. Reasonable and prudent parent training or training materials, as developed or approved by DCFS, shall include, but is not limited to the following topic areas:

- i. age or developmentally appropriate activities or items;
- ii. reasonable and prudent parent standard;
- iii. role of the foster parents and of DCFS;
- iv. allowing for normalcy for the child while respecting the parent's residual rights.

B.4. - C.5.b.vii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and ACT 64 of the 2010 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:833 (March 2011), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:985 (April 2012), amended LR 42:

#### Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### Poverty Impact Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

#### Small Business Statement

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in Public Law 113-183 and Act 124 of the 2015 Regular Legislative Session.

#### Public Comments

All interested persons may submit written comments through, December 29, 2015, to Kim Glapion-Bertrand, Deputy Secretary of Programs, Department of Children and Family Services, P.O. Box 3776, Baton Rouge, LA 70821.

#### Public Hearing

A public hearing on the proposed Rule will be held on December 29, 2015 at the Department of Children and

Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Suzy Sonnier  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Reasonable and Prudent Parent Standards

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

In accordance with Public Law 113-183 and Act 124 of the 2015 Regular Legislative Session, this rule proposes to amend LAC 67:V, Subpart 8, Chapter 67 – Maternity Home, Chapter 71 – Child Residential Class A, and Chapter 73 – Child Placing Agencies to implement the Reasonable and Prudent Parent Standard that supports normalcy for children in foster care.

The proposed rule requires each maternity home, child residential facility and child placing agency serving children in the foster care system to apply the reasonable and prudent parent standard to their decisions whether to allow a child to participate in age-or-developmentally appropriate extracurricular, enrichment, cultural, and social activities, which creates normalcy for children.

The only cost of this proposed rule is the cost of publishing rulemaking, which is estimated to be approximately \$5,112 (\$1,278 State General Funds and \$3,834 Federal) in FY 15-16. This is a one-time cost that is routinely included in the department's annual operating budget.

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

Implementation of this rule will have no effect on state or local revenue collections.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule will have no impact on the estimated costs of any persons or non-governmental facilities. Training is currently required prior to employment as well as annually for existing staff. This proposed rule requires an additional training topic – Reasonable and Prudent Parent Standard, to be completed with the existing training requirements. The department will provide this training within their existing training budget at no cost to the facilities listed above.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Kim Glapion-Bertrand  
Deputy Secretary  
1511#074

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Children and Family Services Economic Stability Section

Supplemental Nutritional Assistance Program (SNAP)  
(LAC 67:III.1942)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to repeal LAC 67:III, Subpart 3, Supplemental Nutritional Assistance Program (SNAP), Chapter 19, Certification of Eligible Households, Subchapter G, Work Requirements, Section 1942, Workforce Training and Education Pilot Initiative.

Pursuant to the authority granted to the department by the Food and Nutrition Services (FNS) and Act 622 of the 2014 Regular Session of the Louisiana Legislature, the department is repealing Section 1942 to terminate the workforce training and education pilot initiative. The pilot initiative was established in Tangipahoa Parish for the purpose of enhancing workforce readiness and improving employment opportunities for SNAP recipients in that parish who are unemployed or underemployed able-bodied adults without dependents (ABAWDs). Unless exempt, these ABAWDs were required to either work an average of 20 hours per week or participate/comply with certain programs that enhance workforce readiness and improve employment for an average of 20 hours per week. Furthermore, the current ABAWD time limit waiver expires on September 30, 2015; therefore, ABAWDs statewide will be subject to the SNAP time limit.

This action was made effective by an Emergency Rule dated and effective October 1, 2015.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Economic Stability

#### Subpart 3. Supplemental Nutritional Assistance Program (SNAP)

#### Chapter 19. Certification of Eligible Households Subchapter G. Work Requirements

#### §1942. Workforce Training and Education Pilot Initiative

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 110-246, and Act 622 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 41:533 (March 2015), repealed LR 42:

#### Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### Poverty Impact Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

#### Small Business Statement

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

#### Public Comments

All interested persons may submit written comments through, December 29, 2015, to Sammy Guillory, Deputy Assistant Secretary of Programs, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70804.

#### Public Hearing

A public hearing on the proposed Rule will be held on December 29, 2015 at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, LA beginning at 10 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call area code (225) 342-4120 (voice and TDD).

Suzy Sonnier  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Supplemental Nutritional Assistance Program (SNAP)

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

This rule proposes to repeal Louisiana Administrative Code (LAC), Title 67, Part III, Subpart 3 Supplemental Nutritional Assistance Program (SNAP), Chapter 19 Certification of Eligible Households, Subchapter G Work Requirements, Section 1942—Workforce Training and Education Pilot Initiative.

The repeal of Section 1942 terminates the Workforce Training and Education Pilot Initiative in accordance with the provisions of Act 622 of the 2014 Regular Session of the Louisiana Legislature. The pilot initiative was established in Tangipahoa parish for the purpose of enhancing workforce readiness and improving employment opportunities for SNAP recipients in that parish who are unemployed or underemployed able-bodied adults without dependents (ABAWDs). Unless exempt, these ABAWDs were required to either work an average of 20 hours per week or participate/comply with certain programs that enhance workforce readiness and improve employment for an average of 20 hours per week.

The current ABAWD time limit waiver expired on September 30, 2015. Beginning October 1, 2015, all ABAWDs statewide are subject to the SNAP time limit of 3 months of benefits in a 36-month period unless they meet a minimum work requirement of either work an average of 20 hours per week or participate/comply with a workforce training program. An Emergency Rule dated and effective October 1, 2015, made this action effective. Therefore, the pilot initiative is obsolete and being repealed.

There is no anticipated direct material effect on state expenditures in DCFS as a result of this proposed rule.

The only cost associated with this proposed rule is the cost of publishing rulemaking. It is anticipated that \$1,065 (\$532.50

State General Fund and \$532.50 Federal Funds) will be expended in FY 15-16 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)

Implementation of this proposed rule will have no direct 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)

Implementation of this proposed rule will have no cost or economic benefit to directly affected persons or non-governmental groups. SNAP recipients in Tangipahoa parish will have the same work and job training requirements as the SNAP recipients in other parishes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will not have an impact on competition and employment for low-income families.

Sammy Guillory  
Deputy Assistant Secretary  
1511#075

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development  
Office of Business Development  
Office of Entertainment Industry Development**

Entertainment Industry Tax Credit Programs  
Motion Picture Investor Tax Credit Program  
(LAC 61:I.Chapter 16)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development has initiated rulemaking procedures to make amendments to the rules for the Motion Picture Investor Tax Credit Program to bring the rules into compliance with current statutory provisions and administrative practices.

**Title 61  
REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 16. Louisiana Entertainment Industry Tax  
Credit Programs**

**Subchapter A. Motion Picture Investor Tax Credit  
Program**

**§1605. Definitions**

A. - B. ...

\*\*\*

*Cost Report of Production Expenditures*—a report of production expenditures formatted in accordance with LED accounting guidelines, which may be issued with initial certification, posted on LED's website or otherwise communicated by LED to applicant in writing.

\*\*\*

*Louisiana Publisher*—a company primarily engaged in trade, professional or scholarly publishing, which sells copyrights or the right of use of copyrights in their ordinary course of business and has a physical location in Louisiana with at least one individual working at such a location on a regular basis. Registering with the Louisiana Secretary of

State or appointing a registered agent in Louisiana does not establish a physical location in Louisiana. A procurement company that acts as a conduit to enable purchases to qualify for tax credits that would not otherwise qualify shall not be considered a Louisiana publisher.

\*\*\*

*Louisiana Resident*—a natural person who is a legal resident, who has been domiciled in and maintained a permanent place of abode in Louisiana for no less than twelve consecutive months.

\*\*\*

*Louisiana Screenplay*—a screenplay created by a Louisiana resident, or purchased from a Louisiana publisher, as evidenced by documents such as certificate of authorship, WGA copyright registration certificate or a title search opinion.

\*\*\*

*Procurement Company*—a reseller company, or “pass through” company, that purchases goods or services from sources outside of the state, with the intention of selling them, rather than consuming or using them, where the vendor acts as a conduit to enable purchases, rentals or any other expenditures to qualify for tax credits that would not otherwise qualify or qualify at a higher rate, shall not be considered a source within the state.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development and the Office of the Governor, Division of Administration, LR 36:53 (January 2010) amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:

**Subchapter B. Louisiana Filmmakers Grant Fund  
Program**

**§1615. Louisiana Copyright**

A. For state certified productions initially certified on or after July 1, 2015, with expenditures occurring on or after July 1, 2015, to be eligible for the additional fifteen percent of base investment tax credit, an applicant company must meet the following criteria:

1. eligible company:

- a. motion picture production company;
- b. purpose of/engaged in producing nationally/internationally distributed motion pictures;
- c. corporation incorporated in Louisiana or other entity domiciled/headquartered in Louisiana;
- d. authorized to do business in Louisiana;
- e. principal place of business in Louisiana;
- f. headquartered in Louisiana;
- g. physical location in Louisiana;
- h. administrative/management activities exclusively in Louisiana (no other physical locations for administrative/management activities);
- i. files LA income tax return and either:
  - i. Louisiana ownership—must be able to prove that the company is 100 percent owned by a Louisiana resident or residents, who are natural persons who have been domiciled in and maintained a permanent place of abode in Louisiana for no less than twelve consecutive months prior to beginning of pre-production; or

ii. Louisiana employees—must be able to prove that the company has directly employed a minimum of 3 full-time Louisiana residents for a minimum of 12 months prior to beginning of pre-production;

2. required business activities. In addition, the applicant must be able to demonstrate that it:

a. has creative and financial control of the state certified motion picture production and either:

i. Louisiana screenplay—for no less than 12 months prior to date of application it directly owned or optioned to own, the copyright or the right of use of a Louisiana screenplay, which is the subject of the proposed state certified motion picture production; or

ii. non-Louisiana screenplay—for no less than 12 months prior to date of application it directly owned or optioned to own, the copyright or the right of use of a non-Louisiana screenplay, which is the subject of the proposed state certified production, and the results of an independent study, performed at LED's expense, reflect a positive return on investment for the state, taking into consideration all relevant factors.

B. If LED determines that an expenditure is a related party transaction, after review of CPA's verification report and any other supplemental support documentation, in addition to any other appropriate limitations or exclusions, such related party transactions shall not qualify for the additional 15 percent copyright credit.

C. LED shall not issue a final certification letter certifying any credits pursuant to the provisions of this Section, until promulgation of a Rule in the *Louisiana Register*, pursuant to the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:

#### **§1617. Louisiana Music**

A. For state certified productions initially certified on or after July 1, 2015, with expenditures occurring on or after July 1, 2015, to be eligible for an additional 15 percent tax credit for music expenditures, an applicant company must meet the following criteria:

1. services performed in Louisiana—music expenditures were for services performed in Louisiana, with job titles such as composer, songwriter, performer, musician, sound designer, arranger, producer. The purchase of a pre-existing musical work from a procurement company will not qualify; and

2. Louisiana copyright ownership—must be able to prove that the sound recording copyright or musical copyright is either:

a. owned in whole or in no part less than 25 percent by a Louisiana resident or residents; or

b. owned by a company headquartered in the state, with a majority ownership (51 percent +) of Louisiana residents;

c. the purchase of a copyright from a procurement company will not qualify.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:

#### **§1619. Louisiana Promotional Graphic**

A. For state certified productions initially certified on or after August 1, 2015, to be eligible for the entire 30 percent base investment tax credit, motion picture production applicants with base investments in excess of three hundred thousand dollars must be able to demonstrate, at time of request for final certification, that either that they have complied with the Louisiana promotional graphic requirements set forth below, or that an alternative marketing opportunity has been approved in writing by LED.

1. Approved Louisiana promotional graphic requirements:

a. a five second long static or animated graphical brand or logo promoting Louisiana, that has been approved in writing by LED;

b. for feature films, or other production types with a customary end credit crawl, the approved logo is to be placed in the end credits, before the below-the line crawl for the life of the production;

i. LED shall deem "life of the production" to mean that the approved logo is permanently embedded within the subject of the state certified production; and

c. the production company includes an approved Louisiana promotional link or prominent credit to Louisiana on its own website, or that of an approved affiliated company.

2. Alternative marketing opportunities:

a. shall be proposed to LED at the time of application for initial certification, setting forth the details and estimated value of the proposed opportunity or justification of value taking into consideration the additional 5 percent credit being sought. LED shall either approve or deny such options in writing at time of initial certification;

b. acceptable examples of alternative marketing opportunities may include, but not be limited to a combination of the following:

i. a produced in Louisiana card featuring an approved version of the logo during the opening credits of a feature film;

ii. an approved promotional featurette highlighting Louisiana as a tourist destination included on the DVD release of the production;

iii. an approved version of the logo placed in the opening title sequence or as a bumper into or out of commercial breaks for television productions;

iv. significant community service projects in Louisiana;

v. red carpet screening event in Louisiana;

vi. sponsorship of a film festival or other approved event in Louisiana;

vii. an official advertising poster for the state-certified production and a still frame from the production, or, at the discretion of LED, a significant set piece, prop, or costume from the production may be donated on the condition that they may be used for unlimited marketing purposes by the state;

viii. access to a standard or electronic press kit, clip from the motion picture or special interview with the principles involved in the production (actors, directors, producers, etc) promoting Louisiana as a business destination for unlimited use for marketing purposes by LED;

ix. other alternatives as proposed by production companies and approved by LED.

B. Failure to demonstrate such compliance at time of final certification shall result in a reduced base investment credit amount of 25 percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR.

#### **§1621. Louisiana Filmmaker Credit**

A. For state certified productions initially certified on or after July 1, 2015, with expenditures occurring on or after July 1, 2015, to be eligible for the 30 percent base investment tax credit, motion picture production applicants with base investments in excess of \$50,000 but less than \$300,000, must be able to demonstrate at time of request for final certification that 90 percent of the Louisiana base investment expended on above-the-line services has been expended for the services of Louisiana residents and that at least 90 percent of the total production jobs have been filled by Louisiana residents. No credits shall be earned by applicant, and LED shall void any initial certification letter issued and deny final certification requests if applicant fails to demonstrate such compliance.

B. Compensation for above the line services performed in Louisiana shall be paid directly to a Louisiana resident, and any payments made to a loan-out company shall not be considered Louisiana resident payroll for the purposes of above the line percentage calculations.

C. Production jobs may include, but not be limited to cast and crew positions customarily considered below the line in the film and television industry, such as: production manager, cinematographer, set designer, make-up artist. Extras shall not be considered a production job for purposes of production job percentage calculations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 42:

#### **Family Impact Statement**

It is anticipated that the proposed Rule amendment will have no significant effect on the: stability of the family, authority and rights of parents regarding the education and supervision of their children, functioning of the family, family earnings and family budget, behavior and personal responsibility of children, ability of the family or a 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 Statement**

It is anticipated that the proposed Rule should not have a significant adverse impact 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**

The proposed rulemaking will have no provider impact as described in HCR 170 of 2014.

#### **Public Comments**

Interested persons should submit written comments on the proposed Rules to Stephen Hamner through the close of business on Tuesday, December 29, 2015 at P.O. Box 94185, Baton Rouge, LA 70804-9185 or via email to [stephen.hamner@la.gov](mailto:stephen.hamner@la.gov).

#### **Public Hearing**

A meeting for the purpose of receiving the presentation of oral comments will be held at 11 a.m. on Wednesday, December 30, 2015 at the Department of Economic Development, 1301 North Third St., Baton Rouge, LA 70802.

Anne G. Villa  
Undersecretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Entertainment Industry**

#### **Tax Credit Programs**

#### **Motion Picture Investor Tax Credit Program**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no explicit incremental costs or savings to state or local governmental units due to the implementation of this rule because the proposed rule sets forth guidelines required by portions of Act 134 and Act 417 of 2015 Legislative Session and better aligns the rules with statutory provisions and administrative practices. Though the fiscal note submitted by the Department of Economic Development (LED) during the debate of Act 134 indicated the need for one or two additional staff members at an annual cost estimated at \$137,000, any administrative duties brought about by the proposed rule will be handled by existing departmental staff funded by the existing LED budget.

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

The current version of the statute was established in 2009, to date over 700 applications have been received, and \$1.25 billion issued in total credits certified as follows: \$49 million in FY 2010, \$186 million in FY 2011, \$138 million in FY 2012, \$348 million in FY 2013, \$133 million in FY 2014, \$308 million in FY 2015 and \$87 million certified to date in FY 2016.

Act 134 of the 2015 legislative session limited the state's annual program cost exposure to \$180 million for FY16-18, while reallocating the limited amounts of credits to projects with more resident content & participation. The new cap applies to the claiming of credits by taxpayers only and does not limit LED's authority to issue credits. However, by adding new credit provisions the Act actually increases the potential for more credits to be issued. Specifically, it provides for three new credit provisions in accordance with these proposed LED rules, which set forth criteria a production company must meet to qualify for: 1) an additional 15% tax credit (for 45% total film tax credit) on the total base investment for expenditures based upon a Louisiana or certain non-Louisiana screenplays, (although all procurement companies are required to source in-state), 2) an additional 15% credit for certain music expenditures, and 3) a new base investment credit of 30% for

certain Louisiana filmmakers spending between \$50,000-\$300,000 (with 90% of above-the-line expenditures and 90% of below-the line jobs with LA residents). A Louisiana resident must reside in the state for 12 consecutive months and payments made to a loan-out company are considered separate from payroll for both the Louisiana resident credit and above the line percentage calculations. These changes in program composition are expected to occur under the annual program cost cap during FY16-18. The fiscal note for Act 134 indicates an expected increase in state general fund revenue of \$77M in FY 16 and \$70M annually in FY 17 and FY 18, though this rule does not address all components of the law. However, assuming current activity levels and greater percentages of credits issued (conceivable that companies may qualify for 55% credit rate: 30% base+15% additional base for LA copyright credit+10% LA payroll) it is likely that program ROI will be significantly reduced, and substantial exposure to the state fisc could build up and be realized in FY19-20. Several bills were passed during the 2015 Legislative Session that altered the film program, and the official comprehensive version of the statute has not been published by the Law Institute at this time.

Act 417 of the 2015 legislative session requires a motion picture production company to use an approved logo or alternative marketing opportunity in order to receive the full 30% base investment credit, or be subject to a reduced base investment credit rate of 25%. The proposed rules provide guidance on what LED might approve as an alternative marketing opportunity. As all applicants will likely comply with the new logo provisions, there is no anticipated direct material effect on revenues as a result of this measure.

There is no impact to local governmental units.

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

The income of businesses participating in the program may increase due to the increased credit rates and new eligibility criteria.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will continue to gain competitively over companies that do not receive the program's ben

Anna G. Villa  
Undersecretary  
1511#067

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development  
Office of Business Development**

Ports of Louisiana Tax Credits (LAC 13:I.Chapter 39)

Under the authority of R.S. 47:6036 and R.S. 36:104, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development proposes to amend Sections 3903 and 3923 and to adopt Section 3999 for the administration of the Ports of Louisiana Tax Credits Program in LAC 13:I.Chapter 39 to implement fee increases allowed under Act 361 of the 2015 Regular Session of the Louisiana Legislature and to make other changes to bring the rules into compliance with statute and department procedures.

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part I. Financial Incentive Programs**

**Chapter 39. Ports of Louisiana Tax Credits**

**Subchapter A. Investor Tax Credit**

**§3903. Preliminary Certification**

A. - B.8. ...

C. An application fee shall be submitted with the application based on the following:

1. 0.5 percent (.005) times the estimated total incentive rebates (see application fee worksheet to calculate);

2. the minimum application fee is \$500 and the maximum application fee is \$15,000 for a single project;

D. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:2544 (November 2010), amended by the Office of Business Development, LR 42:

**Subchapter B. Import-Export Tax Credit**

**§3923. Application**

A - E.3. ...

F. An application fee equal to 0.5 percent (0.005) times the total anticipated tax incentive, with a minimum application fee of \$500 and a maximum application fee of \$15,000, shall be submitted with each application for import-export credits. The fee shall be made payable to Louisiana Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:2239 (November 2014), amended by the Office of Business Development, LR 42:

Editor's Note: Section 3999 below is applicable to both Subchapter A and B.

**§3999. Applicability of Act 125 of the 2015 Legislative Session to the Ports of Louisiana Tax Credits**

**A. Investor Tax Credit**

1. From July 1, 2015, through June 30, 2018

a. Annual Program Cap. Total annual installments of tax credits taken in a fiscal year shall not exceed \$4,500,000.

b. Annual Project Cap. Annual installments of tax credits taken by a project in a tax year shall not exceed \$1,800,000.

c. Credit Rate. Credits may be certified at a rate of up to 72 percent of total capital costs.

2. As of July 1, 2018, the annual program cap is \$6,250,000, the annual project cap is \$2,500,000, and credits may be granted at a rate of up to 100 percent of capital costs. However, previously approved credits will remain at the rate certified by the commissioner of the Division of Administration.

**B. Import Export Cargo Credit**

1. From July 1, 2015 through June 30, 2018

a. Program Cap. Certification of credits by LED shall not exceed \$4,500,000 per fiscal year (including certifications during a fiscal year for cargo shipped prior to that fiscal year).



b. Credit Rate. Credits will be certified at a rate of up to \$3.60 per tons of qualified cargo (including certifications for cargo shipped prior to July 1, 2015).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6036.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 42:

#### **Family Impact Statement**

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

#### **Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

#### **Provider Impact Statement**

The proposed rulemaking should have no provider impact as described in HCR 170 of 2014.

#### **Public Comments**

Interested persons may submit written comments to Danielle Clapinski, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be sent by email to [danielle.clapinski@la.gov](mailto:danielle.clapinski@la.gov). All comments must be received no later than 8 a.m., on December 28, 2015.

#### **Public Hearing**

A public hearing to receive comments on the Notice of Intent will be held on December 28, 2015 at 9 a.m. at the Department of Economic Development, 1051 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa  
Undersecretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Ports of Louisiana Tax Credits**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no incremental costs or savings to state or local governmental units due to the implementation of the proposed rules. The Department of Economic Development intends to administer the program with existing personnel.

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

Act 361 of the 2015 legislative session provided for a new fee schedule for LED and thus the Ports of Louisiana Tax Credits. Under the new fee schedule in which the application fee increased from \$250 to 0.5% of the anticipated incentive (minimum of \$500; maximum of \$15,000), the Ports of Louisiana Tax Credits could receive increased fees by an undeterminable amount for FY 16 - FY 18.

Additionally, Act 125 reduced the port investor credit program annual cap from \$6.25 million to \$4.5 million, reduced the port investor credit project cap from \$2.5 million to \$1.8 million and reduced the import export cargo credit annual cap from \$6.25 million to \$4.5 million. To date LED, has received some interest from companies but has not yet approved any credits for the Ports of Louisiana Tax Credits. Therefore, there may be an undeterminable increase in state general fund revenues for FY 16 – FY 18 related to these reductions.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Applicants' income will decrease due to the higher fees they will now owe upon filing an application.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Anne G. Villa  
Undersecretary  
1511#066

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Economic Development Office of Business Development**

#### **Restoration Tax Abatement Program (LAC 13:I.Chapter 9)**

Under the authority of LA Const. Art. VII, §21(H) and R.S. 36:104, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development proposes to amend and reenact Sections 903, 913, and 921 for the administration of the Restoration Tax Abatement Program in LAC 13:I.Chapter 9, for administration of the Restoration Tax Abatement Program to implement fee increases allowed under Act 361 of the 2015 Regular Session of the Louisiana Legislature and clarify to whom checks for fees should be payable.

#### **Title 13**

#### **ECONOMIC DEVELOPMENT**

#### **Part I. Financial Incentive Programs**

#### **Chapter 9. Restoration Tax Abatement Program**

#### **§903. Time Limits for Filing Application**

A. The applicant shall submit an "advance notification" on the prescribed form prior to the beginning of construction. An advance notification fee of \$250 shall be submitted with the advance notification form. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins.

B. ...

C. An application fee (effective May 4, 1988) shall be submitted with the application based on the following:

1. 0.5 percent of the estimated total five-year property tax exemption;

2. minimum application fee is \$500 for all projects except owner occupied residential properties which have no minimum application fee; maximum application fee is \$15,000;

3. please make checks payable to: Louisiana Economic Development.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992), amended by the Department of Economic Development, Office of Business Development, LR 42:

**§913. Affidavit of Final Cost**

A. Within six months after construction has been completed, an affidavit of final cost showing complete cost of the exempted project shall be filed on the prescribed form together with a fee of \$250 for the inspection which will be conducted by the Office of Commerce and Industry (make check payable to the Louisiana Economic Development).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992), amended by the Department of Economic Development, Office of Business Development, LR 42:

**§921. Contract Renewal**

A. - B.2. ...

3. a renewal fee check for \$250, payable to Louisiana Economic Development.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, LR 18:252 (March 1992), amended by the Department of Economic Development, Office of Business Development, LR 42:

**Family Impact Statement**

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

The proposed rulemaking should have no provider impact as described in HCR 170 of 2014.

**Public Comments**

Interested persons may submit written comments to Danielle Clapinski, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be sent by email to danielle.clapinski@la.gov. All comments must be received no later than 8 a.m., on December 28, 2015.

**Public Hearing**

A public hearing to receive comments on the Notice of Intent will be held on December 28, 2015 at 9:30 a.m. at the Department of Economic Development, 1051 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Restoration Tax Abatement Program**

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

There will be no incremental costs or savings to state or local governmental units due to the implementation of the proposed rules. The Department of Economic Development intends to administer the program with existing personnel.

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

Act 361 of the 2015 legislative session amended Restoration Tax Abatement (RTA) Program by providing for a new fee schedule for LED and thus the RTA program. Increased to \$250 were the advance notice fee (currently, \$100), project completion report filing fee (currently \$100) and contract renewal fee (currently \$50). The application fee was increased from 0.2% to 0.5% of the 5-year property tax exemption, with a minimum of \$500 and maximum of \$15,000, except for owner occupied residential which has no minimum. Under the new fee schedule, it is estimated that the RTA program will receive increased fees equaling \$65,000 annually in agency self-generated revenues for FY 16 – FY 18.

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

Applicants' income will decrease due to the higher fees they will now owe at the time of filing of an advance notification, application, annual filing or contract amendment.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Anne G. Villa  
Undersecretary  
1511#065

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development  
Office of Business Development**

**Quality Jobs Program (LAC 13:I.Chapter 11)**

Editor's Note: This Notice of Intent is being republished to correct a technical error. The original publication inadvertently omitted current language from §1107.D, and the omission was not considered upon submission of the Fiscal and Economic Impact Statement. The original Notice of Intent can be viewed in the October 20, 2015 edition of the *Louisiana Register* on pages 2182-2184.

These rules are being published in the *Louisiana Register* as required by R.S. 47:4351, et seq. The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104, hereby proposes to amend and reenact Sections 1105, 1107, 1111, 1117, and 1123 and proposes to enact

Section 1133 for the administration of the Quality Jobs Program in LAC 13:Chapter 11 to implement fees under the new fee schedule provided for by Act 361 of the 2015 Regular Session of the Louisiana Legislature and to make other changes to bring the rules into compliance with statute and department procedures.

### **Title 13**

## **ECONOMIC DEVELOPMENT**

### **Part I. Financial Incentive Programs**

#### **Chapter 11. Quality Jobs Program**

##### **§1107. Application Fees, Timely Filing**

A. The applicant shall submit an advance notification on the prescribed form before locating the establishment or the creation of any new direct jobs in the state. All financial incentive programs for a given project shall be filed at the same time, on the same advance notification form. An advance notification fee of \$250, for each program applied for, shall be submitted with the advance notification form. An advance notification filing shall be considered by the department to be a public record under Louisiana Revised Statutes, Title 44, Chapter 1, Louisiana Public Records Law, and subject to disclosure to the public.

B. An application for the Quality Jobs Program must be filed with the Office of Business Development, Business Incentives Services, P.O. Box 94185, Baton Rouge, LA 70804-9185 on the prescribed forms no later than 24 months after the department has received the advance notification and fee. Failure to file an application within the prescribed timeframe will result in the expiration of the advance notification.

C. An application fee shall be submitted with the application based on the following:

1. 0.5 percent (.005) times the estimated total incentive rebates (see application fee worksheet to calculate);

2. the minimum application fee is \$500 and the maximum application fee is \$15,000 for a single project;

3. an additional application fee will be due if a project's employment or investment scope is or has increased, unless the maximum has been paid.

D. An application to renew a contract shall be filed within 60 days of the initial contract expiring. A fee of \$250 must be filed with the renewal contract. The board may approve a request for renewal filed more than 60 days but less than 5 years after expiration of the initial contract, and may impose a penalty for the late filing of the renewal request, including a reduction of the 5-year renewal period.

E. The advance notification, application, or annual certification is not deemed to be filed until all required information and fees are received by LED. Processing fees for advance notifications, applications, or annual certification that have been accepted for eligible projects shall not be refundable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2451-2462 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011), LR 42:

### **Family Impact Statement**

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

### **Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

### **Provider Impact Statement**

The proposed rulemaking should have no provider impact as described in HCR 170 of 2014.

### **Public Comments**

Interested persons may submit written comments to Danielle Clapinski, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by email to [danielle.clapinski@la.gov](mailto:danielle.clapinski@la.gov). All comments must be received no later than 5 p.m., on November 23, 2014.

### **Public Hearing**

A public hearing to receive comments on the Notice of Intent will be held on November 24, 2015 at 10 a.m. at the Department of Economic Development, 1051 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa  
Undersecretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Quality Jobs Program**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no incremental costs or savings to state or local governmental units due to the implementation of the proposed rules. The Department of Economic Development intends to administer the program with existing personnel.

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

Acts 126 and 361 of the 2015 legislative session amended the Quality Jobs Program (QJP). For a period from July 1, 2015 until June 30, 2018, Act 126 reduces the amount of new payroll eligible for payroll rebates from 100% of new payroll down to 80% of new payroll for projects whose advance notification was filed on or after July 1, 2015. This legislative change was expected to result in a net revenue increase to the state general fund of \$0 for FY 16, \$1.8 million in FY 17 and \$5.4 million in FY 18. However, LED interprets the Act to allow all QJP approvals (instead of advance notice filings) after 6/30/18 to revert back to a rebate calculation based on 100% of the payroll, which means current law could allow a delay that may eventually result in projects receiving a rebate on 100% of payroll. This was not contemplated in the legislation or the fiscal note and may result in fewer claims in the QJP in early years but a large amount of claims beginning in FY 19, as projects wait for the larger rebates.

Act 361 provided for a new fee schedule for LED. Under the new fee schedule, the Quality Jobs Program will receive increased application fees equaling \$180,000 in agency self-generated revenues for FY 16 – FY 18. The addition of both of these revenue increases results in a net revenue increase to the state of roughly \$180,000 for FY 16, \$1.98 million in FY 17

and \$5.58 million in FY 18. In addition, Act 126 clarifies the deadline for applications stating that applications are due no later than 24 months after the filing of the project advance notification; however this will have no material fiscal impact on the program.

Lastly, the rule change limits the amount of time a company has to clear an objection from either LDR or LWC before cancellation of their application. This change should also have no material fiscal impact on the Quality Jobs Program.

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

The income of companies participating in the program will decrease by the increase in state general fund as fewer credits are anticipated to be paid out due to the legislation. In addition, the income of applicants will decrease by the amount of the application fee they will now owe at the time of reservation of credits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Anna G. Villa  
Undersecretary  
1511#069

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Economic Development  
Office of Business Development**

Technology Commercialization Credit and Jobs Program  
(LAC 13:I.2715 and 2719)

These rules are being published in the *Louisiana Register* as required by R.S. 47:4351 et seq. The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104 hereby proposes to amend Section 2715 and to adopt Section 2719 for the administration of the Technology Commercialization Credit and Jobs Program in LAC 13:I.Chapter 27 to implement fees under the new fee schedule provided for by Act 361 of the 2015 Regular Session of the Louisiana Legislature and to make other changes to bring the rules into compliance with statute and department procedures.

**Title 13**

**ECONOMIC DEVELOPMENT**

**Part I. Financial Incentive Programs**

**Chapter 27. Technology Commercialization Credit  
and Jobs Program**

**§2715. Application Fee  
[Formerly §2711]**

A.1. An application fee in the amount equal to 0.5 percent (0.005) times the total anticipated tax incentive with a minimum application fee of \$500 and a maximum application fee of \$15,000 shall be submitted with each application.

2. All fees shall be made payable to: Louisiana Department of Economic Development

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353 and R.S. 51:936.2.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:980 (May 2004), amended LR 36:310 (February 2010), amended by the Department of Economic Development, Office of Business Development, LR 42:

**§2719. Applicability of Act 125 of the 2015 Legislative  
Session to the Technology Commercialization  
Credit and Jobs Program**

A. Pursuant to Act 125 of the 2015 Regular Session of the Louisiana Legislature, applications approved on or after July 1, 2015, are subject to the following reductions from July 1, 2015, through June 30, 2018:

1. technology commercialization credits—28.8 percent of the amount of the investment.

2. technology jobs credits—4.32 percent of payroll for new direct jobs.

B. Applications approved prior to July 1, 2015, are not affected by Act 125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353 and R.S. 51:936.2.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 42:

**Family Impact Statement**

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

The proposed rulemaking should have no provider impact as described in HCR 170 of 2014.

**Public Comments**

Interested persons may submit written comments to Danielle Clapinski, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by email to [danielle.clapinski@la.gov](mailto:danielle.clapinski@la.gov). All comments must be received no later than 8 a.m., on December 28, 2015.

**Public Hearing**

A public hearing to receive comments on the Notice of Intent will be held on December 28, 2015 at 10 a.m. at the Department of Economic Development, 1051 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Technology Commercialization  
Credit and Jobs Program**

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

There will be no incremental costs or savings to state or local governmental units due to the implementation of the proposed rules. The Department of Economic Development intends to administer the program with existing personnel.

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

Act 125 and Act 361 of the 2015 legislative session amended the Technology Commercialization Credit and Jobs Program (Tech Comm). For a period from July 1, 2015 until June 30, 2018, Act 125 reduces the percentage of costs associated with applications approved in the commercialization of a technology that are eligible for credits from a 40% credit to a 28.8% credit and reduces the percentage of gross payroll of new direct jobs eligible for the jobs credit from 6% of gross payroll to 4.32% of gross payroll. According to the fiscal note, this legislative change was expected to result in a net revenue increase to the state general fund of \$12,000 in FY 17, \$25,000 in FY 18 and \$53,000 in FY 19.

Act 361 provided for a new fee schedule for LED in which the application fee increased from \$250 to 0.5% of the anticipated incentive (minimum of \$500; maximum of \$15,000). Under the new fee schedule, the Tech Comm Program are estimated to receive increased application fees equaling \$2,250 in agency self-generated revenues annually for FY 16 – FY 18. The addition of both of these revenue increases results in a net revenue increase to the state of roughly \$55,250 by FY 18.

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

The income of companies participating in the program will decrease by the increase in state general fund as fewer credits are anticipated to be paid out due to the legislation. In addition, the income of applicants will decrease by the amount of the application fee they will now owe at the time of reservation of credits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program’s benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Anne G. Villa  
Undersecretary  
1511#068

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 118—Statewide Assessment  
Standards and Practices

(LAC 28: CXI.Chapters 11, 13, 17, 18, 19, 23, and 24)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to Part CXI, *Bulletin 118—Statewide Assessment Standards and Practices* §1113. Achievement Levels; §1115. Performance Standards; §1701. Introduction; §1705. Introduction; and §1707. Performance Standards; and the repeal of Bulletin 118, *Statewide Assessment Standards and Practices*: §1125. Introduction; §1127. Grade 4 Achievement Level Descriptors; §1129. Grade 8 Achievement Level Descriptors; §1141. Content Standards; §1143. English Language Arts Test Structure; §1145. Mathematics Test Structure; §1147. Science Tests Structure; §1149 Social Studies Tests Structure; §1335. Content Standards; §1337. English Language Arts Tests

Structure; §1339. Mathematics Test Structure; §1341. Science Test Structure; §1343. Social Studies Tests Structure; §1349. Rescores; §1351. GEE Administration Rules; §1353. Summer Retest Administration; §1355. GEE Transfer Students; §1357. Student Membership Determination; §1703. Format; §1709. Introduction; §1711. Grade 3 Achievement Level Descriptors; §1713. Grade 5 Achievement Level Descriptors; §1715. Grade 6 Achievement Level Descriptors; §1717. Grade 7 Achievement Level Descriptors; §1719. Grade 9 Achievement Level Descriptors; §1721. Content Standards; §1723. English Language Arts Tests Structure; §1725. Math Tests Structure; §1727. Science Tests Structure; §1729. Social Studies Tests Structure; §1805. Algebra I Test Structure; §1806. Biology Test Structure; §1807. English II Test Structure; §1808. Geometry Test Structure; §1809. U.S. History Test Structure; §1810. English III Test Structure; §1815. Introduction; §1817. EOCT Achievement Level Descriptors; §1907. Test Structure; §1909. Scoring; §1915. Introduction; §1917. Grade Span 3-4 Alternate Achievement Level Descriptors; §1919. Grade Span 5-6 Alternate Achievement Level Descriptors; §1921. Grade Span 7-8 Alternate Achievement Level Descriptors; §1923. Grade Span 9-10 Alternate Achievement Level Descriptors; §1925. LAA 1 Science Alternate Achievement Level Descriptors; §2305. Format; §2313. Introduction; §2315. Proficiency Level Descriptors; §2317. Listening Domain Structure; §2319. Speaking Domain Structure; §2321. Reading Domain Structure; §2323. Writing Domain Structure; §2401. Description; §2403. Introduction; §2405. Format; §2407. Membership; §2409. Achievement Levels; §2411. Performance Standards; §2412. Introduction; §2413. ASA Mathematics Achievement Level Descriptors; and §2415. ASA LAA2 Mathematics Achievement Level Descriptors. The proposed revisions update policy to align with state law.

**Title 28**

**EDUCATION**

**Part CXI. Bulletin 118—Statewide Assessment Standards and Practices**

**Chapter 11. Louisiana Educational Assessment Program**

**Subchapter B. Achievement Levels and Performance Standards**

**§1113. Achievement Levels**

A.1. The Louisiana achievement levels are:

- a. advanced;
- b. mastery;
- c. basic;
- d. approaching basic; and
- e. unsatisfactory.

A.2. - B.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (1) and (C).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1536 (July 2005), amended LR 42:

**§1115. Performance Standards**

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 100 and 500 for science and social studies, and between 650 and 850 for English language arts and mathematics.

B. LEAP Achievement Levels and Scaled Score Ranges—Grade 4

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Advanced	790-850	796-850	405-500	399-500
Mastery	750-789	750-795	360-404	353-398
Basic	725-749	725-749	306-359	301-352
Approaching Basic	700-724	700-724	263-305	272-300
Unsatisfactory	650-699	650-699	100-262	100-271

C. LEAP Achievement Levels and Scaled Score Ranges—Grade 8

Achievement Level	English Language Arts Scaled Score Range	Mathematics Scaled Score Range	Science Scaled Score Range	Social Studies Scaled Score Range
Advanced	794-850	801-850	400-500	404-500
Mastery	750-793	750-800	345-399	350-403
Basic	725-749	725-749	305-344	297-349
Approaching Basic	700-724	700-724	267-304	263-296
Unsatisfactory	650-699	650-699	100-266	100-262

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

**§1125. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4 (B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1536 (July 2005), repealed LR 42:

**§1127. Grade 4 Achievement Level Descriptors**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, State Board of Elementary and Secondary Education, LR 31:1536 (July 2005), amended LR 36:968 (May 2010), LR 39:1423 (June 2013), repealed LR 42:

**§1129. Grade 8 Achievement Level Descriptors**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1540 (July 2005), amended LR 36:974 (May 2010), LR 39:1424 (June 2013), repealed LR 42:

**§1141. Content Standards**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1545 (July 2005), amended LR 32:236 (February 2006), repealed LR 42:

**§1143. English Language Arts Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1545 (July 2005), repealed LR 42:

**§1145. Mathematics Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1545 (July 2005), repealed LR 42:

**§1147. Science Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1546 (July 2005), repealed LR 42:

**§1149. Social Studies Tests Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1546 (July 2005), repealed LR 42:

**Chapter 13. Graduation Exit Examination**

**§1335. Content Standards**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1552 (July 2005), amended LR 32:237 (February 2006), repealed LR 42:

**§1337. English Language Arts Tests Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1552 (July 2005), repealed LR 42:

**§1339. Mathematics Tests Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1552 (July 2005), repealed LR 42:

**§1341. Science Test Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1553 (July 2005), repealed LR 42:

**§1343. Social Studies Tests Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1553 (July 2005), repealed LR 42:

**§1349. Rescores**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1554 (July 2005),

amended LR 32:237 (February 2006), LR 36:977 (May 2010), repealed LR 42:

**§1351. GEE Administration Rules**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1554 (July 2005), amended LR 32:237 (February 2006), LR 32:391 (March 2006), LR 34:67 (January 2008), repealed LR 42:

**§1353. Summer Retest Administration**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1555 (July 2005), repealed LR 42:

**§1355. GEE Transfer Students**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1555 (July 2005), amended LR 32:238 (February 2006), LR 34:68 (January 2008), repealed LR 42:

**§1357. Student Membership Determination**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1556 (July 2005), repealed LR 42:

**Chapter 17. Integrated LEAP**

**Subchapter A. General Provisions**

**§1701. Introduction**

A. The iLEAP is a criterion-referenced testing program that is directly aligned with the state content standards. The LEAP measures how well students in grades three, five, six and seven have mastered the state content standards. Test results are reported in terms of achievement levels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR

31:1556 (July 2005), amended LR 32:238 (February 2006), LR 33:265 (February 2007), LR 39:75 (January 2013), LR 42:

**§1703. Format**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:265 (February 2007), repealed LR 42:

**Subchapter B. Achievement Levels and Performance Standards**

**§1705. Introduction**

A. On each test—English language arts, math, science, and social studies—student performance will be reported in terms of achievement level. The Louisiana achievement levels are:

1. advanced;
2. mastery;
3. basic;
4. approaching basic; and
5. unsatisfactory.

B. Achievement Levels Definitions

1. *Advanced*—a student at this level has demonstrated superior performance beyond the mastery level.

2. *Mastery* (formerly Proficient)—a student at this level has demonstrated competency over challenging subject matter and is well prepared for the next level of schooling.

3. *Basic*—a student at this level has demonstrated only the fundamental knowledge and skills needed for the next level of schooling.

4. *Approaching Basic*—a student at this level has only partially demonstrated the fundamental knowledge and skills needed for the next level of schooling.

