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Executive Orders

EXECUTIVE ORDER JBE 17-27

Suspension of Early Voting

WHEREAS, La. R.S. 18:401.1 provides a procedure whereby the emergency suspension or delay and rescheduling of qualifying, early voting and elections can occur when there is a possibility of an emergency or common disaster occurring before or during a regularly scheduled or special election “in order to ensure maximum citizen participation in the electoral process and provide a safe and orderly procedure for persons seeking to qualify or exercise their right to vote, to minimize to whatever degree possible a person’s exposure to danger during declared states of emergency, and to protect the integrity of the electoral process...”

WHEREAS, early voting for the October 14, 2017 election is scheduled to be conducted at the office of the registrar of voters located at 15577 Highway 15, Pointe a la Hache, Louisiana on Saturday, October 7, 2017 from 8:30 a.m. until 6:00 p.m.;

WHEREAS, on October 6, 2017, pursuant to the provisions of La. R.S. 18:401.1(B), the Secretary of State certified to the Governor that due to the possibility of extreme weather from Tropical Storm/Hurricane Nate, the Parish Governing Authority of Plaquemines Parish announced the mandatory evacuation of a portion of Plaquemines Parish, including Point a la Hache, Louisiana, and recommends that early voting on Saturday, October 7, 2017 from 8:30 a.m. until 6:00 p.m. be cancelled.

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

SECTION 1: Under the authority of La. R.S. 18:401.1(B) and based on the October 6, 2017 certification from the Secretary of State that a state of emergency exists early voting on Saturday, October 7, 2017 from 8:30 a.m. until 6:00 p.m. at the office of the registrar of voters located at 15577 Highway 15, Pointe a la Hache, Louisiana is cancelled.

SECTION 2: This order is effective upon signature and shall remain in effect unless amended, modified, terminated, or rescinded.

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 6th day of October, 2017.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1804#054

EXECUTIVE ORDER JBE 17-28

Suspension of Early Voting

WHEREAS, La. R.S. 18:401.1 provides a procedure whereby the emergency suspension or delay and rescheduling of qualifying, early voting and elections can occur when there is a possibility of an emergency or common disaster occurring before or during a regularly scheduled or special election “in order to ensure maximum citizen participation in the electoral process and provide a safe and orderly procedure for persons seeking to qualify or exercise their right to vote, to minimize to whatever degree possible a person’s exposure to danger during declared states of emergency, and to protect the integrity of the electoral process...”

WHEREAS, early voting for the October 14, 2017 election is scheduled to be conducted at the office of the registrar of voters in Orleans, Plaquemines, St. Bernard, and St. Tammany parishes until 6:00 p.m. on October 7, 2017; and

WHEREAS, on October 7, 2017, pursuant to the provisions of La. R.S. 18:401.1(B), the Secretary of State certified and recommended that due to the possibility of extreme weather from Hurricane Nate, early voting be cancelled at the location at 28028 Highway 23 in Port Sulphur in Plaquemines Parish; and further, that early voting be cancelled at of 3:00 p.m. on October 7, 2017 in the parishes of Orleans, Plaquemines, St. Bernard, and St. Tammany.

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

SECTION 1: Under the authority of La. R.S. 18:401.1(8) and based on the October 7, 2017 certification and recommendation from the Secretary of State that a state of emergency exists, early voting on Saturday, October 7, 2017 from 8:30 a.m. until 6:00 p.m. at the Plaquemines Parish Government building at 28028 Highway 23 in Port Sulphur, Louisiana is cancelled.

SECTION 2: Under the authority of La. R.S. 18:401.1(B) and based on the October 7, 2017 certification and recommendation from the Secretary of State that a state of emergency exists, early voting on Saturday, October 7, 2017 will be cancelled at 3:00 p.m. in the parishes of Orleans, Plaquemines, St. Bernard, and St. Tammany.

SECTION 3: This order is effective upon signature and shall remain in effect unless amended, modified, terminated, or rescinded.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of

Louisiana, at the GOHSEP, in the City of Baton Rouge, on this 7th day of October, 2017.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1804#055

EXECUTIVE ORDER JBE 18-08

State as Model Employer Task Force

WHEREAS, the State of Louisiana is committed to developing and maintaining a high performing public workforce that provides access, meaningful services, and improved outcomes for all citizens and reflects the rich diversity of the citizens of this great state. In order to achieve this goal, state leaders must be able to apply diverse perspectives and experiences to the development of responsive solutions to the issues facing the state. Such diversity enhances the fullness of our understanding of these issues and opens opportunities for the consideration of new and better solutions;

WHEREAS, the State of Louisiana is eager to emerge as a national leader in the recognition and protection of civil rights for people with disabilities;

WHEREAS, according to the 2017 Annual Disabilities Statistics Compendium 30 percent of people with disabilities in Louisiana live in poverty, compared to 16% of people without a disability;

WHEREAS, only 33 percent of people with disabilities are in the workforce compared to 72 percent of individuals without disabilities, research indicates that the level of employment, the quality of jobs, and the degree of the access to those jobs are crucial determinants of poverty reduction;

WHEREAS, the economic impact of unemployment and pay disparities between people with disabilities and those without, result in forgone state tax revenue while increasing job opportunities for people with disabilities saves the federal and state government money by reducing dependency on cash and medical and disability benefits;

WHEREAS, the state has a vested interest in reducing discrimination against people living with a disability, eliminating barriers to meaningful employment, and attracting the highest quality candidates into state employment opportunities;

WHEREAS, when the workforce that directs and provides essential services to residents of the state reflects the diversity of the population, those services are more likely to be responsive to and respectful of that diversity;

WHEREAS, to be competitive in the global economy, the State of Louisiana must use the talents and important contributions of all workers, including individuals with disabilities;

WHEREAS, progress towards serving and employing people with disabilities requires both the

commitment and participation of executive leaders throughout state government; and

WHEREAS, Louisiana's state government should serve as a model employer for business by a commitment to improved hiring, recruitment, and retention of individuals with disabilities, with the goal that seven percent of the state work force is comprised of persons living with a disability.