5. *Unsatisfactory*—a student at this level has not demonstrated the fundamental knowledge and skills needed for the next level of schooling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:266 (February 2007), amended LR 42:

**§1707. Performance Standards**

A. iLEAP Achievement Levels and Scaled Score Ranges—Grades 3, 5, 6, and 7

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

Achievement Level	Mathematics Scaled Score Ranges			
	Grade 3	Grade 5	Grade 6	Grade 7
Advanced	790-850	790-850	788-850	786-850
Mastery	750-789	750-789	750-787	750-785
Basic	725-749	725-749	725-749	725-749
Approaching Basic	700-724	700-724	700-724	700-724
Unsatisfactory	650-699	650-699	650-699	650-699

Achievement Level	Science Scaled Score Ranges				
	Grade 3	Grade 5	Grade 6	Grade 7	Grade 9
Advanced	382–500	378–500	380–500	388–500	Not Assessed
Mastery	342–381	341–377	343–379	348–387	
Basic	292–341	292–340	295–342	302–347	
Approaching Basic	249–291	248–291	251–294	259–301	
Unsatisfactory	100–248	100–247	100–250	100–258	

Achievement Level	Social Studies Scaled Score Ranges				
	Grade 3	Grade 5	Grade 6	Grade 7	Grade 9
Advanced	396–500	365–500	364–500	372–500	Not Assessed
Mastery	341–395	339–364	338–363	339–371	
Basic	287–340	289–338	292–337	293–338	
Approaching Basic	255–286	257–288	261–291	262–292	
Unsatisfactory	100–254	100–256	100–260	100–261	

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:266 (February 2007), LR 42:

### §1709. Introduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:990 (June 2007), repealed LR 42:

### §1711. Grade 3 Achievement Level Descriptors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:991 (June 2007), amended LR 39:1425 (June 2013), repealed LR 42:

### §1713. Grade 5 Achievement Level Descriptors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:994 (June 2007), amended LR 39:1427 (June 2013), repealed LR 42:

### §1715. Grade 6 Achievement Level Descriptors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:999 (June 2007), amended LR 39:1428 (June 2013), repealed LR 42:

### §1717. Grade 7 Achievement Level Descriptors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:1002 (June 2007), amended LR 39:1429 (June 2013), repealed LR 42:

### §1719. Grade 9 Achievement Level Descriptors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:1006 (June 2007), repealed LR 42:

### §1721. Content Standards

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:267 (February 2007), repromulgated LR 33:1007 (June 2007), repealed LR 42:

### §1723. English Language Arts Tests Structure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:267 (February 2007), repromulgated LR 33:1007 (June 2007), repealed LR 42:

### §1725. Math Tests Structure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:268 (February 2007), repromulgated LR 33:1008 (June 2007), repealed LR 42:

### §1727. Science Tests Structure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:269 (February 2007), repromulgated LR 33:1009 (June 2007), repealed LR 42:

### §1729. Social Studies Tests Structure

Repealed.

AUTHORITY NOTE; Promulgated in accordance with R.S. 17:24.4(A)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:269 (February 2007), repromulgated LR 33:1009 (June 2007), repealed LR 42:

### Chapter 18. End-of-Course Tests

#### §1805. Algebra I Test Structure

[Formerly 1807]

Repealed.

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



HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), repromulgated LR 39:76 (January 2013), repealed LR 42:

**§1806. Biology Test Structure**  
**[Formerly §1808]**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:35 (January 2012), repromulgated LR 39:76 (January 2013), repealed LR 42:

**§1807. English II Test Structure**  
**[Formerly §1809]**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), repromulgated LR 39:76 (January 2013), repealed LR 42:

**§1808. Geometry Test Structure**  
**[Formerly §1810]**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 37:859 (March 2011), repromulgated LR 39:76 (January 2013), repealed LR 42:

**§1809. U.S. History Test Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:76 (January 2013), repealed LR 42:

**§1810. English III Test Structure**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:76 (January 2013), repealed LR 42:

**§1815. Introduction**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:215 (February 2009), repealed LR 42:

**§1817. EOCT Achievement Level Descriptors**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 35:216 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:36 (January 2012), LR 39:76 (January 2013), LR 39:1020 (April 2013), repealed LR 42:

**Chapter 19. LEAP Alternate Assessment, Level 1**

**§1907. Test Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1–17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:425 (March 2007), amended LR 35:209 (February 2009), repealed LR 42:

**§1909. Scoring**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 (F) (3) and R.S. 17:183.1–17:183.3.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), amended LR 35:209 (February 2009), repealed LR 42:

**§1915. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), amended LR 35:210 (February 2009), repealed LR 42:

**§1917. Grade Span 3-4 Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 33:426 (March 2007), amended LR 35:2210 (February 2009), repealed LR 42:

**§1919. Grade Span 5-6 Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:210 (February 2009), repealed LR 42:

**§1921. Grade Span 7-8 Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:211 (February 2009), repealed LR 42:

**§1923. Grade Span 9-10 Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office of Student and School Performance, LR 35:212 (February 2009), repealed LR 42:

**§1925. LAA 1 Science Alternate Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, Office

of Student and School Performance, LR 35:212 (February 2009), repealed LR 42:

## **Chapter 23. English Language Development Assessment (ELDA)**

### **§2305. Format**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:259 (February 2007), amended LR 34:2556 (December 2008), repromulgated LR 35:61 (January 2009), repealed LR 42:

### **§2313. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:261 (February 2007), repealed LR 42:

### **§2315. Proficiency Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:261 (February 2007), repealed LR 42:

### **§2317. Listening Domain Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:261 (February 2007), repealed LR 42:

### **§2319. Speaking Domain Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:261 (February 2007), repealed LR 42:

### **§2321. Reading Domain Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:262 (February 2007), repealed LR 42:

### **§2323. Writing Domain Structure**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 20 USCS, Section 6311.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 33:262 (February 2007), repealed LR 42:

## **Chapter 24. Academic Skills Assessment (ASA)**

### **§2401. Description**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:36 (January 2012), repealed LR 42:

### **§2403. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:36 (January 2012), repealed LR 42:

### **§2405. Format**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:37 (January 2012), repealed, LR 42:

### **§2407. Membership**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:37 (January 2012), repealed LR 42:

### **§2409. Achievement Levels**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4(F)(1) and (C).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:78 (January 2013), repealed LR 42:

### **§2411. Performance Standards**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:78 (January 2013), repealed LR 42:

### **§2412. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.4(B).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:78 (January 2013), repealed LR 42:

### **§2413. ASA Mathematics Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:78 (January 2013), repealed LR 42:

### **§2415. ASA LAA 2 Mathematics Achievement Level Descriptors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 39:79 (January 2013), repealed LR 42:

### **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 one hundred 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 Statement**

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 4:30 p.m., December 9, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There may be an indeterminable impact to local school districts as a result of the proposed test scores. Scores are used to calculate school and district performance scores as part of the state's accountability system, which ultimately determines school letter grades. Schools labeled as "reward schools" are eligible for financial awards, as funds are available and as determined by the Department of Education. Other state policies related to school choice may be triggered when schools or districts earn letter grades of "C" and below; schools with recurring low scores face possible transfer to the Recovery School District under certain circumstances, both of which could impact MFP distributions to local school districts.

The proposed revisions update policy to include such adequate test scores (achievement standards) for the new assessments administered during the 2014-2015 school year in grades three through eight in English language arts and mathematics. Additional revisions to the scores may occur in the future due to the implementation of new standards and assessments in 2015-2016 and thereafter. Additional revisions remove the achievement level descriptors for the subject matter by grade level.

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

This policy will have no effect on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There may be an indeterminable impact on teachers and administrators as a result of these changes. For teachers, 50 percent of their evaluation is based upon growth in student learning measures using data from the value-added model and/or student learning targets, which may include student test scores. For principals, at least one learning target shall be based on overall school performance improvement in the current school year, as measured by the school performance score.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1511#077

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 119—Louisiana School Transportation Specifications and Procedures  
(LAC 28: CXIII.501, 903, 907, 1301, and 1303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 119—Louisiana School Transportation Specifications and Procedures*: §501, Driver Training Program; §903, Loading and Unloading; §907, Intersections, Turns, Driving Speeds, and Interstate Driving; §1301, Safe Riding Practices; and §1303, Emergency Exit Drills. Foreword. The proposed policy revisions to §903 are required by Act 421 and the revisions to §501 are required by SCR 92 of the 2015 Regular Legislative Session. Other revisions are necessary to update the policy and to correct errors.

#### Title 28 EDUCATION

#### Part CXIII. Bulletin 119—Louisiana School Transportation Specifications and Procedures Chapter 5. Instructional Program for School Bus Drivers

##### §501. Driver Training Program

A. - G.5. ...

H. Evaluation of Private Provider Curricula. Curricula developed by private providers for training Louisiana school bus drivers must be submitted to the DOE prior to use for training pre-service drivers. The criteria below will be used by reviewers to evaluate curricula submitted to the DOE for consideration.

1. Does the curriculum include training and topics required in Bulletin 119?

2. Does the curriculum incorporate applicable *Louisiana Revised Statutes* and BESE policies and procedures detailed in Bulletin 119 or other sources?

3. Does the curriculum content conflict with *Louisiana Revised Statutes* and BESE policies and procedures detailed in Bulletin 119 or other sources?

4. Does the curriculum content adhere to specifications in R.S. 17:164 or with best practices, as described in the National Congress on School Transportation publication *Specifications and Procedures*?

5. Does the curriculum adhere to applicable Federal Motor Vehicle Safety Standards for School Buses, as promulgated by the National Highway Traffic Safety Administration of the U.S. Department of Transportation?

6. Does the curriculum comply with regulations for drivers of Commercial Motor Vehicles, as promulgated by the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation?

7. Is the curriculum appropriate for new trainees with limited driving experience in operating commercial motor vehicles?

8. Are reproducibles or other training materials available for use as handouts for participants?

I. Training and Certification of Private Providers

1. Private providers who wish to conduct pre-service training of Louisiana school bus drivers must comply with

the requirement that all school bus drivers in Louisiana receive pre-service certification by successfully completing the Louisiana school bus operator training course conducted by DOE-certified trainers.

2. The DOE will certify qualified private providers to deliver required training to Louisiana bus drivers, provided the curriculum includes the training topics prescribed by the DOE. Private providers' trainers must attend and complete the DOE instructor program after the provider's curriculum has been evaluated and approved.

J. Drivers who become certified within a year after pre-service training do not have to complete additional in-service training that same school year unless so required by the LEA.

K. Exemptions based on verification of previously completed courses or job-related experiences are approved at the discretion of the LEA.

L. The required 44 hours of pre-service training shall consist of the following three phases and are described in the subsequent Section:

1. classroom instruction (30 hours);

2. vehicle familiarization and operation (behind the wheel) training (4 hours); and

3. on-the-bus training (10 hours).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:630 (April 1999), amended LR 36:1468 (July 2010), LR 37:2122 (July 2011), LR 38:749 (March 2012), LR 42:

#### Chapter 9. Vehicle Operation

##### §903. Loading and Unloading

A. - A.2. ...

B. Locations

1. It is the bus driver's responsibility to select a safe stopping point within LEA guidelines for students to load and unload from the school bus, even if this requires students to walk a distance.

2. Students shall be loaded or unloaded on a shoulder unless the LEA determines that loading or unloading on a shoulder is less safe for the student. If there is no shoulder or if the shoulder is determined to be less safe, a bus driver may load or unload a student while the bus is in a lane of traffic but only if the bus is in the lane farthest to the right side of the road so that there is not a lane of traffic between the bus and the right-side curb or other edge of the road.

3. A driver shall not load or unload a student in a location on a divided highway such that a student, in order to walk between the bus and his home or school, would be required to cross a roadway of the highway on which traffic is not controlled by the visual signals on the school bus.

4. Buses shall not stop within intersections to pick up or discharge students.

5. The school bus shall not be operated on school grounds except to pick up and discharge students or during student safety instruction exercises, but then only when students are carefully supervised.

C. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, R.S. 32:80, and R.S. 32:318.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:835 (May 1999),

amended LR 25:2169 (November 1999), LR 36:1470 (July 2010), LR 37:2123 (July 2011), LR 42:

### **§907. Intersections, Turns, Driving Speeds, and Interstate Driving**

A - A.3. ...

4. School buses shall not stop within intersections to pick up or to discharge students.

B. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, and R.S. 32:62.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:835 (May 1999), amended LR 25:2169 (November 1999), LR 36:1472 (July 2010), LR 37:3204 (November 2011), LR 42:

### **Chapter 13. Student Instruction**

#### **§1301. Safe Riding Practices**

A. - C. ...

D. The designated school administrator shall complete the safe riding practices classroom instruction form (Form T-7) each semester and send the completed form to the transportation office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:95, R.S. 17:223, R.S. 17:240, R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, R.S. 17:405, and R.S. 17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:839 (May 1999), amended LR 36:1473 (July 2010), LR 42:

#### **§1303. Emergency Exit Drills**

A. ...

B. One emergency exit drill shall be held during the first six weeks of each school semester. LEA administrators must provide opportunities at the beginning of each semester for all students riding a school bus to and from school and/or school-related activities to participate in emergency drill exits.

C. The designated school administrator shall complete the emergency evacuation drill verification form (Form T-8) each semester and send the completed form to the transportation office.

D. Three exit drill methods are required.

1. All passengers exit through the service (front) door.
2. All passengers exit through the rear emergency exit.
3. Passengers in the front half of the bus exit through the service door; passengers in the rear half exit through the rear emergency exit.

E. If an additional emergency exit door is installed on the bus, passengers should be taught how to exit through this door. It is not necessary to require exiting through emergency exit windows and roof-top hatches during drills, but evacuation procedures using these exits should be explained to passengers.

F. The following guidelines are given for conducting the emergency exit drills:

1. have a local written policy covering the drills;
2. school officials should schedule drills with drivers;
3. practice drills on school grounds, during school hours, in a safe place, and under supervision of the principal or by persons assigned by the principal to act in a supervisory capacity;
4. time and record each drill;
5. practice exiting the bus through the service (front) door and the emergency rear and/or side door. Instruct students on use of other available emergency exits; and

6. students shall practice going a distance of at least 100 feet from the bus and remain there in a group until further directions are given by the principal or persons assigned by the principal to act in a supervisory capacity. Practice drills must provide instruction for student helpers to assist passengers from the bus. Further direction regarding student helpers is discussed in §1307. Students must be instructed in how and where to get help in emergencies.

G. Important Factors Pertaining to School Bus Evacuation Drills

1. Safety of students is of the utmost importance and must be considered first.

2. All drills should be supervised by the principal or by persons assigned to act in a supervisory capacity.

3. The bus driver is responsible for the safety of the students. In the event of driver incapacitation, see Section 1307.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:632 (April 1999), amended LR 36:1474 (July 2010), LR 37:2123 (July 2011), LR 42:

#### **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 Statement**

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 4:30 p.m., December 9, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 119—Louisiana School Transportation Specifications and Procedures**

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

The proposed policy revision will have no effect on costs or savings to state or local governmental units.

The proposed policy revisions to §903 are required by Act 421 of the 2015 Regular Legislative Session and the revisions to §501 are required by SCR 92 of the 2015 Regular Legislative Session. ACT 421 establishes parameters for loading and unloading passengers. SCR 92 directed BESE to establish policies and procedures to evaluate training curricula developed for bus drivers by private providers. Other revisions are necessary to update the policy and to correct errors.

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

This policy will have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Secretary  
1511#076

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28: CXV. Chapter 23)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2318, The TOPS University Diploma; §2319, The Career Diploma; and §2325, Advanced Placement and International Baccalaureate. The proposed policy revisions are required to correct omissions, make technical edits, and update policy.

**Title 28**

**EDUCATION**

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

**Chapter 23. Curriculum and Instruction**

**Subchapter A. Standards and Curricula**

**§2318. The TOPS University Diploma**

A. - C.1.e.i. ...

f. Physical education—1 1/2 units:

i. shall be physical education I; and

ii. 1/2 unit from among the following:

(a). physical education II;

(b). marching band;

(c). extracurricular sports;

(d). cheerleading; or

(e). dance team.

iii. ROTC may be substituted.

iv. adaptive physical education for eligible special education students may be substituted.

g. Electives—8 units:

i. shall include the minimum courses required to complete a career area of concentration for incoming freshmen 2010-2011 and beyond.

(a). The area of concentration shall include one unit of education for careers, journey to careers, or JAG.

h. Total—24 units.

2. For incoming freshmen in 2008-2009 through 2013-2014 who are completing the Louisiana Core 4 curriculum, the minimum course requirements shall be the following.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. - c.iii.(h.). ...

(i). environmental science\*;

c.iii.(j). - j. ...

3. For incoming freshmen in 2014-2015 and beyond who are completing the TOPS university diploma, the minimum course requirements shall be the following:

- a. - g.iv. ...
- h. health education—1/2 unit;

NOTE: JROTC I and II may be used to meet the health education requirement. Refer to §2347.

- i. electives—three units;
- j. total—24 units.

4. - 6.a.vi. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:1128 (April 2011), LR 37:2129 (July 2011), LR 37:2132 (July 2011), LR 37:3193 (November 2011), LR 38:754, 761 (March 2012), LR 38:1001 (April 2012), LR 38:1584 (July 2012), LR 40:994 (May 2014), LR 40:1328 (July 2014), LR 40:1679 (September 2014), LR 40:2525 (December 2014), LR 42:

### §2319. The Career Diploma

A. - C.1.c.v. ...

- d. social studies—3 units:
  - i. U.S. history;
  - ii. civics (1 unit) or 1/2 unit of civics and 1/2 unit

of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

iii. The remaining unit shall come from the following:

d.iii.(a). - g. ...

i. education for careers, journey to careers, or JAG;

ii. six credits required for a career area of concentration.

h. Total—23 units.

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

a. - c.ii.(f). ...

d. social studies—2 units:

- i. 1 of the following:
  - (a). U.S. history;
  - (b). AP U.S. history;
  - (c). IB history of the Americas I;
- ii. 1 unit of civics or:

2.d.ii.(a). - 4. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (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 42:

### §2325. Advanced Placement and International Baccalaureate

A. Each high school shall provide students access to at least one advanced placement (AP) or international baccalaureate (IB) courses in each of four content areas and one additional AP or IB course.

B. High school credit shall be granted to a student successfully completing an AP course or an IB course, regardless of his test score on the examination provided by the college board or on the IB exam. Students must complete the entire course to receive any credit for a course designated as AP or IB.

1. Procedures established by the college board must be followed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:2032 (October 2008), LR 37:3198 (November 2011), LR 38:759 (March 2012), LR 38:1584 (July 2012), LR 38:2363 (September 2012), LR 39:2216 (August 2013), LR 42:

### 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.

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1508—Pupil Appraisal Handbook (LAC 28:CI.305, 307, 511, 711, 713, 717, 719. and 1509)

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 Statement

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 4:30 p.m., December 9, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Beth Scioneaux
Deputy Superintendent
1511#005

Evan Brasseaux
Staff Director
Legislative Fiscal Office

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to Bulletin 1508—Pupil Appraisal Handbook §305. Screening Activities, §307. Referral Process, §511. Evaluation Timelines, §711. Intellectual Disability, §713. Multiple Disabilities, §717. Other Health Impairment, §719. Specific Learning Disability, and School Health Services and School Nurse Services. The proposed policy revisions are necessary to clarify and align policy with recommendations of professional health organizations, as well as federal law, regarding students with exceptionalities.

Title 28

EDUCATION

Part CI. Bulletin 1508—Pupil Appraisal Handbook
Chapter 3. Interventions and Screenings
§305. Screening Activities

- A. - B.1.a.iii. ...
b. The student is considered "at-risk" of having a hearing impairment when one of the following conditions exist:
i. failure to respond at 20db in one of 1000 Hz, 2000 Hz or 4000 Hz frequencies in at least one ear;
ii. middle ear pressure outside the range of -200 and +50 mm H2O in either ear; or
iii. excessively stiff or flaccid tympanogram in either ear.
B.1.c. - B.2.b.iii. ...
c. When the required techniques are unsuccessful because of the student's immaturity, physical impairment, or intellectual ability, adapted methods of testing shall be used to determine the extent of the loss.
B.3. - H.1.e. ...
i. interventions are required for students suspected of having autism, developmental delay, emotional disturbance, mild intellectual disability, orthopedic impairment, other health impairment, and specific learning disability. Interventions are not required for a preschool-aged child, a student suspected of being gifted or talented, or a student suspected of having a severe or low incidence impairment.
I. - J.4. ...
AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:898 (May 2009), effective July 1, 2009, amended LR 42:
§307. Referral Process
A. - A.3. ...
B. An immediate referral may be made to pupil appraisal services for an individual evaluation of those students suspected of having low incidence impairments such as hearing impairment, visual impairment, deaf-blindness, traumatic brain injury, intellectual disability (moderate or severe), multiple disabilities, and some students with severe



autism, orthopedic impairments and/or significant health issues; or based on substantial documentation by school building level personnel of any student suspected of being likely to injure him/herself or others. Screening activities should be completed during the evaluation for these students.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:900 (May 2009), effective July 1, 2009, amended LR 42:

## **Chapter 5. Evaluation Responsibilities**

### **§511. Evaluation Timelines**

A. ...

1. End of the Year Extension. If the LEA begins an evaluation and there are fewer than 60 business days remaining in the LEA's current school year, the LEA may take this type of extension with parent permission. However, the number of days used between the parental signature and June 1 (the SER official beginning date for summer) will be subtracted from the 60 business days, and the timelines will begin again on September 1 (the SER official ending date for summer).

A.2. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:902 (May 2009), effective July 1, 2009, amended LR 42:

## **Chapter 7. Disabilities**

### **§711. Intellectual Disability**

A. Definition. *Intellectual Disability* means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

1. In every case, determination of an intellectual disability shall be based on an assessment of a variety of factors including educational functioning, adaptive behavior, and past and current developmental functioning (e.g., indices of social, intellectual, adaptive, verbal, motor, language, emotional, and self-care development for age).

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1 through 5 must all be met.

1. Documented evidence must show that evidence based intervention(s) implemented with fidelity did not significantly modify the areas of concern. The intervention(s) shall include operationally defined target behaviors, systematic measurement of the academic and/or social areas of concern, establishment of baseline, and monitoring of the student's response to the intervention. These results may not be available for students with low incidence impairments.

2. For all students meeting the classification of intellectual disability as defined in Subparagraphs a through c, the degree of impairment shall be specified.

a. The measured intelligence and adaptive behavior functioning of a student with an intellectual disability—mildly impaired generally falls between two and three standard deviations below the mean. The student's adaptive behavior functioning falls below age and cultural

expectations and is generally commensurate with the assessed level of intellectual functioning.

b. The measured intelligence and adaptive behavior functioning of a student with an intellectual disability—moderately impaired generally falls between three and four standard deviations below the mean. The student's adaptive behavior functioning falls below age and cultural expectations and is generally commensurate with the assessed level of intellectual functioning.

c. The measured intelligence and adaptive behavior functioning of a student with an intellectual disability—severely impaired generally falls greater than four standard deviations below the mean. The student's adaptive behavior functioning falls below age and cultural expectations and is generally commensurate with the assessed level of intellectual functioning.

B.3. - D.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:909 (May 2009), effective July 1, 2009, amended LR 42:

### **§713. Multiple Disabilities**

A. Definition. *Multiple Disabilities* means concomitant impairments (such as intellectual disability-blindness, orthopedic impairment-deafness, autism-orthopedic impairment, or emotional disturbance intellectual disability), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.

A.1. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:909 (May 2009), effective July 1, 2009, amended LR 42:

### **§717. Other Health Impairment**

A. - D. ...

1. a report of an examination, conducted within the previous 12 months from a physician or other licensed health care provider authorized by the state of Louisiana and qualified in accordance with their licensed scope of practice to assess and diagnose the student's health problems, giving not only a description of the impairment but also any implications for instruction and physical education. When the report indicates the student has a health condition requiring health technology, management or treatments including a special diet or medication or that the student needs assistance with activities of daily living, the school nurse or other qualified personnel will conduct a health assessment. For attention deficit disorder or attention deficit hyperactivity disorder, a diagnostic report from a physician or a nurse practitioner shall not be required.

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:910 (May 2009), effective July 1, 2009, amended LR 42:

### **§719. Specific Learning Disability**

A. Definition. *Specific Learning Disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or

written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

B. Criteria for Eligibility. Evidence of criteria listed in Paragraphs 1, 2, 3, and 4 must be met:

1. the learning problems are not primarily the result of:

- a. visual, hearing, or motor disability;
- b. intellectual disability;

B.1.c. - D.4. ...

5. a psychological assessment shall be conducted by a certified school psychologist, when necessary, to rule out an intellectual disability;

6. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:911 (May 2009), effective July 1, 2009, amended LR 42:

## **Chapter 15. Related Services**

### **§1509. School Health Services and School Nurse Services**

A. - B.1.b. ...

c. A prescription from a physician or dentist or other licensed health care professional authorized by the state of Louisiana to practice in Louisiana or adjacent state and qualified in accordance with their licensed scope of practice prescribes the health treatment, technology, and/or health management that the student must have in order to function within the educational environment; or there is a documented need for a modification of his or her activities of daily living.

C. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:922 (May 2009), effective July 1, 2009, amended LR 42:

#### **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 Statement**

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 4:30 p.m., December 9, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 1508  
Pupil Appraisal Handbook**

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

The proposed policy revision will have no effect on costs or savings to state or local governmental units.

The proposed policy revisions clarify and align policy with recommendations of professional health organizations, as well as federal law. In §305, one condition is being removed at the recommendation of the Educational Audiologists because it is redundant. In §717, the revision allows health care providers other than physicians to diagnose certain health issues according to professional standards and the recommendations of professional organizations. The revision in §1509 allows licensed health care professionals other than physicians to write prescriptions which aligns with the policy with professional standards. Other revisions align with federal law.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

This policy will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 

There may be an indeterminable economic benefit to directly affected persons or non-governmental groups if the costs for diagnoses and prescriptions by health care professionals other than physicians are cheaper.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1511#007

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 746—Louisiana Standards for State Certification of School Personnel—PRAXIS Exams and Scores (LAC 28:CXXXI.243)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, §243. PRAXIS Exams and Scores. The policy revision sets the passing score for the PRAXIS exam for individuals who complete the new Birth to Kindergarten undergraduate teacher preparation program.

**Title 28**

**EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**  
**Chapter 2. Louisiana Educator Preparation Programs**  
**Subchapter D. Testing Required for Licensure Areas**

**§243. PRAXIS Exams and Scores**

A. - A.2. ...  
\* \* \*

Certification Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning and Teaching		
			PLT K-6 (#0622 or 5622)	PLT 5-9 (#0623 or 5623)	PLT 7-12 (#0624 or 5624)
Birth to Kindergarten	Early Childhood Content Knowledge (5022/5025 after September 2015)	160 (for 5022)	PLT: Early Childhood 0621 or 5621 (Score 157)		
	Early Childhood Education (5025)	156 (for 5025)			
OR					
Education of Young Children (5024)	160				
Early Childhood PK-3	OR		PLT: Early Childhood 0621 or 5621 (Score 157)		
	PreK Education (5531)	155			
Early Childhood PK-3	Elementary Content Knowledge (0014 or 5014) prior to 9/1/15	150	PLT: Early Childhood 0621 or 5621 (Score 157)		
	Effective 9/1/15 to 8/31/17				
Early Childhood PK-3	Elementary Education: Content Knowledge (5018)	163	PLT: Early Childhood 0621 or 5621 (Score 157)		
	OR				
	Elementary Education: Multiple Subjects (5001)				
	• Reading/Language Arts(5002)	157			
	• Mathematics (5003)	157			
• Social Studies (5004)	155				
• Science (5005)	159				
Early Childhood PK-3	Mandatory 9/1/17 Elementary Education: Multiple Subjects (5001)		PLT: Early Childhood 0621 or 5621 (Score 157)		
	• Reading/Language Arts(5002)	157			
	• Mathematics (5003)	157			
	• Social Studies (5004)	155			
	• Science (5005)	159			

Certification Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning and Teaching		
			PLT K-6 (#0622 or 5622)	PLT 5-9 (#0623 or 5623)	PLT 7-12 (#0624 or 5624)
Grades 1-5	Elementary Content Knowledge (0014 or 5014) prior to 9/1/15	150	160	---	---
Grades 1-5	Effective 9/1/15 to 8/31/17 Elementary Education: Content Knowledge (5018)	163	160		
	OR Elementary Education: Multiple Subjects (5001) <ul style="list-style-type: none"> <li>• Reading/Language Arts(5002) 157</li> <li>• Mathematics (5003) 157</li> <li>• Social Studies (5004) 155</li> <li>• Science (5005) 159</li> </ul> Mandatory 9/1/17 Elementary Education: Multiple Subjects (5001) <ul style="list-style-type: none"> <li>• Reading/Language Arts(5002) 157</li> <li>• Mathematics (5003) 157</li> <li>• Social Studies (5004) 155</li> <li>• Science (5005) 159</li> </ul>				
Grades 4-8 Mathematics	Middle School Mathematics (0069) Prior to 1/1/14	148	---	160	---
	Middle School Mathematics (5169) Effective 1/1/14	165			
Grades 4-8 Science	Middle School Science (0439) Prior to 6/8/14	150	---	160	---
	Middle School Science (5440) Effective 6/8/14	150			
Grades 4-8 Social Studies	Middle School Social Studies (0089 or 5089)	149	---	160	---
Grades 4-8 English/ Language Arts	Middle School English/Language Arts (0049 or 5049) Prior to 1/1/14	160		160	
	Middle School English (5047) Effective 1/1/14	164	---		---

**B. Content and Pedagogy Requirements**

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**C. - E. ...**

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

**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 one hundred 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? No.
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 Statement

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 4:30 p.m., December 9, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis  
Executive Director

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act  
(LAC 28:XLIII.133 and 905)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*: §133, Expenditures and §905, Definitions. The proposed revisions update policy to align with federal law and correct the placement of a subchapter title.

### Title 28

### EDUCATION

### Part XLIII. Bulletin 1706

### Regulations for Implementation of the Children with Exceptionalities Act

### Subpart 1. Students with Disabilities

### Chapter 1. State Eligibility

### Subchapter F. Students with Disabilities Enrolled by their Parents in Private Schools

### §133. Expenditures

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

i. A student shall be eligible to participate in the program after submission of an application to the Louisiana Department of Education on a timeline established by the department and in accordance with the following requirements:

(a). evaluation of the student by a local education agency as defined in R.S. 17:1942 and resulting in a determination that services are required for one of the following exceptionalities:

- (i). autism;
- (ii). intellectual disability;
- (iii). emotional disturbance;
- (iv). developmental delay;
- (v). other health impairment;
- (vi). specific learning disability; or
- (vii). traumatic brain injury;

3.a.i.(b). - 8.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:4031 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2041 (October 2008), amended LR 38:1401 (June 2012), LR 40:2533 (December 2014), LR 42:

### Chapter 9. General

### Subchapter B. Definitions used in these Regulations

### §905. Definitions

\* \* \*

*Intellectual Disability*—see *student with a disability*.

\* \* \*

*Student with a Disability*—

#### 1. General

a. *Student with a Disability*—a student evaluated in accordance with §§305 through 312 of these regulations and determined as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Bulletin 746-PRAXIS Exams and Scores

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

The proposed policy revision will have no effect on costs or savings to state or local governmental units.

The Praxis Early Childhood (5025) exam was approved by BESE in December 2014 as one of the assessment options for individuals who complete the new Birth to Kindergarten undergraduate teacher preparation program, but setting a passing score was delayed until the completion of the multi-state standard setting study by Educational Testing Services (ETS). The proposed policy revision sets the new passing score.

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

This policy will have no effect on revenue collections of state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1511#006

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

serious emotional disturbance (referred to in these regulation as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

1.b.i. - 3.e. ...

f. *Intellectual Disability*—significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.

g. *Multiple Disabilities*—concomitant impairments (such as intellectual disability-blindness or intellectual disability -orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term *multiple disabilities* does not include deaf-blindness.

h. - j.i. ...

ii. Disorders not Included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

k. - m. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2089 (October 2008), amended LR 36:1505 (July 2010), LR 38:2368 (September 2012), LR 42:

#### 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 Statement

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 4:30 p.m., December 9, 2015, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis  
Executive Director

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: **Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act**

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

The proposed policy revision will have no effect on costs or savings to state or local governmental units.

The proposed revisions update policy to align with federal law and correct the placement of a subchapter title.

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

This policy will have no effect on revenue collections of state or local governmental units.

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

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1511#008

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary**

**Expedited Penalty Agreement  
(LAC 33:I.Chapter 8)(OS088)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.801, 805 and 807 (OS088).

This Rule amends and updates the violations in the air quality, hazardous waste, solid waste, underground storage tanks, water quality, and radiation protection provisions in the expedited penalty program contained in LAC 33:I.807. The Rule also clarifies various existing violations, and appropriately adjusts existing penalty amounts to make the amounts consistent with penalty amounts in the proposed Rule.

The original expedited penalty agreement Rule, LAC 33:I.Chapter 8, became final on December 20, 2006. Since that time, the department has determined additional violations may qualify for coverage under the expedited penalty agreement provisions set forth in LAC 33:I.Chapter 8. Just like the existing Rule, the proposed rule provides an alternative penalty assessment mechanism that the department may utilize to expedite the assessment of penalties in appropriate cases. The department issues expedited penalties at its discretion based upon the circumstances associated with the violations. Entering into an expedited penalty agreement with the department is voluntary, the respondent retains the right to either enter into, or not enter into, the agreement. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY  
Part I. Office of the Secretary  
Subpart 1. Departmental Administrative Procedures  
Chapter 8. Expedited Penalty Agreement  
§801. Definitions**

\* \* \*

*LAR050000*—Repealed.  
*LAR100000*—Repealed.  
*LPDES General Permit*—Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1393 (July 2008), amended by the Office of the Secretary, Legal Division, LR 42:

**§805. Applicability**

A. - D. ...

E. Nine Factors for Consideration. An expedited penalty agreement may be used to assess a monetary penalty for a violation or violations cited in an enforcement action that includes a notice of potential penalty component. An expedited penalty agreement may be used only when the following criteria for the nine factors for consideration listed in R.S. 30:2025(E)(3)(a) are satisfied.

1. The History of Previous Violations or Repeated Noncompliance. An expedited penalty agreement may be utilized to assess a monetary penalty only for a violation that is not a repeat occurrence of a violation that was cited in any compliance order, penalty assessment, settlement agreement, or expedited penalty agreement issued to or entered into with the respondent by the department within the previous two years, and occurred at a facility under the same agency interest number. Site-specific enforcement history considerations will only apply to expedited penalty agreements.

E.2. - L. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006), amended by the Office of the Secretary, Legal Division, LR 42:

**§807. Types of Violations and Expedited Penalty Amounts**

A. The types of violations listed in the following tables may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

EXPEDITED PENALTIES			
OFFICE OF THE SECRETARY			
Violation	Citation	Amount	Frequency
Failure to submit a timely NOC-1 within one year of changes in the name only of a facility or of its owner/operator.	LAC 33:I.1905.A	\$250	Per occurrence
* * *			

EXPEDITED PENALTIES			
AIR QUALITY			
Violation	Citation	Amount	Frequency
Failure to submit a timely and complete permit application prior to construction, but the application was submitted within one year from the start of construction of a facility that is eligible for coverage under a Minor Source Permit or a Minor Source - Air General Permit for a crude oil and/or natural gas facility.	LAC 33:III.501.C.1	\$250	Per occurrence

EXPEDITED PENALTIES			
AIR QUALITY			
Violation	Citation	Amount	Frequency
Failure to submit a timely and complete permit application prior to reconstruction or modification, but submitted the application within one year from the start of reconstruction or modification of a facility that is permitted under a Minor Source Permit or a Minor Source - Air General Permit for a crude oil and/or natural gas facility.	LAC 33:III.501.C.1	\$250	Per occurrence
Failure to obtain a Minor Source Permit or a Minor Source Permit - Air General Permit, but obtained the necessary permit within one year after commencement of operations of a crude oil and/or natural gas facility that may result in the initiation of emission of air contaminants.	LAC 33:III.501.C.2	\$1,000	Per occurrence
Failure to obtain a Minor Source Permit or a Minor Source Permit - Air General Permit, but obtained the necessary permit within two years after commencement of operations of a crude oil and/or natural gas facility that may result in the initiation of emission of air contaminants.	LAC 33:III.501.C.2	\$1,500	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in any minor source permit.	LAC 33:III.501.C.4	\$250	Per occurrence
***			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual or semiannual report.	LAC 33:III.501.C.4	\$500	Per occurrence
Failure to submit the Title V permit renewal application at least six months prior to the expiration date of the current permit, but obtained the renewal permit on or before the expiration date of the current permit.	LAC 33:III.507.E.4	\$1,000	Per occurrence
Failure to provide notice of change of ownership within 45 days after the change.	LAC 33:III.517.G	\$250	Per occurrence
Failure to submit a complete Annual Criteria Pollutant Emissions Inventory in a timely manner when applicable.	LAC 33:III.919	\$500	Per occurrence
Failure to take all reasonable precautions to prevent particulate matter from becoming airborne.	LAC 33:III.1305.A	\$750	Per occurrence
Failure to install and maintain tarps in an abrasive blasting facility.	LAC 33:III.1329.C.1-3	\$750	Per occurrence

EXPEDITED PENALTIES			
AIR QUALITY			
Violation	Citation	Amount	Frequency
Failure to prevent blasting material or visible floating solids from reaching waters of the state, minimized to the maximum extent possible as specified in the facility and/or activity BMP, or in accordance with the LPDES permit program.	LAC 33:III.1329.E	\$750	Per occurrence
Failure to use and diligently maintain in proper working order all emission control equipment according to the manufacturer's specifications whenever any emissions are being generated that can be controlled by the facility, even if the ambient air quality standards in affected areas are not exceeded.	LAC 33:III.1329.H	\$750	Per violation
Failure to maintain records on the facility premises at all times, and present them to an authorized representative of the department upon request.	LAC 33:III.1333.A or B	\$200	Per record
***			
Failure to submit a complete Annual Toxic Emissions Data Inventory in a timely manner when applicable.	LAC 33:III.5107.A	\$500	Per occurrence

EXPEDITED PENALTIES			
AIR QUALITY—Asbestos			
Violation	Citation	Amount	Frequency
***			

EXPEDITED PENALTIES			
AIR QUALITY—Lead			
Violation	Citation	Amount	Frequency
***			

EXPEDITED PENALTIES			
AIR QUALITY—Stage II Vapor Recovery			
Violation	Citation	Amount	Frequency
***			

EXPEDITED PENALTIES			
AIR QUALITY—CHEMICAL ACCIDENT PREVENTION			
Violation	Citation	Amount	Frequency
Failure to ensure current and newly assigned employees have received initial and refresher training as specified (five or fewer employees).	LAC 33:III.5901.A, as described by 40 CFR 68.54 (a-d) (Program 2)	\$500	Per occurrence/employee
Failure to prepare and implement procedures to maintain the ongoing mechanical integrity of the process equipment and/or perform or cause to be performed inspections and tests on process equipment.	LAC 33:III.5901.A, as described by 40 CFR 68.56(a and d) (Program 2)	\$1500	Per occurrence
Failure to document completion of a process hazard analysis action item.	LAC 33:III.5901.A, as described by 40 CFR 68.67(e) (Program 3)	\$250	Per occurrence



EXPEDITED PENALTIES			
AIR QUALITY—CHEMICAL ACCIDENT PREVENTION			
Violation	Citation	Amount	Frequency
Failure to ensure current and newly assigned employees have received initial and refresher training (five or fewer employees).	LAC 33:III.5901.A, as described by 40 CFR 68.71(a and b) (Program 3)	\$750	Per occurrence/employee
Failure to document each inspection and test performed on process equipment.	LAC 33:III.5901.A, as described by 40 CFR 68.73(d)(4) (Program 3)	\$250	Per occurrence

EXPEDITED PENALTIES			
HAZARDOUS WASTE			
Violation	Citation	Amount	Frequency
Unpermitted/Unauthorized storage of on-site generated hazardous waste for a period greater than the allowable time frame and this storage did not result in, or significantly increase the risk of, a release of or exposure to hazardous waste.	LAC 33:V.303.B	\$1,000	Per occurrence
Failure by a generator of a <i>solid waste</i> (as defined in LAC 33:V.109) to determine if solid waste is a hazardous waste and this failure did not result in, or significantly increase the risk of a release or exposure to hazardous waste.	LAC 33:V.1103	\$1,000	Per occurrence
Failure by a generator to notify the Office of Environmental Services within seven days of changes to the information submitted in its application for an EPA identification number.	LAC 33:V.1105.B	\$250	Per inspection
Failure to keep a container containing non-volatile hazardous waste closed, except when necessary to add or remove waste (five or fewer containers).	LAC 33:V.1109.E.1.a.i; LAC 33:V.1109.E.4; LAC 33:V.1109.E.7.a	\$250	Per occurrence
Failure to conduct weekly inspections of hazardous waste containers.	LAC 33:V.1109.E.1.a.i	\$500	Per occurrence
Failure to mark a container of hazardous waste with an accumulation start date (five or fewer containers).	LAC 33:V.1109.E.1.c; LAC 33:V.1109.E.7.c	\$250	Per occurrence
Failure to clearly label or mark a container and/or tank storing hazardous waste with the words "Hazardous Waste" or other words identifying the contents of the container (five or fewer containers).	LAC 33:V.1109.E.1.d; LAC 33:V.1109.E.4; LAC 33:V.1109.E.7.c	\$250	Per occurrence
Failure by a hazardous waste generator to submit a timely, accurate, and/or complete hazardous waste annual report.	LAC 33:V.1111.B	\$500	Per occurrence
Failure to label or mark each universal waste or a container storing universal waste in accordance with LAC 33:V.3823 and/or LAC 33:V.3845 (five or fewer containers).	LAC 33:V.3823; LAC 33:V.3845	\$250	Per occurrence

EXPEDITED PENALTIES			
HAZARDOUS WASTE			
Violation	Citation	Amount	Frequency
Failure by a used oil handler to label or mark containers or aboveground tanks storing used oil or fill pipes to transfer used oil into underground storage tanks with the words "Used Oil" (five or fewer containers).	LAC 33:V.4013.D; LAC 33:V.4035.G; LAC 33:V.4049.F; LAC 33:V.4069.F	\$250	Per occurrence
Failure by a used oil handler to stop, contain, cleanup, and/or manage a release of used oil, and/or repair or replace a leaking used oil container or tank prior to returning it to service.	LAC 33:V.4013.E; LAC 33:V.4035.H; LAC 33:V.4049.G; LAC 33:V.4069.G	\$750	Per occurrence

EXPEDITED PENALTIES			
SOLID WASTE			
Violation	Citation	Amount	Frequency
Unauthorized on-site processing and/or disposal of regulated solid waste generated at the site by an individual who owns, leases, or has an actual right, title, or interest in the property.	LAC 33:VII.315.C	\$500	Per occurrence
Unauthorized processing and/or disposal of solid waste which was generated at an off-site location.	LAC 33:VII.315.C	\$1,500	Per occurrence
Unauthorized on-site processing and/or disposal of regulated solid waste at a site by a business or other entity having an actual right, title, or interest in the property.	LAC 33:VII.315.C	\$1,500	Per occurrence
Failure to report any discharge, deposit, injection, spill, dumping, leaking, or placing of solid waste into or on the water, air, or land.	LAC 33:VII.315.F	\$500	Per occurrence
An individual engaged in open burning of solid waste as prohibited by regulation.	LAC 33:VII.315.M	\$300	Per occurrence
A business engaged in open burning of solid waste as prohibited by regulation.	LAC 33:VII.315.M	\$1,500	Per occurrence
Offering residential solid waste to an unauthorized transporter and/or a facility not permitted to receive such waste.	LAC 33:VII.315.O	\$500	Per occurrence
Offering commercial solid waste and/or construction and demolition debris to an unauthorized transporter and/or a facility not permitted to receive such waste.	LAC 33:VII.315.O	\$1,000	Per occurrence
Offering industrial solid waste to an unauthorized transporter and/or a facility not permitted to receive such waste.	LAC 33:VII.315.O	\$1,500	Per occurrence
* * *			
Transportation of solid waste to a processing or disposal facility not permitted to receive such waste.	LAC 33:VII.505.D	\$1,500	Per occurrence

EXPEDITED PENALTIES			
SOLID WASTE			
Violation	Citation	Amount	Frequency
Failure by a permitted solid waste facility to submit a timely and/or accurate Certification of Compliance (submittal no more than 180 days past due).	LAC 33:VII.525.A	\$500	Per occurrence

EXPEDITED PENALTIES			
SOLID WASTE—Waste Tires			
Violation	Citation	Amount	Frequency
Failure by a collector or collection center to follow the requirements for receipt of waste tires.	LAC 33:VII.10527.A	\$200	Per occurrence
* * *			

EXPEDITED PENALTIES			
SOLID WASTE—Waste Tires			
Violation	Citation	Amount	Frequency
Storage of more than 20 whole waste tires without authorization from the administrative authority.	LAC 33:VII.10509.B	\$200	Per occurrence
Transporting more than 20 waste tires without first obtaining a transporter authorization certificate.	LAC 33:VII.10509.C	\$300	Per occurrence
Storing waste tires for more than 365 days.	LAC 33:VII.10509.E	\$200	Per occurrence
* * *			
Failure to collect appropriate waste tire fee for each tire sold.	LAC 33:VII.10519.C; 10521.B; 10535.B	\$200	Per occurrence
Failure to submit monthly waste tire fee reports to the state on a monthly basis, as specified in the regulations.	LAC 33:VII.10519.D; 10521.C	\$250	Six or fewer months in violation
Failure to submit monthly waste tire fee reports to the state on a monthly basis, as specified in the regulations.	LAC 33:VII.10519.D; 10521.C	\$500	More than six months and up to 12 months in violation
Failure to keep and preserve records necessary to verify the amount of the waste tire fees for a minimum of three years.	LAC 33:VII.10519.D; LAC 33:VII.10519.P; LAC 33:VII.10521.C	\$200	Per inspection
Failure to post required notifications to the public.	LAC 33:VII.10519.E; 10521.D	\$100	Per occurrence
* * *			
Failure to comply with the manifest requirements specified in LAC 33:VII.10533.	LAC 33:VII.10519.G; 10521.G	\$200	Per occurrence
* * *			
Failure to use an authorized transporter for removal of waste tires from a place of business.	LAC 33:VII.10519.K	\$500	Per occurrence
* * *			
Failure of a motor vehicle dealer to notify the administrative authority within 30 days of commencing business operations.	LAC 33:VII.10521.A	\$300	Per occurrence
* * *			
Failure to use a waste tire manifest when transporting greater than 20 waste tires.	LAC 33:VII.10523.C	\$200	Per occurrence
* * *			
Acceptance by a processor of more than five unmanifested waste tires per day per customer.	LAC 33:VII.10525.A.2	\$300	Per occurrence
* * *			

EXPEDITED PENALTIES			
WATER QUALITY—Storm Water General Permit Series (LAR040000, LAR050000, LAR100000, and LAR200000)			
Violation	Citation	Amount <sup>1</sup>	Frequency
Failure to submit a Notice of Intent for coverage under LPDES Storm Water General Permit LAR050000 or LAR100000.	LAC 33:IX.2511.C.1	\$1,000	Per occurrence
Failure to comply with effluent limitations and/or monitoring requirements from a facility eligible for coverage under an LPDES permit within the Storm Water General Series.	LAC 33:IX.2701.A	\$300	Per occurrence
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Prevention Plan (SWPPP) as required by LPDES General Permit LAR200000.	LAC 33:IX.2701.A	\$300	Per occurrence

<sup>1</sup> For each applicable violation that potentially contributes to impairment of a water body, an additional \$500 penalty amount shall be added to the penalty amount specified with the violation.

EXPEDITED PENALTIES			
WATER QUALITY—Sanitary General Permit Series LAG530000, LAG540000, LAG560000, LAG570000, and LAG750000			
Violation	Citation	Amount <sup>1</sup>	Frequency
Unauthorized discharge of pollutants to waters of the state that does not cause an emergency condition and is from a facility eligible for coverage under LPDES General Permit LAG530000, LAG540000, or LAG750000.	LAC 33:IX.501.D	\$500	Per occurrence
Failure to comply with effluent limitations and/or monitoring requirements of LPDES General Permit LAG530000.	LAC 33:IX.2701.A	\$250	10 or fewer violations
Failure to comply with effluent limitations and/or monitoring requirements of LPDES General Permit LAG530000.	LAC 33:IX.2701.A	\$500	More than 10, but less than 20 violations
Failure to comply with effluent limitations and/or monitoring requirements of LPDES General Permit LAG540000 or LAG750000.	LAC 33:IX.2701.A	\$300	10 or fewer violations
Failure to comply with effluent limitations and/or monitoring requirements of LPDES General Permit LAG540000 or LAG750000.	LAC 33:IX.2701.A	\$600	More than 10, but less than 20 violations

EXPEDITED PENALTIES			
WATER QUALITY—Sanitary General Permit Series LAG530000, LAG540000, LAG560000, LAG570000, and LAG750000			
Violation	Citation	Amount <sup>1</sup>	Frequency
Failure to properly operate and maintain all facilities and systems of treatment and control including sanitary sewer overflows.	LAC 33:IX.2701.E	\$250	Per occurrence
Failure to properly operate and maintain all facilities and systems of treatment and control.	LAC 33:IX.2701.E	\$100	Per occurrence
Unauthorized discharge of pollutants to waters of the state that do not cause an emergency condition and is from a facility eligible for coverage under LPDES General Permit LAG560000 or LAG570000.	LAC 33:IX.501.D	\$750	Per occurrence
Failure to comply with effluent limitations and/or monitoring requirement of an LPDES General Permit LAG560000 or LAG570000.	LAC 33:IX.2701.A	\$500	10 or fewer violations
Failure to comply with effluent limitations and/or monitoring requirement of an LPDES General Permit LAG560000 or LAG570000.	LAC 33:IX.2701.A	\$1,000	More than 10, but less than 20 violations

<sup>1</sup> For each applicable violation that potentially contributes to impairment of a water body, an additional \$500 penalty amount shall be added to the penalty amount specified with the violation.

EXPEDITED PENALTIES			
WATER QUALITY—Industrial/Commercial General Permit Series LAG110000, LAG380000, LAG420000, LAG470000, LAG480000, LAG490000, LAG670000, and LAG780000			
Violation	Citation	Amount <sup>1</sup>	Frequency
Unauthorized discharge of pollutants to waters of the state that does not cause an emergency condition and is from a facility eligible for coverage under an LPDES permit within the Industrial/Commercial General Series.	LAC 33:IX.501.D	\$800	Per occurrence
Failure to comply with effluent limitations and/or monitoring requirements from a facility covered under an LPDES permit within the Industrial/Commercial General Series.	LAC 33:IX.2701.A	\$500	10 or fewer violations
Failure to comply with effluent limitations and/or monitoring requirements from a facility covered under an LPDES permit within the Industrial/Commercial General Series.	LAC 33:IX.2701.A	\$1,000	More than 10, but less than 20 violations

<sup>1</sup> For each applicable violation that potentially contributes to impairment of a water body, an additional \$500 penalty amount shall be added to the penalty amount specified with the violation.

EXPEDITED PENALTIES			
WATER QUALITY—Oil and Gas General Permit Series LAG260000, LAG300000, LAG330000, or LAG830000			
Violation	Citation	Amount <sup>1</sup>	Frequency
Unauthorized discharge of pollutants to waters of the state that does not cause an emergency condition and is from a facility eligible for coverage under an LPDES permit within the Oil and Gas General Series.	LAC 33:IX.501.D	\$1,000	Per occurrence
Failure to comply with effluent limitations and/or monitoring requirements from a facility covered under an LPDES permit within the Oil and Gas General Series.	LAC 33:IX.2701.A	\$500	10 or fewer violations
Failure to comply with effluent limitations and/or monitoring requirements from a facility covered under an LPDES permit within the Oil and Gas General Series.	LAC 33:IX.2701.A	\$1,000	More than 10, but less than 20 violations

<sup>1</sup> For each applicable violation that potentially contributes to impairment of a water body, an additional \$500 penalty amount shall be added to the penalty amount specified with the violation.

EXPEDITED PENALTIES			
WATER QUALITY—Other Permits			
Violation <sup>2</sup>	Citation	Amount <sup>1</sup>	Frequency
Failure to comply with effluent limitations and/or monitoring requirements from a facility covered under an LPDES permit, which is not defined as a <i>Major Facility</i> or covered under a <i>General Permit</i> as defined in LAC 33:IX.2313.	LAC 33:IX.2701.A	\$500	10 or fewer violations
Failure to comply with effluent limitations and/or monitoring requirements from a facility covered under an LPDES permit, which is not defined as a <i>Major Facility</i> or covered under a <i>General Permit</i> as defined in LAC 33:IX.2313.	LAC 33:IX.2701.A	\$1,000	More than 10, but less than 20 violations

<sup>1</sup> For each applicable violation that potentially contributes to impairment of a water body, an additional \$500 penalty amount shall be added to the penalty amount specified above.

<sup>2</sup> For municipal sanitary treatment plants eligible for or covered under an LPDES permit within the Minor series, application of expedited penalty related LPDES General Permit LAG560000 or LAG570000 violations may be used as approved by the administrative authority.

EXPEDITED PENALTIES			
WATER QUALITY—Nonspecific			
Violation	Citation	Amount <sup>1</sup>	Frequency
Failure to develop a Spill Prevention and Control (SPC) plan for any applicable facility.	LAC 33:IX.708.C.1; LAC 33:IX.905	\$1,000	Per occurrence

EXPEDITED PENALTIES			
WATER QUALITY—Nonspecific			
Violation	Citation	Amount <sup>1</sup>	Frequency
Failure to implement any component of an SPC plan which does not result in a release of pollutants to waters of the state.	LAC 33:IX.708.C.1; LAC 33:IX.905	\$500	Per occurrence
Failure to implement any component of an SPC plan which results in a release of pollutants to waters of the state.	LAC 33:IX.708.C.1; LAC 33:IX.905	\$1,000	Per occurrence
Unauthorized discharge of oily fluids, oil field wastes, and/or produced water.	LAC 33:IX.708.C.2; LAC 33:IX.1701.B; LAC 33:IX.1901.A	\$1,000	Per occurrence
Failure to submit an initial application or Notice of Intent for authorization under an LPDES permit.	LAC 33:IX.2501.A	\$500	Per required submittal
Failure to reapply for authorization under an LPDES permit in a timely manner prior to the expiration date of the current permit.	LAC 33:IX.2501.A	\$250	Per required submittal
Failure to reapply for authorization under an LPDES permit at a <i>Major Facility</i> , as defined in LAC 33:IX.2313, in a timely manner prior to the expiration date of the current permit.	LAC 33:IX.2501.A	\$500	Per required submittal
Failure to submit certain reports as required by any LPDES permit, including, but not limited to, noncompliance reports, storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports.	LAC 33:IX.2701.A	\$300	Per required submittal
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Prevention Plan (SWPPP), a Pollution Prevention Plan (PPP), or a Best Management Practices (BMP) Plan as required by any LPDES permit not specified elsewhere in this Chapter.	LAC 33:IX.2701.A	\$1,000	Per occurrence
Failure to comply with any portion(s) of Sewage Sludge and Biosolids Use, or Disposal Permit LAJ650000.	LAC 33:IX.7301.D.1	\$400	Per occurrence
Failure to comply with registration requirements and standards for transporters of sewage sludge and/or standards for vehicles used in the transport of sewage sludge.	LAC 33:IX.7301.F	\$400	Per occurrence

EXPEDITED PENALTIES			
WATER QUALITY—Nonspecific			
Violation	Citation	Amount <sup>1</sup>	Frequency
Unauthorized use or disposal of sewage sludge or biosolids.	LAC 33:IX.7301.G.1 or G.2	\$1,000	Per occurrence

<sup>1</sup> For each applicable violation that potentially contributes to impairment of a water body, an additional \$500 penalty amount shall be added to the penalty amount specified with the violation.

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
* * *			
Allowing a regulated substance to be placed into a new UST system that has not been registered.	LAC 33:XI.301.C.4	\$1,500	Per inspection
Failure to provide corrosion protection to tanks that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.D.1	\$500	Per inspection
Failure to provide corrosion protection to piping that routinely contains regulated substances using one of the specified methods.	LAC 33:XI.303.D.2	\$500	Per inspection
Failure to provide corrosion protection to flex hoses and/or sub-pumps that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.D.2	\$500	Per inspection
Failure to provide spill and/or overflow prevention equipment as specified.	LAC 33:XI.303.D.3	\$300	Per inspection
Failure to ensure that the individual exercising supervisory control over installation-critical junctures is certified in accordance with LAC 33:XI.Chapter 13.	LAC 33:XI.303.D.6.b.ii	\$1,500	Per occurrence
Failure to upgrade an existing UST system to new system standards as specified.	LAC 33:XI.303.E	\$1,300	Per inspection
* * *			
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water.	LAC 33:XI.503.A.1	\$300	Per inspection
Failure to have a UST system equipped with a cathodic protection system inspected for proper operation as specified.	LAC 33:XI.503.A.2	\$300	Per inspection
Failure to inspect a UST system with an impressed current cathodic protection system every 60 days to ensure that the equipment is running properly.	LAC 33:XI.503.A.3	\$300	Per inspection

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
Failure to meet requirements for repairs to UST systems.	LAC 33:XI.507	\$300	Per inspection
* * *			
Failure to maintain required information and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them after a request.	LAC 33:XI.509.B and C	\$200	Per inspection
Failure of Class A, B, or C UST operators to be trained and certified in accordance with the regulations and deadlines in LAC 33:XI.607.	LAC 33:XI.603.A.2	\$500	Per occurrence
Failure of Class A or B UST operators to be retrained in accordance with LAC 33:XI.603 and 605 within three years of initial training.	LAC 33:XI.609.A	\$500	Per occurrence
Failure of a Class C operator to be re-trained after beginning work at a UST facility owned by an operator that did not provide the Class C operators initial training.	LAC 33:XI.609.B	\$300	Per occurrence
Failure to meet the performance requirements when performing release detection required in LAC 33:XI.703.	LAC 33:XI.701; 703.A.2.b and c	\$750	Per inspection
Failure to conduct an annual performance test on automatic line leak detectors by simulating a leak.	LAC 33:XI.701.B.1	\$350	Per inspection
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems.	LAC 33:XI.703.A.1	\$1,500	Per inspection
Failure to monitor tanks for releases as specified.	LAC 33:XI.703.B.1	\$350	Per inspection
Failure to monitor underground piping for releases as specified.	LAC 33:XI.703.B.2	\$750	Per inspection
Failure to report any suspected release within 24 hours after becoming aware of the occurrence or when a leak detection method indicates that a release may have occurred.	LAC 33:XI.703.A.3 or 707	\$500	Per occurrence
Failure to investigate and confirm any suspected release of a regulated substance requiring reporting under LAC 33:XI.707 within seven days of detection.	LAC 33:XI.711	\$1,500	Per occurrence

EXPEDITED PENALTIES			
UNDERGROUND STORAGE TANKS			
Violation	Citation	Amount	Frequency
Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.	LAC 33:XI.903.A	\$500	Per inspection
Failure to permanently close tanks that do not meet the required performance standards.	LAC 33:XI.903.C	\$1,000	Per inspection
Failure to perform and/or submit a site assessment within 24 months of the date tanks are placed into temporary closure.	LAC 33:XI.903.D	\$500	Per inspection
* * *			
No person shall conduct critical junctures of a UST system unless the person present at the site and exercising responsible supervisory control over the critical juncture is currently certified in accordance with LAC 33:XI.Chapter 13.	LAC 33:XI.1301.B	\$1,500	Per inspection

EXPEDITED PENALTIES			
RADIATION			
Violation	Citation	Amount	Frequency
Failure to submit a timely and complete license renewal application 30 days prior to expiration of existing license.	LAC 33:XV.332.C	\$250	Per occurrence
Failure to provide adequate or accurate information on notification of reciprocity.	LAC 33:XV.390.A.2	\$250	Per occurrence
Failure to secure licensed or registered radioactive material from unauthorized removal or access.	LAC 33:XV.445.A	\$500	Per occurrence
Failure to post each radiation area with conspicuous signage.	LAC 33:XV.451	\$300	Per occurrence
Failure of licensed transferor to verify that the transferee is licensed to receive the radioactive materials.	LAC 33:XV.340.C	\$1000	Per occurrence
Failure to perform required surveys or monitoring with properly calibrated instruments.	LAC 33:XV.430	\$500	Per inspection
Failure to perform periodic measurement of entrance exposure rates at installation, annually thereafter, or after any maintenance of the x-ray fluoroscopic system.	LAC 33:XV.605.A.3.b.i	\$1000	Per occurrence

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2243 (December 2006), amended LR 34:1393 (July 2008), LR 35:62 (January 2009), amended by the Office of the Secretary, Legal Division, LR 42:

#### **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.

#### **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 OS088. Such comments must be received no later than January 5, 2016, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to [deidra.johnson@la.gov](mailto:deidra.johnson@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 OS088. 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 December 29, 2015, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North 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 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM  
Executive Counsel

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Expedited Penalty Agreement**

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

The proposed rule change may result in a savings to state governmental units as a result of adding violations to the expedited penalty program. The potential savings may occur through a reduction in litigation costs associated with the

violation process, as certain violations would now be eligible for expedited penalties. The amount saved is indeterminable since it would depend on the violation, penalty amount and if industry voluntarily enters the expedited penalty program. There are no estimated implementation costs or savings to local governmental units as a result of the proposed rule.

The proposed rule adds violations in the air quality, hazardous waste, solid waste, underground storage tanks, water quality, and radiation protection provisions to the expedited penalty program. The rule also clarifies various existing violations by adjusting existing penalty amounts to make the amounts consistent with penalty amounts for violations that are part of the normal penalty process. For illustrative purposes, there are 1,733 violations that were issued for the six areas mentioned above in a two-year period from 10/1/2013 to 10/1/2015. To the extent the proposed expedited penalties were applicable, approximately 22% or 383 violations would be eligible for expedited penalties.

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

The proposed rule is not anticipated to have any impact on state and local government revenues. The penalties that are being added to the expedited penalty agreement are penalties that are currently in place. The proposed rule change may result in a more timely payment of penalties that are now part of the expedited penalty agreement, since the violation process can be lengthy.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule may result in an economic benefit to directly affected persons or non-governmental groups that participated in the increased scope of violations within the expedited penalty agreement. The potential economic benefit would be a quicker penalty process since the process can be lengthy for industry and the department. Entering into an expedited penalty agreement with the department is voluntary.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no effect on competition or employment in the public or private sector as a result of the proposed rule. The proposed rule will not adjust the workload of the department, but potentially change the process of handling violations and penalties.

Herman Robinson, CPM  
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1511#056

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Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Environmental Quality Office of the Secretary Legal Division**

Waste Tires (LAC 33:VII.Chapters 105 and 111)(SW062)

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 Solid Waste regulations, LAC 33:VII. 10501, 10503, 10505, 10507, 10509, 10511, 10513, 10514, 10515, 10516, 10517, 10518, 10519, 10521, 10523, 10524, 10525, 10527, 10529, 10531, 10532, 10533, 10534, 10535, 10536, 10537, 10539, 10541, 10543, 11101, 11103 (SW062).

This Rule provides regulations for the administration and enforcement of the waste tire program, including the waste tire management fund. R.S. 30:2418(H) requires the Secretary of the Department of Environmental Quality to promulgate rules, regulations, and guidelines for the administration and enforcement of the waste tire program. Section 3 of Act 427 of the 2015 Regular Legislative Session, requires the secretary to bring any Rule, regulation or guideline required by R.S. 30:2418(H) in conformity with current law by March 31, 2016. The basis and rationale for this proposed Rule are to comply with the legislative mandate set forth in section 3 of Act 427 of the 2015 Regular Legislative Session. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part VII. Solid Waste**

#### **Subpart 2. Recycling**

#### **Chapter 105. Waste Tires**

##### **§10505. Definitions**

A. The following words, terms, and phrases shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

*Abandoned*—waste tires and/or waste tire material discarded without adhering to the proper disposal or processing standards required by these regulations.

*Act*—the Louisiana Environmental Quality Act (R.S. 30:2001 et seq.).

*Adjustment Tire*—a tire that becomes unusable for any reason within the manufacturer's control and is returned to the dealer under a tire manufacturer's warranty. Tire adjustments are initiated by the consumer.

*Administrative Authority*—the secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

*Agreement*—a written contract or other written arrangement between recipient persons and the administrative authority that outlines specific goals or responsibilities.

*Applicant*—any person submitting a grant and/or loan application for funds from the waste tire management fund or any person who submits an application to the administrative authority for a standard waste tire processing or collection center permit. An applicant can also be any person applying for authority to operate a High Volume End Use Facility, authority to utilize waste tires and/or waste tire material in an end-market use project, or authority to conduct a single event cleanup.

*Authorization Certificate*—written authorization issued by the administrative authority.

*Civil Engineering Project*—generally a project that requires designs and/or calculations for the construction or maintenance of the physical environment, such as roads, bridges, canals, dams, and buildings. For purposes of these regulations, civil engineering projects, include but are not limited to, light weight backfill, leachate collection systems in landfill cell construction, or erosion control. Waste tire material used in civil engineering projects shall provide comparable or improved performance to traditional

materials. Civil engineering projects do not include land reclamation.

*Clean Closure*—the act of closing a facility whereby all waste tires and waste tire material are removed.

*Collection Center*—a permitted or authorized facility where waste tires can be stored and/or collected.

*Collector*—a person who operates a collection center.

*Customary End-Market Uses*—projects that conform with generally accepted standard industry practices, including but not limited to, those recognized by the Environmental Protection Agency, the Rubber Manufacturers Association, or previously approved by the administrative authority e.g., bulkheads, tire derived fuel, and crumb rubber applications, or as otherwise determined by the administrative authority.

*Department*—the Department of Environmental Quality as created by R.S. 30:2001 et seq.

*Destination Facility*—a facility where waste tires and/or waste tire material is processed, recycled, collected, stored and/or disposed after transportation.

*Disease Vector*—animals and insects such as rodents, fleas, flies, mosquitoes, etc. that are capable of transmitting diseases to humans.

*Disease Vector Control Plan*—a plan approved by the administrative authority to control the growth and spread of disease vectors.

*Disposal*—the depositing, dumping, or placing of waste tires or waste tire material on or into any land or water so that such waste tires, waste tire material, or any constituent thereof, may have the potential for entering the environment, or being emitted into the air, or discharged into any waters of the state of Louisiana.

*Eligible Tire*—see *program eligible waste tires*.

*End-Market Use Project*—the utilization of whole waste tires and/or waste tire material in a manner approved by the administrative authority.

*End-Market User*—any person who uses whole waste tires and/or waste tire material in an end-market use project as approved by the administrative authority. For the purposes of international and out-of-state end-market use projects, end-market user includes a port at which waste tires and/or waste tire material is loaded for transportation by water destined for out-of-state markets.

*Extended Storage*—any project which requires storage of more than 5,000 whole waste tires or 2,000,000 pounds of waste tire material at the end of any operational day.

*Facility*—any land and appurtenances thereto used for collection, storage, processing, or recycling of whole waste tires and/or waste tire material.

*Fraudulent Taking*—Repealed.

*Generator*—a person whose activities, whether authorized or unauthorized, result in the production of waste tires. This may include, but is not limited to, tire dealers, salvage yards, etc.

*Government Agencies*—local, parish, state, municipal, and federal governing authorities having jurisdiction over a defined geographic area.

*Government Tire Sweep*—a waste tire collection event authorized by the administrative authority to allow government agencies to collect waste tires for transport to a permitted waste tire processing facility.

*Grant*—any funds awarded by the administrative authority from the waste tire management fund to a person subject to a grant agreement.

*Grant Agreement*—a written contract or other written agreement between the administrative authority and the recipient of a grant that defines the conditions, goals, and responsibilities of the recipient and the administrative authority.

*Grant Application*—an application meeting the requirements of LAC 33:VII.10541 from a person making a request for a grant from the waste tire management fund.

*Grantee*—the recipient of a grant or loan.

*High Volume End Use Facility*—a facility at which whole waste tires and/or waste tire material is utilized for projects that require extended storage and have been approved by the administrative authority. This definition also includes ports where extended storage is necessary to facilitate transportation on water to out-of-state and/or international approved end market use projects.

*Ineligible Tire*—see *program ineligible waste tire*.

*Land Reclamation Project*—a project utilizing waste tire material to fill, rehabilitate, improve, or restore existing excavated, deteriorated, or disturbed land for the purpose of enhancing its potential use.

*Limiting Piece of Equipment*—that piece of processing equipment that has the lowest daily throughput of waste tires and/or waste tire material, typically the primary shredder, unless a different piece of equipment is otherwise approved by the administrative authority.

*Loan*—any issuance of funds by the administrative authority from the waste tire management fund to a person subject to a loan agreement.

*Loan Agreement*—a written contract or other written agreement between the administrative authority and the recipient of a loan that defines the conditions, goals, and responsibilities of the recipient and the administrative authority.

*Loan Application*—an application meeting the requirements of LAC 33:VII.10541 from a person making a request for a loan from the waste tire management fund.

*Major Highway*—Repealed.

*Manifest*—the mechanism provided by the administrative authority, used for identifying the quantity, type, origin, transportation, and destination of waste tires and/or waste tire material from the point of generation to the authorized destination.

*Marketing*—the selling and/or transferring of waste tires or waste tire material for recycling in end-market use projects.

*Medium Truck Tire*—a tire weighing 100 pounds or more and normally used on semi-trailers, truck-tractor, semi-trailer combinations or other like vehicles used primarily to commercially transport persons or property on the roads of this state or any other vehicle regularly used on the roads of this state.

*Mobile Processor*—a standard permitted processor who has processing equipment capable of being moved from one authorized location to another.

*Modification*—any change in a site, facility, unit, process, or operation that deviates from any specification in the permit or other approval from the administrative

authority. Routine or emergency maintenance that does not cause the facility to deviate from any specification of the permit or other approval is not considered a modification.

*Motor Vehicle*—an automobile, motorcycle that is operated either on-road or off-road, truck, trailer, semi-trailer, truck-tractor and semi-trailer combination, or any other vehicle operated in this state, and propelled by power other than muscular power. This term does not include bicycles and mopeds.

*Motor Vehicle Dealer*—any person that sells or leases new vehicles that are required to be registered in or are intended for use in the state of Louisiana.

*Mounting Services*—the removal and replacement of an unserviceable tire with a serviceable tire purchased at another location and for which the appropriate Louisiana waste tire fee has been collected.

*Off-Road Tire*—a tire weighing 100 pounds or more and that is normally used on off-road vehicles.

*Off-Road Vehicle*—a vehicle used for construction, farming, industrial uses, or mining, not normally operated on the roads of the state. This term does not include vehicles propelled solely by muscular power.

*Passenger/Light Truck/Small Farm Service Tire*—a tire weighing less than 100 pounds and normally used on automobiles, motorcycles that are operated either on-road or off-road, pickup trucks, sport utility vehicles, front steer tractors, and farm implement service vehicles.

*Permittee/Permit Holder*—a person who is issued a permit and is responsible for meeting all conditions of the permit and these regulations.

*Person*—an individual, trust, firm, joint-stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of the state, interstate body, or the federal government or any agency of the federal government.

*Premises*—a unit of land or any portion thereof.

*Principal Executive Officer*—the chief executive officer of a state or federal agency, or a senior executive officer having responsibility for the overall operations of a principal geographic or functional unit of a state or federal agency (e.g., regional administrators of EPA).

*Processing*—any method or activity that alters whole waste tires so that they are no longer whole; such as, cutting, slicing, chipping, shredding, distilling, freezing, or other processes as determined by the administrative authority. At a minimum, a tire is considered processed only if its volume has been reduced by more than half.

*Processor*—a person that processes waste tires.

*Processor Agreement*—a written contract between a permitted processor and the administrative authority that outlines specific requirements and responsibilities and is required for payment to the processor from the waste tire management fund.

*Program Eligible Waste Tires*—those waste tires generated within Louisiana for which a processor will be reimbursed by the waste tire management fund. These tires may include, but are not limited to: passenger/light truck/small farm service tires, medium truck tires, off-road tires, golf cart tires, lawn mower tires, and bicycle tires. These tires are only program eligible if they are:



- a. originating from an authorized tire dealer upon the replacement of an unserviceable tire with a serviceable tire including tires documented from mounting services;
- b. collected during an authorized government tire sweep or authorized site cleanup, except those waste tires defined as program ineligible waste tires;
- c. collected by an authorized government collection center, except those waste tires defined as program ineligible waste tires;
- d. collected by a permitted collection center, except those waste tires defined as program ineligible waste tires;
- e. removed from a Louisiana titled vehicle at a qualified scrap or salvage yard;
- f. collected at a permitted processing facility in accordance with LAC 33:VII.10525.B.2, except those waste tires defined as program ineligible waste tires; or
- g. otherwise determined by the administrative authority on a case-by-case basis.

*Program Ineligible Waste Tire*—a waste tire for which a processor will not be reimbursed from the waste tire management fund. This includes, but is not limited to, tires weighing 500 pounds or more at the time of sale, solid tires, tires purchased from a tire wholesaler for use on fleet vehicles and/or used vehicles for which a fee has not been paid, out-of-state tires, marine bumper tires, purchased used tires that are not suitable for re-sale, tires accepted by retail outlets for which a fee has not been collected, and any other tire not defined as a program eligible waste tire.

*Qualified Recycler*—Repealed.

*Qualified Scrap or Salvage Yard*—any facility that is licensed pursuant to R.S. 32:784.

*Recall Tire*—a tire that is specified as defective by the manufacturer and returned to the dealer by the consumer so that the dealer may provide a replacement or repair. Recalls are initiated by the manufacturer or the federal government.

*Recapped or Retreaded Tire*—any tire that has been reconditioned from a used tire and sold for use on a motor vehicle.

*Recovered Material*—materials which have known recycling potential, can be feasibly recycled, and have been diverted or removed from the solid waste stream for sale, use, or reuse by separation, collection, or processing.

*Recycling*—any process by which waste tires, waste tire material, or residuals are used or reused in an end-market use project.

*Responsible Corporate Officer*—one of the following persons employed by the corporation: president; treasurer; secretary; vice-president in charge of a principal business function; or any other person who performs similar policy or decision-making functions of the corporation; or the manager of one or more manufacturing, production, or operating facilities, provided that the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to ensure long term environmental compliance with environmental laws and regulations, and can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit applications or other authorizations as required by the regulations, and the manager has the authority to sign

documents assigned or delegated in accordance with corporate procedures. The administrative authority will assume that these corporate officers have the requisite authority to sign permit applications and other authorizations, unless the corporation has notified the administrative authority to the contrary.

*Responsible Official*—the person who has the authority to sign a processor agreement, an application for a permit, and/or an application for a high volume end use facility. For corporations, this person shall be a responsible corporate officer. For a partnership or sole proprietorship, this person shall be a partner or the proprietor, respectively. For a municipality, state agency, federal agency, or other public agency, this person shall be a ranking elected official or a principal executive officer of a state or federal agency.

*Sale of a Motor Vehicle*—any sale and/or lease of a new motor vehicle that would be required to be registered in or intended for use in the state of Louisiana.

*Single Event Cleanup*—the authorized removal of accumulated waste tires from an unauthorized site.

*Site*—the physical location, including land area and appurtenances, upon which waste tires and/or waste tire material is located.

*Standard Permit*—a written authorization issued by the administrative authority to a person for the construction, installation, modification, operation, or closure of facilities or equipment used or intended to be used to process and/or collect waste tires in accordance with the act, these regulations, and specified permit terms and conditions.

*Temporary Permit*—a written authorization issued by the administrative authority for a specific amount of time to a person for the construction, installation, operation, or closure of a particular facility used or intended to be used for processing and/or collecting waste tires and/or waste tire material in accordance with the act, these regulations, and specified permit terms and conditions.

*Tire*—a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle or off-road vehicle.

*Tire Dealer*—any person, business, or firm that engages in the sale of tires, including recapped or retreaded tires, for use on motor vehicles.

*Tire Wholesaler*—any wholesaler, supplier, distributor, jobber, or other entity who distributes tires to retail dealers in this state or to its own retail establishments in this state.

*Transporter*—a person who transports waste tires.

*Unauthorized Waste Tire Pile*—an accumulation of more than 20 waste tires whose storage and/or disposal is not authorized by the administrative authority.

*Unmanifested Waste Tire*—a waste tire transported without a waste tire manifest.

*Used Tire*—a tire that can be salvaged and sold as a functional motor vehicle tire consistent with definitions and standards contained in the Louisiana Department of Public Safety regulations.

*Used Tire Dealer*—any person, business, or firm that engages in the sale of used tires for use on motor vehicles.

*Waste Tire*—a whole tire that is no longer suitable for its original purpose because of wear, damage, or defect and/or has been discarded by the consumer.

*Waste Tire Generation*—Repealed.

*Waste Tire Material*—recovered material produced from whole waste tires which have been processed, unless

abandoned or otherwise improperly disposed of in a manner that subjects the material to the solid waste regulations.

*Waste Tire Transfer Station*—an authorized facility where whole waste tires are stored for longer than 24 hours and at which the tires are accumulated as part of the transportation process and are transferred directly or indirectly from transportation vehicles to other vehicles and/or storage containers, for transportation without processing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2773 (December 2000), LR 27:829 (June 2001), LR 27:2226 (December 2001), LR 28:1953 (September 2002), LR 29:2779 (December 2003), amended by the Office of Environmental Assessment, LR 31:1323 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3158 (December 2005), LR 33:89 (January 2007), amended by the Office of the Secretary, Legal Division, LR 42:

### **§10507. Exemptions**

A. Any person, facility, or other entity subject to these regulations that generates, collects, stores, transports, processes waste tires and/or waste tire material, or utilizes waste tires and/or waste tire material in an end-market use project, may petition the administrative authority for an exemption from the waste tire regulations or any portion thereof, when petitions for such are deemed appropriate after consideration of the factors enumerated in Subparagraphs C.2.a and b of this Section as well as any other pertinent factors.

B. The administrative authority shall make a decision whether or not to grant the exemption requested within 60 days from the date on which the request for exemption was filed, unless a longer time period is agreed upon by mutual consent of the applicant and the administrative authority. In no case shall the time period be greater than one year.

C. Each request for an exemption shall:

1. identify the specific provisions of these regulations from which a specific exemption is sought;

2. provide sufficient justification for the type of exemption sought that includes, but may not be limited to, the following demonstrations:

a. that compliance with the identified provisions would impose an unreasonable economic, technologic, safety, or other burden on the person or the public; and

b. that the proposed activity will have no significant adverse impact on the health, safety, and welfare of the public and the environment, and that it will be consistent with the applicable provisions of the Act;

3. include proof of publication of the notice as required in Paragraph D.1 of this Section, except for emergency exemptions; and

4. be considered by the administrative authority on a case-by-case basis and if approved, the administrative authority shall specify the duration of the exemption.

D. Public Notification of Exemption Requests

1. Persons requesting an exemption shall publish a notice of intent to submit a request for an exemption, except as provided in Paragraph D.2 of this Section. This notice

shall be published one time as a single classified advertisement in the legal-notices section of a newspaper of general circulation in the area and parish where the facility is located, and one time as a classified advertisement in the legal-notices section of the official journal of the state. If the facility is in the same parish or area as the official journal of the state, a single classified advertisement in the legal-notices section of the official journal of the state shall be the only public notice required.

2. Persons granted emergency exemptions by the administrative authority shall publish a notice to that effect in the legal-notices section of a newspaper of general circulation in the area and parish where the facility requesting the exemption is located. The notice shall be published one time as a single classified advertisement in the legal-notices section of a newspaper of general circulation in the area and parish where the facility is located, and one time as a classified advertisement in the legal-notices section of the official journal of the state. The notice shall describe the nature of the emergency exemption and the period of time for which the exemption was granted. Proof of publication of the notice shall be forwarded to the administrative authority within 30 days after the granting of an emergency exemption.

E. A vehicle operated by a local government body that is engaged in the collection of waste tires that are located on government property or on road rights of way with the tires to be taken to an authorized waste tire collection center or permitted processing facility may be granted an exemption to the transporter authorization application fee and the transporter maintenance and monitoring fee specified in LAC 33:VII.10535. A maximum of one vehicle is allowed for each government body under this exemption. In order to be recognized as exempt under this Subsection, the local government body shall submit a transporter notification form to the administrative authority indicating the government body's desire to take advantage of this exemption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:38 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2774 (December 2000), LR 27:2227 (December 2001), amended by the Office of the Secretary, Legal Division, LR:42:

### **§10509. Prohibitions and Mandatory Provisions**

A. No person shall knowingly and/or intentionally dispose unprocessed waste tires in a landfill within the boundaries of the state of Louisiana.

B. No person shall knowingly dispose, discard, burn, abandon, or otherwise release waste tires or waste tire material to the environment within the boundaries of the state of Louisiana, unless given prior written approval from the administrative authority.

C. Except for waste tires stored at the facilities listed in Paragraphs C.2 and 3 of this Section, all waste tires shall be stored in accordance with LAC 33:VII.10519.H. No person shall store more than 20 whole waste tires unless the tires are:

1. collected and stored at a registered tire dealer, registered used tire dealer, or other registered generator of waste tires;

2. collected and stored at an authorized waste tire transfer station, authorized waste tire collection center, or permitted waste tire processing facility;

3. collected and stored at an authorized end-market use project site; or

4. collected and stored at a location authorized in writing by the administrative authority.

D. No person shall transport more than 20 waste tires without first obtaining a transporter authorization certificate.

E. No processor shall receive payment from the Waste Tire Management Fund without a standard processing permit issued by the administrative authority, an effective Processor's Agreement, and an approved end-market use project in which whole waste tires and/or waste tire material are utilized.

F. No authorized generator, collector, or processor shall store any waste tires for longer than 365 days, unless given prior written approval by the administrative authority.

G. All persons subject to these regulations are subject to inspection, audit, and/or enforcement action by the administrative authority, in accordance with the Act and/or these regulations.

H. All persons subject to these regulations shall maintain all records required to demonstrate compliance with these regulations for a minimum of five years. The administrative authority may extend the record retention period in the event of an investigation. The records shall be maintained and shall be made available for audit and/or inspection during regular business hours at the regulated facility's place of business unless an alternate storage location is approved in writing by the administrative authority. A copy of the approval shall be maintained at the place of business subject to the audit and/or inspection. All records stored at an approved alternate location shall be provided within 48 hours of the request by the administrative authority.

I. All persons who sell tires shall retain and make available for inspection, audit, copying, and examination, a record of all tire transactions in sufficient detail to be of value in determining the correct amount of fees due from such persons. The records retained shall include all sales invoices, purchase orders, inventory records, and shipping records pertaining to any and all sales and purchases of tires. This recordkeeping provision does not require anything more than what is already required by R.S. 47:309(A).

J. All tire wholesalers shall notify the administrative authority on a form available on the department's website and maintain records of all tire sales made in Louisiana. These records shall contain the name and address of the tire purchaser, the date of the purchase, the number of tires purchased, and the type and size of each tire purchased. These records shall be maintained by tire wholesalers for a minimum of five years and shall be made available for audit and/or inspection at the wholesaler's place of business during regular business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:38 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2774 (December 2000), amended by the Office of Environmental

Assessment, LR 31:1323 (June 2005), amended by the Office of the Secretary, Legal Division, LR 42:

## §10511. Permit System

### A. Permit Requirements

1. Scope. Persons, other than generators and government agencies, operating facilities that collect waste tires and/or process waste tires or waste tire material must secure a permit and are subject to the requirements detailed in these regulations.

### 2. Types of Permits

a. Temporary Permits. A temporary permit allows continued operation of an existing collection center and/or waste tire processing facility, in accordance with an approved interim operational plan, but does not allow the expansion or modification of the facility without approval of the administrative authority. The administrative authority may issue a temporary permit in the following situations:

i. *order to upgrade*—to allow operations to continue at an existing facility while a standard permit application is being processed; or

ii. *order to close*—to allow operations to continue at an existing facility while a closure plan is being processed or while a facility is being closed in accordance with a closure plan.

b. Standard Permit. The permit issued by the administrative authority to applicants that have successfully completed the standard permit application process.

### 3. Permit Provisions

a. Permit Duration. A standard permit issued to a processing and/or collection facility shall be valid for five years from the date of issuance. Permit renewal applications shall be submitted no less than 365 calendar days before the expiration date of the standard permit, unless written permission for later filing is granted by the administrative authority. If the renewal application is submitted on or before the deadline above, and the administrative authority does not issue a final decision on the renewal application on or before the expiration date of the standard permit, the standard permit shall remain in effect until the administrative authority issues a final decision.

b. Transfer of Permit. Permits issued pursuant to these regulations are assigned only to the permittee and cannot be transferred, sublet, leased, or assigned, without prior written approval of the administrative authority.

B. Modifications. No modifications shall be made to the permit or facility without prior written approval from the administrative authority.

C. Suspension, Modification, or Revocation of Permit. The administrative authority may review a permit at any time. After review of a permit, the administrative authority may, for cause, suspend, modify, or revoke a permit in whole or in part in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:38 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2775 (December 2000), amended by the Office of the Secretary, Legal Division, LR 42:

### **§10513. Permit Process for Existing and Proposed Facilities**

#### **A. Applicant Public Notice**

1. The prospective applicant shall publish a notice of intent to submit an application for a waste tire standard permit. This notice shall be published, 1 to 45 days prior to submission of the application to the administrative authority. This notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of this state and in a major local newspaper of general circulation. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the legal or public notices section of the official journal of the state will be the only public notice required.

2. The public notice shall be published in accordance with the form provided in LAC 33:VII.11101, Public Notice Example—Appendix A.

3. Proof of publication of the notice shall be included in all waste tire standard permit applications for existing and proposed facilities submitted to the administrative authority.