NOW, THEREFORE, I, JOHN BEL EDWARDS, Governor of the state of Louisiana, by virtue of the power vested in me by the Constitution and statutes of the state of Louisiana do, effective immediately, hereby order and direct as follows:

SECTION 1: The State as a Model Employer Task Force (hereafter "Task Force") is hereby established within the executive department, Office of the Governor, Office of Disability Affairs.

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

A. Develop policies, strategies, and services designed to achieve the employment targets established in this Order;

B. Establish a five-year plan with annual goals that will enable the state workforce to reach parity with the percentage of working age people with disabilities in Louisiana; and

C. Provide guidance and other support to agencies and institutions of higher education on recruitment, retention, accommodation, and accessibility for persons with disabilities.

SECTION 3: By August 1, 2018, the Task Force shall submit a comprehensive report to the Governor on the issues set forth in Section 2 of this Order.

SECTION 4: The Task Force shall be composed of a maximum of fifteen (15) members appointed by the Governor from leadership of state agencies and subject matter experts. The chair of the Task Force shall be appointed by the Governor from the membership of the Task Force. All other officers, if any, shall be elected by the Task Force from its membership.

SECTION 5: The head of each state agency that reports to the Governor shall be responsible for executing the following:

A. Designate a staff person within 30 days of this order who will be responsible for overseeing the development, implementation, monitoring, and evaluation of effective strategies to attract, engage, and advance people with disabilities;

B. Implement strategies for employment of people with the most significant disabilities, including utilizing the state's supported employment program, customized employment strategies, and civil service testing exemptions, when appropriate and in accordance with standards established by the Department of Civil Service;

C. Increase awareness of the state's disability employment supports and services and utilize the resources, services, and funding available through Louisiana Rehabilitation Services and Louisiana Workforce Commission to provide opportunities for work based learning experiences, internships and trainings to high

school and college students with disabilities including youth with significant disabilities;

D. Ensure continued development and implementation of policies, strategies, and services to ensure successful implementation of this Order; and

E. Submit a plan by October 31, 2018, and annually thereafter, to the Task Force that describes the strategies and policies adopted to meet the goals of this Order, and specifically addresses progress and outcomes in responsibilities detailed in items A, B, and C of this Section.

SECTION 6: Task Force members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Task Force.

A Task Force member who is an employee or an elected public official of the State of Louisiana or a political subdivision thereof may seek reimbursement of travel expenses, in accordance with PPM 49, from his or her employing and/or elected department, agency and/or office.

SECTION 7: Support staff, facilities, and resources for the Task Force shall be provided by the Office of the Governor, Office of Disability Affairs.

SECTION 8: This order shall not be construed to require any state employee to disclose disability status involuntarily. This order shall not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the state of Louisiana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SECTION 9: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Task Force in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall continue in effect until amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 19th day of March, 2018.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1804#007

EXECUTIVE ORDER JBE 18-09

Louisiana Offshore Terminal Authority to Administer
the Federal Deepwater Port Act for Louisiana

WHEREAS, the federal Deepwater Port Act, 33 U.S.C. Sec. 1501, et seq., provides for the application for, and the construction and operation of deepwater ports or offshore terminal facilities beyond the seaward boundaries of Louisiana, for the transportation, storage or further handling of oil or natural gas;

WHEREAS, the state of Louisiana, to the extent that it is considered an adjacent coastal state, has been granted

certain rights, duties, and responsibilities by the Deepwater Port Act in connection with the application for, and construction and operation of, such deepwater ports;

WHEREAS, there is a need for a single state agency to supervise, coordinate, and direct the state's duties and responsibilities in connection with implementation of the Deepwater Port Act;

WHEREAS, the Louisiana Offshore Terminal Authority was created by La. R.S. 34:3101, et seq., to promote, plan, finance, develop, construct, control, license, regulate, supervise, operate, manage, maintain and modify offshore terminal facilities within its jurisdiction;

WHEREAS, the Deepwater Port Act has extended the jurisdiction of the state of Louisiana to adjacent offshore waters beyond state boundaries for the limited and exclusive purposes as stated in the Act; and

WHEREAS, the Louisiana Offshore Terminal Authority has continuously demonstrated its competence and expertise in operation, monitoring, and regulation of the Louisiana Offshore Oil Platform ("LOOP").

NOW, THEREFORE, I, JOHN BEL EDWARDS, Governor of the state of Louisiana, by virtue of the power vested in me by the Constitution and statutes of the state of Louisiana do, effective immediately, hereby order and direct as follows:

SECTION 1: The Louisiana Offshore Terminal Authority is hereby designated as the single state agency which, subject to the powers and duties reserved to the Governor, shall administer and supervise the rights, duties and responsibilities of the state of Louisiana under the federal Deepwater Port Act.

SECTION 2: The right, duties and responsibilities to be supervised and administered by the Louisiana Offshore Terminal Authority shall include, but are not necessarily limited to, those contained in 33 U.S.C. Sec. 1504(h)(2) and 33 U.S.C. Sec. 1508, except for those powers expressly reserved to the Governor under 33 U.S.C. 1502(10) and Sec. 1508(b)(1) relative to the Governor's authority to approve, disapprove, or conditionally approve pending applications. All required notices from the U.S. Coast Guard or the secretary of the U.S. Department of Transportation under the Deepwater Port Act, shall continue to be sent directly to the Governor, whose office shall provide same to the Louisiana Offshore Terminal Authority.