#### **B. Submittal of Permit Applications**

1. Any applicant for a standard permit for an existing or proposed facility shall complete a waste tire standard permit application, and submit six copies to the administrative authority. Each individual copy of the application shall be in standard three-ring-bound documents measuring 8 1/2 by 11 inches. All appendices, references, exhibits, tables, etc., shall be marked with appropriate tabs.

2. Each waste tire standard permit application shall be accompanied by a remittance in the full amount of the appropriate waste tire standard permit application fee. No application shall be processed prior to payment of the full amount as specified in LAC 33:VII.10535.

#### **C. Requirements for Public Notification of Permit Application**

1. As provided in R.S. 30:2022 and 2418, upon receipt of a permit application the administrative authority shall provide written notice on the subject matter to the parish governing authority and each municipality affected by the application.

2. The administrative authority shall hold a public hearing within 60 days of submission of an application.

3. The applicant shall publish the hearing notice in the official journal of the parish or municipality on two separate days preceding the hearing. The last day of publication of such notice shall be at least 10 days prior to the hearing. The applicant shall provide the administrative authority with proof of publication.

4. The applicant shall post a notice of the hearing in prominent view of the public for two weeks prior to the hearing in the courthouse, government center, and all the libraries of the parish.

5. A public comment period of at least 30 days shall be allowed following the public hearing.

#### **D. Permit Application Review and Evaluation**

1. The applicant shall make available to the administrative authority the assistance of professional engineers or other trained individuals responsible for the design of the facility to explain the design and operation.

2. The applicant shall furnish all other technical information the administrative authority may require to evaluate the waste tire standard permit application, monitor the performance of the facility, and ensure that the purposes of this program are met.

#### **E. Waste Tire Standard Permit Application Review**

1. Applications shall be subject to the completeness and technical review requirements of LAC 33:I.1505.A and B.

2. Applications that are determined to be unacceptable for a technical review shall be rejected. The applicant shall be required to resubmit the application to the administrative authority.

3. An applicant whose application is acceptable for technical review, but lacks the necessary information, shall be informed of such in a deficiency letter. These deficiencies shall be corrected by submission of supplementary information within 30 days after receipt of the deficiency letter.

#### **F. Standard Permit Applications Deemed Technically Complete**

1. An application that has been deemed technically complete will be accepted for public review. When the permit application is accepted for public review, the administrative authority shall request an additional six copies, or more if necessary. The copies shall be distributed for public review as follows:

- a. one copy to the local parish governing authority;
- b. one copy to the municipal governing authority;
- c. one copy to the main branch of the parish public library;

d. one copy to the department's respective regional office; and

- e. two copies to remain with the department.

2. Each copy of the permit application shall be provided as a standard three-ring-bound document (8 1/2 by 11 inches). The application shall incorporate, in the appropriate sections, all required plans, narratives, and revisions made during the review process and shall include appropriate tabbing for all appendices, figures, etc. A permit application that presents revisions made during the review process as a separate supplement to the application shall not be accepted.

3. After the six copies are submitted to the administrative authority, notices shall be placed in the department's bulletin (if one is available), the official journal of the state, and a major local newspaper of general circulation. The administrative authority shall publish a notice of acceptance for review one time as a single classified advertisement in the legal or public notices section of the official journal of the state and one time as a classified advertisement in the legal or public notices section of a major local newspaper of general circulation. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. The notice shall solicit comment from interested individuals and groups. Comments received by the administrative authority within 30 days after the date the notice is published in the local newspaper shall be reviewed by the administrative

authority. The notice shall be published in accordance with the sample public notice provided by the administrative authority.

4. A public hearing may be held for any proposed standard permit application when the administrative authority determines, on the basis of comments received and other information, that a hearing is necessary.

5. Public Opportunity to Request a Hearing. Any person may, within 30 days after the date of publication of the newspaper notice required in Paragraph F.3 of this Section, request that a public hearing be held. If the administrative authority determines that the hearing is warranted, a public hearing shall be held. If the administrative authority determines not to hold the requested hearing, the administrative authority shall send the person requesting the hearing written notification of the determination. The request for a hearing shall be in writing and shall contain the name and affiliation of the person making the request and the comments in support of or in objection to the issuance of a permit.

6. Public Notice of a Public Hearing. If the administrative authority determines that a hearing is necessary, a notice shall be published at least 20 days before a fact-finding hearing in the official journal of the state and in a major local newspaper of general circulation. The notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state and one time as classified advertisement in the legal or public notices section of a major local newspaper of general circulation. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. Those persons on the department's mailing list for hearings shall be mailed notice of the hearing at least 20 days before a public hearing. A notice shall also be published in the department bulletin, if available.

7. Receipt of Comments Following a Public Hearing. The administrative authority shall receive comments for 30 days after the date of a public hearing.

G. Issuance or Denial of a Permit

1. The administrative authority shall issue a standard permit or shall issue a standard permit application denial, including reasons for the denial.

2. A temporary permit may be issued to allow closure activities to be accomplished at a facility which has been issued a standard permit application denial.

H. Public Notice of Permit Issuance. No later than 20 days following the issuance of a standard permit, the administrative authority shall publish a notice of the issuance of the standard permit. This notice shall be published in the official journal of the state and in a major local newspaper of general circulation. The notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state, and one time as a classified advertisement in the legal or public notices section of a major local newspaper of general circulation. If the affected area is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state will be the only public notice required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:39 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2775 (December 2000), LR 27:829 (June 2001), amended by the Office of Environmental Assessment, LR 30:2033 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2502 (October 2005), LR 33:2157 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:

**§10514. Submittal Requirements for High Volume End Use Facility Applications**

A. Facility applicants who utilize whole waste tires and/or waste tire material for projects that require extended storage shall apply to the administrative authority for authorization as a high volume end use facility. Submission of the following information shall be provided on the application, which is available on the department's website:

1. name of the business;
2. mailing address including city, state, zip code, and parish;
3. street address including city, state, zip code, and parish;
4. business telephone number;
5. federal identification number and state tax identification number, if applicable;
6. site master plan including where applicable, property lines, buildings, facilities, excavations, drainage, roads, and other appurtenances;
7. name, address, and phone number of a contact person in case of an emergency, if different from the owner;
8. signature of the responsible official certifying under penalty of law, that all information provided in the application is true, accurate, and complete; and
9. any additional information as requested by the administrative authority.

B. The applicant, other than a permitted processor, shall address the standards in LAC 33:VII.10531 and furnish all other technical information required by the administrative authority to evaluate and monitor the end-market use project, and ensure that the goals of the waste tire program are met.

C. Permitted processors shall address the standards in LAC 33:VII.10531.B.

D. An applicant that submits an application that is acceptable for review, but lacks the necessary information, shall be informed of the deficiency(ies) in writing. The applicant shall correct the deficiency(ies) by submitting supplementary information in writing within 30 calendar days after receipt of the deficiency letter.

E. Upon completing review of the application, the administrative authority shall approve or deny the application in writing.

F. Authorization Duration. A high volume end use facility authorization issued under this Section shall be valid for five years from the date of issuance. High volume end use facilities with an effective authorization shall submit to the administrative authority a new authorization application, following the process as contained in this Section, at least 180 calendar days before the expiration date of the authorization, unless written permission for later submission is granted by the administrative authority. If the renewal application is submitted on or before the deadline above, and the administrative authority does not issue a final decision

on the renewal application on or before the expiration date of the authorization, the existing authorization shall remain in effect until the administrative authority issues a final decision on the renewal authorization.

G. Applicants who utilize whole waste tires and/or waste tire material for projects that do not require extended storage are not subject to the requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:

#### **§10515. Submittal Requirements for End-Market Use Project Applications**

A. A permitted processor requesting approval of an end-market use project shall apply to the administrative authority for approval of each project by completing the end-market use project application available on the department's website. Each application contains the following:

1. name of the permitted processor;
2. name of the end-market user utilizing waste tires and/or waste tire material in the project;
3. mailing address, including city, state, zip code, and parish of the end-market user utilizing waste tires and/or waste tire material in the project;
4. physical address, including city, state, zip code, and parish of the end-market use project site;
5. telephone number of end-market user utilizing waste tires and/or waste tire material in the project;
6. site master plan, including, property lines, buildings, facilities, excavations, drainage, roads, and other elements of the site, if applicable;
7. detailed description of the project including drawings and/or pictures;
8. estimate and calculations of waste tires and/or waste tire material needed to complete the project;
9. estimated dates to start and end the project specified as month, day, and year;
10. description of the material to be replaced and the engineering properties of waste tires and/or waste tire material that provide equivalent or improved performance compared to conventional technologies; and
11. name, address, and phone number of a contact person responsible for the daily operations at the project, in case of an emergency;
12. date and signature of the processor and the end-market user utilizing waste tires and/or waste tire material in the project;
13. designation of the project as a one-time project or as a project that requires extended storage; and
14. any additional information as requested by the administrative authority.

##### **B. Land Reclamation Pilot Study**

1. The administrative authority will conduct a pilot study to determine the effectiveness of land reclamation using waste tire material.

a. This study will expire on December 31, 2020.

b. At the expiration of the pilot study, the administrative authority will issue a summary report on the results and make a determination on the future allowance of land reclamation projects.

2. In addition to the requirements of this Section, applications for land reclamation projects shall include a plan to confirm the thickness of the cover soil upon completion of the project.

a. This plan shall specify the method used to determine the thickness of the cover soil using either:

i. surveys of the base and top elevations of the cover at a maximum of 100 foot spacing; or

ii. borings taken through the cover at a minimum density of four locations per acre.

b. A report on the implementation of the plan shall be submitted to the administrative authority within 30 days of the approved project completion.

3. Land reclamation will be approved on a case-by-case basis and shall meet the following standards.

a. The applicant shall certify that the proposed location was excavated for a purpose other than the burial of waste tire material.

b. Waste tire material shall be mixed with inert fill material. The waste tire material shall comprise no more than 50 percent of the total volume required to restore the land to its approximate natural grade.

c. Processors may use up to 50 percent of the total annual volume of waste tire material generated at each facility, as determined on a three-year rolling average, for land reclamation projects;

d. Completed projects shall be covered with a minimum of 18 inches of clean soil material;

e. Within 30 days of completing an approved land reclamation project, the end-market user shall update the conveyance record to reflect the use of waste tire material on the property and submit verifiable documentation that this was completed to the administrative authority.

f. Whole tires may not be used in land reclamation projects.

C. Prior to any deviations from the approved project, modifications must be submitted to and approved by the administrative authority in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:

#### **§10516. Annual Agreements with Waste Tire Processors**

A. Standard permitted waste tire processors may apply to the administrative authority for funding to assist them with waste tire processing and marketing costs. To be eligible for payment, the processor shall enter into an agreement with the administrative authority. The agreement shall be renewed annually and is subject to review at any time by the administrative authority. After review, the administrative authority may, for cause, suspend, revoke, and/or modify the agreement by giving the processor a 60 day written notice of its intent to take the intended action, and allowing the processor an opportunity to demonstrate why the intended action should not be taken.

##### **B. Maximum Payments to Processors**

1. The agreement shall contain a provision regarding the amount and requirements for payment. Provided the terms and conditions of the agreement are met, standard permitted processors shall be paid a minimum of seven and a

half cents per pound of whole waste tires and/or waste tire material that is recycled or that reaches an approved end-market use project in accordance with LAC 33:VII.10535.F.

2. To be eligible for payment from the waste tire management fund, standard permitted processors shall apply and obtain approval from the administrative authority to market whole waste tires and/or waste tire material. The processor shall submit request(s) on a form available from the administrative authority and shall include all of the requirements of LAC 33:VII.10525.D.

C. The agreement shall contain provisions regarding the submission of reports by the processor to the administrative authority, including but not limited to:

1. waste tire facility reports and application for payment;

2. generator manifests in accordance with LAC 33:VII.10534.B;

3. processor manifests in accordance with LAC 33:VII.10534.C;

4. monthly collection center reports;

5. unmanifested waste tire logs;

6. Louisiana Department of Agriculture and Forestry certified scale-weight tickets including gross, tare, and net weights; and

7. any other documentation requested by the administrative authority.

D. The agreement shall contain provisions requiring standard permitted processors to comply with LAC 33:VII.10534.

E. The agreement shall contain provisions requiring the standard permitted processor to submit an annual report on all approved end-market use projects to the administrative authority. This report is due no later than January 31 of each year for the previous year's activities, and shall identify approved projects, the amount of all waste tires and/or waste tire material used in each approved project within the last year, and the date of completion of each project, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:39 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2776 (December 2000), LR 27:830 (June 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2502 (October 2005), LR 33:2158 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:

### **§10517. Standard Waste Tire Processor Permit**

#### **Applications**

A. Each applicant requesting a standard permit for a waste tire processing facility shall complete the permit application and submit it to the administrative authority. In addition, the standards in LAC 33:VII.10525 shall be incorporated into the appropriate application requirements. The permit application shall include:

1. the name, address, and phone number of the applicant;

2. the name and phone number of the facility contact, if different from the applicant;

3. the name and phone number of a contact person in case of an emergency, if different from the individual specified in Paragraph A.2 of this Section;

4. the business mailing address, including city, state, parish, and zip code;

5. the location and address of the processing facility;

6. the business telephone number;

7. the federal identification number and state tax identification number;

8. a site master plan, including property lines, buildings, facilities, excavations, drainage, roads, and other components of the processor site employed;

9. a copy of written notification to the appropriate local governing authority, stating that the site is to be used as a waste tire processing facility;

10. written documentation from the appropriate local governing authority, stating that the facility is in compliance with local zoning and permitting requirements;

11. written documentation from the property owner granting approval for use of property as a waste tire processing facility, if property owner is other than applicant;

12. proof of publication of Notice of Intent to submit an application for a standard waste tire processing facility permit;

13. a letter of compliance and certification of premises and buildings from the state fire marshal;

14. an operational plan addressing the following:

a. facility access and security;

b. waste tire acceptance plan to count, record, and monitor incoming quantities of waste tires;

c. method to control water run-on/runoff;

d. days and hours of operation;

e. waste tire storage method in detail:

i. dimensions of waste tire piles;

ii. maximum number of waste tires and volume of waste tire material to be stored at any one time;

iii. width of fire lanes;

iv. method of storage to exclude standing water;

v. type of access roads; and

vi. emergency control plans in case of fire or accident, etc.;

f. a detailed description of the waste tire processing method to be used, including daily capacity and technical support to determine daily capacity, such as the processing capacity of the limiting piece of processing equipment;

g. site grounds maintenance and disease vector control to minimize vector-breeding areas and animal attraction;

i. controlling fly, mosquito, and other insect emergence and entrance;

ii. controlling rodent burrowing for food or harborage; and

iii. controlling bird and animal attraction;

h. buffer zones; and

i. method to control and/or treat any process water;

15. evidence of commercial general liability insurance in the amount of no less than \$1 million applicable to on-site and off-site liability provided by an insurer who is admitted, authorized, or eligible to conduct insurance business in Louisiana;

16. site closure plan to assure clean closure. The closure plan must be submitted as a separate section with each application to ensure clean closure, and include the following:

- a. the method to be used and steps necessary for closing the facility;
- b. the estimated cost of closure of the facility, based on the cost of hiring a third party to close the facility at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive;
- c. the maximum inventory of whole waste tires and waste tire material on-site at any one time over the active life of the facility;
- d. a schedule for completing all activities necessary for closure; and
- e. the sequence of final closure as applicable;

17. site closure financial assurance fund;

18. plans, specifications, and operations represented and described in the permit application or permit modifications shall be prepared under the supervision of and certified by a professional engineer licensed in the state of Louisiana;

19. a signed legal certification that all information provided in the application is true and correct with the knowledge of the possibility of punishment under the law for false information;

20. date and signature of responsible official;

21. name of authorized agent for service of process, if applicable; and

22. required information regarding facility site assessments as follows:

- a. a discussion demonstrating that the potential and real adverse environmental effects of the facility have been avoided to the maximum extent possible;

- b. a cost-benefit analysis demonstrating that the social and economic benefits of the facility outweigh the environmental-impact costs;

- c. a discussion and description of possible alternative projects that would offer more protection to the environment without unduly curtailing non-environmental benefits;

- d. a discussion of possible alternative sites that would offer more protection to the environment without unduly curtailing non-environmental benefits; and

- e. a discussion and description of the mitigating measures which would offer more protection to the environment than the facility, as proposed, without unduly curtailing non-environmental benefits.

#### B. Mobile Processors

1. Submission of the following information shall be provided on the application, which is available on the department's website:

- a. waste tire processor information which includes:

- i. processor's name;
- ii. processor's LDEQ facility number;
- iii. processor's agency interest (AI) number;
- iv. processor's contact name; and
- v. processor's contact telephone number;

- b. processing site location(s) information for each site, where mobile processing will be conducted, during the authorization period denoted on the certificate shall include:

- i. type of location(s) listed on the waste tire mobile processor application form;

- ii. processing location address/physical description, city, and parish;

- iii. location LDEQ facility number;

- iv. location agency interest (AI) number;

- v. location contact's name and telephone number; and

- vi. federal and state tax identification numbers for the person where the mobile processing equipment will be operating, if applicable;

- c. payment information shall be as specified in LAC 33:VII.10535;

- d. a description of each vehicle, truck, trailer, and/or processing unit which will be used by the applicant for the processing of waste tires shall include the make, model, year, license number, and name of registered owner if different from that of the processor;

- e. evidence of commercial general liability insurance shall be no less than \$1 million applicable to on-site and off-site liability provided by an insurer who is admitted, authorized, or eligible to conduct insurance business in Louisiana; and

- f. certification by the applicant that all information provided in the application is true and correct with the knowledge of the possibility of punishment under the law for false information.

C. Government Agencies. Government agencies intending to operate waste tire processing equipment for the purposes of volume reduction shall notify the administrative authority on a form available on the department's website and shall not be required to obtain a standard waste tire processing permit, provided that the requirements of LAC 33:VII.10525.J are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:39 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2776 (December 2000), LR 27:830 (June 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2502 (October 2005), LR 33:2158 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:

### **§10518. Standard Waste Tire Collection Center Permit Application**

A. Each applicant requesting a standard permit in accordance with these regulations shall complete the permit application and submit it to the administrative authority. In addition, the standards in LAC 33:VII.10527 shall be incorporated into the appropriate items below. Submission of the following information shall be provided on the application, which is available on the department's website:

1. the name and phone number of the applicant;
2. the name and phone number of the facility contact, if different from the applicant;
3. the name, address, and phone number of a contact person in case of an emergency, if different from the individual specified in Paragraph A.2 of this Section;
4. the business mailing address, including city, state, parish, and zip code;
5. the location of the facility;



6. the business telephone number;
7. the federal identification number and state tax identification number;
8. a site master plan, including property lines, building, facilities, excavations, drainage, roads, and other appurtenances;
9. a copy of written notification to the appropriate local governing authority, stating that the site is to be used as a collection center;
10. written documentation from the appropriate local governing authority, stating that the facility is in compliance with local zoning and permitting requirements;
11. written documentation from the property owner granting approval for use of the property as a collection center, if property owner is other than applicant;
12. proof of publication of notice of intent to submit an application for a standard waste tire collection center permit;
13. a letter of compliance and certification of premises and buildings from the state fire marshal;
14. an operational plan addressing the following:
  - a. facility access and security;
  - b. waste tire acceptance plan to count, record, and monitor incoming quantities of waste tires;
  - c. method to control water run-on/runoff;
  - d. days and hours of operation;
  - e. waste tire storage method:
    - i. dimensions of waste tire piles;
    - ii. maximum number of whole waste tires stored at any one time;
    - iii. width of fire lanes;
    - iv. method of storage to exclude standing water;
    - v. type of access roads; and
    - vi. emergency control plans in case of fire, accident, etc.;
  - f. site grounds maintenance and disease vector control to minimize vector-breeding areas and animal attraction;
    - i. controlling fly, mosquito, and other insect emergence and entrance;
    - ii. controlling rodent burrowing for food or harborage; and
    - iii. controlling bird and animal attraction;
  - g. buffer zones; and
  - h. method to control and/or treat any process water;
15. evidence of commercial general liability insurance in the amount no less than \$1 million applicable to on-site and off-site liability provided by an insurer who is admitted, authorized, or eligible to conduct insurance business in Louisiana;
16. site closure plan to assure clean closure. The closure plan shall be submitted as a separate section with each application, ensure clean closure, and include the following:
  - a. the method to be used and steps necessary for closing the facility;
  - b. the estimated cost of closure of the facility, based on the cost of hiring a third party to close the facility at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive;
  - c. maximum inventory of whole waste tires on-site at any one time over the active life of the facility;

- d. a schedule for completing all activities necessary for closure; and
- e. the sequence of final closure as applicable;
17. site closure financial assurance fund;
18. plans, specifications, and operations represented and described in the permit application or permit modifications shall be prepared under the supervision of and certified by a professional engineer licensed in the state of Louisiana;
19. a signed legal certification that all information provided in the application is true and correct with the knowledge of the possibility of punishment under the law for false information;
20. date and signature of the responsible official;
21. name of authorized agent for service of process, if applicable; and
22. required information regarding facility site assessments as follows:
  - a. a discussion demonstrating that the potential and real adverse environmental effects of the facility have been avoided to the maximum extent possible;
  - b. a cost-benefit analysis demonstrating that the social and economic benefits of the facility outweigh the environmental-impact costs;
  - c. a discussion and description of possible alternative projects that would offer more protection to the environment without unduly curtailing non-environmental benefits;
  - d. a discussion of possible alternative sites that would offer more protection to the environment without unduly curtailing non-environmental benefits; and
  - e. a discussion and description of the mitigating measures which would offer more protection to the environment than the facility, as proposed, without unduly curtailing non-environmental benefits.

B. Government agencies intending to operate a waste tire collection center shall notify the administrative authority on a form available on the department's website prior to operating the waste tire collection center. Government agencies operating waste tire collection centers shall not be required to obtain a standard waste tire collection center permit provided they meet the requirements of LAC 33:VII.10527.H.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:

**§10519. Standards and Responsibilities of Waste Tire Generators and Sellers of Tires**

A. Within 30 days of commencement of business operations or when requested by the administrative authority, generators of waste tires that store more than 20 whole waste tires and/or persons who sell tires shall notify the administrative authority of their existence and obtain a generator identification number. The identification number shall be obtained by the generator prior to initiating a waste tire manifest. Notification shall be on a form available on the department's website.

B. Tire dealers must accept from the purchaser, at the time of purchase, one waste tire for every tire sold, unless the purchaser elects to retain the waste tire. Tire dealers may

accept additional waste tires from the customer; however, the additional tires are considered program ineligible waste tires and shall be documented on the waste tire manifest as ineligible waste tires.

C. Each tire dealer doing business in the state of Louisiana shall be responsible for the collection of the \$2 waste tire fee upon the sale of each passenger/light truck tire, \$5 waste tire fee upon the sale of each medium truck tire, and \$10 waste tire fee upon the sale of each off-road tire. For recapped or retreaded tires, a waste tire fee of \$1.25 shall be collected upon the sale of each recapped or retreaded tire. These fees shall also be collected upon replacement of all recall and adjustment tires. These fees shall be collected whether or not the purchaser retains the waste tires. The department does not require the collection of fees on the sale of tires weighing 500 pounds or more, solid tires, or tires which are de minimis in nature, including but not limited to lawn mower tires, bicycle tires, and golf cart tires.

D. Each dealer of passenger/light truck tires, medium truck tires, or off-road tires shall:

1. remit all waste tire fees as required by LAC 33:VII.10535.B to the administrative authority on a monthly basis on or before the twentieth day following the month during which the fees were collected. The fees shall be remitted to the Office of Management and Finance;

2. submit with the waste tire fees, the monthly waste tire fee report (Form WT02, available from the Office of Management and Finance) to the Office of Management and Finance on or before the twentieth day of each month for the previous month's activity, including months in which no fees were collected;

3. keep and preserve records as may be necessary to readily determine the amount of fee due. Each dealer shall maintain a complete record of the quantity of tires sold, together with tire sales invoices, purchase invoices, inventory records, and copies of each monthly waste tire fee report for a period of no less than five years; and

4. maintain the required records in accordance with LAC 33:VII.10509.H.

E. In any case where a tire dealer has failed to report and remit the waste tire fee to the administrative authority, and the dealer's records are inadequate to determine the proper amount of fee due, or in any case where a grossly incorrect report or a report that is false or fraudulent has been submitted by the tire dealer, the administrative authority shall have the right to estimate and assess the amount of the fee due, along with any interest accrued and penalties. The burden to demonstrate to the contrary shall rest upon the tire dealer.

F. Tire dealers shall prominently display to the public sector the notification provided by the administrative authority indicating that:

1. "It is unlawful for any person to dispose, discard, burn, or otherwise release waste tires to the environment in a manner in contravention to the Louisiana Solid Waste Regulations. A fine of up to \$32,500 per day per violation may be imposed on any company or individual who violates these rules and regulations."

2. "All Louisiana tire dealers are required to collect a waste tire cleanup and recycling fee from the consumer at the time of the retail sale of \$2 for each passenger/light truck

tire, \$5 for each medium truck tire, \$10 for each off-road tire, and \$1.25 for recapped or retreaded tires. These fees shall also be collected upon replacement of all recall and adjustment tires. Tire fee categories are defined in the Waste Tire Regulations. This fee must be collected whether or not the purchaser retains the waste tires. Tire dealers must accept from the purchaser, at the time of sale, one waste tire for every tire sold, unless the purchaser elects to retain the waste tire. The department does not require the collection of fees on the sale of tires weighing 500 pounds or more, solid tires, or tires which are de minimis in nature, including but not limited to lawn mower tires, bicycle tires, and golf cart tires."

G. The waste tire fee established by R.S. 30:2418 shall be listed on a separate line of the retail sales invoice and identified as the "LDEQ waste tire fee." The LDEQ waste tire fee shall not include any additional fees. No tax of any kind shall be applied to this fee.

H. Generators of waste tires, required to register in accordance with LAC 33:VII.10519.A, shall comply with the manifest requirements of LAC 33:VII.10534.

I. For all waste tires collected and/or stored, generators shall provide:

1. a cover adequate to exclude water from the waste tires;

2. vector and vermin control; and

3. means to prevent or control standing water in the storage area.

J. Generators of waste tires, required to register in accordance with Subsection A of this Section may store waste tires up to 120 days after receipt or generation. However, a registered generator of waste tires may store waste tires a maximum of 365 days, provided:

1. the storage is solely for the purpose of accumulating such quantities as are necessary for cost effective transportation and processing; and

2. documentation supporting the storage period and the quantity generated is made available at the generator's facility for audit and/or inspection.

K. No more than 150 tires shall be stored at the generator's place of business at one time, unless stored indoors or in a transportable collection container.

L. No tire dealer shall allow the removal of waste tires from his place of business by anyone other than an authorized transporter, unless the tire dealer generates 50 or less waste tires per month from the sale of 50 tires. In this case, the tire dealer may transport up to 20 waste tires to a permitted processing facility.

M. A generator or tire dealer who ceases operation at the registered location shall notify the administrative authority in writing within 10 days of the date of the closure or relocation of the business. This written notice shall include information regarding the location and accessibility of the records required by Subsections D, O, and/or P of this Section, as applicable.

N. Waste tires shall be segregated from any usable tires.

O. All tire wholesalers shall maintain records of all tire sales made in Louisiana. These records shall contain the name and address of the purchaser, the date of the purchase, the number of tires purchased, and the type and size of each tire purchased. These records shall be maintained by tire

wholesalers for a minimum of five years and shall be made available for audit and/or inspection at their place of business during regular business hours.

P. All generators of waste tires, required to register in accordance with Subsection A of the Section, and not required to collect fees, shall maintain a complete record of purchase invoices, inventory records, and sales invoices for a period of no less than five years.

Q. In addition to the applicable requirements of this Section, qualified scrap or salvage yards shall make available to the administrative authority the register of business transactions as required by R.S. 32:784(A), and also maintain a record of the number of tires recovered from Louisiana-titled vehicles, which tires are resold. These records shall be maintained for a minimum of five years and shall be made available for audit and/or inspection at their place of business during regular business hours.

R. All persons required to register in accordance with Subsection A of this Section, shall notify the administrative authority when any information provided on the notification form changes. Only changes in mailing address, telephone number, and contact name may be made by submitting the corrections on the monthly waste tire fee report Form WT-02. All other corrections shall be submitted within 10 days of the change on a new Waste Tire Generator Notification Form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:40 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2777 (December 2000), LR 27:830 (June 2001), LR 27:2227 (December 2001), LR 28:1953 (September 2002), LR 29:1818 (September 2003), LR 29:2780 (December 2003), amended by the Office of Environmental Assessment, LR 31:1323 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2503 (October 2005), LR 33:90 (January 2007), LR 33:2158 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:

#### **§10521. Standards and Responsibilities of Sellers of Motor Vehicles**

A. Within 30 days of commencement of business operations, or when requested by the administrative authority, motor vehicle dealers shall notify the administrative authority of their existence and obtain an identification number. Notification shall be made using the form available on the department's website.

B. Motor vehicle dealers doing business in the state of Louisiana, who sell new vehicles, shall be responsible for the collection from the consumer of the \$2 waste tire fee for each tire upon the sale of each vehicle with passenger/light truck tires, the \$5 waste tire fee for each tire upon the sale of each vehicle with medium truck tires, and the \$10 waste tire fee for each tire upon the sale of each off-road vehicle. No fee is collected on the designated spare tire. These fees shall also be collected upon replacement of all recall and adjustment tires. The department does not require the collection of fees on the sale of a vehicle with tires weighing 500 pounds or more, solid tires, or tires which are de minimis in nature, including but not limited to lawn mower tires, bicycle tires, and golf cart tires.

C. Dealers of used motor vehicles doing business in the state of Louisiana shall not be subject to this Section. However, dealers of used motor vehicles who buy tires at wholesale and mount them on a used vehicle prior to sale are considered waste tire generators and are subject to the requirements of LAC 33:VII.10519.

D. Motor vehicle dealers shall:

1. remit all waste tire fees as required by LAC 33:VII.10535.B to the administrative authority on a monthly basis on or before the twentieth day following the month during which the fees were collected. The fees shall be remitted to the Office of Management and Finance;

2. submit with the waste tire fees a monthly waste tire fee report (Form WT02, available from the Office of Management and Finance) to the Office of Management and Finance on or before the twentieth day of each month for the previous month's activity, including months in which no fees were collected;

3. maintain and preserve records as may be necessary to readily determine the amount of fee due. Each dealer shall maintain a complete record of the quantity of vehicles sold, together with vehicle purchase and sales invoices, and inventory records, for a period of no less than five years; and

4. maintain the records in accordance with LAC 33:VII.10509.H.

E. In any case where a motor vehicle dealer has failed to report and remit the waste tire fee to the administrative authority, and the dealer's records are inadequate to determine the proper amount of fee due, or in any case where a grossly incorrect report or a report that is false or fraudulent has been submitted by the dealer, the administrative authority shall have the right to estimate and assess the amount of the fee due, along with any interest accrued and penalties. The burden to demonstrate to the contrary shall rest upon the motor vehicle dealer.

F. Motor vehicle dealers shall prominently display to the public the notification provided by the administrative authority, indicating that:

"All Louisiana motor vehicle dealers selling new vehicles are required to collect a waste tire cleanup and recycling fee from the consumer of \$2 for each passenger/light truck tire, \$5 for each medium truck tire, and \$10 for each off-road tire, upon the sale of each new motor vehicle. These fees shall also be collected upon replacement of all recall and adjustment tires. No fee shall be collected on the designated spare tire. The department does not require the collection of fees on the sale of tires weighing 500 pounds or more, solid tires, or tires which are de minimis in nature, including but not limited to lawn mower tires, bicycle tires, and golf cart tires."

G. The waste tire fee established by R.S. 30:2418 shall be listed on a separate line of the retail sales invoice or buyers order and identified as the "LDEQ waste tire fee." The LDEQ waste tire fee shall not include any additional fees. No tax of any kind shall be applied to this fee.

H. A motor vehicle dealer who ceases the sale of motor vehicles at the registered location shall notify the administrative authority in writing within 10 days of the date of the close or relocation of the business. This written notice shall include information regarding the location and accessibility of the records required by Subsection D of this Section.

I. Motor vehicle dealers, who generate waste tires, shall comply with the requirements of LAC 33:VII.10519.L, and the manifest requirements of LAC 33:VII.10534.

J. Motor vehicle dealers shall also comply with LAC 33:VII.10519.I-K, and Q, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1324 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:91 (January 2007), LR 33:2158 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:

### **§10523. Standards and Responsibilities of Waste Tire Transporters**

A. Any person who transports more than 20 waste tires within the state of Louisiana shall comply with all of the requirements for transporters contained in this Section.

B. No person shall transport more than 20 waste tires without a valid transporter authorization certificate and a completed manifest satisfying the requirements of LAC 33:VII.10534. The manifest provision shall not apply to state and local governments utilizing vehicles to transport waste tires from rights-of-way to government agency collection centers satisfying the requirements of LAC 33:VII.10527.H.

C. Transporter of waste tires shall complete the transporter authorization application form available on the department's website. Along with the application, the transporter shall submit proof of commercial liability insurance and financial responsibility in the form of a surety bond, containing the language provided in LAC 33:VII.1303.D.1 and Section 11103, Appendix B, in a minimum amount of \$10,000, or as determined by the secretary, and pay the transporter fees as specified in LAC 33:VII.10535.A. The transporter shall provide other documentation deemed necessary by the administrative authority, to the administrative authority prior to transporting waste tires.

D. Upon satisfying the requirements of Subsection B of this Section and obtaining approval by the administrative authority, the appropriate number of authorization certificates and transporter decals shall be issued. All transporter authorization certificates and transporter decals expire on July 31 of each calendar year. The transporter decals shall be placed in accordance with Subsection H of this Section. The administrative authority may suspend, revoke, or deny transporter authorization certificates for cause. Such cause shall include, but not be limited to:

1. violations of federal or state law;
2. failure to maintain a complete and accurate record of waste tire shipments;
3. falsification of shipping documents or waste tire manifests;
4. delivery of waste tires to a facility not permitted to accept the tires;
5. failure to comply with any rule or order issued by the administrative authority pursuant to the requirements of this regulation;
6. unauthorized disposal of waste tires and/or waste tire material; or
7. collection or transportation of waste tires without a valid transporter authorization.

E. Transporters shall reapply for authorization certificates in accordance with Subsection B of this Section on an annual basis and the application shall be submitted no later than July 1 of each calendar year.

F. A transporter of waste tires shall only accept and transport waste tires from generators who have notified and obtained a valid generator identification number from the administrative authority.

G. For in-state waste tire transportation, the transporter shall transport all waste tires only to an authorized collection center, an authorized waste tire transfer station, a permitted processing facility, or an authorized end-market use.

H. The transporter shall affix the transporter decal to the driver and passenger sides of each registered vehicle listed on the notification form. The transporter authorization certificate shall be kept in the registered vehicle at all times.

I. All persons subject to this Section shall notify the administrative authority in writing within 10 days when any information on the authorization certificate changes or if they cease transporting waste tires.

J. All persons who use company-owned or company-leased vehicles to transport tire casings for the purpose of retreading between company-owned or company-franchised retail tire outlets, and retread facilities owned or franchised by the same company are not considered waste tire transporters unless they also transport waste tires.

K. Prior to transporting any waste tire material in the state of Louisiana, all persons shall notify the administrative authority on a form available on the department's website. Except for the notification requirement and the manifest requirements in LAC 33:VII.10534.C, persons transporting only waste tire material are not subject to the requirements of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2778 (December 2000), LR 27:831 (June 2001), repromulgated LR 27:1885 (November 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2503 (October 2005), LR 33:2159 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:

### **§10524. Standards and Responsibilities of Waste Tire Transfer Stations**

A. No person shall operate a waste tire transfer station without authorization from the administrative authority. Owners and/or operators of waste tire transfer stations shall:

1. Complete the waste tire transfer station authorization form available on the department's website. The form shall be submitted to the administrative authority for review.

2. Comply with existing local zoning and comprehensive land-use regulations and ordinances.

3. Provide advanced written notice, at least 30 days prior to construction/operation, to the parish governing authority whose jurisdiction may be affected, of the intent to operate a waste tire transfer station.

B. Authorization Duration. A waste tire transfer station authorization issued under this Section shall be valid for two years from the date of issuance. Waste tire transfer stations with an effective authorization shall submit to the administrative authority a new authorization application, following the process as contained in this Section, at least 90 calendar days before the expiration date of the authorization,

unless written permission for later submission is granted by the administrative authority. If the renewal application is submitted on or before the deadline above, and the administrative authority does not issue a final decision on the renewal application on or before the expiration date of the authorization, the existing authorization shall remain in effect until the administrative authority issues a final decision on the renewal authorization.

C. The administrative authority may, for cause, suspend, revoke, and/or modify this authorization by giving the owner and/or operator a 60 day written notice of its intent to take the intended action, and allowing the owner and/or operator an opportunity to demonstrate why the intended action should not be taken.

D. No processing or disposal shall occur at a waste tire transfer station.

E. Tires shall not be stored at the waste tire transfer station for more than 10 days after the initiation of the manifest by the generator.

F. Waste tires shall be stored in locked containers or trailers which prevent the collection of rainwater. These storage containers shall remain locked at all times to prevent unauthorized access.

G. Manifests for the waste tires at the facility shall be maintained in a secure manner at the transfer station until such time that the tires represented on the manifest are transported to a permitted processor. Manifests shall be made available upon inspection and/or audit.

H. Waste tire transfer stations are only allowed to receive waste tires from authorized transporters.

I. Owners and operators of waste tire transfer stations shall notify the administrative authority in writing within 10 days of the date of the closure or relocation of the facility. No less than 10 days prior to closure or relocation of the transfer station, all waste tires shall be removed from the transfer station and transported to a permitted processing facility.

J. Signs shall be prominently posted to discourage promiscuous dumping at the waste tire transfer station.

K. Notwithstanding the provision in Subsection F of this Section, persons operating a waste tire transfer station intending to store waste tires on the ground shall comply with the following requirements.

1. A buffer zone of not less than 50 feet between the facility and the property line shall be established and maintained. A reduction in the buffer zone requirements shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 50 feet from the facility. The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the conveyance records of the parish or parishes in which the landowners' properties are located. The affidavit(s) shall be maintained with the records of the facility. No storage of waste tires shall occur within the facility's buffer zone.

2. Security shall be provided for the facility in the form of a fence surrounding the facility to prevent unauthorized ingress or egress except by willful entry. During operating hours, each facility entry point shall be continuously monitored, manned, or locked. During non-operating hours, each facility entry point shall be locked.

3. Waste tires shall be stored in a manner to prevent the collection of rainwater.

4. No waste tires shall be stored in standing water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:

#### **§10525. Standards and Responsibilities of Waste Tire Processors**

A. Before receiving a shipment of waste tires from a relocated generator (one from which, the processor has not previously received shipments) or one that has changed ownership, the processor shall verify, using the Generator List on the department's website, that the generator's status is active and determine the generator's status as eligible or ineligible. If waste tires originating from an ineligible generator are marked eligible on the manifest, the processor shall follow the procedures outlined in LAC 33:VII.10534.B.7 for correcting a discrepancy on the manifest. The processor shall notify the administrative authority upon becoming aware of generators who have not registered.

##### **B. Receipt of Tires**

1. Upon receiving a shipment containing waste tires, the processor shall be responsible for verifying the number of eligible and ineligible waste tires in the shipment by actually counting each waste tire. The processor shall sign each waste tire manifest upon receiving the waste tires. Permitted processors with an agreement with the administrative authority can be reimbursed from the waste tire management fund for only those eligible tires accepted from authorized Louisiana transporters or from generators as specified in LAC 33:VII.10519.L.

2. Processors may accept no more than 20 unmanifested waste tires from a person, per day, per vehicle. However, the processor will only be eligible for reimbursement from the waste tire management fund for five of the unmanifested waste tires received, provided the tires are defined as *program eligible waste tires*. The processor shall maintain the unmanifested waste tire log on a form provided by the administrative authority for all unmanifested waste tires. The log shall include, at the minimum, the following:

a. the name, address, phone number, and driver's license number with state of issuance of the person delivering the waste tires;

b. the license plate number of the vehicle delivering the tires;

c. the number, type, and whether the tires are eligible or ineligible;

d. the date and the signature of the person delivering the tires; and

e. an explanation of how the waste tires were generated.

C. No processor shall list on the unmanifested waste tire log an ineligible tire as eligible.

D. On a form available on the department's website, all processors shall submit a monthly report on or before the twelfth day of each month. That monthly report shall include:

1. waste tire facility reports and application for payment;

2. generator manifests in accordance with LAC 33:VII.10534.B;

3. processor manifest in accordance with LAC 33:VII.10534.C;

4. monthly collection center reports, if applicable;

5. unmanifested waste tire logs;

6. Louisiana Department of Agriculture and Forestry certified scale-weight tickets including gross, tare, and net weights; and

7. any other documentation requested by the administrative authority.

E. Permitted processors who have an effective processor's agreement shall submit an annual report on all approved end-market use projects to the administrative authority. This report is due no later than January 31 of each year for the previous year's activities, and shall identify approved projects, the amount of all whole waste tires and/or waste tire material used in each approved project within the last year, and the date of completion of each project, if applicable.

F. Waste tire processors shall provide completed copies of waste tire manifests to the appropriate waste tire generator within 30 days of the origination date of the manifest and shall comply with all other requirements of LAC 33:VII.10534.

G. All waste tire processors shall meet the following standards:

1. control ingress and egress to the site through a means approved by the administrative authority, with at least one entrance gate being a minimum of 20 feet wide;

2. maintain a buffer zone of 100 feet. Waste tires and waste tire material shall not be placed in the buffer zone. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 100 feet from the facility. The processor shall enter a copy of the notarized affidavit(s) in the conveyance records of the parish or parishes in which the landowners' properties are located;

3. prohibit open burning;

4. enter into a written agreement with the local fire department regarding fire protection at the facility;

5. develop and implement a fire protection and safety plan for the facility to ensure personnel protection and minimize impact to the environment;

6. provide suitable drainage structures or features to prevent or control standing water in the waste tires, waste tire material, and associated storage areas;

7. control all water discharges, including stormwater runoff, from the site in accordance with applicable state and federal rules and regulations;

8. maintain an acceptable and effective disease vector control plan approved by the administrative authority;

9. maintain waste tires and waste tire material in piles, the dimensions of which shall not exceed 10 feet in height, 20 feet in width, and 200 feet in length or in such dimensions as approved by the administrative authority. The number of piles shall be based on the maximum amount of waste tires and/or waste tire material to be stored in accordance with Paragraph G.12 of this Section, the

dimensions of the piles, and an appropriate industry standard density;

10. maintain lanes between piles of waste tires and/or waste tire material a minimum width of 50 feet to allow access by emergency vehicles and equipment;

11. ensure that lanes to and within the facility are free of potholes and ruts and be designed and maintained to prevent erosion;

12. store no more than 60 times the daily permitted processing capacity of the processing facility. The daily capacity of the facility shall be calculated using the daily throughput of the limiting piece of processing equipment and the daily operating hours of the facility;

13. upon ceasing operations, processors shall ensure clean closure;

14. all waste tire facility operators shall maintain a site closure financial assurance fund in an amount based on the maximum number of pounds of waste tires and/or waste tire material that will be stored at the processing facility site at any one time. This fund shall be in the form of a financial guarantee bond, performance bond, or an irrevocable letter of credit in the amount of \$20 per ton of waste tires and/or waste tire material on the site. A standby trust fund shall be maintained for the financial assurance mechanism that is chosen by the facility. The financial guarantee bond, performance bond, irrevocable letter of credit, or standby trust fund must use the exact language included in the documents in LAC 33:VII.11103. Appendix B. The financial assurance must be reviewed at least annually;

15. an alternative method of determining the amount required for financial assurance shall be as follows:

a. the processor shall submit to the administrative authority an estimate of the maximum total amount by weight of waste tire material that will be stored at the processing facility at any one time;

b. the processor shall also submit to the administrative authority two independent, third-party estimates of the total cost of cleaning up and closing the facility, including the cost of loading the waste tire material, transportation to a permitted disposal site, and the disposal cost; and

c. if the estimates provided are lower than the required \$20 per ton of waste tires and/or waste tire material, the administrative authority shall evaluate the estimates submitted and determine the amount of financial assurance that the processor is required to provide;

16. financial assurances for closure and post-closure activities must be in conformity with the standards contained in LAC 33:VII.1303 and the sample documents in §11103.