SECTION 3: The rights, duties and responsibilities to be administered and supervised by the Louisiana Offshore Terminal Authority in connection with the Deepwater Port Act shall include, but shall not necessarily be limited to, the following:

A. Upon receipt from the Governor of an application made under the Deepwater Port Act for the construction and operation of a deepwater port or offshore terminal facility, the Louisiana Offshore Terminal Authority shall coordinate and supervise the review by the state of such application, including coordination with other necessary state agencies, including the Department of Environmental Quality, the Department of Wildlife and Fisheries, and the Department of Natural Resources. The review shall include all environmental impact statements submitted, the impact on the coastal environment, the impact on the inshore and offshore waters and fisheries of the state, the impact on navigation, examination of monitoring plans, and such other

reviews as the Louisiana Offshore Terminal Authority may deem necessary to assure the protection of the state and its resources.

B. Formulation and implementation of any necessary environmental monitoring and security plans, in cooperation with the operator, federal agencies, and state agencies.

C. Coordination with other adjacent coastal states and any other states impacted by the construction and operation of a deepwater port facility.

D. Letting of necessary contracts in connection with environmental monitoring, security and such other necessary services as may be required by the Louisiana Offshore Terminal Authority in connection with the application for, or construction and operation of, deepwater ports under the Deepwater Port Act. Such contracts shall be let in accordance with law, and specifically in accordance with the requirements of the Louisiana Offshore Terminal Authority implementing legislation, La. R.S. 34:3101, et seq.

E. Upon completing necessary reviews of an application for construction of a deepwater port facility, report its findings and recommendations to the Governor so as to allow the Governor adequate information upon which to exercise in a timely manner, the Governor's authority under 33 U.S.C. Sec. 1508(b)(1) to approve, disapprove, or conditionally approve a pending application.

F. In accordance with the provisions of 33 U.S.C. Sec. 1504(h)(2), obtain compensation for any economic cost incurred by the state of Louisiana in fulfilling its duties and responsibilities in connection with the construction and operation of any deepwater port facility, by fixing and collecting reasonable fees for the use of a deepwater port facility and for use of land-based facilities directly related to a deepwater port facility, subject to the approval of the secretary of the U.S. Department of Transportation.

SECTION 4: For the Louisiana Offshore Terminal Authority to carry out its responsibilities as ordered herein, subject to the availability of funding, the Louisiana Offshore Terminal Authority shall have the authority to establish an office with appropriate staff and facilities; to develop and implement an operational plan; to develop and implement a communications plan; to work with industry with regard to homeland security, safety, and hurricane-preparedness plans; to construct and implement a budget, including performance-based budgeting; to institute monitoring and reporting timelines and guidelines in compliance with the Deepwater Port Act and other applicable law; and generally to do and implement any other necessary and appropriate measures to allow the Louisiana Offshore Terminal Authority to function effectively, in accordance with law, and specifically in accordance with the provisions of La. R.S. 34:3102, et seq.

SECTION 5: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Task Force in implementing the provisions of this Order.

SECTION 6: This Order is effective upon signature and shall continue in effect until amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 21st day of March, 2018.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1804#010

EXECUTIVE ORDER JBE 18-10

Flags at Half-Staff—Thomas Milton Benson, Jr.

WHEREAS, on March 15, 2018, Thomas Milton Benson, Jr. passed away at the age of 90;

WHEREAS, a native of New Orleans, Louisiana, Mr. Benson attended St. Aloysius High School (now Brother Martin) and Loyola University before enlisting in the United States Navy, where he served on the USS South Dakota in World War II;

WHEREAS, after many years of business success in commercial real estate and automobile dealerships in Louisiana and Texas, Mr. Benson purchased the New Orleans Saints in 1985, saving the Saints from moving to Florida;

WHEREAS, during his time as owner, the Saints made the playoffs for the first time in franchise history in 1987; he oversaw the return of the Saints to New Orleans after Hurricane Katrina with a win over the Atlanta Falcons in 2006; and his leadership of the team culminated with a win in Super Bowl XLIV over the Indianapolis Colts;

WHEREAS, in 2012, Mr. Benson purchased the New Orleans Hornets and rebranded the team as the Pelicans, the Louisiana State Bird;

WHEREAS, in 2014, to honor Mr. Benson and in appreciation for his support of the Pro Football Hall of Fame, the field at the Canton, Ohio stadium was renamed the "Tom Benson Hall of Fame Stadium";

WHEREAS, Mr. Benson's legacy is also one of philanthropy, as he and his loving wife, Gayle, have generously supported many charitable efforts, including the Gayle and Tom Benson Cancer Center on the campus of Ochsner Medical Center, the World War II museum, and the Team Gleason House for Innovative Living;

WHEREAS, Mr. Benson was also a man of deep faith and a strong supporter of the Catholic Church, and in 2012, the Bensons were awarded the Pro Ecclesia et Pontifice for their generosity to the Catholic Church, the highest papal honor that Catholic laypeople can receive; and

WHEREAS, Thomas Milton Benson Jr. was and will remain a true Louisiana original and will leave a legacy in his home state and city for generations to come.

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

SECTION 1: As an expression of respect and to honor the life of Thomas Milton Benson Jr., the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol and all public buildings and institutions of the State of Louisiana until sunset on Friday, March 23, 2018.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, March 23, 2018, unless amended, modified, terminated, or rescinded prior to that date.

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 23rd day of March, 2018.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1804#013

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences

Roseau Cane Scale Quarantine
(LAC 7:XV.169)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and the authority of the state entomologist under the provisions of R.S. 3:1652, and in order to avoid a lapse in coverage until the permanent Rule is in effect, notice is hereby given that Department of Agriculture and Forestry is adopting these emergency regulations establishing a quarantine for the following pest: Roseau cane scale, *Nipponaclerda biwakoensis*. The state entomologist has determined that Roseau cane scale has been found in this state and may be prevented, controlled, or eradicated by quarantine. The effective date of this Rule is March 26, 2018.

Roseau cane scale (RCS) poses an imminent threat to the health and welfare of Louisiana's wetlands, and possibly the sorghum, sugarcane and rice industries. In 2016, the gross farm value of sorghum in the state was \$15,100,000 (*Louisiana State University AgCenter 2016 Louisiana Summary, Agriculture and Natural Resources*). Sugarcane is also a possible host for RCS. The gross farm value for sugarcane in Louisiana was \$496,000,000 and the total value of the sugarcane crop to producers, processors, etc. at the first processing level was \$834,000,000 (*LSU AgCenter 2016 Louisiana Summary, Agriculture and Natural Resources*). The gross farm value for rice in Louisiana was \$305,000,000 (*LSU AgCenter 2016 Louisiana Summary, Agriculture and Natural Resources*). The potential of rice as a host for RCS also is being evaluated in laboratory and greenhouse tests. Acreage for one or more of these crops exists in parishes where RCS infestations have been documented on Roseau cane. LSU AgCenter is currently proceeding with trials to determine if sorghum, sugarcane and rice are hosts for RCS. In addition to the agronomic impact, hundreds of thousands of acres of wetlands may be adversely affected by RCS. RCS is implicated in the Roseau cane die-offs which could greatly accelerate coastal erosion. Roseau cane is a unique plant that has the ability to thrive in tidal estuaries with salinity levels that would prohibit growth of most other aquatic plants.

Natural dispersal of RCS is believed to be limited to relatively short distances. However, without restriction, RCS could spread through human-assisted means over long distances via RCS-infested Roseau cane. Recent observations of Roseau cane die-offs from the scale, have resulted in areas converting to open water, or colonization by exotic invasive vegetative species. As Roseau cane is considered one of the best aquatic plants to assist in slowing coastal erosion, it is imperative to eliminate the movement of Roseau cane scale to areas in the state where it currently has not been detected.

For these reasons the presence of RCS in Louisiana presents a peril to the integrity and stability of Louisiana's coastal wetlands. As a result of this imminent peril, the Department of Agriculture and Forestry hereby exercises its full and plenary power pursuant to R.S. 3:1652 to deal with crop and fruit pests and contagious and infectious crop and fruit diseases by imposing the quarantines set out in these emergency regulations.

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

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 1. Crop Pests and Diseases

Chapter G. Roseau Cane Scale Quarantine

§169. Roseau Cane Scale Quarantine

A. The department issues the following quarantine because the state entomologist has determined that the insect Roseau cane scale ("RCS"), *Nipponaclerda biwakoensis*, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

B. Regulated articles, defined in this Section, are not allowed to move within or outside of the quarantine area.

C. The quarantine area encompasses all areas south of Louisiana Highway 10 beginning at the Mississippi state line (near Bogalusa) and moving west until intersecting Highway 171 in Vernon Parish; then, moving south on Highway 171 continuing to Highway 190 in DeRidder and turning west on Highway 190; continuing on Highway 190 until reaching the Sabine River. Quarantine areas in this state include:

1. portions of the following parishes that are south of Louisiana Highway 10:
 - a. Allen;
 - b. East Feliciana;
 - c. Evangeline;
 - d. Pointe Coupee;
 - e. St. Landry;
 - f. St. Helena;
 - g. Tangipahoa;
 - h. Vernon;
 - i. Washington;
 - j. and West Feliciana.
2. the entire parishes of:
 - a. Acadia;
 - b. Ascension;
 - c. Assumption;
 - d. Beauregard;
 - e. Calcasieu;
 - f. Cameron;
 - g. East Baton Rouge;
 - h. Iberia;
 - i. Iberville;
 - j. Jefferson;
 - k. Jefferson Davis;

- l. Lafayette;
- m. Lafourche;
- n. Livingston;
- o. Orleans;
- p. Plaquemines;
- q. St. Bernard;
- r. St. Charles;
- s. St. James;
- t. St. John;
- u. St. Martin;
- v. St. Mary;
- w. St. Tammany;
- x. Terrebonne;
- y. Vermillion; and
- z. West Baton Rouge.

D. Clean nursery stock of the genus *Phragmites* may be moved within the quarantine area under a special permit issued by Louisiana Department of Agriculture and Forestry.

E. Limited movement of Roseau cane by boat only is allowed for waterfowl hunters as long as the Roseau cane material is moved no more than one-quarter mile from its original location and remains within the quarantine area.

F. The following articles are deemed to be regulated articles for purposes of this Subsection:

- 1. the Roseau cane scale in all of its life stages;
- 2. Roseau cane or any species or variety of the genus *Phragmites*;
- 3. any other article, product, or means of conveyance not listed in this Subsection may be designated as a regulated article if an inspector determines that it presents a risk of spreading Roseau cane scale and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

G. Any person violating this quarantine shall be subject to imposition of the remedies and penalties set forth in R.S. 3:1653.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652 and 3:1653.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 44:

Mike Strain, DVM
Commissioner

1804#011

DECLARATION OF EMERGENCY

Tuition Trust Authority Office of Student Financial Assistance

START Saving Program
(LAC 28:VI.311, 315, 507, 509, and 517)

The Louisiana Tuition Trust Authority is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091 et seq.).

This rulemaking adds the applicable interest rates for the START Saving Program for the 2017 calendar year. It adds provisions allowing the rollover of a START Saving

Program account to a qualified ABLÉ program to bring the program in line with amendments to IRC Section 529 as part of the Tax Cuts and Jobs Act of 2017. It also allows a juridical entity to open an LA ABLÉ account on behalf of a disabled individual under specified circumstances.

The emergency rules are necessary to allow the Louisiana Office of Student Financial Assistance and educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LATTA has determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective March 21, 2018, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (ST18181ER)

Title 28 EDUCATION

Part VI. Student Financial Assistance—Higher Education Savings

Chapter 3. Education Savings Account

§311. Termination, Refund, and Rollovers of an Education Savings Account

A. - G. ...

H. Rollovers

1. Rollovers among ESAs of the Same Account Owner

a. Beginning October 1, 2009, an account owner may rollover any part or all of the value of an ESA to another ESA if the beneficiary of the account receiving the funds is a member of the family of the beneficiary of the original account.

b. If the current value of an ESA is transferred, all EEs and earnings thereon shall be included in the transfer.