H. Processors shall only deliver waste tires and/or waste tire material to end-market users in the amount approved by the administrative authority and shall not deliver waste tires and/or waste tire material in anticipation, or prior to approval, of end-market use projects. Processors violating this provision shall promptly remove any improperly delivered whole tires and/or waste tire material and either properly dispose of and/or find another approved end-market use for the whole tires and/or waste tire material. In any case, the use of improperly delivered whole waste tires and/or waste tire material shall not entitle the processor to an additional payment from the waste tire management fund. In the event the processor chooses to properly dispose of the

material, he shall reimburse the Waste Tire Management Fund for any payments received for the disposed material.

#### I. Mobile Processors

1. Only standard permitted processors shall be eligible to apply for mobile processor authorization certificates. Each applicant requesting a mobile processor authorization certificate pursuant to these regulations shall complete the mobile processor application in accordance with LAC 33:VII.10517.B.

2. The appropriate mobile processor application fee shall be submitted with the application in accordance with LAC 33:VII.10535.A.3.

3. The administrative authority will review the mobile processor authorization application and issue a mobile processor authorization certificate, if appropriate. Mobile processing operations are prohibited without a valid authorization certificate.

4. A mobile processor authorization certificate is valid for one year from the date of issuance. Mobile processors shall reapply in accordance with LAC 33:VII.10517.B on an annual basis, no later than 30 days prior to the expiration of the certificate.

5. For mobile waste tire processing, the processor shall operate only at an authorized collection center, a permitted processing facility, or other sites with prior written authorization from the administrative authority.

6. For mobile waste tire processing, the processor shall:

- a. prohibit open burning;
- b. provide fire protection at the processing location;

and

- c. locate processing equipment;
  - i. in an area of sufficient size and terrain to handle the processing operation;
  - ii. a minimum of 100 feet from all adjacent property lines, unless otherwise authorized by the administrative authority;
  - iii. away from utilities, such as power lines, pipelines, or potable water wells; and
  - iv. near roadways and entrances suitable for truck hauling waste tires and/or waste tire material.

7. Immediately upon processing, the waste tire material shall be deposited in a transportable collection container. All waste tire material shall be removed within 10 days from the date of processing.

8. No processed material shall be deposited on the ground at the processing location at any time.

9. Mobile processors shall submit a monthly report on or before the twelfth day of each month for the previous month's activity, including months in which no activity occurred. This report shall be submitted on a form available on the department's website detailing the processing activities at the authorized location. The information in the report shall include, but is not limited to:

- a. site physical address;
- b. number of whole tires processed;
- c. weight (in pounds) of processed material removed from the site, verified by certified scale weight tickets; and
- d. number of tires remaining to be processed.

10. Mobile processors are responsible for notifying the administrative authority in writing within 10 days when any

information on the mobile processor authorization application changes, prior to moving to another authorized location, or if operations cease.

J. Government agencies may operate tire splitting equipment for the purposes of volume reduction prior to disposal without a permit to process waste tires, provided they meet the requirements outlined in Paragraphs I.6-8 and 10 of this Section, and receive written authorization from the administrative authority before initiating any processing.

K. Processors shall maintain a complete set of records pertaining to manifested tires or waste tire material coming in or leaving their place of business. This shall include, but is not limited to, manifests, monthly reimbursement reports, records of all payments from/to end-markets, inventory records, logs, any documents related to out-of-state tire activity, and financial records. These records shall be maintained for a period of no less than five years and shall be made available for audit and/or inspection at the processor's place of business during regular business hours.

L. After review, the administrative authority may, for cause, suspend, revoke, and/or modify the standard permit and/or mobile processor authorization by giving the processor a 60 day written notice of its intent to take the intended action, and allowing the processor an opportunity to demonstrate why the intended action should not be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2779 (December 2000), LR 27:831 (June 2001), LR 27:2228 (December 2001), LR 28:1953 (September 2002), LR 29:2780 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2503 (October 2005), LR 33:2159 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:

### **§10527. Standards and Responsibilities for Waste Tire Collection Centers**

#### A. Receipt of Tires

1. All collection center operators shall be responsible for counting the number of tires in each shipment. The collection center shall report monthly on a form available on the department's website. The monthly report shall be submitted to the administrative authority no later than the fifteenth day of each month for the previous month's activity, documenting the total number of tires received at the facility along with copies of the Unmanifested Waste Tire Log Sheets. These records shall be maintained by the collection center for a minimum of five years and shall be made available for audit and/or inspection at the collection center's place of business during regular business hours.

2. Each collection center shall accept no more than five unmanifested waste tires per individual, per day per vehicle. These five tires will be eligible, provided the tires are defined as *Program Eligible Waste Tires*. The collection center shall maintain on a form available on the department's website, the Unmanifested Waste Tire Log of all unmanifested waste tires. The log shall include, at the minimum, the following:

- a. the name, address, phone number, and driver's license number of the person delivering the waste tires;

- b. the license plate number with state of origin of the vehicle delivering the tires;
- c. the number and type of tires and whether the tires are eligible or ineligible;
- d. the date and the signature of the person delivering the tires; and
- e. an explanation as to how the waste tires were generated.

B. All collection center operators shall meet the following standards:

- 1. control ingress and egress to the site through a means approved by the administrative authority, with at least one entrance gate being a minimum of 20 feet wide;
- 2. maintain a buffer zone of 100 feet. Waste tires shall not be placed in the buffer zone. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 100 feet from the facility. The collector center operator shall enter a copy of the notarized affidavit(s) in the conveyance records of the parish or parishes in which the landowners' properties are located;
- 3. prohibit open burning;
- 4. enter into a written agreement with the local fire department regarding fire protection at the facility;
- 5. develop and implement a fire protection and safety plan for the facility to ensure personnel protection and minimize impact to the environment;
- 6. provide suitable drainage structures or features to prevent or control standing water in the waste tires and associated storage areas;
- 7. control all water discharges, including stormwater runoff, from the site in accordance with applicable state and federal rules and regulations;
- 8. maintain an acceptable and effective disease vector control plan approved by the administrative authority;
- 9. maintain waste tires in piles, the dimensions of which shall not exceed 10 feet in height, 20 feet in width, and 200 feet in length or in such dimensions as approved by the administrative authority. The number of piles shall be based on the maximum amount of waste tires to be stored in accordance with Subsection C of this Section, the dimensions of the piles, and an appropriate industry standard density;
- 10. maintain lanes between piles of waste tires a minimum width of 50 feet to allow access by emergency vehicles and equipment;
- 11. ensure that lanes to and within the facility be free of potholes and ruts and be designed and maintained to prevent erosion.

C. Collection centers shall store no more than 3,000 whole waste tires at any time.

D. Use of mobile processing units are allowed at collection centers. Immediately upon processing, the waste tire material shall be deposited in a transportable collection container for immediate removal from the site. All waste tire material shall be removed from the collection center by the processor within 10 days from the date of processing.

E. No processed waste tire material shall be deposited on the ground at a collection center at any time.

F. All collection center operators shall satisfy the manifest requirements of LAC 33:VII.10534.

G. The closure plan for all collection centers must ensure clean closure and must include the following:

- 1. the method to be used and steps necessary for closing the collection center;
- 2. a detailed and itemized estimated cost of closure of the collection center, based on the cost of hiring a third party to close the collection center at the point in the center's operating life when the extent and manner of its operation would make closure the most expensive;
- 3. the maximum inventory of whole waste tires ever on-site over the active life of the collection center;
- 4. a schedule for completing all activities necessary for closure; and
- 5. the sequence of final closure as applicable;
- 6. all collection center operators shall maintain a site closure financial assurance fund in an amount based on the maximum number of pounds of waste tires that will be stored at the collection center at any one time. This fund shall be in the form of a financial guarantee bond, performance bond, or an irrevocable letter of credit in the amount of \$20 per ton of waste tires on the site. A standby trust fund shall be maintained for the financial assurance mechanism that is chosen by the facility. The financial guarantee bond, performance bond, irrevocable letter of credit, or standby trust fund must use the exact language included in the documents in LAC 33:VII.11103, Appendix B. The financial assurance must be reviewed at least annually;
- 7. an alternative method of determining the amount required for financial assurance shall be as follows:
  - a. the collection center operator shall submit to the administrative authority an estimate of the maximum total amount by weight of waste tire material that will be stored at the processing facility at any one time;
  - b. the collection center operator shall also submit to the administrative authority two independent, third-party estimates of the total cost of cleaning up and closing the facility, including the cost of loading the waste tires, transportation to a permitted processing facility;
  - c. if the estimates provided are lower than the required \$20 per ton of waste tires, the administrative authority shall evaluate the estimates submitted and determine the amount of financial assurance that the collection center is required to provide;

8. financial assurances for closure and post-closure activities must be in conformity with the standards contained in LAC 33:VII.1303 and the sample documents in LAC 33:VII.11103.

H. Government Agencies

1. Government agencies intending to operate collection centers will not be required to obtain permits, provided that the collection center is:

- a. located on property owned or otherwise controlled by the government agency, unless otherwise authorized by the administrative authority;
- b. attended by personnel during operational hours and have controlled ingress and egress during non-operational hours; and
- c. staffed by personnel witnessing the loading and unloading of waste tires.

2. Government agencies operating collection centers shall:



- a. only accept waste tires from roadside pickup, from rights-of-way, and individuals;
- b. not accept tires from registered generators;
- c. not allow the removal of waste tires by anyone other than an authorized transporter;
- d. operate under a fire and disease vector control plan;
- e. notify the administrative authority in writing within 10 days of the date of closure, relocation, or when any information provided on the notification form changes; and
- f. satisfy the requirements of LAC 33:VII.10509, 10519.I, 10527.A.1 and 2, 10527.C-E, and 10534.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), LR 29:2780 (December 2003), amended by the Office of the Secretary, Legal Division, LR 42:

**§10529. Standards and Procedures for Waste Tire Cleanups**

A. Property Owners. Owners of property on which more than 20 waste tires are stored, deposited, or abandoned but were not generated by a waste tire generator authorized by the administrative authority and managed in accordance with LAC 33:VII.10519, shall:

- 1. provide for and ensure the removal of the waste tires in the following manner:
  - a. removed by the property owner and transported to a permitted processing facility in quantities of no more than 20 per day;
  - b. removed by the property owner and transported to an authorized collection center in quantities of no more than five per day; or
  - c. in accordance with the department's single event cleanup procedures outlined in Subsection B of this Section;
- 2. provide disease vector control measures adequate to protect the safety and health of the public, and keep the site free of excess grass, underbrush, and other harborage; and
- 3. limit access to the piles to prevent further disposal of tires or other waste.

**B. Single Event Cleanups**

1. Single event cleanups may be authorized by the administrative authority to address accumulations of waste tires at unauthorized locations provided that notification is submitted to the administrative authority 30 days prior to the anticipated event. Notification shall be on the single event cleanup/government tire sweep form, which is available on the department's website. The information on the form shall include:

- a. type of application;
- b. name of responsible business, organization, government entity, or property owner;
- c. physical location of abandoned waste tires to be removed;
- d. email address of applicant;
- e. contact person if different from owner;
- f. mailing address;
- g. phone number and fax number;

- h. reason for request (i.e., promiscuous dump, called in complaint, found on property, tire sweep, or other);
- i. estimated number of waste tires to be removed;
- j. information describing how the waste tires were generated;
- k. name of permitted processor to receive waste tires; and
- l. certification that all information provided on the form is true and correct with the knowledge of the possibility of punishment under the law for false information.

2. All waste tires collected shall be removed by an authorized waste tire transporter and processed by the permitted waste tire processor indicated on the single event cleanup/government tire sweep form submitted to the administrative authority. Use of a waste tire processor not indicated on the form must be approved in writing by the administrative authority.

3. The administrative authority shall not be responsible for any cost associated with the removal of the tires.

4. Approval of the cleanup is effective for the time period and amount of waste tires specified in the approval letter. If additional time is needed, a written request shall be submitted to the administrative authority for approval prior to the expiration date indicated in the initial approval letter. Exceedances of 10 percent or more in the estimated number of tires reported in the notification form shall be reported in writing to the administrative authority prior to the expiration date indicated in the initial approval letter.

5. Applicants shall comply with the manifest requirements of LAC 33:VII.10534 and shall identify the tires as ineligible on the manifest.

**C. Government Tire Sweeps**

1. Government tire sweeps may be authorized by the administrative authority to allow government agencies to collect waste tires provided that:

- a. notification is submitted to the administrative authority 30 days prior to the anticipated event. Notification shall be on the single event cleanup/government tire sweep form, which is available on the department's website. The form shall include the information described in Subsection B of this Section.
- b. the government agency has not conducted a Tire Sweep within six months prior to the request.

2. A maximum of five waste tires may be collected per person and no waste tires shall be accepted from businesses. Records of the five tires shall be maintained on the unmanifested waste tire log form, available on the department's website.

3. All waste tires collected shall be transported by an authorized waste tire transporter and processed by the permitted waste tire processor indicated on the single event cleanup/government tire sweep form submitted to the administrative authority. Use of a waste tire processor not indicated on the form must be approved in writing by the administrative authority.

4. Waste tire collection shall only be conducted on the date(s) included in the approval letter. If additional time or alternate dates are needed, the administrative authority shall be notified in writing prior to the expiration date included in the initial approval letter.

5. Government agencies shall comply with the manifest requirements of LAC 33:VII.10534.

D. Waste Tires Discarded by a Third Party. Property owners and government entities cleaning property in which tires have been discarded by a third party and requesting the waste tires be determined eligible shall:

1. notify the administrative authority in writing with information regarding the discarded tires. This information includes, but is not limited to, address of the site, estimated number and type of tires, photographs, and information on person(s) responsible for the discarded tires, if known;

2. obtain and submit to the administrative authority a police report documenting the incident. If a police report cannot be obtained, a written certification shall be submitted to the administrative authority attesting that all information provided in Paragraph 1 of this Section is true and correct;

3. provide the administrative authority a description of the measures taken to prevent future incidents of this nature at the site. These measures include, but are not limited to, limiting access to the site by adding fencing or other means to secure the property, posting signs to deter dumping of tires, and/or using cameras and/or video surveillance to record dumping incidents;

4. provide disease vector control measures adequate to protect the safety and health of the public, and keep the site free of excess grass, underbrush, and other harborage;

5. limit access to the discarded tires to prevent further disposal;

6. not remove the discarded tires from the property prior to obtaining written permission from the administrative authority, which includes an eligibility or ineligibility determination. Unless otherwise determined by the administrative authority, no more than 520 tires can be eligible per site in a calendar year. Reimbursements from the waste tire management fund will not be approved for any waste tires removed under the authority of this Section which are defined as program ineligible waste tires;

7. ensure the tires are removed by an authorized waste tire transporter and transported to a permitted waste tire processor;

8. comply with the manifest requirements of LAC 33:VII.10534.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), amended by the Office of the Secretary, Legal Division, LR 42:

#### **§10531. Standards and Responsibilities of High Volume End Use Facilities**

A. All owners and/or operators of high volume end use facilities in Louisiana shall meet the following requirements:

1. control ingress and egress to the site through a means approved by the administrative authority, with at least one entrance gate being a minimum of 20 feet wide;

2. maintain a buffer zone of 100 feet. Waste tires and waste tire material shall not be placed in the buffer zone. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all

landowners having an ownership interest in property located less than 100 feet from the facility. A copy of the notarized affidavit(s) shall be placed in the conveyance records of the parish or parishes in which the landowners' properties are located;

3. prohibit open burning;

4. enter into a written agreement with the local fire department regarding fire protection at the facility;

5. develop and implement a fire protection and safety plan for the facility to ensure personnel protection and minimize impact to the environment;

6. provide suitable drainage structures or features to prevent or control standing water in the waste tires, waste tire material, and associated storage areas;

7. control all water discharges, including stormwater runoff, from the site in accordance with applicable state and federal rules and regulations;

8. maintain an acceptable and effective disease vector control plan approved by the administrative authority;

9. maintain waste tires and waste tire material in piles, the dimensions of which shall not exceed 10 feet in height, 20 feet in width, and 200 feet in length or in such dimensions as approved by the administrative authority. All facilities shall provide, for approval by the administrative authority, calculations and/or justification of the amount of waste tires and/or waste tire material to be stored at the facility. At no time shall the amount of material stored at the facility exceed the amount approved by the administrative authority;

10. maintain lanes between piles of waste tires or waste tire material a minimum width of 50 feet to allow access by emergency vehicles and equipment;

11. ensure that lanes to and within the facility be free of potholes and ruts and be designed and maintained to prevent erosion;

12. specific projects using whole waste tires and/or waste tire material shall meet the requirements of LAC 33:VII.10532 and shall be submitted, in writing, to the administrative authority for prior approval. High volume end use facilities shall have an approved project in order to receive, store, or utilize waste tires and/or waste tire material;

13. on a form available on the department's website, all high volume end use facility owners and/or operators shall submit a monthly report to the administrative authority, which shall include a certified record of pounds of waste tire material, and/or whole waste tires received and used in an approved end-market use project;

14. all facilities shall maintain, for a minimum of five years, a complete set of the following records:

a. documentation of compliance with the approved storage limits;

b. copies of waste tires and/or waste tire material manifests entering and/or exiting the site of the approved project;

c. copies of required monthly reports; and

d. any documents related to out-of-state activity;

15. all records shall be maintained at the facility and shall be made available for audit and/or inspection during regular business hours.

B. Requirements for Processing Facilities Operating as High Volume End Use Facilities

1. Waste tire material will only be eligible for payment when recycled or that reaches an approved end-market use project.

2. Processors shall comply with all standard processing permit requirements.

3. The processor shall maintain a legible log for all waste tire material being utilized as landscape mulch, and/or playground material. The log shall include, at the minimum, the following:

- a. the name and address of the customer;
- b. the address where the waste tire material will be used;
- c. an explanation as to how the waste tire material will be used;
- d. the license plate number and state of issuance of the vehicle picking up the material;
- e. the phone number of the customer;
- f. the pounds of waste tire material received and the certified weight ticket number associated with the load;
- g. the date;
- h. the time; and
- i. the signature of the customer certifying, under penalty of law, that all information provided in the log is true and correct.

C. Entities located outside Louisiana applying to become a high volume end use facility shall use a form available on the department's website. The applicant shall provide the administrative authority confirmation from their state indicating the facility has the proper permits and is authorized to accept the waste tires and/or waste tire material. If the facility is not in compliance with applicable regulations of the state in which the facility is located, the administrative authority reserves the right to review the project and make it ineligible for payment and/or deny the high volume end use facility application.

D. Port Facilities Applying to Become a High Volume End Use Facility

1. In instances where waste tires and/or waste tire material is required to be stored in quantities greater than 5,000 whole tires and/or 2,000,000 pounds of waste tire material to facilitate transportation to an approved out-of-state end-market use project, the port where the waste tires and/or waste tire material will be loaded for transportation on water shall submit an application to become a high volume end use facility utilizing a form available on the department's website. For purposes of transportation to end-market use projects out-of-state, waste tires and/or waste tire material shall not be stored at facilities other than approved high volume end use facilities.

2. Waste tires and/or waste tire material shall not be accepted without an approved end-market use project as demonstrated by a copy of the project approval letter from the administrative authority. Waste tires and/or waste tire material shall not be accepted at the facility in anticipation of, or prior to approval of, end-market use projects.

3. Waste tires and/or waste tire material shall not be accepted at the facility in amounts exceeding the end-market use project approval.

4. The facility shall:

- a. prohibit open burning;
- b. provide suitable drainage structures or features to prevent or control standing water in the waste tires, waste tire material, and associated storage areas;
- c. control all water discharges, including stormwater runoff, from the site in accordance with applicable state and federal rules and regulations;
- d. maintain an acceptable and effective disease vector control plan approved by the administrative authority;
- e. maintain waste tires and waste tire material in piles, the dimensions of which shall not exceed 10 feet in height, 20 feet in width, and 200 feet in length or in such dimensions as approved by the administrative authority;
- f. maintain lanes between piles of waste tires and/or waste tire material a minimum width of 50 feet to allow access by emergency vehicles and equipment, unless otherwise approved by the administrative authority; and
- g. ensure that lanes to and within the facility be free of potholes and ruts and be designed and maintained to prevent erosion.

6. On a form available on the department's website, the facility owner and/or operator shall submit a monthly report to the administrative authority, which shall include a certified record of the number of waste tires and/or pounds of waste tire material received from each permitted processor and shipped to each approved end-market use project.

7. The facility shall maintain, for a minimum of five years, a complete set of the following records:

- a. copies of waste tires and/or waste tire material manifests entering and/or exiting the place of business;
- b. copies of end-market use project approval letters; and
- c. copies of required monthly reports.

8. All records shall be maintained at the facility and shall be made available for audit and/or inspection during regular business hours.

E. After review, the administrative authority may, for cause, suspend, revoke, and/or modify the High Volume End Use Facility's authorization by providing the facility owner a 60 day written notice of the administrative authority's intent to take the intended action and allowing the facility owner an opportunity to demonstrate why the intended action should not be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:

**§10532. End-Market Uses**

A. End-market use projects may be approved by the administrative authority on a case-by-case basis. These projects include, but are not limited to, slope stabilization, erosion control, levee construction, lightweight backfill material, roadway stabilization material over soft soils, or other applications as approved by the administrative authority.

1. The administrative authority will review and issue a decision within 15 business days of receipt of an application for the following end-market use projects:

a. backfill as an alternative to aggregate to promote drainage; and

b. use in landfill applications such as leachate collection systems.

2. For purposes of Paragraph 1 of Subsection A above, if additional information is requested based on the inadequacy of the application, the 15 day review period is suspended. The review period resumes upon the administrative authority's receipt of the requested information from the applicant.

3. Customary end-market use projects utilizing waste tires and/or waste tire material for tire derived fuel (TDF), lightweight backfill for bulkheads, or crumb rubber applications are considered approved if the administrative authority has not issued to the applicant a project approval, requested additional information, or denied the project within 15 business days of project submittal. The administrative authority reserves the right to add additional projects to the list provided above. The list will be maintained on the department's website.

4. Applications for end-market use projects described in Paragraph A.1 of this Subsection shall be electronically submitted in a manner determined by the administrative authority.

B. Specific projects using whole waste tires and/or waste tire material shall meet the requirements of LAC 33:VII.10533 and LAC 33:VII.10534.

C. Facilities at which whole waste tires and/or waste tire material is utilized for projects that require extended storage must obtain approval as a high volume end use facility in addition to receiving approval of any end-market use project.

D. Unless approved by the administrative authority as a high volume end use facility, end-market users shall not store more than 5,000 whole waste tires or 2,000,000 pounds of waste tire material at the end of any operational day.

E. On a form available on the department's website, end-market users shall submit a monthly report to the administrative authority, unless exempted on a case-by-case basis, which shall include a certified record of pounds of waste tire material or whole waste tires received and a certified record of pounds of waste tire material and/or whole waste tires used in an approved end-market use project.

F. End-market users shall maintain a complete set of records pertaining to waste tires and/or waste tire material coming in or leaving the site of the approved project. The records shall include, but are not limited to, manifests, required monthly reports, inventory records, logs, and any documents related to out-of-state activity as determined by the administrative authority. These records shall be maintained for a period of no less than five years and shall be made available for audit and/or inspection at the end market user's place of business during regular business hours.

G. End-market users shall:

1. prohibit open burning;
2. provide fire protection at the location;
3. locate the project work site:

a. in an area of sufficient size and terrain to handle the operation; and

b. maintain a minimum distance of 100 feet from nearby residences, businesses, and/or sensitive receptors,

(e.g., schools, hospitals, clinics, that will be inconvenienced or adversely affected by use of the site).

H. Whole waste tires and/or waste tire material shall only be utilized in the project as approved by the administrative authority.

I. If the approved amount of waste tires and/or waste tire material delivered exceeds the amount required to complete the approved project, the end-market user shall notify the administrative authority in writing within 15 days of completion of the project. The notification shall include the numbers or weight of waste tires and/or waste tire material, and a description of how the end-market user intends to address the unused material.

J. Within 30 days of completion of any end-market use project, the end-market user shall submit a letter to the administrative authority stating date of completion, the amount of waste tires and/or waste tire material that was needed to complete the project, and amount of unused material.

K. The administrative authority may, for cause, review, suspend, modify, and/or revoke an End-Market Use project authorization by giving the end-market user a five day written notice of its intent to take the intended action, and allowing the end-market user an opportunity to demonstrate why the intended action should not be taken.

L. International End-Market Use Projects

1. Permitted processors shall submit an end-market use application in accordance with LAC 33:VII.10515 and receive written authorization from the administrative authority prior to shipping waste tire material internationally. The information described in LAC 33:VII.10515.A.12 and 13 is not required in applications for international end-market use projects. However, the application shall include a copy of the contract/agreement with the international market which specifies the amount of waste tire material to be sent to the market. Only the permitted processor shall be required to sign the application.

2. International end-market use projects are not subject to the requirements of Subsections C-H, J, K, and L of this Section.

3. Approved international end-market users are not required to apply for and obtain authorization as high volume end use facilities.

4. In the event the end-market use project is cancelled prior to the waste tire material leaving the port, processors shall promptly remove it and either properly dispose of it or find another approved end market use for the waste tire material. In any case, the use of waste tire material shall not entitle the processor to an additional payment from the waste tire management fund. In the event the processor chooses to properly dispose of the waste tire material, he shall reimburse the waste tire management fund for any payments received for the waste tire material.

5. Processors shall only deliver to the port waste tire material in the amount approved by the administrative authority and shall not deliver waste tire material in anticipation, or prior to approval, of international end-market use projects. Processors violating this provision shall promptly remove any improperly delivered waste tire material and either properly dispose of and/or find another approved end market use for the waste tire material. In any case, the use of improperly delivered waste tire material

shall not entitle the processor to an additional payment from the waste tire management fund. In the event the processor chooses to properly dispose of the waste tire material, he shall reimburse the waste tire management fund for any payments received for the disposed waste tire material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), LR 27:831 (June 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2503 (October 2005), amended by the Office of the Secretary, Legal Division, LR 42:

### **§10533. Project Specifications**

A. Civil engineering projects may be approved by the administrative authority on a case-by-case basis. Calculations and/or designs shall be certified by a professional engineer registered in the state of Louisiana, as determined by the administrative authority. Project requests shall include a description of the materials to be replaced and the engineering properties (e.g., strength, permeability, etc.), of the waste tires and/or waste tire material that demonstrate comparable or improved performance to conventional materials. Unless project specifications require otherwise or an alternate design is specified by a professional engineer and approved by the administrative authority, the following requirements shall be met:

1. Landfill Leachate Systems

a. A maximum thickness of 12 inches of tire material shall be used unless otherwise demonstrated by the design engineer. However, in no case shall the thickness of tire material exceed 24 inches.

b. Tire chips shall be separated from geomembranes by a minimum of 12 inches earthen material or as approved in the facility's permit.

2. Gas Collection Systems

a. Tire material may be used to backfill a trench in which pipe associated with the gas collection system is laid.

b. The trench may be no larger than twice the diameter of the pipe or as specified by the design engineer.

3. Bulkhead Backfill/Lightweight Fill. Waste tire material used in bulkhead or lightweight fill applications shall provide comparable or improved performance compared to conventional material.

4. Slope Stabilization/Erosion Control

a. Tire material may be used to control erosion. However, tire material may only be used to rebuild a slope no less than 4(Horizontal):1(Vertical).

b. No more than 6 inches of waste tire material may be placed at the top of the slope and a maximum of 18 inches at the toe, unless the design engineer can demonstrate that additional waste tire material is needed to meet the intended design criteria.

B. Other Projects. A request for other projects shall contain engineering drawings and/or supporting calculations demonstrating compliance with Subsection A of this Section. Projects shall provide for the efficient and proper use of waste tires and/or waste tire material in a manner that does not constitute disposal. Project standards will be determined on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:

### **§10534. Manifest System (Formerly §10533)**

A. All shipments, other than those transported in authorized government vehicles transporting waste tires from rights of way to a government agency collection center satisfying the requirements of LAC 33:VII.10507.B, of more than 20 waste tires shall be accompanied by a waste tire manifest provided by the administrative authority and executed in accordance with this Section. Generators offering tires for transport in Louisiana that are ineligible, as defined in LAC 33:VII.10505, shall clearly label such tires as ineligible on the manifest.

B. The Generator Waste Tire Manifest flow is as follows.

1. Prior to the tires leaving the facility, the generator initiates the manifest (original and at least five copies), by completing all of section 1 and designating the processing facility in section 4. After the transporter signs the manifest, the generator retains one copy for his files, and the original and all other copies accompany the waste tire shipment. Upon receipt of the waste tires, the transporter completes the section 2, transporter 1 information. If applicable, upon surrender of the shipment to a second transporter, the second transporter completes the section 2, transporter 2 information. After transporter 2 signs the manifest, transporter 1 retains his copy of the manifest.

2. The transporter secures the signature of the designated processing facility operator upon delivery of waste tires to the designated processing facility. The transporter retains one copy for his files and gives the original and remaining copies to the designated processing facility operator;

3. The designated processing facility operator completes section 4 of the generator waste tire manifest and retains a copy for his files. The designated processing facility operator shall submit the original manifest to the administrative authority with the monthly processor report. The designated processing facility shall provide completed copies of the generator waste tire manifest to the appropriate waste tire generator within 30 days of the origination date of the manifest.

4. Generators, transporters, and processors shall certify that the information submitted in the generator manifest is true and correct to the best of his knowledge.

5. A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated processing facility within 30 days of the date the waste tires were accepted by the initial transporter must contact the transporter and/or the owner or the operator of the designated processing facility to determine the status of the shipment.

6. A generator must submit to the administrative authority written notification, if he has not received a copy of the manifest with the handwritten signature of the designated processing facility operator within 45 days of the date the shipment was accepted by the initial transporter. The notification shall include:

a. a legible copy of the manifest for which the generator does not have confirmation of delivery; and

b. a cover letter signed by the generator explaining the efforts taken to locate the shipment and the results of those efforts.

7. Upon discovering a discrepancy of 10 percent or greater in the number or type of tires in the load, the designated processing facility shall attempt to reconcile the discrepancy with the generator(s) or transporter(s). The processing facility operator must submit to the administrative authority, as part of their monthly report, electronic files containing an itemized list of generator/processor manifests, describing in detail the discrepancy and attempts to reconcile it and a copy of the manifest(s). After the discrepancy is resolved, a corrected copy shall be sent to the administrative authority.

8. Completed manifests shall be maintained by the generator, transporter(s), and processor for a minimum of five years and shall be made available for audit and/or inspection at the generator's place of business during regular business hours.

C. The processor waste tire manifest flow is as follows.

1. The processor initiates the processor's waste tire manifest (original and five copies), by completing all of section 1 and section 3. After the transporter signs the manifest, the processor retains one copy for his files, and the original and all other copies accompany the waste tire material shipment. Upon receipt of the waste tire material, the transporter completes the section 2 information.

2. The transporter secures the signature of the designated destination facility operator upon delivery of the waste tire material. The transporter retains one copy for his files and gives the original and remaining copies to the designated destination facility operator.

3. The designated destination facility operator completes section 4 of the processor's waste tire manifest and retains a copy for his files and shall provide completed copies to the appropriate waste tire processor within 30 days of the origination date of the manifest. The processor shall submit the original manifest to the administrative authority, with the monthly report.

4. Processors, transporters, and end-market users shall certify that the information submitted in the processor manifest is true and correct to the best of his or her knowledge.

5. A processor who does not receive a copy of the manifest with the handwritten signature of the owner/operator of the designated destination facility within 30 days of the date the whole waste tires and/or waste tire material was accepted by the initial transporter must contact the transporter and/or the owner/operator of the designated destination facility to determine the status of the shipment.

6. The processor must submit a written notification to the administrative authority if he has not received a copy of the manifest with the handwritten signature of the designated destination facility operator within 45 days of the date the shipment was accepted by the transporter. The notification shall include:

a. a legible copy of the manifest for which the processor does not have confirmation of delivery; and

b. a cover letter signed by the processor explaining the efforts taken to locate the shipment and the results of those efforts.

7. Upon discovering a discrepancy on the processor's waste tire manifest, the processor must attempt to reconcile the discrepancy with the transporter or designated destination facility operator. The processor must submit to the administrative authority, as part of their monthly report, electronic files containing an itemized list of generator/processor manifests, describing in detail the discrepancy and attempts to reconcile it and a copy of the manifest(s). After the discrepancy is resolved, a corrected copy is to be sent to the administrative authority.

8. Completed manifests shall be maintained by the processor, transporter, and destination facility for a minimum of five years and shall be made available for inspection and/or audit at their place of business during regular business hours.

9. All shipments of waste tires and/or waste tire material shall be accompanied by a manifest provided by the administrative authority and executed in accordance with this Section. Tire material transported into Louisiana that is ineligible shall be clearly labeled ineligible on the manifest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), LR 27:831 (June 2001), LR 27:2228 (December 2001), LR 29:2780 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:91 (January 2007), LR 33:2160 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:

#### **§10535. Fees and Fund Disbursement**

A. Permit and Application Fees. Each applicant for the following permits or other authorization from the administrative authority shall submit with the application or request a non-refundable fee for the following categories in the amount specified.

1. Transporter Fees

a. The transporter authorization application fee is \$100.

b. The transporter maintenance and monitoring fee is \$25 per vehicle annually payable on or before July 31 of each year. This fee is to be paid on each truck listed on the transporter application form, or if the vehicle used to transport tires is a tractor and trailer rig, the vehicle fee must be paid for each tractor.

c. The transporter modification fee is \$25 per vehicle transfer. This fee is charged each time a vehicle is added or substituted on a transporter authorization certificate.

2. The collection center permit application fee is \$800.

3. The mobile processor annual application fee is \$600.

4. The standard processor permit application fee is \$1,250.

5. The permit modification fee is \$100.

6. The high volume end use facility application fee is \$250.

B. A waste tire fee is hereby imposed on each tire sold in Louisiana, to be collected from the purchaser by the tire dealer or motor vehicle dealer at the time of retail sale. The fee shall be \$2 for each passenger/light truck tire, \$5 for each medium truck tire, and \$10 for each off-road tire. For recapped or retreaded tires, a waste tire fee of \$1.25 shall be collected upon the sale of each recapped or retreaded tire. This fee shall be collected whether or not the purchaser retains the waste tires. The department does not require the collection of fees on the sale of tires weighing 500 pounds or more, solid tires, or tires de minimis in nature, including but not limited to lawn mower tires, bicycle tires, and golf cart tires.

C. Waste Tire Fee Audits and Informal Resolution Procedures

1. Audits shall be undertaken to ensure waste tire generators are in compliance with all applicable regulations and that all monies owed to the waste tire management fund are efficiently, effectively, and timely collected and remitted to the fund.

2. Waste tire generators are audited for various reasons, including but not limited to, referrals resulting from department inspections and enforcement issues, waste tire program or financial services staff collection efforts, and/or research initiated and performed by the auditors based on various circumstances.

3. Upon a determination that outstanding waste tire fees are owed, the administrative authority shall mail a written demand letter and invoice to the generator. The written demand letter shall include the following:

- a. the amount of the debt owed;
- b. a plan of action for recovery of the debt by the administrative authority;
- c. options available to the generator for repayment of the debt; and
- d. the informal procedures available to the generator by which the written demand letter, and contents of the invoice including the amount of the debt may be disputed.

4. Demand letters and invoices may be disputed by either sending a written dispute letter to the administrative authority requesting that the invoice be reevaluated, or by sending a written letter to the administrative authority requesting an informal meeting with the department to discuss the matter.

a. Written Dispute Process. Within 30 calendar days of the date on the written demand letter, the generator may dispute the debt by sending a letter to the administrative authority containing a concise statement, along with any supporting documentation, demonstrating why the debt is not owed. After a written dispute is received, the administrative authority will review the dispute, along with any supporting documentation submitted, and thereafter take any of the following actions:

- i. reverse the amount of the debt in dispute and close the invoice;
- ii. partially reduce the amount of the debt and issue a new written demand letter and invoice; or
- iii. deny the dispute on grounds that insufficient information has been provided by the generator and proceed with appropriate department debt collection efforts.

b. Informal Dispute Meeting. Within 30 calendar days of the date on the written demand letter, the generator may dispute the debt by sending a letter to the administrative authority requesting an informal meeting to discuss the debt. Upon a determination by the administrative authority that a meeting is warranted, the administrative authority will notify the generator in writing of the date, time, and place of the informal meeting. The generator shall bring to the meeting all supporting documentation, including but not limited to, receipts, sales invoices, or any other documentation to dispute the debt. After the meeting, the administrative authority will consider the information discussed at the meeting, review all supporting documentation, if any, presented by the generator at the meeting, and thereafter take any of the following actions:

- i. reverse the amount of the debt in dispute and close the invoice;
- ii. partially reduce the amount of the debt and issue a new written demand letter and invoice; or
- iii. deny the dispute on grounds that insufficient information was provided to dispute the debt and proceed with appropriate debt collection efforts.

D. The disposition of the fee shall be as follows.

1. The entire waste tire fee shall be forwarded to the Office of Management and Finance by the tire dealer and/or motor vehicle dealer and shall be deposited in the waste tire management fund.

2. The waste tire fee shall be designated as follows:

a. A minimum of seven and a half cents per pound of whole waste tires and/or waste tire material that is recycled or that reaches an approved end-market use will be utilized to pay permitted waste tire processors that have entered into a processor agreement with the administrative authority, and are in compliance with all applicable requirements of these regulations.

b. A maximum of 10 percent of the waste tire fees collected may be utilized for program administration; and

c. Ten percent of the waste tire fees collected may be used for the cleanup of unauthorized waste tire piles and waste tire material.

E. Payments for Processing and Marketing Waste Tires and Waste Tire Material. Payments made by the state of Louisiana are meant to temporarily supplement the business activities of processors and are not meant to cover all business expenses and costs associated with processing and marketing. Payments shall only be paid to standard permitted processors under written agreement with the administrative authority in accordance with LAC 33:VII.10516.

1. No payments shall be made for waste tires generated outside of the state of Louisiana.

2. No payments shall be made for used tires or for tires destined to be retreaded.

3. The payment for marketing or recycling of waste tire and/or waste tire material shall be a minimum of seven and a half cents per pound of waste tires and/or waste tire material that is recycled in accordance with a department approved end-market use. The determination that waste tires and/or waste tire material is being marketed to an end-market use shall be made by the administrative authority. This determination may be reviewed at any time. The processor shall maintain documentation demonstrating the

waste tires and/or waste tire material has been recycled or has reached end-market use.

4. The payment for marketing waste tires and/or waste tire material produced by means other than shredding shall be determined on a case-by-case basis, but shall be a minimum of seven and a half cents per pound of waste tires and/or waste tire material.

5. Payments shall be made to the processor on a monthly basis, after properly completed monthly reports are submitted by the processor to the administrative authority. Reporting forms will be provided by the administrative authority.

6. The amount of payments made to each processor is based on the availability of monies in the waste tire management fund.

7. All, or a portion, of a processor's payments may be retained by the administrative authority if the administrative authority has evidence that the processor is not fulfilling the terms of the processor agreement and/or the conditions of the processor's standard permit or the standards and requirements of these regulations.

8. Waste tire material that was produced prior to January 1, 1998, and for which processing payments were made are only eligible for the additional \$0.15 incentive for marketing the waste tire material when the material is marketed after December 31, 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2781 (December 2000), LR 27:832 (June 2001), LR 27:2228 (December 2001), amended by the Office of Environmental Assessment, LR 31:1324 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:2160 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:

#### **§10536. Remediation of Unauthorized Tire Piles**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1213 (December 1996), LR 23:722 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2782 (December 2000), LR 27:832 (June 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2504 (October 2005), LR 33:2160 (October 2007), repealed by the Office of the Secretary, Legal Division, LR 42:

#### **§10537. Enforcement**

A. Failure to Comply. Failure of any person to comply with any of the provisions of these regulations, the terms and conditions of any permit, other authorization, or order issued by the administrative authority, constitutes a violation of the Act. To address any violation, the administrative authority may issue any enforcement action, including penalties, bring a civil suit as appropriate, or take any other such action as may be necessary and authorized by the Act or rules promulgated by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2782 (December 2000), LR 28:1954 (September 2002), amended by the Office of Environmental Assessment, LR 31:1324 (June 2005), amended by the Office of the Secretary, Legal Division, LR 42:

#### **§10539. Grants and Loans Applicability**

A. The administrative authority may award a grant or loan to a person for any use that serves the purpose of:

1. encouraging market research and the development of products from waste tires that are marketable and provide a beneficial use; and/or

2. promoting those waste tire products that have beneficial use; and

3. assisting in solving the state's waste tire problem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:3158 (December 2005), amended by the Office of the Secretary, Legal Division, LR 42:

#### **§10541. Application for a Grant or Loan**

A. A person may apply for a grant or loan from the waste tire management fund by making application to the Department of Environmental Quality, Office of Management and Finance. The grant or loan application must be submitted on a form obtained from the department, which shall be available on the department's website. Along with this form, the request for a grant or loan must include information on the following non-exclusive items:

1. a detailed description of the project for which the grant or loan is requested and how the project meets the requirements of LAC 33:VII.10539;

2. the amount of the grant or loan request;

3. the projected time frame for completion of the project for which the grant or loan is requested;

4. an analysis of how the grant or loan monies will be used to encourage market research and the development of products from waste tires that are marketable and that provide a beneficial use, and/or provide for the promotion of those waste tire products that have beneficial use;

5. a detailed explanation of how the grantee will account for the use of the grant or loan funds;

6. procedures for reporting to the department on an annual basis the status of the project. The department may require additional reporting;

7. how the recipient will provide for any permits that may be necessary in order for the project to be completed, and the status of the applicant's efforts to obtain the necessary permits; and

8. any other information deemed necessary by the department.