2. Rollover to another Qualified Tuition Program

a. An account owner may request a rollover of the current value of the account less EEs and earnings thereon to another qualified tuition program.

b. EEs and the earnings thereon allocated to an ESA that is rolled over to another qualified tuition program are forfeited.

3. Rollover to a Qualified ABLÉ Program Account

a. Beginning May 1, 2018, an account owner may rollover any part or all of the value of an ESA to a qualified ABLÉ program account if the beneficiary of the account receiving the funds is a member of the family of the beneficiary of the ESA.

b. EEs and the earnings thereon allocated to an ESA that is transferred to a qualified ABLÉ program are forfeited.

c. A rollover by a Louisiana resident to any qualified able program account will be subject to Louisiana tax table income in accordance with state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:790 (April 2004), LR 31:639 (March 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:444 (March 2007),

LR 35:236 (February 2009), LR 36:492 (March 2010), LR 36:2551 (November 2010), LR 39:2238 (August 2013), LR 42:1080 (July 2016), LR 44:

§315. Miscellaneous Provisions

A. - B.36. ...

37. For the year ending December 31, 2017, the Louisiana education tuition and savings fund earned an interest rate of 1.68 percent.

38. For the year ending December 31, 2017, the savings enhancement fund earned an interest rate of 1.52 percent.

C. - S.2. ...

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007), LR 34:1886 (September 2008), LR 35:1492 (August 2009), LR 36:492 (March 2010), LR 36:2030 (September 2010), LR 38:1954 (August 2012), LR 39:2238 (August 2013), LR 40:1926 (October 2014), LR 41:1487 (August 2015), LR 42:1082 (July 2016), LR 42:1658 (October 2016), LR 43:1731 (September 2017), LR 44:

Chapter 5. Achieving a Better Life Experience (ABLE)

§507. Applicable Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

Account Owner—the eligible individual who opened the account, or the eligible individual on whose behalf the account was opened, and who is also the beneficiary.

Administrator—the person who has the authority to direct the activities of the account. The administrator of the account may be the account owner or a person authorized by law or by authentic act to administer the account on behalf of the beneficiary. For purposes of these rules, the term *administrator* shall mean the account owner or a person who is legally authorized to act on his behalf.

Beneficiary—the eligible individual who established the ABLE account, or for whom an ABLE account was established, and who is the owner of such account.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:639 (April 2017), amended LR 44:

§509. Establishment of an ABLE Account

A. - D.1. ...

2. Documentation required to establish an account on behalf of an eligible individual includes:

a. if a parent, a copy of the eligible individual's birth certificate;

b. if an adoptive parent, documentation evidencing the adoption of the eligible individual;

c. if a custodian, court documents evidencing the appointment of the custodian by a court of law;

d. if designated by the eligible individual to administer his affairs, documentation evidencing such designation;

e. if a juridical entity, documentation evidencing that the eligible individual, or a person authorized to act on his behalf, as indicated in §509.D.2.a-d above, has designated the juridical entity to act on his behalf for purposes of an LA ABLE account program account.

E. - H.4.b.vii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:640 (April 2017), amended LR 44:

§517. Termination, Refund, and Rollovers of an Education Savings Account

A. - G.1.b. ...

2. Rollover to another ABLE Program

a. An administrator may request a rollover of the current value of the account to another qualified ABLE program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3081-3089.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 43:642 (April 2017), amended LR 44:

Robyn Rhea Lively
Senior Attorney

1804#012

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2018 Commercial Large Coastal Shark Season Closure

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency 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.357.M.2, to modify large coastal shark seasons to maintain consistency with the adjacent federal waters, and that such closure order shall close the season until the date projected for the re-opening of that fishery in the adjacent federal waters, the secretary hereby declares:

Effective 11:30 p.m., March 13, 2018, the commercial fishery for Large Coastal Sharks in Louisiana waters, as described in LAC 76:VII.357.B.2, (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark and tiger shark) will close and remain closed until January 1, 2019, at which time the season is scheduled to reopen. This closure will not pertain to persons holding a federal shark research permit issued by NOAA Fisheries Service, when those persons are legally fishing under the regulations promulgated for that permit including that a NMFS-approved observer is aboard the vessel.

Nothing herein shall preclude the legal harvest of large coastal sharks by legally licensed recreational fishermen during the open season for recreational harvest. Effective with this closure, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell large coastal sharks, whether taken from within or without Louisiana waters, except for a federal shark research permit holder, when legally operating under that permit. Also effective with the closure, no person shall possess Large coastal sharks in excess of a daily bag limit whether taken from within or without Louisiana waters, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure, or from federal shark research permit holders, provided that all commercial dealers possessing large coastal sharks taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by NOAA Fisheries that the harvest of large coastal sharks in the federal waters of the Gulf of Mexico will close at 11:30 p.m. local time on March 13, 2018, and will be closed until January 1, 2019, at which time the season is scheduled to reopen.

Jack Montoucet
Secretary

1804#005

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2018 Red Snapper Recreational Season Closure

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in LAC 76:VII.335.G.5. to modify opening and closing dates of the recreational red snapper season in Louisiana state waters, the secretary hereby declares:

The season for the recreational harvest of red snapper in Louisiana state waters, scheduled to open on March 24, 2018 (LAC 76:VII.335), shall remain closed until further notice.

Any such closure shall prohibit the possession and/or landing of red snapper in state waters, except for situations involving federally permitted charter boats or commercial individual fishing quota holders operating under federal law.

The secretary has been notified by NOAA Fisheries that an exempted fishing permit (EFP) proposal, submitted by the Louisiana Department of Wildlife and Fisheries, for the recreational harvest of red snapper will be published in the Federal Register. If ultimately approved by NOAA Fisheries, this EFP would allow the Louisiana Department of Wildlife and Fisheries to set the season for the recreational harvest of red snapper in the federal waters of the Exclusive Economic Zone (EEZ) outside of the normal recreational season.

In order to allow time for publication and comment relating to this EFP proposal, the recreational red snapper season is being delayed until such a time that a season can be established under the provisions of the final published version of this EFP.

Jack Montoucet
Secretary

1804#003

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Boeuf and Grassy Lake WMA Closures

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

Currently, due to excessive high water levels associated with excessive rainfall along with backwater flooding, Boeuf and Grassy Lake wildlife management areas are inundated with floodwater and water levels are continuing to rise. These areas are nearly completely inaccessible by vehicle and hazardous conditions exist on the areas due to such water levels. Such conditions constitute a public safety hazard. Additionally, many wildlife species are stressed and displaced by such events, and public access to and use of these areas during this time will adversely impact such. Therefore, until the high water recedes, it is deemed necessary to close these wildlife management areas to all use.

In accordance with the provisions of R.S. 56:6.1 public access to and use of the above-mentioned wildlife management areas shall be as follows: Closed to all use. This Declaration of Emergency shall become effective March 30, 2018, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until rescinded by the secretary.

Jack Montoucet
Secretary

1804#016

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Opening of Shrimp Season in Portion of State Outside Waters

In accordance with the emergency provisions of R.S. 49:953, the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicate that

marketable shrimp, in sufficient quantities are available for harvest; and, a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on August 3, 2017 which authorizes the secretary of the Department of Wildlife and Fisheries to reopen any area closed to shrimping when the closure is no longer necessary, the secretary hereby declares:

State outside waters extending from the inside/outside shrimp line as described in R.S. 56:495 seaward to the 3-mile line, from the northwest shore of Caillou Boca at -90 degrees 50 minutes 27 seconds west longitude westward to the Atchafalaya River Ship Channel at Eugene Island as delineated by the red buoy line shall reopen to shrimping at 6 a.m. on April 2, 2018.

Recent biological samples taken by Office of Fisheries biologists indicate that small white shrimp which have overwintered in these waters from January through the present time have reached marketable sizes and the closure is no longer necessary. Significant numbers of smaller size white shrimp still remain in state outside waters west of the Atchafalaya River Ship Channel to the western shore of Freshwater Bayou Canal at -92 degrees 18 minutes 33 seconds west longitude, and these waters will remain closed to shrimping until further notice. Notice of any opening, delaying or closing of a season by the secretary will be made by public notice at least 72 hours prior to such action.

Jack Montoucet
Secretary

1804#015

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Oyster Season Closures

In accordance with the emergency provisions of R.S. 49:953, under the authority of R.S. 56:433, and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on September 7, 2017 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if oyster resources and/or reefs are being adversely impacted, notice is hereby given that the Secretary of the Department of Wildlife and Fisheries hereby declares that the Vermilion/East and West Cote Blanche and Atchafalaya Bay Public Oyster Seed Grounds shall close to the harvest of seed oysters at one-half hour after sunset on Monday, March 12, 2018. The area shall remain open for the harvest of market oysters (sacking).

Harvest activities during the season has reduced seed oyster stocks and removed excessive amounts of non-living reef material from the public oyster seed grounds. Continued harvest of seed oysters may threaten the long-term sustainability of remaining oyster resources and reefs in these areas. Protection of these remaining oyster reef resources from injury is in the best interest of these public oyster seed grounds.

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

Department of Health and Hospitals for public health concerns.

Jack Montoucet
Secretary

1804#004

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Reopening of Oyster Bedding Season in Selected Portions of the Public Oyster Seed Grounds in Lake Borgne in St. Bernard Parish

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953, and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters, and under the authority granted to the Secretary of the Department of Wildlife and Fisheries by the Commission on September 7, 2017, the Secretary hereby declares that the Lake Borgne Public Oyster Seed Ground, as described in Louisiana Administrative Code (LAC) 76:VII.513, referenced as A.1., A.2., A.3. and A.4. shall open for the harvest of seed oysters for bedding purposes only at one-half hour before sunrise on March 12, 2018 and shall close at one-half hour after sunset on March 17, 2018. The area is currently open for harvest of oysters for market sales. Both market oyster season and the special bedding season will only be open in areas of the Lake Borgne Public Oyster Seed Ground that are currently open by Louisiana Department of Health and Hospitals (LDHH).

The special bedding-only season described above shall be opened with the following provisions.

1. All oysters on board a vessel actively harvesting oysters in the public seed grounds described above shall be presumed to have been taken from the public seed grounds described above.

2. No oyster harvester who is actively harvesting oysters for bedding purposes in the public seed ground described above shall have on board his vessel any sacks or containers which may be used to hold oysters for transport to market.

3. No harvester shall sell, or transport with his vessel, oysters intended for market sales on the same day that he harvested seed oysters from the public seed grounds described above.

4. Oyster harvest for bedding purposes is limited to live oyster resources and the excessive removal of non-living material will not be allowed.

Harvestable quantities of oyster resources exist in these public oyster seed grounds and the opening of the Bonnet Carre' Spillway may place those resources in imminent peril. As significant oyster mortalities could be experienced due to the anticipated depression of salinity, allowing limited harvest of the resource prior to the oyster mortality is in the best interest of the public.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such

action unless such closure is ordered by the Department of Health and Hospitals for public health concerns.