B. Upon receipt of the grant application or loan application, the department shall review the application, may request additional information from the applicant, may deny the application, or may grant the application.

1. The denial of a grant application or loan application is a final decision of the administrative authority.

2. The granting of the application does not award funds, but allows for the applicant and the department to



enter into a grant or loan agreement. The grant or loan agreement constitutes the conditions, goals, and responsibilities of the recipient and the department. The grant agreement or loan agreement, as a condition of the agreement, may require offsets for amounts due from any payments made in accordance with LAC 33:VII.10535.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:3158 (December 2005), amended by the Office of the Secretary, Legal Division, LR 42:

### §10543. Violations

A. Failure to Comply. The grantee shall comply with all provisions of the grant agreement or loan agreement. In the event of a violation, the administrative authority may take any enforcement action authorized by the Act, including but not limited to:

1. issuance of a compliance order;
  2. issuance of a notice of potential penalty and/or a penalty;
  3. filing suit for recovery of the grant or loan amounts;
- or
4. the placing of a lien on any real property of the grantee for the amount of the grant or loan funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:3158 (December 2005), amended by the Office of the Secretary, Legal Division, LR 42:

## Chapter 111. Appendices

### §11101. Public Notice Example—Appendix A

A. The following is an example of a public notice to be placed in the local newspaper for intention to submit a permit application to the Office of Environmental Services for existing/proposed waste tire processing facilities and collection centers.

#### PUBLIC NOTICE OF

#### INTENT TO SUBMIT PERMIT APPLICATION

[NAME OF APPLICANT/FACILITY]

FACILITY [location], PARISH [location], LOUISIANA

Notice is hereby given that [name of applicant] does intend to submit to the Department of Environmental Quality, Office of Environmental Services, Waste Permits Division an application for a permit to operate a [Waste Tire Processing/Waste Tire Collection Center] in [parish name], which is approximately [identify the physical location of the site by direction and distance from the nearest town].

Comments concerning the facility may be filed with the secretary of the Louisiana Department of Environmental Quality at the following address:

Louisiana Department of Environmental Quality  
Office of Environmental Services  
Waste Permits Division  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:

## §11103. Financial Assurance Documents—Appendix B

### A. Appendix B

#### Louisiana Department of Environmental Quality Financial Assurance Documents For Waste Tire Facilities

The following documents are to be used to demonstrate financial responsibility for the closure of waste tire facilities. The wording of the documents shall be identical to the wording that follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

#### SAMPLE DOCUMENT 1: WASTE TIRE FACILITY FINANCIAL GUARANTEE BOND

Date bond was executed: [Date bond executed]

Effective date: [Effective date of bond]

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:

Surety: [name and business address]

[site identification number, site name, facility name, and current closure amount for each facility guaranteed by this bond]

Total penal sum of bond: \$

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality Waste Tire Management Fund in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., to have a permit in order to own or operate the waste tire facility identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure care, as a condition of the permit;

NOW THEREFORE, if the Principal shall provide alternate financial assurance as specified in LAC 33:VII.10525.G.15 and 16 and obtain written approval from the Office of Management and Finance, Financial Services Division of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority from the Surety, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform closure in accordance with the closure plan and permit requirements as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and

until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Office of Management and Finance, Financial Services Division. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the Office of Management and Finance, Financial Services Division, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in the Louisiana Department of Environmental Quality's Waste Tire Regulations, LAC 33:VII.11103.Appendix B effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate Seal]

CORPORATE SURETIES

[Name and Address]  
State of incorporation:  
Liability limit:  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]  
[This information must be provided for each cosurety]  
Bond Premium: \$

**SAMPLE DOCUMENT 2:  
WASTE TIRE FACILITY  
PERFORMANCE BOND**

Date bond was executed: [date bond executed]  
Effective date: [effective date of bond]  
Principal: [legal name and business address of permit holder or applicant]  
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]  
State of incorporation:  
Surety: [name(s) and business address(es)]  
[Site identification number, site name, facility name, facility address, and closure amount(s) for each facility guaranteed by this bond]  
Total penal sum of bond: \$  
Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality, Waste Tire Management Fund, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as cosureties, we, the sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

whereas, said Principal is required, under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., to have a

permit in order to own or operate the waste tire facility identified above; and

whereas, the Principal is required by law to provide financial assurance for closure care, as a condition of the permit;

therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

or, if the Principal shall provide financial assurance as specified in LAC 33:VII.10525.G.14-16 and obtain written approval of the Office of Management and Finance, Financial Services Division of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of the *Louisiana Administrative Code*, Title 33, Part VII, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the Waste Tire Management Fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance as specified in LAC 33:VII.10525.G.15-16 and obtain written approval of such assurance from the Office of Management and Finance, Financial Services Division during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the surety shall place funds in the amount guaranteed for the facility into the standby trust as directed by the administrative authority.

The Surety hereby waives notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Office of Management and Finance, Financial Services Division. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

in witness whereof, the Principal and the Surety have executed this performance bond and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified by the Louisiana Department of Environmental Quality's Waste Tire Regulations, LAC 33:VII.11103.Appendix B effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate Seal]

CORPORATE SURETY

[Name and Address]  
State of incorporation:  
Liability limit:  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond Premium: \$

**SAMPLE DOCUMENT 3:  
WASTE TIRE FACILITY  
IRREVOCABLE LETTER OF CREDIT**

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4303  
Baton Rouge, Louisiana 70821-4303  
Attention: Office of Management and Finance,  
Financial Services Division  
Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit Number [number] in favor of the Department of Environmental Quality of the State of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the closure fund for its [list site identification number, site name, and facility name] at [location], Louisiana for any sum or sums up to the aggregate amount of U.S. dollars \$ [number] upon presentation of:

(1) A sight draft, bearing reference to the Letter of Credit Number [number] drawn by the administrative authority together with;

(2) A statement signed by the administrative authority, declaring that the operator has failed to perform closure in accordance with the closure plan and permit requirements and that the amount of the draft is payable into the standby trust.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date, and on each successive expiration date thereof, unless, at least 120 days before the then current expiration date, we notify both the Office of Management and Finance, Financial Services Division and the [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder/applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft to the Department of Environmental Quality for deposit into the Waste Tire Management Fund in the name of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except as otherwise expressly agreed upon, this credit is subject to the uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication Number 400, or any revision thereof effective on the date of issue of this credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in the Louisiana Department of Environmental Quality's Waste Tire Regulations, LAC 33:VII.11103.Appendix B effective on the date shown immediately below.

[Signature(s) and Title(s) of Official(s) of Issuing Institutions]  
[Date]

**SAMPLE DOCUMENT 4:  
WASTE TIRE TRANSPORTER  
FINANCIAL GUARANTEE BOND**

Date bond was executed: [Date bond executed]

Effective date: [Effective date of bond]

Principal: [legal name and business address of permit holder or applicant]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:

Surety: [name and business address]

[site identification number, site name, facility name, and current closure amount for each facility guaranteed by this bond]

Total penal sum of bond: \$

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety hereto, are firmly bound to the Louisiana Department of Environmental Quality Waste Tire Management Fund in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where Sureties are corporations acting as co-sureties, we the sureties bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit or liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required by La. R.S. 30:2418 and LAC 33:10523 to obtain authorization from the administrative authority in order to transport waste tires; and WHEREAS, the Principal is required by law to provide a surety bond to ensure proper management of waste tires in accordance with the Department of Environmental Quality's Waste Tire Regulations as a condition of the authorization;

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to properly manage waste tires in its possession as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the Waste Tire Management Fund as directed by the administrative authority.

The Surety hereby waives notification of amendments to transporter authorizations, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Office of Environmental Compliance, Waste Permits Division. Cancellation shall not occur before 120 days have elapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the Office of Environmental Compliance, Waste Permits Division, provided; however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in the Louisiana Department of Environmental Quality's Waste Tire Regulations, LAC 33:VII.11103.Appendix B.

PRINCIPAL

[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate Seal]

CORPORATE SURETIES

[Name and Address]  
State of incorporation:  
Liability limit:  
[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]  
[This information must be provided for each cosurety]  
Bond Premium: \$

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1214 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2782 (December 2000), LR 27:832 (June 2001), amended by the Office of Environmental Assessment, LR 30:2027 (September 2004), amended by the Office of the Secretary, Legal Division, LR 42:

**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.

**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 SW062. Such comments must be received no later than January 5, 2016, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@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 SW062. 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 December 29, 2015, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North 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 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM  
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Waste Tires**

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. The proposed rule organizes, clarifies and enhances regulatory requirements for the administration and enforcement of the waste tire program. In addition, Act 427 of 2015 directed that the waste tire regulations conform to current law. As part of reorganizing the program, the proposed rule separates permit applications and standards and procedures for each component associated with the waste tire program. An example of clarification is the further defining of eligible waste tires and ineligible waste tires. A provision regarding the dispute of waste tire audits was also added for greater efficiency. Finally, the proposed rule codifies into rule current practices utilized by the program such as a more defined waste tire manifest flow from generator to processors and processors to end market users.

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 as a result of the proposed rule.

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

The proposed rule change may result in a cost to directly affected persons or non-governmental groups as a result of increasing the record retention period from 3 years to 5 years. The increase in retention time is to be consistent with the audit period that allows for the department to audit an applicant at least once every five years. The record retention change is not retroactive and is prospective only.

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, CPM  
Executive Counsel  
1511#055

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Capital Area Ground Water Conservation Commission**

**Pumpage Fees (LAC 56:V.1103)**

Notice is hereby given that the Board of Commissioners of the Capital Area Ground Water Conservation District, which consists of the Parishes of East and West Baton Rouge, East and West Feliciana, and Pointe Coupee, plan to increase the pumping charges for non-exempt ground water users from \$5 per million gallons of water pumped to \$10 per million gallons of water pumped. The board has determined that this increase is necessary to fund a study projecting saltwater intrusion into groundwater in order to determine preventive measures. The Capital Area Groundwater Conservation District plans to install several exploratory wells 2,000 feet below the surface (2,000-foot sand) to determine the location of saltwater and the best location for a saltwater scavenger well. This action is in accordance with Louisiana Revised Statutes 38:3076(14) and 38:3079.

**Title 56  
PUBLIC WORKS**

**Part V. Capital Area Ground Water Conservation  
Commission**

**Chapter 11. Determination of and Payment of Accounts**

**§1107. Pumpage Fee**

A. The pumping charges for ground water users shall be \$10 per million gallons and is to be paid quarterly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3076(14) and 38:3079.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Capital Area Ground Water Conservation Commission, LR 1:291 (July 20, 1975, amended LR 10:592 (August 1984), LR 34: effective January 1, 1985, repromulgated LR 33:2649 (December 2007), amended LR 34:435 (March 2008), effective April 1, 2008, LR 39:486 (March 2013), LR 42:

**Family Impact Statement**

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

The proposed rulemaking should have no provider impact as described in HCR 170 of 2014.

**Public Comments**

Interested persons may submit written comments to Anthony J. Duplechin, Director, Capital Area Groundwater Conservation District, 3535 South Sherwood Forest Blvd., Ste. 137, Baton Rouge, LA, 70816, either by mail or hand delivery. Comments may also be sent by email to tony@cagwcc.com. All comments must be received no later than 4 p.m., on December 28, 2015.

**Public Hearing**

A public hearing will be held on December 29, 2015 at 1 p.m. in the District office, 3535 South Sherwood Forest

Blvd., Suite 137, Baton Rouge, LA. Oral comments will be accepted at that meeting.

Anthony J. Duplechin  
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Pumpage Fees**

**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 change. The proposed rule raises the Capital Area Groundwater Conservation District's pumpage fee from \$5 per million gallons of groundwater pumped to \$10 per million gallons of groundwater pumped. The increased revenue will fund a study projecting saltwater intrusion into groundwater in order to determine preventive measures. The Capital Area Groundwater Conservation District plans to install several exploratory wells 2000 feet below the surface (2,000-foot sand) to determine the location of saltwater and the best well location.

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

The Capital Area Groundwater Conservation District is anticipated to increase collections by \$102,000 for the period March 1, 2016 through June 30, 2016, and increase collections by \$305,000 annually thereafter as a result of the proposed rule change.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The 59 users, including municipalities and industries in East Baton Rouge, East Feliciana, Pointe Coupee, West Baton Rouge and West Feliciana, that are subject to the current \$5 per million gallons of groundwater pumped will be charged an additional \$5 per million gallons of groundwater pumped.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated effect on competition and employment as a result of this proposed rule change.

Anthony J. Duplechin  
Director  
1511#063

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Office of Technology Services**

Information Technology Contracts for Consulting Services  
(LAC 34:I.Chapter 55)

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, the Office of the Governor, Division of Administration, Office of Technology Services (OTS), enacts LAC 34:I.5521, LAC 34:I.5523, and LAC 34:I.5525 for the procurement of information technology (IT) consulting services, IT systems, IT services, IT equipment or similar services contracts as

authorized by R.S. 39:200(L). OTS proposes to enact a Rule to adopt provisions which will allow it the ability to make multiple awards in Information Technology consulting services contracts. Accordingly, OTS hereby gives Notice of Intent to adopt the following rules to become effective upon promulgation.

#### **Title 34**

### **GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL**

#### **Part I. Purchasing**

#### **Subpart 3. Equipment-Lease-Purchase Program**

### **Chapter 55. Procedures for Information Technology Hardware, Software, Software Maintenance and Support Services and Hardware Maintenance**

#### **§5521. Procurement of Information Technology Consulting Services, Information Consulting Systems, Information Technology Services, Information Technology Equipment Using Multiple Awards**

A. A multiple award is an award of an indefinite quantity contract for one or more information technology (IT) consulting services, IT systems, IT services, IT equipment or similar service to more than one contractor through the request for proposals or invitation to bid process. A multiple award may be in the state's best interest when award to two or more contractors is needed for adequate delivery, service, or availability. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the state's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business or avoiding the resolution of tie proposals. Any such awards shall be limited to the least number of IT consultants, IT systems, IT services, or IT equipment necessary to meet the valid requirements of the Office of Technology Services. It shall be mandatory that the requirements of the Office of Technology Services that can be met under the contract be obtained in accordance with the contract, provided, that:

1. the state shall reserve the right to take solicitations separately if a particular service requirement arises which exceeds the scope specified in the contract;
2. the state shall reserve the right to take solicitations separately if the contract will not meet a nonrecurring or special need of the state;
3. the state reserves the right to use its own personnel to provide similar services when such services are available and satisfy the Office of Technology Services need.

B. Where multiple award contracts exist for IT consulting services, IT systems, IT services, IT equipment or similar service, the Office of Technology Services may utilize any of the following procedures prior to issuing task orders.

1. The Office of Technology Services may prepare a request for response that may include, if applicable, the following (A request for response is an informal process used to seek additional information to assist the state chief information officer (CIO) make a best value determination.):

- a. a performance-based statement of work that includes such things as:
  - i. the work to be performed;

- ii. location of the work;
- iii. period of performance;
- iv. deliverable schedule;
- v. applicable performance standards;
- vi. acceptance criteria;
- vii. any special requirements (e.g. security clearances, special knowledge, etc.);
- viii. the products or services required using generic description of products or services whenever possible;
- b. if necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks;
- c. a request for submittal of a firm-fixed total price for the product and/or service which are no higher than prices in the multiple award contract;
- d. submit the request for response to at least three multiple award contract holders, whenever available, offering functionally equivalent products and/or services that will meet the Office of Technology Services' needs.

2. The CIO may issue task orders by allowing selected awardees to give oral presentations in lieu of written response to a request for response.

3. The CIO need not contact awardees prior to issuing an order if the CIO has information, such as price sheets or catalogs available to determine the best value for the state.

C. Evaluation and Selection of the Contractor to Receive the Task Order

1. In making a best value determination, the CIO shall place the task order(s) with the contractor(s) that meet(s) the Office of Technology Services' needs. The Office of Technology Services should give preference (where allowable) to small entrepreneurship or small and emerging businesses when two or more contractors can provide the products and/or services at the same firm-fixed total price.

2. A best value determination is one that considers, in addition to underlying contract pricing, such factors as:

- a. probable life of the product selected;
- b. technical qualifications;
- c. delivery terms;
- d. warranty;
- e. maintenance availability;
- f. administrative costs;
- g. compatibility of a product within the user's environment;
- h. user's familiarity with the item or service; and
- i. qualifications and experience of proposed staff.

3. The Office of Technology Services shall document in the procurement file the evaluation of the contractors' response that formed the basis for the selection. The documentation shall identify the contractor from which the product and/or services were purchased, the products and/or services purchased, and the cost of the resulting order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(L).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 42:

#### **§5523. Intent to Use**

A. If a multiple award is anticipated prior to issuing a solicitation, the method of award should be stated in the solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(L).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 42:

**§5525. Determination Required**

A. The chief information officer shall make a written determination setting forth the reasons for a multiple award, which shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(L).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 42:

**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 Rule will have no net impact on family functioning, stability and autonomy as described in R.S. 49:972.

**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 post secondary 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.

**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 submit written comments via the U.S. Mail until 4:30 p.m., December 20, 2015 to David Dousay, Chief Executive Officer, Office of Technology Services, P.O. Box 94095, Baton Rouge, LA 70804.

Richard Howze  
Chief Information Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Information Technology Contracts for Consulting Services**

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

The proposed rule amendment is anticipated to result in an indeterminable decrease in state governmental expenditures. The rule will allow the Office of Technology Services (OTS) to issue multi-vendor awards for Request for Proposals (RFP) relative to staff augmentation IT services. The Office of State Purchasing (OSP) has already successfully implemented such a rule within their business unit. The proposed rule will extend that authority to the OTS for procuring IT services. By issuing awards to multiple vendors who will each offer a catalog of services at various price points, the state will be able to choose

the best vendor for a particular project based on an individual vendor's merits both in price and expertise in another competitive environment. Once multiple vendors are selected to provide a specific catalog of IT services, which will include a price ceiling, these same vendors will have to compete again at the task order level in order to be chosen to provide services that may not be completed by OTS internal staff at the time of the request.

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

There is no anticipated impact on revenue collections of state or local governmental units as a result of the proposed rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will result in multiple level competitions among vendors. Once multiple vendors are selected to provide a specific catalog of IT services, which will include a price ceiling, these same vendors will have to compete again at the task order level in order to be chosen to provide services that cannot be completed by OTS internal staff at the time of the request.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The rule will allow for multi-vendor awards for contracts allowing each vendor to offer a catalog of services and will likely result in increased competition between the vendors participating. Each vendor will be able to individually price each line of service with the knowledge that they are in competition with the other awarded vendors for that particular service.

Richard Howze  
Chief Executive Officer  
1511#088

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Real Estate Appraisers Board**

Prohibited Activities  
(LAC 46:LXVII.30701, 30901, 31101, and 31103)

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Appraisers Board has initiated procedures to amend Chapters 307 (Prohibited Activities), 309 (Disciplinary Authority; Enforcement and Hearings), and 311 (Compensation of Fee Appraisers).

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part LXVII. Real Estate**

**Subpart 3. Appraisal Management Companies**

**Chapter 307. Prohibited Activities**

**§30701. Improper Influence**

A. - A.6. ...

7. committing an act or practice that impairs, or attempts to impair, an appraiser's independence, objectivity or impartiality; or

8. making referrals to Louisiana appraisers for appraisal services during any period in which the appraisal management company license has expired; or

9. requiring an appraiser to sign a contract that includes language that will indemnify or hold harmless the appraisal management company and/or the lender against any suit, threat, or claim on any work product or service provided as part of the contract agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 37:2408 (August 2011), amended LR 42:

### **Chapter 309. Disciplinary Authority; Enforcement and Hearings**

#### **§30901. Causes for Censure, Suspension, Revocation, or Denial of a License**

A. The Louisiana Real Estate Appraisers Board may censure, deny, suspend, or revoke an appraisal management company license, or may restrict or limit the activities of an appraisal management company or a person who owns an interest in or participates in the business of the appraisal management company, if the board finds that any of the following circumstances apply.

1. - 6. ...

7. The licensee failed to notify the board within ten days of any disciplinary action imposed against the licensee, its owners, or employees in any state.

B. - D.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 37:2408 (August 2011), amended LR 42:

### **Chapter 311. Compensation of Fee Appraisers**

#### **§31101. General Provisions; Customary and Reasonable Fees; Presumptions of Compliance**

A. - C. ...

D. Except in the case of breach of contract or substandard performance of real estate appraisal activity, an appraisal management company shall make payment to an independent contractor appraiser for the completion of an appraisal or appraisal review assignment:

1. within 30 days after the appraiser provides the completed appraisal report to the appraisal management company.

2. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 39:3073 (November 2013), amended LR 42:

#### **§31103. Disclosure**

A. When an appraisal obtained through an appraisal management company is used for loan purposes, the borrower or loan applicant shall be provided with a written disclosure of the total compensation to the appraiser or appraisal firm within the certification body of the appraisal report that is transmitted to the client/intended end user and it shall not be redacted or otherwise obscured.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3415.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 42:

#### **Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the

Notice of Intent for publication in the November 20, 2015 *Louisiana Register*: The proposed Rule has no known impact on family, formation, stability, or autonomy.

#### **Poverty Impact Statement**

The proposed Rule has no known impact on poverty as described in R.S. 49:973.

#### **Provider Impact Statement**

The proposed Rule has no known impact on providers of services for individuals with developmental disabilities.

#### **Public Comments**

Interested parties may submit written comments on the proposed regulations to Ryan Shaw, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809 or rshaw@lrec.state.la.us, through December 10, 2015 at 4:30 p.m.

#### **Public Hearing**

If it becomes a necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedures Act, a hearing will be held on December 29, 2015 at 9 a.m. at the office of the Louisiana Real Estate Commission, 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Prohibited Activities**

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

There are no estimated implementation costs (savings) to state or local governmental units associated with the proposed rule change. The proposed rule change provides improvements in contract transparency between appraisers and appraisal management companies for prospective homeowners, improves legal protections for appraisers when signing contracts with management companies, requires appraisers to report disciplinary actions imposed against them to the board within 10 days or receiving said discipline and requires an appraiser to be paid by the appraisal management company within 30 days after the appraiser provides the complete appraisal report.

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

The proposed rule change will have no effect on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There may be minor increases in short-term costs for appraisal management companies as appraisers will now be required to be paid within 30 days of submitting their final appraisal report as opposed to the flexible payment schedules allowed under the existing rules. The current flexible payment schedules are typically paid over several months or longer depending on the conditions of the contract.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will have no effect on competition and employment.

Bruce Unangst  
Executive Director  
1511#078

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office



## NOTICE OF INTENT

### Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services  
Non-Rural, Non-State Hospitals  
Children's Specialty Hospitals Reimbursements  
(LAC 50:V.967)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.967 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.

Due to a budgetary shortfall in SFY 2013, the Department of Health and Hospitals, Bureau of Health Services Financing, amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals, including children's specialty hospitals (*Louisiana Register*, Volume 40, Number 2).

The department subsequently promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services rendered by children's specialty hospitals to revise the reimbursement methodology and establish outlier payment provisions (*Louisiana Register*, Volume 40, Number 10). This Rule is being promulgated to continue the provisions of the October 4, 2014 Emergency Rule.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

##### Part V. Hospital Services

##### Subpart 1. Inpatient Hospitals

##### Chapter 9. Non-Rural, Non-State Hospitals

##### Subchapter B. Reimbursement Methodology

##### §967. Children's Specialty Hospitals

A. Routine Pediatric Inpatient Services. For dates of service on or after October 4, 2014, payment shall be made per a prospective per diem rate that is 81.1 percent of the routine pediatric inpatient cost per day as calculated per the "as filed" fiscal year end cost report ending during SFY 2014. The "as filed" cost report will be reviewed by the department for accuracy prior to determination of the final per diem rate.

1. Repealed.

B. Inpatient Psychiatric Services. For dates of service on or after October 4, 2014, payment shall be a prospective per diem rate that is 100 percent of the distinct part psychiatric cost per day as calculated per the as filed fiscal year end cost report ending during SFY 2014. The as filed cost report will be reviewed by the department for accuracy prior to determination of the final per diem rate.

1. Costs and per discharge/per diem limitation comparisons shall be calculated and applied separately for acute, psychiatric and each specialty service.

C. Carve-Out Specialty Services. These services are rendered by neonatal intensive care units, pediatric intensive care units, burn units and include transplants.

1. Transplants. Payment shall be the lesser of costs or the per diem limitation for each type of transplant. The base

period per diem limitation amounts shall be calculated using the allowable inpatient cost per day for each type of transplant per the cost reporting period which ended in SFY 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid (CMS) beginning with the cost reporting periods starting on or after January 1, 2010.

a. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid days for the period for each type of transplant multiplied times the per diem limitation for the period.

2. Neonatal Intensive Care Units, Pediatric Intensive Care Units, and Burn Units. For dates of service on or after October 4, 2014, payment for neonatal intensive care units, pediatric intensive care units, and burn units shall be made per prospective per diem rates that are 84.5 percent of the cost per day for each service as calculated per the "as filed" fiscal year end cost report ending during SFY 2014. The "as filed" cost report will be reviewed by the department for accuracy prior to determination of the final per diem rate.

D. Children's specialty hospitals shall be eligible for outlier payments for dates of service on or after October 4, 2014.

1. Repealed.

E. ...

1. Repealed.

F. Effective for dates of service on or after February 3, 2010, the per diem rates as calculated per §967.C.1 above shall be reduced by 5 percent. Effective for dates of service on or after January 1, 2011, final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 95 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

G. Effective for dates of service on or after August 1, 2010, the per diem rates as calculated per §967.C.1 above shall be reduced by 4.6 percent. Effective for dates of service on or after January 1, 2011, final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 90.63 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

H. Effective for dates of service on or after January 1, 2011, the per diem rates as calculated per §967.C.1 above shall be reduced by 2 percent. Final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 88.82 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

I. - I.3. ...

J. Effective for dates of service on or after August 1, 2012, the per diem rates as calculated per §967.C.1 above shall be reduced by 3.7 percent. Final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 85.53 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

K. Effective for dates of service on or after February 1, 2013, the per diem rates as calculated per §967.C.1 above

shall be reduced by 1 percent. Final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 84.67 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

**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(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:

#### **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.

#### **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, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers for the same services they already render.

#### **Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, December 30, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Inpatient Hospital Services Non-Rural, Non-State Hospitals Children's Specialty Hospitals Reimbursements**

#### **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 general fund programmatic savings of \$79,567 for FY 15-16, \$82,148 for FY 16-17, and \$84,612 for FY 17-18. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 15-16 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 62.17 percent in FY 15-16 and 62.26 percent in FY 17.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$131,004 for FY 15-16, \$135,519 for FY 16-17, and \$139,585 for FY 17-18. It is anticipated that \$378 will be expended in FY 15-16 for the federal administrative expenses 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 62.17 percent in FY 15-16 and 62.26 percent in FY 17.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed Rule continues the provisions of the October 4, 2014 Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services rendered by children's specialty hospitals to revise the reimbursement methodology and establish outlier payment provisions. It is anticipated that the implementation of this proposed rule will reduce programmatic expenditures in the Medicaid Program for inpatient hospital services by approximately \$211,327 for FY 15-16, \$217,667 for FY 16-17 and \$224,197 for FY 17-18.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1511#083

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Intermediate Care Facilities for Persons  
with Intellectual Disabilities  
Complex Care Reimbursements  
(LAC 50:VII.32915)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:VII.32915 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 and Hospitals, Bureau of Health Services Financing currently provides Medicaid reimbursement to non-state intermediate care facilities for persons with intellectual disabilities (ICFs/ID) for services provided to Medicaid recipients.

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/ID to establish reimbursement for complex care services provided to Medicaid recipients residing in non-state ICFs/ID (*Louisiana Register*, Volume 40, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 1, 2014 Emergency Rule.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part VII. Long Term Care**

##### **Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities**

##### **Chapter 329. Reimbursement Methodology**

##### **Subchapter A. Non-State Facilities**

##### **§32915. Complex Care Reimbursements**

A. Effective for dates of service on or after October 1, 2014, non-state intermediate care facilities for persons with intellectual disabilities (ICFs/ID) may receive an add-on payment to the per diem rate for providing complex care to Medicaid recipients who require such services. The add-on rate adjustment shall be a flat fee amount and may consist of payment for any one of the following components:

1. equipment only;
2. direct service worker(DSW);
3. nursing only;
4. equipment and DSW;
5. DSW and nursing;
6. nursing and equipment; or
7. DSW, nursing, and equipment.

B. Non-state owned ICFs/ID may qualify for an add-on rate for recipients meeting documented major medical or behavioral complex care criteria. This must be documented on the complex support need screening tool provided by the department. All medical documentation indicated by the screening tool form and any additional documentation requested by the department must be provided to qualify for the add-on payment.

C. In order to meet the complex care criteria, the presence of a significant medical or behavioral health need must exist and be documented. This must include:

1. endorsement of at least one qualifying condition with supporting documentation; and
2. endorsement of symptom severity in the appropriate category based on qualifying condition(s) with supporting documentation.
  - a. Qualifying conditions for complex care must include at least one of the following as documented on the complex support need screening tool:
    - i. significant physical and nutritional needs requiring full assistance with nutrition, mobility, and activities of daily living;
    - ii. complex medical needs/medically fragile; or
    - iii. complex behavioral/mental health needs.

D. Enhanced Supports. Enhanced supports must be provided and verified with supporting documentation to qualify for the add-on payment. This includes:

1. endorsement and supporting documentation indicating the need for additional direct service worker resources;
2. endorsement and supporting documentation indicating the need for additional nursing resources; or
3. endorsement and supporting documentation indicating the need for enhanced equipment resources (beyond basic equipment such as wheelchairs and grab bars).

E. One of the following admission requirements must be met in order to qualify for the add-on payment:

1. the recipient has been admitted to the facility for more than 30 days with supporting documentation of necessity and provision of enhanced supports; or
2. the recipient is transitioning from another similar agency with supporting documentation of necessity and provision of enhanced supports.

F. All of the following criteria will apply for continued evaluation and payment for complex care.

1. Recipients receiving enhanced rates will be included in annual surveys to ensure continuation of supports and review of individual outcomes.
2. Fiscal analysis and reporting will be required annually.
3. The provider will be required to report on the following outcomes:
  - a. hospital admissions and diagnosis/reasons for admission;
  - b. emergency room visits and diagnosis/reasons for admission;
  - c. major injuries;
  - d. falls; and
  - e. behavioral incidents.

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 42:

##### **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 or autonomy as described in R.S. 49:972 as it will maintain recipient access to much needed ICF/ID services.

##### **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 as described in R.S. 49:973.

##### **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, and may

enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers for the same services they already render.

#### Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, December 30, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Intermediate Care Facilities for Persons with Intellectual Disabilities Complex Care Reimbursements

#### 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 general fund programmatic costs of \$1,737,992 for FY 15-16, \$1,733,480 for FY 16-17 and \$1,733,480 for FY 17-18. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 15-16 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 62.17 percent in FY 15-16 and 62.26 percent in FY 16-17.

#### 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 \$2,855,982 for FY 15-16, \$2,859,738 for FY 16-17 and \$2,859,738 for FY 17-18. It is anticipated that \$378 will be expended in FY 15-16 for the federal administrative expenses 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 62.17 percent in FY 15-16 and 62.26 percent in FY 16-17.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the October 1, 2014 Emergency Rule which amended the provisions governing the reimbursement methodology for intermediate care facilities for persons with intellectual disabilities (ICFs/ID) to establish reimbursement for complex care services provided to Medicaid recipients residing in non-state ICFs/ID. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid program to ICFs/ID by approximately \$4,593,218 for FY 15-16, \$4,593,218 for FY 16-17 and \$4,593,218 for FY 17-18.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a positive effect on employment as it will increase the payments to ICFs/ID. The increase in payments may improve the financial standing of these facilities and could possibly cause an increase in employment opportunities.

J. Ruth Kennedy  
Medicaid Director  
1511#084

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program  
Emergency Aircraft Transportation  
Rotor Winged Ambulance Services Rate Increase  
(LAC 50:XXVII.353)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.353 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.

In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state's disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 40, Number 7). The department promulgated an Emergency Rule which amended the provisions governing reimbursement for emergency medical aircraft transportation in order to increase the rates for services originating in rural areas (*Louisiana Register*, Volume 40, Number 9). This proposed Rule is being promulgated to continue the provisions of the September 1, 2014 Emergency Rule.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXVII. Medical Transportation Program

#### Chapter 3. Emergency Medical Transportation Subchapter C. Aircraft Transportation §353. Reimbursement

A. - H. ...

I. Effective for dates of service on or after September 1, 2014, the reimbursement rates for rotor winged emergency air ambulance services, which originate in areas designated as rural and/or super rural by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, shall be increased to the following rates:

1. base rate, \$4,862.72 per unit; and
2. mileage rate, \$33.65 per unit.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2564 (November 2010), LR 37:3029 (October 2011), LR 39:1285 (May 2013), LR 40:1379 (July 2014), LR 42:

#### **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 or autonomy as described in R.S. 49:972 as it will maintain recipient access to medical transportation services.

#### **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 as described in R.S. 49:973.

#### **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, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers for the same services they already render.

#### **Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, December 30, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medical Transportation Program Emergency Aircraft Transportation Rotor Winged Ambulance Services Rate Increase**

#### **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 general fund programmatic costs of \$382,926 for FY 15-16, \$393,253 for FY 16-17 and \$405,052 for FY 17-18. It is anticipated that \$432 (\$216 SGF

and \$216 FED) will be expended in FY 15-16 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 62.17 percent in FY 15-16 and 62.26 percent in FY 16-17.

#### **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 \$629,164 for FY 15-16, \$648,754 for FY 16-17 and \$668,216 for FY 17-18. It is anticipated that \$216 will be expended in FY 15-16 for the federal administrative expenses 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 62.17 percent in FY 15-16 and 62.26 percent in FY 16-17.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed Rule continues the provisions of the September 1, 2014 Emergency Rule which amended the provisions governing reimbursement for emergency medical aircraft transportation in order to increase the rates for services originating in rural areas. It is anticipated that implementation of this proposed rule will increase programmatic expenditures for emergency medical transportation services by approximately \$1,011,658 for FY 15-16, \$1,042,007 for FY 16-17 and \$1,073,268 for FY 17-18.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a positive effect on employment as it will increase the payments to providers. The increase in payments may improve the financial standing of these providers and could possibly cause an increase in employment opportunities.

J. Ruth Kennedy  
Medicaid Director  
1511#085

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Psychiatric Residential Treatment Facilities  
Licensing Standards  
(LAC 48:I.Chapter 90)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 90 as authorized by R.S. 36:254 and R.S. 40:2009. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the licensing of psychiatric residential treatment facilities (PRTFs) in order to revise the licensing standards as a means of assisting PRTFs to comply with the standards (*Louisiana Register*, Volume 39, Number 9). The department promulgated an Emergency Rule which amended the provisions governing the licensing standards for PRTFs in order to remove service barriers, clarify appeal opportunities, avoid a reduction in occupancy of PRTFs in

rural locations, and clarify the process for cessation of business (*Louisiana Register*, Volume 40, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 20, 2014 Emergency Rule in order to revise the formatting of these provisions to ensure that these provisions are appropriately promulgated in a clear and concise manner (*Louisiana Register*, Volume 41, Number 3). This proposed Rule is being promulgated to continue the provisions of the March 20, 2015 Emergency Rule.

**Title 48**  
**PUBLIC HEALTH—GENERAL**  
**Part I. General Administration**  
**Subpart 3. Licensing**

**Chapter 90. Psychiatric Residential Treatment Facilities (under 21)**

**Subchapter A. General Provisions**

**§9003. Definitions**

A. ...

\* \* \*

*Cessation of Business—Repealed.*

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:54 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:371 (February 2012), LR 39:2510 (September 2013), LR 42:

**Subchapter B. Licensing**

**§9015. Licensing Surveys**

A. - D. ...

E. If deficiencies have been cited during a licensing survey, regardless of whether an acceptable plan of correction is required, the department may issue appropriate sanctions, including, but not limited to:

1. civil fines;
2. directed plans of correction;
3. provisional licensure;
4. denial of renewal; and/or
5. license revocations.

F. - F.2 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:375 (February 2012), amended LR 42:

**§9017. Changes in Licensee Information or Personnel**

A. - D.2. ...

3. A PRTF that is under provisional licensure, license revocation or denial of license renewal may not undergo a CHOW.

E. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:375 (February 2012), amended LR 42:

**§9019. Cessation of Business**

A. Except as provided in §9089 of these licensing regulations, a license shall be immediately null and void if a PRTF ceases to operate.

1. - 3. Repealed.

B. A cessation of business is deemed to be effective the date on which the PRTF stopped offering or providing services to the community.

C. Upon the cessation of business, the provider shall immediately return the original license to the Department.

D. Cessation of business is deemed to be a voluntary action on the part of the provider. The provider does not have a right to appeal a cessation of business.

E. Prior to the effective date of the closure or cessation of business, the PRTF shall:

1. give 30 days' advance written notice to:
  - a. HSS;
  - b. the prescribing physician; and
  - c. the parent(s) or legal guardian or legal representative of each client; and
2. provide for an orderly discharge and transition of all of the clients in the facility.

F. In addition to the advance notice of voluntary closure, the PRTF shall submit a written plan for the disposition of clients' medical records for approval by the department. The plan shall include the following:

1. the effective date of the voluntary closure;
2. provisions that comply with federal and state laws on storage, maintenance, access, and confidentiality of the closed provider's clients' medical records;
3. an appointed custodian(s) who shall provide the following:
  - a. access to records and copies of records to the client or authorized representative, upon presentation of proper authorization(s); and
  - b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction; and
4. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing provider, at least 15 days prior to the effective date of closure.

G. If a PRTF fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning a PRTF for a period of two years.

H. Once the PRTF has ceased doing business, the PRTF shall not provide services until the provider has obtained a new initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:375 (February 2012), amended LR 42:

**§9023. Denial of License, Revocation of License, Denial of License Renewal**

A. - C.3. ...

D. Revocation of License or Denial of License Renewal. A PRTF license may be revoked or may be denied renewal for any of the following reasons, including but not limited to:

1. - 13. ...
14. bribery, harassment, or intimidation of any resident or family member designed to cause that resident or family member to use or retain the services of any particular PRTF; or
15. failure to maintain accreditation or failure to obtain accreditation.

16. Repealed.

E. If a PRTF license is revoked or renewal is denied, or the license is surrendered in lieu of an adverse action, any owner, officer, member, director, manager, or administrator of such PRTF may be prohibited from opening, managing, directing, operating, or owning another PRTF for a period of two years from the date of the final disposition of the revocation, denial action, or surrender.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:376 (February 2012), amended LR 42:

**§9025. Notice and Appeal of License Denial, License Revocation, License Non-Renewal, and Appeal of Provisional License**

A. - B. ...

1. The PRTF shall request the informal reconsideration within 15 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for informal reconsideration must be in writing and shall be forwarded to the Health Standards Section.

B.2. - D. ...

E. If a timely administrative appeal has been filed by the facility on a license denial, license non-renewal, or license revocation, the Division of Administrative Law shall conduct the hearing pursuant to the Louisiana Administrative Procedure Act.

E.1. - G.2. ...

3. The provider shall request the informal reconsideration in writing, which shall be received by the Health Standards Section within five days of receipt of the notice of the results of the follow-up survey from the department.

a. Repealed.

4. The provider shall request the administrative appeal within 15 days of receipt of the notice of the results of the follow-up survey from the department. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law, or its successor.

a. Repealed.

H. - H.1. ...

I. If a timely administrative appeal has been filed by a facility with a provisional initial license that has expired or by an existing provider whose provisional license has expired under the provisions of this Chapter, the Division of Administrative Law shall conduct the hearing pursuant to the Louisiana Administrative Procedure Act.

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:377 (February 2012), amended LR 42:

**§9027. Complaint Surveys**

A. - J.1. ...

a. The offer of the administrative appeal, if appropriate, as determined by the Health Standards Section, shall be included in the notification letter of the results of the informal reconsideration. The right to administrative appeal

shall only be deemed appropriate and thereby afforded upon completion of the informal reconsideration.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:378 (February 2012), amended LR 42:

**§9029. Statement of Deficiencies**

A. - C.1. ...

2. The written request for informal reconsideration of the deficiencies shall be submitted to the Health Standards Section and will be considered timely if received by HSS within 10 calendar days of the provider's receipt of the statement of deficiencies.

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:379 (February 2012), amended LR 42:

**Subchapter H. Additional Requirements for Mental Health PRTFs**

**§9093. Personnel Qualifications, Responsibilities, and Requirements**

A. - A.2.a.iv. ...

b. The clinical director is responsible for the following:

i. providing clinical direction for each resident at a minimum of one hour per month, either in person on-site, or via telemedicine pursuant to R.S. 37:1261-1292 et seq. and LAC 46:XLV.408 and Chapter 75 et seq.;

2.b.i.(a). - 3.a.iv. ...

b. A LMHP or MHP shall provide for each resident a minimum weekly total of 120 minutes of individual therapy.

A.3.c. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:397 (February 2012), amended LR 39:2511 (September 2013), LR 42:

**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 by ensuring continued access to PRTF services.

**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 and community asset development as described in R.S. 49:973.

**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 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, December 30, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: **Psychiatric Residential Treatment Facilities, Licensing Standards**

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 15-16. It is anticipated that \$1,296 (SGF) will be expended in FY 15-16 for the state's administrative expense for the promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections since the licensing fees, in the same amounts, will continue to be collected.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the March 20, 2015 Emergency Rule which amended the provisions governing the licensing standards for psychiatric residential treatment facilities (PRTFs) in order to remove service barriers, clarify appeal opportunities, avoid a reduction in occupancy of PRTFs in rural locations, clarify the process for cessation of business and ensure that these provisions are appropriately promulgated in a clear and concise manner. It is anticipated that the implementation of this proposed rule will have no economic costs, but will be beneficial to PRTFs by removing service barriers in order to increase occupancy.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Cecile Castello  
Health Standards Section Director  
1511#086

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Public Safety and Corrections Office of State Fire Marshal

Detention and Correctional Occupancy Inspections  
(LAC 55:V.1701)

The Department of Public Safety and Corrections, Public Safety Services, Office of State Fire Marshal, hereby gives notice that in accordance with the provisions of R.S. 49:953(B), the Administrative Procedure Act, the Office of State Fire Marshal hereby proposes to amend the following Rule regarding the timeframe for inspections by the Office of State Fire Marshal of detention and correctional occupancies. The Rule is being amended due to low staffing levels which currently prohibit the completion of semi-annual inspections.