Jack Montoucet
Secretary

1804#002

DECLARATION OF EMERGENCY
Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Special Bedding-Only Season Opening in
Selected Portions of the Public Oyster Seed Grounds
in Mississippi Sound in St. Bernard Parish

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953, and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters, and under the authority granted to the secretary of the Department of Wildlife and Fisheries by the commission on September 7, 2017, the secretary hereby declares that the public oyster seed grounds within the following areas shall open for the harvest of seed oysters for bedding purposes only at one-half hour before sunrise on March 24, 2018 and shall close at one-half hour after sunset on April 7, 2018:

The area is opening to allow for the permitted transplant, or relay, of live oysters for bedding purposes only. Oysters may only be transplanted from the area within the public oyster seed grounds further described below which are currently closed by the Louisiana Department of Health (LDH). All individuals found harvesting in this area must possess a valid LDH oyster transplant permit, in addition to all other applicable licenses and permits as required by the Department of Wildlife and Fisheries.

Areas to be opened further described below within portions of LDH harvest area 1 and harvest area 2 are located within the following boundaries:

Western boundary line:

1. 30 degrees 09 minutes 40.678 seconds N latitude
89 degrees 30 minutes 57.011 seconds W longitude to,
2. 30 degrees 07 minutes 05.000 seconds N latitude
89 degrees 29 minutes 56.000 seconds W longitude

Southern boundary line:

3. 30 degrees 07 minutes 05.000 seconds N latitude
89 degrees 29 minutes 56.000 seconds W longitude to,
4. 30 degrees 07 minutes 49.356 seconds N latitude
89 degrees 26 minutes 40.4 seconds W longitude

Eastern boundary line:

5. 30 degrees 07 minutes 49.356 seconds N latitude
89 degrees 26 minutes 40.4 seconds W longitude following shoreline to,
6. 30 degrees 08 minutes 36.000 seconds N latitude
89 degrees 26 minutes 28.000 seconds W longitude across to,
7. 30 degrees 10 minutes 38.034 seconds N latitude
89 degrees 24 minutes 55.306 seconds W longitude

Northern boundary line:

8. 30 degrees 10 minutes 38.034 seconds N latitude
89 degrees 24 minutes 55.306 seconds W longitude to,
9. 30 degrees 09 minutes 57.642 seconds N latitude
89 degrees 27 minutes 25.143 seconds W longitude to,
10. 30 degrees 09 minutes 34.635 seconds N latitude
89 degrees 30 minutes 39.753 seconds W longitude and back to,
11. 30 degrees 09 minutes 40.678 seconds N latitude
89 degrees 30 minutes 57.011 seconds W longitude

The special bedding-only season described above shall be opened with the following provisions.

1. All oysters on board a vessel actively harvesting oysters in the public seed grounds described above shall be presumed to have been taken from the public seed grounds described above.

2. No individual who is actively harvesting oysters in the public seed ground described above shall have on board his/her vessel any sacks or containers which may be used to hold oysters for transport to market.

3. No harvester shall sell, or transport with his vessel, oysters intended for market sales on the same day that he/she harvested seed oysters from the public seed grounds described above.

4. Any individual actively harvesting oysters in the public oyster seed grounds described above shall be properly permitted for such transplant by LDH in accordance with the state *Sanitary Code*.

Harvestable quantities of oyster resources exist in these public oyster seed grounds and the opening of the Bonnet Carre' Spillway may place those resources in imminent peril. As significant oyster mortalities may occur due to the anticipated decrease in salinity, allowing limited harvest of the resource is in the best interest of the public.

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

Jack Montoucet
Secretary

1804#008

Rules

RULE

Board of Elementary and Secondary Education

Advisory Councils; Minimum Foundation Program;
Rulemaking (LAC 28:I.503, 1107, and 1303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Part I, BESE/8(g) Operations, Subpart 1, Board of Elementary and Secondary Education: §503, Advisory Councils; §1107, Minimum Foundation Program; and §1303, Rulemaking. As part of regular compliance and management activities, a review of the BESE Code was conducted to identify any needed updates, technical edits, and revisions as a result of changes in practice/procedure, legislation, or other regulations. The revisions clarify that proxies designated by persons serving on an advisory council shall not retain voting privileges and adjust agenda timelines; update the Minimum Foundation Program (MFP) membership definition related to the at-risk student count to ensure alignment with state law; and make technical updates to current policy. This Rule is hereby adopted on the day of promulgation.

Title 28

EDUCATION

Part I. BESE/8(g) Operations

Subpart 1. Board of Elementary and Secondary Education

Chapter 5. Organization

§503. Advisory Councils

A. - F.4. ...

5. Proxy. Any person serving on an advisory council who cannot attend a scheduled meeting may designate a person to attend as that member's proxy if the appointing authority does not object. To receive reimbursement for travel and other expenses, a proxy must be properly designated by the active member and recorded in the minutes as being present. If the proxy is representing an advisory council member who is prohibited by board policy from receiving reimbursement for travel expenses, the proxy is likewise prohibited from receiving reimbursement.

F.6. - G.2. ...

3. Agendas of council meetings shall be distributed to council members by the board staff at least 7 days in advance of a meeting, calendar permitting. All council meetings shall be conducted in accordance with the Louisiana open meetings law (R.S. 42:11). In the event that no items have been referred by the board to an advisory council for consideration, there are no items pending on an advisory council agenda, and the LDE has no items to bring forward to the advisory council at least 10 days prior to a scheduled meeting, the meeting shall be cancelled and the members shall be notified of the cancellation.

4. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(A)(15), R.S. 17:24.4, and R.S. 17:11.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:416 (March 2008), amended LR 35:1874 (September 2009), LR 36:2851 (December 2010), LR 37:2140 (July 2011), LR 38:772 (March 2012), LR 38:3152 (December 2012), LR 39:3263 (December 2013), LR 42:563 (April 2016), LR 44:744 (April 2018).

Chapter 11. Finance and Property

§1107. Minimum Foundation Program

A. - A.1.b. ...

2. Local Responsibility

a. It shall be the responsibility of city, parish, or other local school systems; recovery school district schools; and LSU and Southern Lab schools to submit to the LDE in a timely manner all necessary and required information for the computation of an individual allocation from the minimum foundation formula. This information shall be submitted to the LDE in the form required by the LDE. It shall also be the responsibility of all city, parish, or other local school systems; recovery school district schools; and LSU and Southern Lab schools to follow all circulars issued by the LDE providing instructions for the preparation of the required data and other instructions regarding the computation of an allotment from the formula.