#### Title 55

#### PUBLIC SAFETY

#### Part V. Fire Protection

#### Chapter 17. Detention and Correctional Occupancies §1701. Inspection of Detention and Correctional Occupancies

A. All detention and correctional occupancies in the state of Louisiana shall be inspected by the Office of the State Fire Marshal at least annually.

B. The term "detention and correctional occupancies" shall include, but shall not be limited to, detention centers, prisons, jails, penal institutions, and other facilities meeting the definition of a detention and correctional occupancy as defined by the *NFPA 101 Life Safety Code*.

C. Detention and correctional occupancies constructed on or after September 1, 1981 shall comply with the applicable provisions of the National Fire Protection Association's *Life Safety Code* (NFPA 101) for existing detention and correctional occupancies, and with the applicable provisions of the National Fire Protection Association's *Fire Code* (NFPA 1), the latest adopted editions.

D. Detention and correctional occupancies constructed prior to September 1, 1981 shall comply with the applicable provisions of the National Fire Protection Association's *Life Safety Code* (NFPA 101) for existing detention and correctional occupancies, and with the applicable provisions of the National Fire Protection Association's *Fire Code* (NFPA 1), the latest adopted editions, excluding the provisions that address the following:

1. multiple occupancies;
2. standpipe and hose systems;
3. subdivision of building spaces.

E. The minimum aisle spacing between beds in all detention and correctional occupancies shall not be less than 28 inches.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B) and R.S. 40:1563(B)(4).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:388 (October 1978), repromulgated LR 6:75 (February 1980), amended by the Office of the State Fire Marshal, LR 7:12 (January 1981), LR 8:485 (September 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1699 (December 1997), LR 42:



### §1703. Basic Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1563 and R.S. 40:1563(B)(4).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:388 (October 1978), repromulgated LR 6:75 (February 1980), amended by the Department of Public Safety, Office of the State Fire Marshal, LR 7:12 (January 1981), LR 8:485 (September 1982), repealed by the Department of Public Safety and Corrections, Office of State Fire Marshal,, LR 42:

#### Family Impact Statement

The proposed Rule will not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. local governmental entities have the ability to perform the enforcement of the action proposed in accordance with R.S. 40:1730.23.

#### Poverty Impact Statement

The proposed Rule amends LAC 55:V.1701 and repeals LAC 55:V.1703. These Rule changes 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 Statement

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### Provider Impact Statement

The proposed rules do not impact or affect a "provider." "Provider" means an organization that provides services for individuals with developmental disabilities as defined in HCR 170 of the 2014 Regular Session of the Legislature. In particular, the proposed rules have no effect or impact on a "provider" in regards to:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the cost to the provider to provide the same level of service;
3. The ability of the provider to provide the same level of service

#### Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted no later than December 10, 2015, at 4:30 p.m. to Melinda L. Long, 7979 Independence Boulevard, Suite 307, Baton Rouge, LA 70806, (225) 925-6103, fax: (225) 925-4624, or melinda.long@la.gov.

#### Public Hearing

If needed, a public hearing will be scheduled pursuant to R.S. 49:953(A)(1)(a) and the time and date will be posted on the website of the Department of Public Safety.

Jill P. Boudreaux  
Undersecretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Detention and Correctional Occupancy Inspections

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

There will be no implementation costs or savings to state or local governmental units as a result of the proposed rule change. The proposed rule amends the current rule related to the timeframe in which detention and correctional occupancies are inspected by the Office of the State Fire Marshal. The rule is being amended due to low staffing levels that prohibit the completion of semi-annual inspections. In addition, the basic requirements for the inspections are being repealed. The basic requirements are now provisions found in the National Fire Protection Association's Life Safety Code that has been included in the Inspection of Detention and Correctional Occupancies rule change.

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

The proposed rule change will have no effect on revenue collections of state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no anticipated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule change.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment. The Deputy Fire Marshals will continue to maintain full workloads with annual inspections of detention and correctional occupancies.

Jill P. Boudreaux  
Undersecretary  
1511#079

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of State Police**

**Federal Motor Carrier Safety and Hazardous Materials  
(LAC 33:V.10303)**

Editor’s Note: This Notice of Intent is being republished to correct a submission error. The original publication can be viewed on pages 1900-1902 of the September 20, 2015 *Louisiana Register*.

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., and R.S. 32:1501 et seq., gives notice of its intent to amend its rules regulating motor carrier safety and hazardous materials by updating the revision date of the adopted federal motor carrier regulations to August 10, 2015.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Wastes and Hazardous Materials**

**Subpart 2. Department of Public Safety and Corrections—Hazardous Materials**

**Chapter 103. Motor Carrier Safety and Hazardous Materials**

**§10303. Federal Motor Carrier Safety and Hazardous Materials**

A. The following federal motor carrier safety regulations and hazardous materials regulations promulgated by the United States Department of Transportation, revised as of August 10, 2015, and contained in the following parts of 49 CFR as now in effect or as hereafter amended, are made a part of this Chapter.

<b>Hazardous Material Regulations</b>	
Part 107	Hazardous Materials Program Procedures
Part 171	General Information, Regulations, and Definitions
Part 172	Hazardous Materials Table, Special Provisions, and Hazardous Materials Communications, Emergency Response Information, and Training Requirements
Part 173	Shippers—General Requirements for Shipments and Packagings
Part 177	Carriage by Public Highways
Part 178	Specifications for Packagings
Part 180	Continuing Qualification and Maintenance of Packagings

<b>Motor Carrier Safety Regulations</b>	
Part 355	Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations
Part 360	Fees for Motor Carrier Registration and Insurance
Part 365	Rules Governing Applications for Operating Authority
Part 367	Standards for Registration with States
Part 373	Receipts and Bills
Part 374	Passenger Carrier Regulations
Part 375	Transportation of Household Goods in Interstate Commerce: Consumer Protection Regulations
Part 376	Lease and Interchange of Vehicles
Part 379	Preservation of Records
Part 382	Controlled Substances and Alcohol Use and Testing
Part 383	Commercial Driver's License Standards; Requirements and Penalties
Part 384	State Compliance with Commercial Driver's License Program
Part 385	Safety Fitness Procedures
Part 386	Rules of Practice for Motor Carrier, Broker, Freight Forwarder and Hazardous Materials Proceedings

<b>Motor Carrier Safety Regulations</b>	
Part 387	Minimum Levels of Financial Responsibility for Motor Carriers
Part 388	Cooperative Agreements with States
Part 389	Rulemaking Procedures-Federal Motor Carrier Safety
Part 390	Federal Motor Carrier Safety Regulations; General
Part 391	Qualifications of Drivers
Part 392	Driving of Commercial Motor Vehicles
Part 393	Parts and Accessories Necessary for Safe Operation
Part 395	Hours of Service of Drivers
Part 396	Inspection, Repair, and Maintenance
Part 397	Transportation of Hazardous Materials; Driving and Parking Rules

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32: 1501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 17:1115 (November 1991), LR 19:351 (March 1993), LR 20:58 (January 1994), LR 24:956 (May 1998), LR 24:2321 (December 1998), LR 29:711 (May 2003), LR 30:447 (March 2004), LR 32:641 (April 2006), LR 34:882 (May 2008), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, LR 37:1613 (June 2011), LR 38:1417 (June 2012), amended by the Department of Public Safety and Corrections, Office of State Police, LR 40:371 (February 2014), LR 42:

**Family Impact Statement**

1. The effect of this Rule on the stability of the family. This Rule should not have any 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 should not have any 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 should not have any effect on the functioning of the family.
4. The effect of this Rule on family earnings and family budget. This Rule should not have any effect on family earnings and family budget.
5. The effect of this Rule on the behavior and personal responsibility of children. This Rule should not have any effect on the behavior and personal responsibility of children.
6. The effect of these rules on the ability of the family or local government to perform the function as contained in the proposed Rule. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

**Poverty Impact Statement**

The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in the R.S. 49:973.

The agency has considered economic welfare factors 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 poverty.

### Small Business Statement

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

### Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

### Public Comments

Interested persons may submit written comments to Paul Schexnayder, Post Office Box 66614, Baton Rouge, LA 70896. Written comments will be accepted through December 15, 2015.

Jill P. Boudreaux  
Undersecretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Federal Motor Carrier Safety and Hazardous Materials

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The proposed rule changes will have no anticipated impact on state or local government expenditures.  
The proposed rule updates the revision date of adopted federal motor carrier regulations.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There should be no effect on revenue collections of state or local governmental units as a result of this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There should be no costs or economic benefits to any person or group, as a result of this rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule change will have no effect on competition and employment.

Jill P. Boudreaux  
Undersecretary  
1511#010

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Administrative Fees (LAC 61:III.1701)

Under the authority of R.S. 47:1507 and R.S. 47:1511, and, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.1701, Administrative Fees, to implement the fees authorized by Act 130 of the 2015 Regular Session of the Louisiana Legislature.

Act 130 of the 2015 Regular Session of the Louisiana Legislature amended and reenacted R.S. 47:1507 to provide for fees for searching for tax returns and other documents subject to R.S. 47:1508, authenticating records, and certifying copies of tax returns and other documents. In accordance with Act 130, this proposed Rule establishes the fees that must be paid to the department to search for, authenticate, or certify copies of returns or any other confidential documents in its records and files.

### Title 61

## REVENUE AND TAXATION

### Part. III. Administrative Provisions and Miscellaneous

#### Chapter 17. Administrative Fees

#### §1701. Fees for Searching for Returns and Other Documents, Authenticating and Certifying Copies of Records

##### A. Definitions

*Authenticated Copy*—a copy of any public rule, decision or order of the secretary, paper or report bearing the original signature of the secretary of the Department of Revenue to establish that the copy is an exact duplicate of such rule, decision, order, paper or report in the records and files maintained by the secretary in the administration of subtitle II of the *Louisiana Revised Statutes* of 1950, as amended.

*Certified Copy*—a copy of any confidential and privileged document and which is signed by the secretary, or designee, and two witnesses before a notary public certifying that the copy is a true and correct copy of the original document in the records and files maintained by the secretary in the administration and enforcement of the tax laws of this state.

*Search*—an examination of the records and files maintained by the secretary in the administration and enforcement of the tax laws of this state in response to a request made by a taxpayer, or their authorized representative, for a copy of any tax return previously filed by the taxpayer or any other document subject to the provisions of R.S. 47:1508.

##### B. Fees

1. For authenticating a copy of any public rule, decision or order of the secretary, paper or report, the fee shall be \$25.

2. For a copy of any tax return previously filed by the taxpayer or any other document subject to the provisions of R.S. 47:1508, the fee to search for the return or document shall be \$15 for each year or tax period requested, regardless of whether the requested return or document is located.

3. For a certified copy of a return or other document, the fee shall be \$25 for each return or document which is to be certified.

4. All fees shall be paid in advance by check, money order, or other authorized method of payment, made payable to the Department of Revenue. Cash cannot be accepted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1507 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 42:

#### **Family Impact Statement**

The proposed adoption of LAC 61:III.1701 relative to the establishment of fees for searching for tax returns and other confidential documents, authenticating records, and certifying copies of tax returns and other documents should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule will have 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 will have no impact on poverty as described in R.S. 49:973.

#### **Provider Impact Statement**

The proposed regulation will have 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 Annie L. Gunn, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., December 28, 2015.

#### **Public Hearing**

A public hearing will be held on December 29, 2015 at 10:00 a.m. in the River Room, located on the 7th floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Tim Barfield  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Administrative Fees**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

This proposed rule implements the administrative fees authorized by Act 130 of the 2015 Regular Session for document searches and authentication. A fee of \$15 per return or report is imposed upon each search for tax returns and other documents, regardless of results. If a certified copy or authentication is requested, the fee will be \$25 per return or report instead of \$15.

The process of implementing the new fees will require a small, indeterminable amount of resources. These costs consist of adjustments to the LDR software system and to existing forms to account for the changes. The increase in fees may discourage some individuals from choosing to request a search for these documents, leading to a small and indeterminable reduction in costs. Local governments will not be affected by this proposed rule.

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

This proposed rule introduces a fee of \$15 per return or report to search for a document, which increases to \$25 if the taxpayer requests a certified copy or authentication. LDR receives about 500 requests per year for copies and searching. Many requests are for four years of individual income tax returns. However, in the case of sales tax, the number of returns is much larger since the forms are filed monthly. If LDR imposes charges on 3,000 searches at \$15 each and 2000 copies at \$25 each, self-generated revenue collections would increase by \$95,000. Assuming some searches would require authentication, rounding to \$100,000 would be a reasonable estimate of yearly self-generated revenues.

### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Taxpayers requesting a search for documents will incur a fee of \$15 per return/report or \$25 for certified copies. To some small and indeterminable extent, the fee may discourage such requests.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule should not affect competition or employment.

Tim Barfield  
Secretary  
1511#090

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **Department of Revenue Policy Services Division**

Installment Agreement for Payment of Tax; Fees  
(LAC 61:I.4919)

Under the authority of R.S. 105 and R.S. 47:1576.2, and, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC

61:I.4919, Installment Agreement for Payment of Tax; Fees, to provide for the payment of taxes, interest, penalties, fees and costs (“taxes due”) by installment payments.

Act 130 of the 2015 Regular Session of the Louisiana Legislature amended and reenacted R.S. 47:105 and enacted R.S. 47:1576.2 to provide for taxpayer election of installment payments for taxes due and to set mandatory fees for the establishment of standard installment agreements and reinstatement of such agreements in cases of defaults. To effect optimal collection of taxes due, improve compliance and keep viable businesses operational, the proposed rule provides the requirements, conditions and procedures that apply when qualified taxpayers elect to pay the taxes due in installment payments.

## **Title 61**

### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered by the Secretary of Revenue**

#### **Chapter 49. Tax Collection**

#### **§4919. Installment Agreement for Payment of Tax**

A. Time Tax Payable. The total amount of tax due on a tax return shall be paid no later than the date the return is required to be filed without regard to any extension of time for filing the return. An extension of time to file a return is not an extension of time to pay the tax due. The total amount of tax shown on the return as filed is an assessment, which is equivalent to a judgment, and shall be recorded as an assessment in the records of the secretary.

B. Installment Agreement. If a taxpayer qualifies for an installment agreement, the secretary may allow the taxpayer to pay taxes, interest, penalties, fees and costs due in installments subject, but not limited, to the following requirements or conditions.

1. The taxpayer shall pay a nonrefundable installment agreement fee in the amount of \$105, payable to the Department of Revenue, to establish an installment agreement for the payment of the tax debt. Payment of the fee is mandatory. The installment agreement fee cannot be paid in installments nor waived or applied against any tax debt. However, the secretary shall not charge the fee to enter into an installment payment agreement plan with any taxpayer whose adjusted gross income is less than or equal to \$25,000.

2. The taxpayer must be current in the filing of all returns and in the payment of all liabilities for all tax types and periods not covered in the installment agreement.

3. The taxpayer shall file returns for all tax periods in the installment agreement.

4. The taxpayer shall agree to waive all restrictions and delays on all liabilities not assessed and to timely file all returns and pay all taxes that become due after the periods included in the installment agreement.

5. The taxpayer may be required to pay a down payment of 20 percent and to make installment payments by automatic bank draft.

6. All installment agreement payments shall be applied to accounts, taxes, and periods as determined by the department.

7. Any and all future credits and overpayments of any tax shall be applied to outstanding liabilities covered by the installment agreement.

8. The taxpayer shall notify the department before selling, encumbering, alienating, or otherwise disposing of any of their real (immovable) or personal (movable) property.

9. Tax liens may be filed in any parish wherein the department has reason to believe the taxpayer owns immovable property.

10. A continuing guaranty agreement may be required on installment agreements requested by a corporation.

#### **C. Offset of Tax Refunds and Other Payments**

1. All state tax refunds issued to the taxpayer shall be applied to the tax debt until the balance is paid in full.

2. Monies received as an offset of the taxpayer’s federal income tax refund shall be credited to the tax debt for the amount of the offset, less a deduction for the offset fee imposed by the Internal Revenue Service, until the balance is paid in full.

3. Other payments that the taxpayer may be entitled to receive shall be offset in accordance with applicable law.

4. Amounts of state or federal tax refunds offsets or other payments applied to the tax debt shall not reduce the amount of any installment payment due or extend the time for paying an installment payment.

#### **D. Forms of Installment Agreements**

1. Informal installment agreements shall be allowed only if the amount owed is less than \$25,000 and the payment period is 24 months or less.

2. Formal installment agreements shall be required if the amount owed is \$25,000 or more or the payment period exceeds 24 months. Information relative to the taxpayer’s employment, bank account, credit, income statement, balance sheets, cash-flow data, and any other information shall be provided to the department upon request.

3. All installment agreements shall be made on forms and in the manner prescribed by the secretary.

#### **E. Default; Reinstatement of Installment Agreement**

1. If any installment payment is not paid on or before the dated fixed for its payment, the total outstanding balance shall be due and payable immediately upon notice and demand from secretary. All collection actions shall be reactivated.

2. Upon request of the taxpayer and the approval of the secretary, the installment agreement may be reinstated, provided the taxpayer pays the mandatory reinstatement fee in the amount of \$60, payable to the Department of Revenue. The reinstatement fee cannot be paid in installments nor waived or applied against any tax debt.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 105 and R.S. 47:1576.2.

**HISTORICAL NOTE:** Promulgated by the Department of Revenue, Policy Services Division, LR 42:

#### **Family Impact Statement**

The proposed adoption of LAC 61:I.4919 relative to installment agreements and fees should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have 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 will have no impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

The proposed regulation will have 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 Annie L. Gunn, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., December 28, 2015.

**Public Hearing**

A public hearing will be held on December 29, 2015 at 9 a.m. in the River Room, located on the 7th floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Tim Barfield  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Installment Agreement  
for Payment of Tax; Fees**

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

This proposed rule implements the fees and procedures authorized by Act 130 of the 2015 Regular Session to establish, or reinstate, a defaulted installment payment agreement. If the taxpayer defaults on the installment agreement, a fee of \$60 is charged to reinstate the agreement. The fees do not apply to establish an installment agreement with a taxpayer whose adjusted gross income is less than or equal to \$25,000. The installment agreement fees cannot be paid in installments nor waived or applied against any tax debt.

The process of implementing and establishing the new installment plans will require a small, indeterminable, and immaterial amount of resources. These costs consist of adjustments to the LDR software system and to existing forms to account for the changes. Conversely, the fees may discourage individuals from choosing to establish an installment agreement for the purpose of halting collection by the department, leading to a small and indeterminable reduction in costs and use of department resources. Local governments will not be affected.

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

This proposed rule implements a new fee of \$105 to establish a standard installment payment agreement for taxes owed to LDR. Further, if the taxpayer defaults on the installment agreement, a fee of \$60 will be charged to reinstate

the installment plan. Taxpayer's whose adjusted gross income is less than or equal to \$25,000 are exempt from payment of the fee required to establish an installment agreement. Based on historical data, LDR expects to process approximately 17,000 installment agreements and 4,445 defaults per year. Assuming the number of new and defaulted payment agreements remains constant, LDR self-generated revenue would increase by approximately \$2 million (17,000\*\$105 + 4,445\*\$60) per year, using actual figures that have been updated since the fiscal note for Act 130 was created.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The establishment of an installment agreement will only have a potential financial effect on taxpayers with an adjusted gross income of more than \$25,000. Since payment of the installment agreement fee is mandatory for many taxpayers, the fee may, to an indeterminable degree, discourage taxpayers from establishing installment agreements with LDR solely to have collection actions ceased. Since there is no exception from payment of the reinstatement fee, all taxpayers seeking to reinstate a defaulted installment agreement are required to pay the \$60 reinstatement fee. A formal installment agreement will be required for those with liabilities in excess of \$25,000 or an installment payment term greater than 24 months.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule should not affect competition or employment.

Tim Barfield  
Secretary  
1511#091

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

**Issuance and Cancellation of a Lien; Fees (LAC 61:I.5302)**

Under the authority of R.S. 47:295, R.S. 47:1511, R.S. 47:1577, and R.S. 47:1578, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Act 130 of the 2015 Regular Session of the Louisiana Legislature, the Department of Revenue, Policy Services Division, proposes to amend and adopt LAC 61:I.5302 to implement the fee and payment required to apply for compromises of judgments (offer in compromise) for taxes of \$500,000 or less exclusive of interest and penalty, including assessments for such amounts which are equivalent to judgments.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered  
by the Secretary of Revenue**

**Chapter 53. Miscellaneous Fees**

**§5302. Issuance and Cancellation of a Lien; Fees**

**A. - C.2. ...**

3. when the lien on the taxpayer's remaining real property is valued at not less than the amount of the remaining tax obligation, including all penalties, interest, and other costs incurred, plus the amount of all prior liens on the remaining property;

4. when the amount paid to the secretary in partial satisfaction of the liability is not less than the value of the

interest of the state of Louisiana in the part of the property to be released or the secretary determines that the interest of the state of Louisiana in the part to be released has no value.

D. The secretary with the approval of two assistant secretaries may compromise any judgments for taxes of \$500,000 or less exclusive of interest and penalty, including assessments for such amounts that are equivalent to judgments, when any of the following conditions exist:

1. there is serious doubt as to the collectibility of the outstanding judgment;
2. there is serious doubt as to the taxpayer's liability for the outstanding judgment;
3. the administration and collection costs involved would exceed the amount of the outstanding liability.

E. The secretary may, upon making a record of his reasons, waive, reduce, or compromise individual income tax, penalties, interest, or other amounts.

F. Offers in Compromise

1. A taxpayer may have only one offer in compromise approved in a 10-year period. If an offer in compromise is approved, the secretary shall not consider or accept any other application for an offer in compromise from the taxpayer until the expiration of the 10-year period.

2. Each application for an offer in compromise shall be made on a form and in the manner prescribed by the secretary. A nonrefundable application fee of \$186 payable to Louisiana Department of Revenue shall be submitted with each application. The application fee shall not be applied to the tax liability.

3. A nonrefundable initial payment of 20 percent of the amount offered must be submitted with the offer in compromise application. This payment shall be applied to the tax liability.

4. The secretary shall keep a record of all such offers in compromise which shall be open to public inspection and, notwithstanding the provisions of R.S. 47:1508 and 1508.1, shall be published in the department's annual report.

G. The department shall assess a fee against the taxpayer for the filing of a tax lien and the cancellation of a lien. The amount of the fee to be assessed against the taxpayer shall be determined according to the amount charged the department by the parish in which the lien is filed. In the event a lien is filed in more than one parish for the same taxes, each lien shall be treated separately and the total charges per parish for the liens shall be assessed against the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:295, R.S. 47:1511, R.S. 47:1577, and R.S. 47:1578.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:347 (February 2002), amended LR 30:1045 (May 2004), LR 33:860 (May 2007), LR 42:

**Family Impact Statement**

The proposed adoption of LAC 61:I.5302 Issuance and Cancellation of a Lien should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule will have 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 will have no impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

The proposed regulation will have 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 Annie L. Gunn, Attorney, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., December 28, 2015.

**Public Hearing**

A public hearing will be held on December 29, 2015 at 11 a.m. in the River Room, located on the 7th floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Tim Barfield  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Issuance and  
Cancellation of a Lien; Fees**

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

This amendment reflects the statutory changes implemented by Act 130 of the 2015 Regular Session concerning fees and procedures applicable to offers in compromise. It also removes the requirement for approval by the Board of Tax Appeals (BTA) for the release of liens meeting certain criteria as addressed by Act 198 of the 2014 Regular Session and states the Secretary of the Department of Revenue has the authority to waive all individual income tax, penalties and interest or other amounts concerning liens without BTA approval.

Per Act 130, a nonrefundable application fee of \$186 must be submitted with each application for an offer in compromise. Further, the rule increases the down payment from 10% to 20% of the amount offered in accordance with the same Act. The process of implementing the new fees will require a small, indeterminable amount of resources. These costs consist of adjustments to the LDR software system and to existing forms to account for the changes, all of which will be absorbed in the current budget. However, the increase in fees and down payment could discourage some individuals from choosing to apply for an offer in compromise, leading to a small and indeterminable reduction in costs.

The BTA is removed from the process of approving the release of certain liens, causing a small, indeterminable reduction in workload and corresponding costs to that agency with no discernible fiscal impact. Local governments will not be affected by this rule.

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

This rule introduces a fee of \$186 to apply for an offer in compromise. Based on historical data, LDR expects to process approximately 115 offers in compromise each year. Assuming the number of offers in compromise applications remains constant, LDR self-generated revenue would increase by \$21,390 (\$186\*115) per year, though the fee could discourage applicants.

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

Taxpayers choosing to apply for an offer in compromise will incur a fee of \$186. The increase in the down payment from 10% to 20% of the amount offered will require the taxpayer to pay a larger portion of the offered tax liability up front.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should not affect competition or employment.

Tim Barfield  
Secretary  
1511#089

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Policy Services Division**

Public Registry of Motion Picture Investor  
Tax Credit Brokers (LAC 61:III.2701)

Under the authority of R.S. 15:587, R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6007 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.2701.

The primary purpose of this proposed regulation is to create a public registry of motion picture investor tax credit brokers as required by Act 451 of the 2015 Regular Session of the Louisiana Legislature.

**Title 61**

**REVENUE AND TAXATION**

**Part III. Administrative Provisions and Miscellaneous  
Chapter 27. Transferable Income and Franchise Tax  
Credits**

**§2701. Public Registry of Motion Picture Investor Tax  
Credit Brokers**

A. This Section is applicable to all persons or persons employed by or representing an entity engaged in the sale or brokerage of motion picture investor tax credits which are granted, issued or authorized by the state pursuant to R.S. 47:6007.

B. Definitions

*Department*—Louisiana Department of Revenue.

*Secretary*—the secretary of the Department of Revenue.

*Seller or Broker*—any person or person employed by or representing an entity engaged in the sale or brokerage of motion picture investor tax credits whose duties include the sale or brokerage of motion picture investor tax credits on behalf of the entity. A seller or broker includes any person or person employed by or representing an entity when the

person or entity meets any of the following criteria. The person or entity:

a. holds himself/herself/itself out to be engaged in the business of selling or brokering motion picture investor tax credits; or

b. has a history of frequent, regular, and repeated sales of motion picture investor tax credits; or

c. did not purchase the credits at issue for his/her/its own personal use. Any person failing to meet any of the above-mentioned criteria shall be presumed a non-seller or non-broker and thus not subject to the requirements of R.S. 47:6007(C)(7).

C. Initial Registration. Beginning January 1, 2016, all sellers or brokers of motion picture investor tax credits shall apply for the registry and be deemed qualified after meeting the requirements of R.S. 47:6007(C)(aa)-(cc) and undergoing a criminal history background examination by the Louisiana Bureau of Criminal Identification and Information as provided for in R.S. 15:587(A)(1)(h) at the expense of the applicant. Applicants for the registry shall follow the procedure for registration provided for in R.I.B. 15-036. However, no seller or broker shall be prevented from transferring motion picture investor tax credits until the effective date of this regulation.

1. Any person deemed qualified to sell or broker motion picture investor tax credits shall be included in the public registry of motion picture investor tax credit brokers, which shall be maintained by the department and made available on its website, [www.revenue.la.gov/brokerregistry](http://www.revenue.la.gov/brokerregistry).

2. No person may sell or broker motion picture investor tax credits on or after the effective date of this regulation without first qualifying for and being included on the public registry of motion picture investor tax credit brokers. All transfers made on or after the effective date of this regulation by a person subject to the requirements of R.S. 47:6007(C)(7) who is not listed on the public registry of motion picture investor tax credits shall be inoperable and of no legal effect and any such transfers shall be deemed ineligible for registration in the Louisiana Tax Credit Registry established pursuant to R.S. 47:1524. Further, failure to so qualify and register with the Department prior to selling or brokering tax credits issued pursuant to R.S. 47:6007 shall be punishable by a fine of not more than ten thousand dollars or imprisonment at hard labor for not more than five years, or both. In addition to the foregoing penalties, a person convicted under the provisions of R.S. 47:6007(C)(7) shall be ordered to make full restitution to any person who has suffered a financial loss as a result of this offense. If a person ordered to make restitution is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person's ability to pay.

3. Any person who is determined to no longer be in compliance with the requirements of R.S. 47:6007(C)(7) and LAC 61:III.2701.C after initial qualification may be removed from the public registry of motion picture investor tax credit brokers and prohibited from thereafter engaging in the transfer, sale or brokerage of motion picture investor tax credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587(1)(h), R.S. 47:6007 and R.S. 47:1511.



HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 42:

**Family Impact Statement**

The proposed adoption of LAC 61:III.2907, regarding the creation of the public registry of motion picture investor tax credit brokers, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule will have 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 regulation will have no impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

The proposed regulation will have 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**

Any interested person may submit written data, views, arguments or comments regarding this proposed regulation to Brad Blanchard, Attorney Supervisor, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4 p.m., December 28, 2015.

**Public Hearing**

A public hearing will be held on December 29, 2015, at 10 a.m. in the Calcasieu Room, on the second floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Tim Barfield  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Public Registry of Motion Picture Investor Tax Credit Brokers**

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

This rule implements the procedures the Department of Revenue (LDR) will use to administer the Public Registry of Motion Picture Tax Credit Brokers in conformity with Act 451 of the 2015 Regular Session. The registry will be created and maintained by LDR and made available publicly on its website.

When Act 451 was under debate, LDR indicated that a general fund position requiring a new appropriation of about \$60,000 annually would be required to implement and administer the new registry. However, under the proposed rule,

LDR indicates that implementing and administering the new registry will require a small, indeterminable amount of resources that will be absorbed by LDR's existing budget allocation using self-generated revenue.

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

This rule does not change the availability of film credits or the means by which they are claimed. The rule may allow a more thorough screening process under which some film credits may not change hands, though there is no way to determine whether this action would prevent the transfer or force the transfer through other means. Thus, there is no direct revenue impact associated with this bill as it appears to be a measure more in keeping the program participants in good standing than disqualifying credits.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Broker qualifications include no prior convictions for matters related to tax, credit or fraud, and prohibit registration by a family member of an Office of Entertainment Industry Development (OEID) or LDR employee or those employed by OEID in the prior 2 years. Registrants must submit and pay for a criminal background check by the Louisiana Bureau of Criminal Identification and Information, who will also query the Federal Bureau of Investigation. A person selling or brokering film tax credits without registering shall be fined up to \$10,000 or imprisoned for 5 years or both with full restitution for any financial loss as a result of not registering.

Sellers or brokers of motion picture investment tax credits will be required to undergo a background screening and to apply for registry in the Public Registry of Motion Picture Tax Credit Brokers at their own expense. The Louisiana State Police has indicated the fingerprinting and background search will cost \$50.75 per applicant. Without this expense, individuals will no longer be eligible to broker motion picture tax credits. LDR estimates there are less than 20 brokers currently selling credits in Louisiana.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule should not affect competition or employment.

Tim Barfield  
Secretary  
1511#092

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Transportation and Development  
Intermodal Transportation Division  
Aviation Section**

Intermodal Transportation (LAC 70:IX.Chapters 1 and 3)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 2:6, 2:8, and 2:802-803, that the Department of Transportation and Development, Intermodal Division, Aviation Section proposes to amend current regulations pertaining to aeronautics in Louisiana and the Airport Construction and Development Priority Program process.

Amendments to Chapter 1 reflect technical changes pertaining to the landing area registration process. These revisions include adding supporting information that will

accompany an application for a new landing area, as well as reflecting the updated state classification for each public airport as listed in the new Louisiana aviation system plan. Amendments to Chapter 3 include technical revisions pertaining to the project prioritization process. These revisions include adding timelines for executing grants for projects, adding specific language for eligible projects, and clarifying the scoring process and procedure for eligible projects. These revisions will also update the technical terminology used in fiscal year airport project application procedures, which will allow airports to update their project applications on file with the state to properly reflect requested projects for inclusion in the Airport Construction and Development Priority Program and to ensure that the projects submitted are scored accurately. Finally, the revisions add language and guidance for the development of new airports and documentation that the program will need to receive in order to prioritize future project applications for public airports.

## **Title 70**

### **TRANSPORTATION**

#### **Part IX. Intermodal Transportation**

##### **Chapter 1. Aeronautics in Louisiana**

###### **§101. General**

A. - B.5. ...

6. One copy of the Federal Aviation Administration's notification of its favorable or unfavorable airspace findings.

C. Classifications of Louisiana Airports, Seaplane Bases and Heliports

1. The classification of airports is necessary to assure an orderly method of administration by establishing a coded identity for each airport which relates to the role it plays in the Louisiana aviation systems plan (LASP), what guidelines should be followed in its development, and what special funds may be available for scheduled improvements.

2. Airports. The airports in the LASP are classified according to a simplified version of the Federal Aviation Administration's national plan of integrated airport systems (NPIAS) classification system. Essentially, this involves identifying the airport according to the type of aircraft which it will principally serve. Although the LASP classification is less complicated than that of the FAA NPIAS, there is no conflict between the NPIAS classification of an airport and the LASP classification. The state classification of each publicly-owned airport is listed in the Louisiana aviation system plan. Additional classifications were necessary to complete the System Plan: Landing Strip; Seaplane Base; and Heliport. The letter codes used are as follows:

C.2.a - H. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 2:8.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 6:163 (May 1980), amended LR 6:559 (September 1980), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:510 (March 2007), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

## **Chapter 3. Airport Construction and Development Priority Program Process [Formerly Chapter 9]**

### **§301. Introduction**

**[Formerly §901]**

A. The Louisiana Department of Transportation and Development (DOTD), Aviation Section is responsible for developing public aviation facilities in the state, fostering air commerce, promoting aeronautics statewide, and protecting the health and safety of those engaged in aeronautics. Assistance with the planning, design, construction, and inspection of facilities is provided to local governments which own the public airports. In addition, state funding is used in many cases to provide all or a portion of the local match requirement if the improvement is federally funded, received 90 percent or more of project funds from sources other than state funds, or if most or all of the total funding is previously approved by the Legislature. The aviation portion of the Louisiana transportation trust fund is known as the aviation trust fund (ATF), which is funded by the collection of sales tax solely on aviation fuels, and is the only source of state funds for airport capital improvements or matching funds for federal airport improvement grants.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997, R.S. 2:803(B) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1504 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:519 (March 2007), amended by the Department of Transportation and Development, Aviation Section, LR 39:104 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

### **§303. Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grants**

**[Formerly §903]**

A. Federal funding for projects is received through grants from the Federal Aviation Administration directly to the recipient airport. Under the Airport Improvement Program (AIP) a minimum of 90 percent of project funds are federal. Occasionally, the FAA may offer a grant requiring a local match of more than 10 percent. For example, terminal building projects at commercial service airports are offered as 75 percent federal, 25 percent local match. Terminal buildings at commercial service airports may have a percentage of the project not eligible to receive funding. In most instances, the FAA determines what portion is or is not eligible. When the local sponsor requests state funding assistance for the local share, the project is evaluated through the priority system because of the use of state dollars. The local sponsor must coordinate the development of the project with the Aviation Section and the FAA in order to receive the matching funds through the priority system. When the required match to the federal grant is greater than 10 percent, the state will participate in no more than 10 percent of the project cost and the local sponsor must provide the remaining amount necessary to match the federal grant. The FAA provides the AIP grants directly to the

airport sponsor who is responsible for administering the grant.

**AUTHORITY NOTE:** Promulgated in accordance with SCR 67, 1997, R.S. 2:803(B) and R.S. 2:6.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1504 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:519 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:104 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

### **§307. Project Prioritization Process** **[Formerly §907]**

A. The prioritization of a project is a two-step process. The first step is to determine whether the project should be included in the priority process. The second step is to determine whether the information necessary for prioritization is available. Support documentation shall include a project resolution from the local airport owner or sponsor requesting state assistance for that project, project scope and estimated cost, justification of the project, any environmental clearance documentation (if necessary), and information from the local sponsor necessary for prioritization of the project. Height limitation and land use zoning ordinances, operations manual, documentation that part 139 and 5010 inspection discrepancies have been corrected, pavement maintenance plan with repair logs, and a certified copy of the legal document creating the airport district or authority may also be requested before the process can continue. If any pertinent documentation is missing, the review process may cease and not continue until all information is made available to the Aviation Section. If all of the necessary documents are not received by the Aviation Section by November 1, the proposed project may not be allowed to compete for funding for that fiscal year being prioritized but may be considered for the following fiscal year.

B. ...

C. The project components are also reviewed to determine if the project can be prioritized as one project or requires restructuring into more than one project. The project will be restructured into usable units if necessary. An example is a request to lengthen a runway and to extend the corresponding taxiway. The runway can be lengthened and is usable without the extension of the taxiway so these may be considered as two projects in the priority system. On the other hand, the extension of the runway's lighting system would be included with the runway extension as one project because the additional runway length cannot be used at night without the extended lighting.

D. - F. ...

G. Prioritized projects which have been approved for state funding but which, for lack of federal matching funds or other reasons, do not have an executed sponsor-state agreement within one fiscal year, beginning July 1 of the fiscal year in which the project was approved by the legislature, shall be cancelled from the funded program and placed back on the unfunded prioritized list of projects. The project may then compete for funding in subsequent years. Funds which had been approved for a cancelled project will be reallocated to any other prioritized project the legislature

has approved as needed. Normally such funds will be used to cover project overruns, "up front" engineering costs (FAA reimbursable engineering costs incurred by the airport owner prior to the issuance of a federal grant in aid), or "up front" land purchase costs (FAA reimbursable costs associated with survey, real estate and title fees, and purchase of land by the airport owner prior to the issuance of a federal grant-in-aid).

H. These funds may also be used to fund the next-in-line project on the subsequent fiscal year prioritized unfunded list and finally the three-year unfunded portion of the priority list if that project has received funding or for projects funded by other than state funds not covered by the future FAA obligations funds. As a general rule, funds originally allocated to commercial service airports will, whenever practical, be used to fund projects on the commercial service airport unfunded list. Funds allocated to general aviation airports will likewise be used to fund projects on the general aviation airport unfunded list.

**AUTHORITY NOTE:** Promulgated in accordance with SCR 67, 1997, R.S. 2:803(B) and R.S. 2:6.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1505 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:520 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:105 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

### **§309. Nonprioritized Programs** **[Formerly §909]**

A. Through the legislative approval process for the Priority Program, the Aviation Section may specify on the Priority Program, nonprioritized programs as needed. Such statewide programs may include, but are not limited to planning, navigational aids, discretionary projects, maintenance reimbursement, obstruction removal safety programs, future FAA obligations, Statewide Marking Program, Statewide Sealcoat Program, and the General Aviation Enhancement Program. These programs are an integral element of the state's aviation program. Projects cannot reach the facility improvement stage without going through the planning phase. Navigational aid projects enhance use of the overall state system by providing an increased level of safety. Discretionary projects provide the Aviation Section with the latitude to fund emergency or safety related projects on a real-time basis and to undertake projects which are too small to be eligible for funding through the priority program. The state's airport system would be stagnated without these types of projects. The Maintenance Reimbursement Program assists the general aviation and commercial service airports in the high cost of maintaining an airport and allows the airport to maintain a safe and operational status. The Obstruction Removal Safety Program is needed to keep the state's airports safe from obstructions that penetrate the airports approach slopes, runway protection zones, FAR part 77 and transitional surfaces. The future FAA obligations are needed to meet the funding requirements for the projects the Federal Aviation Administration (FAA) has funded after the priority program has been approved. This phenomenon is caused by the state's fiscal year being out of synchronization with the federal fiscal year by approximately three months. This special

program precludes the loss of federal funds and improves the state's timely response. The Statewide Marking Program assists airports statewide in maintaining a safe visual marking aid environment on the airfield. The Statewide Sealcoat Program and pavement condition index study assists airports statewide in maintaining their pavement in good condition.

**AUTHORITY NOTE:** Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1505 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:521 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:106 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

### **§313. Preliminary Evaluation** **[Formerly §913]**

A. - A.2. ...

B. A review committee consisting of, at a minimum, the aviation director, assistant aviation director, and the aviation program manager for the airport concerned will make an initial determination of whether there is sufficient information to prioritize a project when a project request is received. Some of the information considered by the committee is required by either title 2 of the *Louisiana Revised Statutes*, the Airport Construction and Development Priority Program process, or DOTD and Aviation Section policy.

C. The DOTD Aviation Section is responsible for assigning priority values to projects and determining if they are consistent with development plans in the master plan or action plan for the airport. If insufficient data is sent to the Aviation Section, correct prioritization of the project will not be possible. When insufficient data is provided, a request will be made for the additional information needed. Therefore, project applications and necessary documentation should be sent to the Aviation Section early enough to allow time for processing and possible return for additional information before the program can be presented to the legislature for approval. Any document package not meeting all requirements and not in Aviation Section hands by the deadline may not be prioritized or included in the upcoming fiscal year's program.

D. - F. ...

**AUTHORITY NOTE:** Promulgated in accordance with SCR 67, 1997, R.S. 2:802 and R.S. 2:6.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1507 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:522 (March 2007), amended by the Department of Transportation and Development, Aviation Section, LR 39:107 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

### **§315. Project Support Documentation** **[Formerly §915]**

A. Once it has been determined that a project is of the type and size to be considered in the priority system, an evaluation of required supporting documentation will be made. The project support documentation is a combination

of documents and information necessary for the Aviation Section to determine if the project is developed sufficiently for inclusion in the priority listing. Documentation shall include the following items:

A.1. - E.3. ...

**AUTHORITY NOTE:** Promulgated in accordance with SCR 67, 1997, R.S. 2:802 and R.S. 2:6.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1508 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:522 (March 2007), amended by the Department of Transportation and Development, Aviation Section, LR 39:107 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

### **§317. Project Priority Rating System** **[Formerly §917]**

A. There are four categories of evaluation. The categories are as follows:

A.1. - B. ...

**AUTHORITY NOTE:** Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1510 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:524 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:109 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

### **§319. Category I—Project Type (see Exhibit 1)** **[Formerly §919]**

A. - E. ...

F. Safety (see Exhibit 1.A). Projects in this subcategory are limited to those that only affect aircraft operational safety. These are projects such as obstruction removal, runway grooving, aircraft rescue and firefighting (ARFF) equipment, and lighting. It can be argued that most aviation improvement projects increase safety at an airport, but caution is used to place only those projects in this subcategory that specifically affect the safety of aircraft using the airport. For example, lengthening of a runway improves safety, but its primary purpose is to allow utilization by larger or faster aircraft. In the case of ARFF vehicles, a request for a new ARFF vehicle must have adequate justification. For example: If an airport's ARFF index requires, as part of its certification, one 1,500 gallon ARFF vehicle, and this vehicle was purchased within the last two years, the ARFF vehicle's life cycle is expected to last approximately 10-12 years. Therefore, if the sponsor requests a newer ARFF vehicle within this 10-12 year time frame, the ARFF vehicle will not be scored in the 'safety' category. Rather, the ARFF vehicle will be scored in the 'airside improvement' category due to the age of the recently purchased vehicle, unless it is justified by the airport's current ARFF index. If the ARFF vehicle that is currently allowing the airport to meet its ARFF index requirement is expected to exceed the 10-12 years of age by the time of the request, the vehicle can be scored in the 'safety' category. Projects in the "safety" category are those developed specifically to address an unsafe condition and thus receive the highest evaluation points possible.

G. - H. ...

I. Landside Improvements (see Exhibit I.D). Projects in this subcategory are those that are designed to facilitate the handling of issues dealing strictly with landside improvements. These projects receive the least amount of points in the prioritization process due to the fact that emphasis must be put on airside needs in order to maintain a safe and operational airport. Projects in this subcategory may be addressed once the airside issues have been addressed and resolved.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1510 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:524 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:109 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

**§321. Category II—Facility Usage (see Exhibit 2) [Formerly §921]**

A. - C. ...

D. The number of based aircraft at an airport, as indicated in the latest 5010 inspection report or the national based aircraft inventory, is used to determine the relative level of use at an airport by general aviation interests. There are some drawbacks to this approach. The number of operations for each based aircraft is not accounted for by using only the based aircraft numbers. Itinerant operations, which are very important to an airport, are not recognized by counting based aircraft. Other operations by aircraft not based on the field, such as agricultural and military aircraft, are also missed. All of these factors affect the overall number of operations at an airport which is a much more accurate measure of airport use than based aircraft, but reliable operations counts at all nontowered airports are not available for general aviation airports. Should the Aviation Section develop a systematic program for counting operations at nontowered airports, the relative number of operations at an airport may replace based aircraft as the indicator of facility use. Until such a system is developed, counts of based aircraft are the only consistent way to measure general aviation use at the airports.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1511 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:525 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:110 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

**§323. Category III—Sponsor Compliance (see Exhibit 3) [Formerly §923]**

A. - C. ...

D. The final evaluation area in the “sponsor responsibility” category is maintenance. The local owners of the airport are responsible for routine maintenance such as

cutting the grass, changing light bulbs, maintaining proper drainage, sealing or filling pavement cracks, and refurbishing marking and painting stripes. If regular maintenance is not done, the airport will not receive full points in this category. If maintenance is cited as a problem, the airport will be notified in writing of the problem and the corrective action to be taken. Until the airport corrects the problem, all projects evaluated in the priority system for the airport will lose points.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1512 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:525 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:110 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

**§327. New Airports [Formerly §927]**

A. - D. ...

E. New airports constructed in areas of the state not being served by a public airport should be prioritized under the project type “airside improvements” subcategory. These airports are primarily constructed to increase the capacity of the Louisiana public airports system. As previously discussed, land acquisition costs are usually reimbursed by the FAA and these projects should be prioritized accordingly.

F. ...

G. Under the “sponsor responsibility” category, there are two areas that can be included in the prioritization process. The presence of height limitation zoning/ordinances and land use zoning and subsequent local enforcement policies and procedures should be documented and points assigned accordingly. Most new airports will not have developed an operations manual for the airport. In cases where the airport has not developed an operations manual, the airport will be awarded 5 points based on the assumption that the elements of an operations manual will be in place when the airport is opened for operations.

H. ...

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1513 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:526 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:112 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

**§337. Exhibits [Formerly §937]**

A. Exhibit 1

Exhibit 1	
Category I—Project Type	
A. Safety—Projects Directly Affecting Operational Safety	
Points	
50	Correction of runway failures severe enough to be an obvious safety problem. Runway friction surface or grooving or other action directly related to safety.

Exhibit 1	
Category I—Project Type	
F49	Repair of primary runway lighting system or approach lighting system which is not functional and is deemed to be a safety hazard.
48	Obstruction removal which is requiring the displacement of the runway threshold and relocation of runway lighting.
47	Obstructions within the Runway Protection Zone (RPZ) or Penetrations to the Required FAR Part 77 20:1 Approach Slope Surface.
46	FAR Part 139 Certificated Airport ARFF vehicles and equipment required at commercial service airports or minimum safety equipment at GA airports to maintain current certificated FAA ARFF Index. Security fencing to correct a specific safety problem (does not include general perimeter fencing).
45	Safety condition identified by professional evaluation or accident statistics.
<b>B. Airside Preservation—Preserving the Infrastructure of the Airport Dealing with Air Operations. Examples are preserving and maintaining the infrastructure of the runways, taxiways, aircraft aprons, airfield lighting, NAVAIDs, Fuel Farms, T-Hangars, etc.</b>	
20	Primary runway
19	Taxiway serving primary runway
18	Apron
17	Secondary runway
16	Taxiway serving secondary runway
15	Stub taxiways and taxilanes
<b>C. Airside Improvements—Improving the Infrastructure of the Airport Dealing with Air Operations. Examples are improving and upgrading the infrastructure of the runways, taxiways, aircraft aprons, airfield lighting, NAVAIDs, Fuel Farms, T-Hangars, Approaches, etc.</b>	
14	Primary runway / Obstructions within the FAR Part 77 7:1 Transitional Slope Surfaces
13	Primary taxiway
12	Apron
11	Perimeter fencing
10	Navigational Aids (NAVAIDs)
9	Secondary runway
8	Secondary taxiway
7	Agricultural loading area
6	Noise Mitigation / Terminal Building for Commercial Service and General Aviation Airports / Hangars / Fuel Systems
5	New airport construction including runway, taxiway, and apron, Any additional ARFF vehicles or equipment beyond minimum requirements to meet current ARFF Index, Masterplans, and Action Plans.
<b>D. Land Side Improvements—Improvements That Enhance an Airport's Infrastructure Not Related to the Air Side.</b>	
4	Land acquisition not related to Airside Improvements for future expansion
3	Primary vehicle access road
2	Primary vehicle nonrevenue-generating parking.
1	Other Land Side Improvements

B. Exhibit 2

Exhibit 2	
Category II—Facility Usage	
Based Aircraft*	Points
91 or More	20
81 to 90	18
71 to 80	16
61 to 70	14
51 to 60	12
41 to 50	10
31 to 40	8
21 to 30	6
11 to 20	4

Exhibit 2	
Category II—Facility Usage	
1 to 10	
Additional Points for Air Commercial Service Enplanements**	Points
500,000 or more	20
250,000 to 499,999	15
50,000 to 249,999	10
2,500 to 49,999 ***	5
If noncommercial reliever airport	10
*Taken from latest 5010 Inspection or the national based aircraft inventory	
**Taken from Annual FAA Enplanement Data	
***Less than 2,500 enplanement do not receive points	

C. Exhibit 3

Exhibit 3	
Category III—Sponsor Compliance	Points
Height Limitation Zoning	10
Land Use Zoning	5
5010 / Safety Inspection	Points
Inspection Response Letter from Airport Received	10
Airport Performing Basic Maintenance	10
Airport Addressed Inspection Deficiencies on CIP	10

D. - E. ...

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AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:538 (June 1990), amended LR 24:1515 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:528 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:113 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:

**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 family formation, stability, and autonomy. Specifically:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule will have no known or foreseeable effect on the family earnings and family budget.

5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or local government to perform this function.

**Poverty Impact Statement**

The implementation of this proposed Rule should not have any known or foreseeable impact on child, individual, or

family poverty in relation to individual or community asset development as defined by R.S. 49:973. Specifically,

1. The implementation of this proposed Rule will have no known or foreseeable effect on household income, assets, and financial security.

2. The implementation of this proposed Rule will have no known or foreseeable effect on early childhood development and preschool through postsecondary education development.

3. The implementation of this proposed Rule will have no known or foreseeable effect on employment and workforce development.

4. The implementation of this proposed Rule will have no known or foreseeable effect on taxes and tax credits.

5. The implementation of this proposed Rule will have no known or foreseeable effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Statement**

The implementation of this proposed Rule on small businesses, as defined in the Regulatory Flexibility Act, has been considered. The proposed rule is not expected to have a significant adverse impact on small businesses. The department, 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 the proposed statutes while minimizing the adverse impact of the Rule on small businesses.

#### **Provider Impact Statement**

The implementation of this proposed Rule change does not have any known or foreseeable impact on a provider as defined by House Concurrent Resolution No. 170 of the 2014 Regular Session of the Louisiana State Legislature. Specifically:

1. The implementation of this proposed Rule change does not have any known or foreseeable impact on the staffing level requirements or qualifications required to provide the same level of service.

2. The implementation of this proposed Rule change does not have any known or foreseeable impact on the total direct and indirect effect on the cost to a provider to provide the same levels of service.

3. The implementation of this proposed Rule change does not have any known or foreseeable impact on the overall effect on the ability of a provider to provide the same level of service.

#### **Public Comments**

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 30 days from the date of publication of this Notice of Intent to Bradley Brandt, Program Director, Aviation Section, Department of Transportation and Development, P.O. Box 94245, Baton Rouge, LA 70804-9245; telephone (225) 379-3040.

Sherri H. LeBas  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Intermodal Transportation**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will adopt amendments to make technical changes, to update airport project priority program processes and procedures, and to revise basic airport project application procedures. This will allow airports to update their project applications on file with the state to properly reflect requested projects for inclusion in the Airport Construction and Development Priority Program and to ensure that the projects submitted are scored accurately. Finally, the revisions add language and guidance for the development of new airports and documentation that the program will need to receive in prioritizing future project applications for public airports.

There is no anticipated cost to implement the proposed rule changes. The department has adequate personnel and resources in the Aviation Section to handle the administration of the program.

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

There is no anticipated effect on revenue collections as a result of this proposed rule change.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule changes may have a material economic benefit to non-governmental groups, specifically to airports through the Airport Construction and Development Priority Program. The proposed rule change will prioritize eligibility for state funding to those airports that have fully secured all projected means of financing associated with a project. Projects that have not fully secured such funding will have a set time frame to do so or will be moved back onto the priority list and replaced with a ready-to-proceed project. This can facilitate a more robust airport improvement program, as well as expedite projects that may have required awards over multiple years to fully fund a project.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed changes to the project priority process, and subsequently the grant execution process, for projects through the Airport Construction and Development Priority Program may result in increased economic opportunities for individuals working in fields related to the design, consulting, construction, and maintenance of aviation facilities statewide.

Eric Kalivoda  
Deputy Secretary  
1511#057

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Advertising or Sponsorship Signs on Department Assets  
(LAC 76:1.339)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:13, do

hereby advertise their intent to investigate the feasibility of and place advertising or sponsorship signs on one or more assets under departmental control for the purpose of generating revenue to defray costs of services associated with communication, educational, and extension activities or for the purpose of recognizing sponsorship partners.

#### **Title 76**

### **WILDLIFE AND FISHERIES**

#### **Part I. Wildlife and Fisheries Commission and Agencies Thereunder**

#### **Chapter 3. Special Powers and Duties**

#### **Subchapter J. Placing of Advertising or Sponsorship Signs on Department Assets**

#### **§339. Advertising or Sponsorship Signs on Department Assets**

##### **A. Purpose**

1. The purpose of this Rule is to establish procedures and guidelines within the department for allowing certain limited types of advertising and sponsorship signs on high-visibility assets owned or controlled by the department to raise revenue to defray costs of departmental services associated with communication, educational, and extension activities or to recognize sponsorship partners.

2. The display of advertising or sponsorship signs on departmental assets shall not constitute an endorsement by the department of any of the products, services or messages of the advertiser or sponsor.

3. Advertisement or sponsorship signs may be placed on immovable property, improvements on immovable property, vehicles, vessels, and other assets of the department, including but not limited to websites, pamphlets, brochures, and other outreach, communications, and educational materials.

##### **B. Solicitation, Selection and Contracting**

1. The department may issue solicitations to secure contracts to determine the market potential for advertisements or sponsorships or to place advertisements or sponsorship signs on department assets.

2. The solicitation responses will be reviewed by a committee appointed by the secretary, and the most suitable proposals, as determined by the committee, may be selected.

3. The committee has the discretion to make reasonable recommendations to the secretary concerning the types of advertising or sponsorship signs that may be displayed utilizing the criteria established herein.

4. The secretary shall have final discretion regarding which recommendations and solicitations are selected. Selections shall be made for those advertisements or sponsorships that do not impact or infringe upon the image or reputation of the department.

5. The department may limit the number and type of assets available for advertising or sponsorship displays.

6. The department may limit the authorization to advertise or place sponsorship signs among the department's divisions, sections, programs and initiatives.

7. The department may limit the terms and conditions of the contract with an advertiser or sponsor.

##### **C. Guidelines for Content for Advertising and Sponsorship Signs**

1. Only commercial advertising or sponsorships will be accepted. The advertisement or sponsorship content shall

only include content that promotes or informs a commercial transaction.

2. No content promoting illegal activity or obscene, vulgar or offensive conduct shall be allowed.

3. No content that demeans or disparages individuals or groups shall be allowed.

4. No political or religious advertising or sponsorships shall be allowed.

5. No advertising or sponsorship signs of adult oriented products shall be allowed. Advertising or sponsorship signs of firearms and other means authorized in the lawful taking of game in Louisiana, however, may be allowed.

6. The advertising or sponsorships should not be so controversial that it can promote vandalism of advertising or sponsorship materials and associated departmental property.

##### **D. Guidelines for Placement of Advertising or Sponsorship Signs on Assets**

1. Advertising or sponsorship signs shall not be placed in a manner that could interfere or confuse as to the identification of department's ownership or control of the asset.

2. On vehicles, vessels, and other assets of the department traditionally utilized in the transport of personnel or equipment, advertising or sponsorships signs may be placed on the inside or the outside of equipment. However, the signage shall not be erected in such a manner that it impedes the asset's safe utilization and operation.

a. Advertising or sponsorship signs shall not be allowed on vehicles, vessels, and other assets traditionally utilized in the transport of personnel and equipment that are under the control or operation of the enforcement division.

3. For advertising or sponsorship signs which require a power source, such as electronics or LED lighting, the advertiser or sponsor will be required by the department to submit and maintain detailed plans and provisions. The use of the powered advertising or sponsorship devices shall not have any adverse effect on the safety and functionality of the asset. If the safety and functionality of the asset is compromised after installation, the signage shall be removed.

**AUTHORITY NOTE:** Promulgated in accordance R.S. 56:13

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 42:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

##### **Family Impact Statement**

In accordance with Act 1183 of 1999 regular session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

##### **Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S.49:973.



### Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014

### Public Comments

Interested persons may submit written comments relative to the proposed Rule to William J. Guste, IV, Office of Fisheries, 2021 Lakeshore Drive, Ste. 310, New Orleans, LA 70122, or wguste@wlf.la.gov prior to December 28, 2015.

Edwin "Pat" Manuel  
Chairman

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Advertising or Sponsorship Signs on Department Assets

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

The proposed rule is not anticipated to result in an increase in costs to the Louisiana Department of Wildlife and Fisheries.

Pursuant to Act 313 of 2015, the proposed rule establishes the procedures and guidelines within the Louisiana Department of Wildlife and Fisheries (L.D.W.F.) for allowing certain types of advertising and sponsorship signs on assets owned or controlled by the department. Asset examples include: immovable property, improvements on immovable property, non-enforcement vehicles, vessels, websites, social media, videos, pamphlets and brochures. The placement of advertising or sponsorship signs shall not constitute an endorsement by the department of any of the products, services, or messages of the advertiser or sponsor.

The proposed rule change details that requests for proposals may be utilized for the selection of one or more firms to determine the market potential and value for such advertisements and to select bidders for advertisement placement. The department may issue solicitations to secure contracts to determine the potential market value for advertisements and sponsorships or to place advertisements or sponsorship signs on department assets. A committee appointed by the secretary of the L.D.W.F. (secretary) will review the solicitation responses and select the most suitable proposals. The committee has the discretion to make reasonable recommendations to the secretary concerning the types of advertising or sponsorship signs that may be displayed utilizing the criteria established in this proposed rule change. The secretary shall have full and final discretion regarding which recommendations are selected.

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

The proposed rule may result in an increase in revenue collections to the Louisiana Department of Wildlife and Fisheries. Increased revenue estimates are difficult to anticipate as LDWF has yet to receive any advertisement offers at this time. Due to the policy of not placing such ads on enforcement vehicles, it is likely that the majority of anticipated revenue would come from website advertisements rather than advertisements placed on vehicles and other LDWF property.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There may be additional costs to directly affected persons or non-governmental groups as a result of this proposed rule. Any potential new costs would be incurred only if a company elects to advertise with LDWF and could potentially include

operating costs associated with generating and maintaining said advertisements.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment as a result of the proposed rule change.

Bryan McClinton  
Undersecretary  
1511#032

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Workforce Commission Office of Workforce Development

#### Certification of High Unemployment Areas (LAC 40:XXI.101)

Pursuant to the authority granted by R.S. 36:310 and 8 CFR Part 204.6(i) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Workforce Commission proposes to promulgate LAC 40:XXI.101. The purpose of the promulgation of this Rule is to allow the Workforce Commission to charge a fee to cover expenses related to certifying high unemployment areas under the Employment Based Fifth Category Visa Program (EB-5). This proposed Rule is being promulgated to continue the provisions of the Emergency Rule adopted on September 9, 2015.

#### Title 40

#### LABOR AND EMPLOYMENT

#### Part XXI. High Unemployment Areas

#### Chapter 1. Certification of High Unemployment Areas

#### §101. Application Fee

A. An application fee in the amount of \$250 shall be required for each request for certification of a high unemployment area under the Employment Based Fifth Category Visa Program (EB-5).

B. All fees shall be paid in advance by check, money order, or other authorized method of payment and made payable to: Louisiana Workforce Commission. Cash cannot be accepted.

AUTHORITY NOTE: Promulgated in accordance with 8 CFR Part 204.6(i) and R.S. 36:310.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Workforce Development, LR 42:

#### Family Impact Statement

Implementation of the 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), except that the proposed Rule could result in a positive impact on family earnings and budget under R.S. 972(B)(4), if the certification issued under this proposed Rule results in investment and job creation in a high unemployment area.

#### Poverty Impact Statement

The proposed Rule will have no impact on poverty as described in R.S. 49:973, except that the proposed Rule could result in a positive impact on employment and workforce development under R.S. 973(B)(3), if the certification issued under this proposed Rule results in investment and job creation in a high unemployment area.

### Small Business Statement

The proposed Rule's impact on small businesses has been considered in accordance with R.S. 49:965.6, and it is estimated that the proposed action will have negligible 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, it is anticipated that this proposed Rule will have no known or foreseeable effect 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

All interested parties are invited to submit views, arguments, information, or comments on the proposed rule to Jenee Slocum, Office of Workforce Development, Workforce Commission, P.O. Box 94094, Baton Rouge, LA 70804-9094. The deadline for receipt of all written comments is 4 p.m. on December 29, 2015. No preamble was prepared.

### Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, December 30, 2015, at 10 a.m. at the LWC Training Center, 2155 Fuqua Street, Baton Rouge, LA 70802.

Curt Eysink  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Certification of High Unemployment Areas

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The proposed rule promulgates Title 40 Labor and Employment, Part XXI High Unemployment Areas, Chapter 1

Certification of High Unemployment Areas, and Section 101 Application Fees. This rule allows the Louisiana Workforce Commission (LWC) to charge a cost-recuperation fee to cover expenses related to certifying high unemployment areas under the federal Employment Based Fifth Category Visa Program (EB-5). The EB-5 program requires immigrant investors to invest \$1 million in a business that creates at least 10 jobs, or \$500,000 for a business located in a Targeted Employment Area (TEA), in order to qualify for a permanent resident visa within two years. Under 8 CFR Part 204.6(i), EB-5 applicants investing in Louisiana must have a certification letter from LWC determining that the TEA criteria is met and properly documented. The administrative infrastructure to manage the application process is currently in place.

Besides the cost to publish in the *Louisiana Register*, the proposed rule is not anticipated to require any additional expenditure by the department nor will the proposed rule result in any savings to LWC. In addition, the proposed rule is not anticipated to result in any costs or savings to other state or local governmental units. The cost of publishing rules is appropriated in the department's existing operating budget.

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

The LWC receives an average of 70 TEA letter requests a year. Therefore, a \$250 cost-recuperation fee is anticipated to generate \$17,500 annually (70 letters x \$250 fee). The proposed rule is not expected to impact local revenue collections.

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

The LWC has no statistical data to forecast, with any degree of accuracy, the economic benefits to affected persons or non-governmental groups. However, there is a potential of additional employers entering Louisiana and additional employment generated due to the EB-5 program.

- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The LWC does not anticipate that there will be any effect on competition. A small portion of the projects related to the EB-5 program may grow into businesses that create jobs; thus, positively affecting employment rates.

Curt Eysink  
Executive Director  
1511#081

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Supplement to Annual Quarantine Listing—2015

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., R.S. 3:1652, R.S. 3:1732 and LAC 7:XV:107, 109 the annual quarantine listing for 2015 is being supplemented to include the following quarantines and locations.

#### 11.0 Citrus Canker (*Xanthomonas citri* subsp. *Citri*)

Louisiana:

a. the entire parishes of Orleans and St. Bernard;  
b. the portions of Jefferson, Plaquemines and St. Charles Parishes bounded by a line beginning at the intersection of the Orleans and Plaquemines Parish line located in the center of the Mississippi River near St. Bernard State Park; then moving west, following the Orleans Parish line to the intersection of the Orleans Parish line with River Road; then moving west on River Road and following River Road parallel to the western border of the Mississippi River to the point where River Road becomes Highway 11; then following Highway 11 until it reaches the point immediately east of East Walker Road; then moving west following East Walker Road and crossing Highway 23 to the intersection of Highway 23 and Walker Road; then moving west following Walker Road to the intersection of East Bayou Road; then moving north following East Bayou Road to the intersection of the service road servicing the intracoastal waterway west closure complex; then moving west-southwest along an imaginary line that intersects with the Jefferson Parish line running through Lake Salvador; then moving northeast, following the Jefferson Parish line to the intersection of the parish line with Highway 18; then moving southwest following Highway 18 (River Road) to the intersection of Interstate Highway 310; then moving south following I-310 until it reaches the intersection of I-310 and Hwy 3127; then moving north following 3127 to the intersection of Hwy 3127 and Hwy 3142; then moving east following 3142 to the intersection of Hwy 3142 and the West Mississippi River Levee; then moving south following the West Mississippi River Levee to the GPS coordinates 29.957078, -90.402763; then moving east along an imaginary line which crosses the Mississippi River and runs into Ormand Blvd.; the line continues northeast along Ormand Blvd until it intersects US 61; then moving southeast following US 61 until it intersects I-310; then moving north following Interstate Highway 310 to the Interstate Highway 310 / Interstate Highway 10 interchange; then moving east following Interstate Highway 10 to its intersection with the Jefferson Parish line; then moving north following the Jefferson Parish line until reaching the south shoreline of Lake Ponchartrain; then moving east following the south shoreline of Lake Ponchartrain until its intersection

with the Orleans Parish line; then moving south following the Orleans Parish line and following said parish line to the point of beginning;

c. that portion of Plaquemines Parish bounded by a line beginning on the West Bank Back levee, City Price to Empire at GPS coordinates 29.407249, -89.61491.7, west of Carroll Lane; then moving south following the West Bank Back Levee, City Price to Empire to GPS coordinates 29.387110, -89.606785, west of E. Buccaran Road; then moving east following an imaginary line that intersects Hwy 23; then continuing east following E. Buccaran Road until it intersects Parish Road 11; then moving east along an imaginary line until it intersects the West Mississippi River Levee at GPS coordinates 29.392376, -89.598360; then moving north following the West Mississippi River Levee to GPS coordinates 29.409588, -89.609089; then moving west along an imaginary line until it intersects Parish Road 11; then continuing west following Carroll Lane until it intersects HWY 23; then continuing west following an imaginary line to the point of beginning;

d. that portion of Lafourche Parish bounded by a line beginning at the intersection of Highway 90 and Highway 1, then moving southwest on Highway 90 where it intersects Bayou Folse; then moving northwest along Bayou Folse to GPS coordinates 29.709562, -90.632235, then moving north, northeast along an imaginary line until it intersects Highway 1, then moving southeast on Highway 1 until it reaches the point of beginning.

Any areas designated as quarantined under the federal citrus canker quarantine 7 CFR 301.75 et seq.

Mike Strain, DVM  
Commissioner

1511#028

## POTPOURRI

### Department of Environmental Quality Office of Environmental Compliance Underground Storage Tank and Remediation Division

Risk Evaluation/Corrective Action Program (RECAP)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of Secretary regulations, LAC 33:I.1307 and the RECAP document. The department anticipates that the Notice of Intent to revise the Risk Evaluation/Corrective Action Program (RECAP) will be published in the *Louisiana Register* in 2016.

The RECAP revisions will provide clarification, reorganization, and corrections to text, tables, figures, and appendices of the RECAP regulation that was promulgated in December 1998 and revised in June 2000 and October 2003. The RECAP revisions will help ensure that a consistent method based on sound scientific principles is

used for addressing site contamination and will continue to serve as a standard tool to assess impacts to soil, ground water, surface water, and air. The basis and rationale for the revised rule will be to clarify, reorganize, and update the current RECAP regulation to be consistent with current federal risk assessment recommendations. The RECAP revisions will serve to establish uniformity for submitters in the program to minimize the time and money necessary to identify corrective action levels for constituents of concern at a contaminated site. This should encourage voluntary and expeditious remediation.

The proposed draft revisions are available for inspection at the following LDEQ office locations from 8 a.m. to 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 111 New Center Drive, Lafayette, LA 70508; 508 Downing Pines Road, West Monroe, LA. 71292; 2129 Rainbow Drive, Pineville, LA 71360; 1525 Fairfield, Room 520, Shreveport, LA 71101; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 110 Barataria Street, Lockport, LA 70374; 1301 Gadwall Street, Lake Charles, LA 70615; or on the internet at: <http://www.deq.louisiana.gov/portal/DIVISIONS/UndergroundStorageTankandRemediationDivision/RemediationServices/RECAP.aspx>.

Herman Robinson, CPM  
Executive Counsel

1511#053

**POTPOURRI**

**Office of the Governor  
Coastal Protection and Restoration Authority**

Deepwater Horizon Oil Spill: Draft Phase V Early Restoration Plan and Environmental Assessment

**ACTION:**

Notice of Availability of Draft Plan

**SUMMARY:**

In accordance with the Oil Pollution Act of 1990 (OPA), the Louisiana Oil Spill Prevention and Response Act (OSPR), the National Environmental Policy Act (NEPA), and the Framework Agreement for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill, notice is hereby given that the Federal and State natural resource trustee agencies for Louisiana, Mississippi, Alabama, Florida, and Texas (Trustees) have prepared a Draft Phase V Early Restoration Plan and Environmental Assessment (Draft Phase V ERP/EA) describing and proposing the first phase of an early restoration project (Florida Coastal Access Project)<sup>1</sup> intended to continue the process of restoring natural resources and services injured or lost as a result of the *Deepwater Horizon* Oil Spill, which occurred on or about April 20, 2010, in the Gulf of Mexico. The Draft Phase V ERP/EA proposes the first phase of the Florida Coastal Access Project, which is consistent with the early restoration program alternatives selected in the Final Phase III Early Restoration Plan / Programmatic Environmental Impact Statement (Phase III ERP/PEIS). The Draft Phase V ERP/EA also includes notices of change and supporting analyses for two Phase III Early Restoration Projects, “Strategically Provided Boat Access Along Florida’s Gulf Coast – City of Port St. Joe, Frank Pate Boat

Ramp Improvements” and “Florida Artificial Reef Creation and Restoration”. The purpose of this notice is to inform the public of the availability of the Draft Phase V ERP/EA, and to seek public comments on the proposed first phase of the Florida Coastal Access Project and supporting analysis.

**DATES**

**Comments Due Date:** We will consider public comments received on or before December 28, 2015.

**Public Meeting:** The Trustees will schedule a public meeting to facilitate public review and comment on the Draft Phase V ERP/EA. Both written and verbal comments will be taken at the public meeting. The Trustees will hold an open house immediately prior to the formal meeting. The public meeting will include a presentation of the Draft Phase V ERP/EA. The public meeting schedule is as follows:

Date	Time	Location
December 14, 2015	6:00 p.m. Open House	Gulf Coast State College, Student Union East, Room 231 (Gibson Lecture Hall), 5230 West U.S. Highway 98, Panama City, FL 32411
	6:30 p.m. Public Meeting	

**ADDRESSES:**

**Obtaining the Document:** You may download the Draft Phase V ERP/EA at <http://la-dwh.com/EarlyRestorationPlanning.aspx> and <http://www.gulfspillrestoration.noaa.gov>. Alternatively, you may request a CD of the document (see For Further Information Contact section below). You may also review copies of the document at the public facilities listed at <http://la-dwh.com/EarlyRestorationPlanning.aspx> and <http://www.gulfspillrestoration.noaa.gov>.

**Submission of Comments:** You may submit comments on the Draft Phase V ERP/EA by one of the following methods:

Via the web: <http://www.gulfspillrestoration.noaa.gov>.

Via U.S. Mail: U.S. Fish & Wildlife Service, P.O. Box 49567, Atlanta, GA 30345. Submissions must be received on or before the comment deadline referred to in the *Comments Due Date* section above in order to be considered.

**FOR FURTHER INFORMATION CONTACT:**

Nanciann Regalado at [nanciann\\_regalado@fws.gov](mailto:nanciann_regalado@fws.gov).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon*, which was being used to drill a well for BP Exploration and Production, Inc. (BP) in the Macondo prospect (Mississippi Canyon 252 - MC 252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed for a period of over three months. The *Deepwater Horizon* Oil Spill is the largest oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill. Affected resources include ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas.

The State and Federal Natural Resource Trustees (Trustees) are conducting the natural resource damage assessment for the *Deepwater Horizon* oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 et seq.). Pursuant to OPA, Federal and State agencies and Indian Tribes may act as trustees on behalf of the public to assess natural resource injuries and losses, and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete. Pursuant to the process articulated in the Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill (Framework Agreement), the Trustees previously selected, and BP agreed to fund, a total of 64 early restoration projects, expected to cost a total of approximately \$832 million, through the Phase I Early Restoration Plan/Environmental Assessment (Phase I ERP/EA), Phase II Early Restoration Plan/Environmental Review (Phase II ERP/ER), the Programmatic and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement (Phase III ERP/PEIS), and the Phase IV Early Restoration Plan/Environmental Assessments (Phase IV ERP/EA). These plans are available at: <http://www.gulfspillrestoration.noaa.gov/restoration/early-restoration/>, and <http://la-dwh.com>.

#### **The Trustees are:**

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Department of Defense (DOD);<sup>2</sup>
- U.S. Environmental Protection Agency (USEPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- For the State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

#### **Background**

On April 20, 2011, BP agreed to provide up to \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the *Deepwater Horizon* Oil Spill. The Framework Agreement

represents a preliminary step toward the restoration of injured natural resources and is intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. The Framework Agreement provides a mechanism through which the Trustees and BP can work together "to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable" prior to the resolution of the Trustees' natural resource damages claim. Early restoration is not intended to and does not fully address all injuries caused by the *Deepwater Horizon* Oil Spill. Restoration beyond early restoration projects will be required to fully compensate the public for natural resource losses, including recreational use losses, from the *Deepwater Horizon* Oil Spill.

The Trustees have actively solicited public input on restoration project ideas through a variety of mechanisms, including public meetings, electronic communication, and creation of a Trustee-wide public Web site and database to share information and receive public project submissions. Their key objective in pursuing early restoration is to secure tangible recovery of natural resources and natural resource services for the public's benefit while the longer term process of fully assessing injury and damages is under way. The Trustees released, after public review of the drafts, the Phase I ERP/EA (which included eight early restoration projects) and the Phase II ERP/ER (which included an additional two projects) in April and December 2012, respectively. After public review, the Trustees released the Phase III ERP/PEIS, which included an additional 44 early restoration projects, on June 26, 2014. Subsequently, the Trustees approved the Phase III ERP/PEIS in a Record of Decision on October 31, 2014. The Trustees released the Phase IV ERP/EA, which included an additional 10 early restoration projects, on September 23, 2015, after public review.

The Trustees are proposing the first phase of the Florida Coastal Access Project in Phase V to address injuries from the *Deepwater Horizon* oil spill. The proposed first phase of the Florida Coastal Access Project in this Draft Phase V ERP/EA is consistent with the Programmatic ERP and PEIS included in the Final Phase III ERP/PEIS previously developed by the Trustees. The Draft Phase V ERP/EA is not intended to and does not fully address all injuries caused by the spill or provide the extent of the restoration needed to make the public and the environment whole.

#### **Overview of the Draft Phase V ERP/EA**

The Draft Phase V ERP/EA is being released in accordance with the Oil Pollution Act (OPA), the Natural Resource Damage Assessment (NRDA) regulations found in the Code of Federal Regulations (CFR) at 15 CFR 990, the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and the Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill. The Trustees are considering the first phase of the Florida Coastal Access Project in the Draft Phase V ERP/EA. This phase would involve the acquisition and/or enhancement of four coastal project locations in the Florida Panhandle to enhance the public's access to the surrounding natural resources and increase recreational opportunities. The total estimated cost for the proposed first phase is \$34,372,184.<sup>3</sup> Details on the proposed first phase of the Florida Coastal

Access Project are provided in the Draft Phase V ERP/EA. The Draft Phase V ERP/EA also includes notices of change and supporting analyses for two Phase III Early Restoration Projects, “Strategically Provided Boat Access Along Florida’s Gulf Coast—City of Port St. Joe, Frank Pate Boat Ramp Improvements” and “Florida Artificial Reef Creation and Restoration”.

The proposed first phase of the Florida Coastal Access Project is intended to continue the process of using early restoration funding to restore natural resources, ecological services, and recreational use services injured or lost as a result of the *Deepwater Horizon* Oil Spill. The Trustees considered hundreds of projects leading to the identification of the Florida Coastal Access Project and considered both ecological and recreational use restoration projects to restore injuries caused by the *Deepwater Horizon* Oil Spill, addressing both the physical and biological environment, as well as the relationship people have with the environment. The early restoration actions in the Draft Phase V ERP/EA are not intended to and do not fully address all injuries caused by the spill or provide the extent of restoration needed to make the public and the environment whole. The Trustees may propose additional early restoration projects in the future.

#### Next Steps

As described above, a public meeting is scheduled to facilitate the public review and comment process. After the public comment period ends, the Trustees will consider and address the comments received before issuing the Final Phase V Early Restoration Plan and Environmental Assessment (Final Phase V ERP/EA). After issuing a Final Phase IV ERP/EA and if the Trustees approve the first phase of the Florida Coastal Access Project, the Trustees will file a negotiated stipulation for the approved project with the court. The approved first phase of the project will then proceed to implementation, pending compliance with all applicable State and Federal laws.

#### Invitation to Comment

The Trustees seek public review and comment on the proposed first phase of the Florida Coastal Access Project and supporting analysis included in the Draft Phase V ERP/EA. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be publicly available at any time.

#### Administrative Record

The documents comprising the Administrative Record can be viewed electronically at the following locations:

<http://www.doi.gov/deepwaterhorizon>; or

<http://la-dwh.com/AdminRecord.aspx>.

#### Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), the implementing Natural Resource Damage Assessment regulations found at 15 CFR 990, the Louisiana Oil Spill Prevention and Response Act [La. R.S. §§30:2451-2496 (2010)], and the implementing natural resource damage assessment regulations found at La. Admin. Code 43:101 et seq.

<sup>1</sup> The proposed Florida Coastal Access Project would proceed in phases. The additional future phase will consist of similar restoration activities and shall be identified and

selected by the Trustees in the same manner and using the same criteria as described in the Draft Phase V ERP/EA and in accordance with OPA, NEPA, and other applicable laws, and after public review of the proposed action.

<sup>2</sup> Although a trustee under OPA by virtue of the proximity of its facilities to the *Deepwater Horizon* oil spill, DOD is not a member of the Trustee Council and does not currently participate in Trustee decision making.

<sup>3</sup> The total estimated cost of the entire proposed Florida Coastal Access Project is \$45,415,573. The Trustees will propose in an additional, future phase similar restoration activities that would implement the remaining \$11,043,389.

Kyle Graham  
Executive Director

1511#082

### POTPOURRI

#### Department of Health and Hospitals Board of Nursing

Licensure as an Advanced Practice Registered Nurse  
and Authorized Practice—Public Hearing  
(LAC 46:XLVII.4507 and 4513)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Louisiana State Board of Nursing published a Notice of Intent in the October 20, 2015 edition of the *Louisiana Register* (LR 42:2218-2220) to amend two sections in Chapter 45 of its rules, particular by amending 4507 and 4513. The proposed Rule changes will allow the Louisiana State Board of Nursing the ability to provide an opportunity for APRNs that have acquired licensure by alternative methods to go before the board and explain and/or justify why the Louisiana State Board of Nursing should extend licensure opportunities to him/her. It will also allow the Louisiana State Board of Nursing the ability to clarify exemption of CRNAs from the requirement to have a collaborative practice agreement to provide anesthesia care and ancillary services to patients in a hospital or other licensed surgical facility.

A public hearing on these substantive changes to the proposed Rule is scheduled for Monday, November 30, 2015 at 1 p.m. at the Louisiana State Board of Nursing, 17373 Perkins Road, Baton Rouge, LA. At that time all interested persons will be afforded the opportunity to submit views or arguments either orally or in writing.

Karen C. Lyon  
Executive Director

1511#097

### POTPOURRI

#### Department of Health and Hospitals Board of Veterinary Medicine

Spring/Summer Examination Dates

The Louisiana Board of Veterinary Medicine will administer the state board examination (SBE) for licensure to practice veterinary medicine on the first Tuesday of every month. Deadline to apply for the SBE is the third Friday prior to the examination date desired. SBE dates are subject to change due to office closure (i.e. holiday, weather).

**POTPOURRI**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Substantive Changes and Public Hearing Notification  
Managed Care for Physical and Basic Behavioral Health  
Timely Filing of Claims (LAC 50:I.3511)

The board will accept applications to take the North American veterinary licensing examination (NAVLE) which will be administered through the National Board of Veterinary Medical Examiners (NBVME), formerly the National Board Examination Committee (NBEC), as follows.

Test Window Date	Deadline To Apply
April 11 - April 23, 2016	Monday, January 3, 2016

The Board will also accept applications for the Veterinary Technician National Examination (VTNE) for state registration of veterinary technicians which will be administered through the American Association of Veterinary State Boards (AAVSB), as follows.

Test Date	Deadline To Apply
March 15 - April 15, 2016	February 15, 2016
July 15 - August 15, 2016	June 15, 2016
November 15 - December 15, 2016	October 15, 2016

Applications for all examinations must be received on or before the deadline. No late application will be accepted. Requests for special accommodations must be made as early as possible for review and acceptance. Applications and information may be obtained from the board office at 301 Main Street, Suite 1050, Baton Rouge, LA 70801, via telephone at (225) 342-2176, and by e-mail at [admin@lsbvm.org](mailto:admin@lsbvm.org); application forms and information are also available on the website at [www.lsbvm.org](http://www.lsbvm.org).

**Board Meeting Dates**

The members of the Louisiana Board of Veterinary Medicine will meet at 8:30 a.m. on the following dates in 2016:

- Thursday, February 4, 2016
- Thursday, April 7, 2016
- Thursday, June 2, 2016 (Annual Meeting)
- Thursday, July 28, 2016
- Thursday, October 6, 2016
- Thursday, December 1, 2016

These dates are subject to change, so please contact the board office via telephone at (225) 342-2176 or email at [admin@lsbvm.org](mailto:admin@lsbvm.org) to verify actual meeting dates.

**Board Nominations**

The Louisiana Board of Veterinary Medicine announces that nominations for the position of Board Member will be taken by the Louisiana Veterinary Medical Association (LVMA) at the annual winter meeting to be held in late January 2016. Interested persons should submit the names of nominees directly to the LVMA as per R.S. 37:1515. It is not necessary to be a member of the LVMA to be nominated. The LVMA may be contacted at (225) 928-5862.

Wendy D. Parrish  
Executive Director

1511#031

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Bureau of Health Services Financing published a Notice of Intent in the June 20, 2015 edition of the *Louisiana Register* (LR 41:1150-1151) to amend LAC 50:I.3511. This Notice of Intent proposed to amend the provisions governing managed care for physical and basic behavioral health in order to revise the timely filing requirements for provider claims.

The department conducted a public hearing on this Notice of Intent on July 30, 2015 to solicit comments and testimony on the proposed Rule. As a result of the comments received, the department proposes to amend the provisions of the proposed Rule.

Taken together, all of these revisions will closely align the proposed Rule with the department’s original intent and the concerns brought forth during the comment period for the Notice of Intent as originally published. No fiscal or economic impact will result from the amendments proposed in this notice.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part I. Administration**

**Subpart 3. Managed Care for Physical and Basic Behavioral Health**

**Chapter 35. Managed Care Organization Participation Criteria**

**§3511. Prompt Pay of Claims**

A. - B.1.c. ...

2. Medicaid claims must be filed within 365 days of the date of service.

a. The provider may not submit an original claim for payment more than 365 days from the date of service, unless the claim meets one of the following exceptions:

- i. the claim is for a member with retroactive Medicaid eligibility and must be filed within 180 days from linkage into an MCO;
- ii. the claim is a Medicare claim and shall be submitted within 180 days of Medicare adjudication; and
- iii. the claim is in compliance with a court order to carry out hearing decisions or agency corrective actions taken to resolve a dispute, or to extend the benefits of a hearing decision or corrective action.

B.3. - E.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, Bureau of Health Services Financing, LR 37:1589 (June 2011), amended LR 41:938 (May 2015), LR 42:

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.

**Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding these substantive amendments to the proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Public Hearing**

A public hearing on these substantive changes to the proposed Rule is scheduled for Wednesday, December 30, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

1511#087

**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
Ko-Ler Tri-State	Caddo Pine Island	S	G A Raines	A-2	35043
Ko-Ler Tri-State	Caddo Pine Island	S	Raines et al	A-3	36305
W.D. Chew	Caddo Pine Island	S	Levee Board	C-2	12882
Cat-Oil Inc.	Tew Lake	L	T1 Su64; Taliaferro	C-1	237199
Cat-Oil Inc.	Tew Lake	L	T1 Su62; Morris	001	240147
Cat-Oil Inc.	Tew Lake	L	Taliaferro SWD	001	973602
Lee Kinnebrew et al	Wildcat-No LA Shreveport Dist	S	International Paper Co	001-A	107365
F. E. Hargraves and Sons Drl. Co. Inc.	Caddo Pine Island	S	Caddo Levee Board	003	52881
R. P. Phillips Well Service	Ederly	L	Hunter	014	22295
Matsonia Oil Co	Caddo Pine Island	S	Boisseau	004	26333
Snelling Brothers	Crossroads	S	C S Meredith	002	89211
Snelling Brothers	Wildcat-No LA Shreveport Dist	S	Snelling	001	115526
Frank F. Bryant et al	Red River-Bull Bayou	S	Jenkins	010	41711
Matzinger Petroleum Co.	Midland	L	A I Leblanc SWD	001	195418
D. C. Cames	Caddo Pine Island	S	Crystal Oil and Ref Co	024	46352

James H. Welsh  
Commissioner

1511#035



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