B. - C. ...

1. Definition. For state reporting for public education for the purpose of establishing the base student count for state funding, city, parish, or other local school systems; approved charter schools; recovery school district schools; LSU and Southern Lab schools; Office of Juvenile Justice schools; New Orleans Center for Creative Arts (NOCCA); and Louisiana School for Math, Science, and the Arts (LSMSA) shall adhere to the following:

a. - b.x. ...

D. MFP—Add-on Students/Units

1. Required Data. For purposes of establishing the data sets used in determining the add-on students/units, the following will be adhered to.

a. Low income and English language learner student count, also referred to as economically disadvantaged, shall be determined by the number of students with the following characteristics:

i. is eligible for Louisiana's food assistance program for low-income families;

ii. is eligible for Louisiana's disaster food assistance program;

iii. is eligible for Louisiana's program for assistance to needy families with children to assist parents in becoming self-sufficient;

iv. is eligible for Louisiana's healthcare program for families and individuals with limited financial resources;

v. is eligible for reduced price meals based on the latest available data;

vi. is an English language learner;

vii. is identified as homeless or migrant pursuant to the McKinney-Vento Homeless Children and Youth Assistance Act and the Migrant Education Program within the Elementary and Secondary Education Act;

viii. is incarcerated with the Office of Juvenile Justice or in an adult facility;

ix. has been placed into custody of the state.

b. Career and technical education unit count shall be determined by the number of secondary career and technical education courses per student as reported by the school districts through the Louisiana education accountability data system (LEADS) for the prior year.

c. Special education—other exceptionalities student count shall be determined by the number of special education students identified as having “other exceptionalities” in the special education reporting (SER) database as of the student count date(s) including:

i. infants and toddlers ages 0-2, who have a current individual family service plan (IFSP) and are currently receiving services; and

ii. both public and nonpublic special education students ages 3-21 identified as having a disability, as defined by R.S. 17:1943, who have a current individual education plan (IEP) and are currently receiving services from any local public school system or school. (Students serviced by SSD #1 and certain correctional facilities are excluded.)

d. Special education—gifted and talented student count shall be determined by the number of special education students in the SER database as of the student count date(s), which includes both public and nonpublic special education students ages 3-21, identified as gifted and talented, as defined by R.S. 17:1943, who have a current IEP and are currently receiving services from any local public school system or school.

e. Economy of scale student count shall be determined by the number of students in the base student membership count as defined in LAC 28:I.1107.C.1.

AUTHORITY NOTE: Promulgated in accordance with Art. VIII §13 and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:425 (March 2008), amended LR 37:1142 (April 2011), LR 37:3219 (November 2011), LR 38:1404 (June, 2012), LR 38:3155 (December 2012), LR 39:3266 (December 2013), LR 44:744 (April 2018).

Chapter 13. Regulatory Documents

§1303. Rulemaking

A. - C.1. ...

2. Following approval of a proposed Rule to be advertised as a Notice of Intent:

a. the appropriate LDE/BESE staff is requested to submit proposed policy language, a Family Impact Statement, a Poverty Impact Statement, a Small Business Analysis, a Provider Impact Statement, a Public Comments paragraph, a Fiscal and Economic Impact Statement (FEIS), and comparison language (if applicable) to the board recorder for processing;

b. ...

c. after the FEIS is approved by the LFO, the board recorder prepares the Notice of Intent in compliance with statutory specifications and submits it to the *Louisiana Register* for publication. A report regarding the Rule is also submitted to the appropriate legislative committees;

2.d. - 3....

D. Due to the board meeting schedule, the FEIS approval process, and the *Louisiana Register* deadlines, the entire process takes a minimum of five months to complete.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:426 (March 2008), amended LR 37:3220 (November 2011), LR 38:3156 (December 2012), LR 39:3267 (December 2013), LR 44:745 (April 2018).

Shan N. Davis
Executive Director

1804#030

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel (LAC 28:CXXXI.305 and 311)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §305, Professional Level Certificates; and §311, World Language Certificate (WLC) PK-12. The revisions allow the LDE to accept evaluations of foreign credentials from any agency that follows the evaluation standards promulgated by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). This Rule is hereby adopted on the day of promulgation.

Title 28

EDUCATION

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

Chapter 3. Teaching Authorizations and Certifications

Subchapter A. Standard Teaching Authorizations

§305. Professional Level Certificates

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

(b). credentials may be submitted to a credentialing agency that follows the standards of the American Association of Collegiate Registrars and Admissions Officers (AACRAO) for evaluation. The original course-by-course evaluation must be submitted directly from the agency on “safe script” paper and must include a statement verifying the comparability of the baccalaureate degree in the field of education.

A.1.d. - E.4. ...

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 32:1797 (October 2006), amended LR 33:433 (March 2007), LR 34:233 (February 2008), LR 34:1611 (August 2008), LR 35:222 (February 2009), LR 37:558 (February 2011), LR 38:1951 (August 2012), LR 40:279 (February 2014), LR 41:2128 (October 2015), LR 43:1304 (July 2017), LR 44:745 (April 2018).

§311. World Language Certificate (WLC) PK-12

A. - B. ...

C. Eligibility guidelines:

1. a bachelor's degree in education or equivalent preparation in education from a foreign country. The status of this degree will be determined by the LDE. If LDE staff

cannot make a degree equivalent determination, the candidate's credentials must be evaluated by a credentialing agency that follows the standards of the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The original course-by-course evaluation for certification must come directly from the evaluating agency on "safe script" paper and must include a course-by-course evaluation;

C.2. - E. ...

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 32:1800 (October 2006), amended LR 33:1618 (August 2007), LR 34:233 (February 2008), LR 35:642 (April 2009), LR 36:486 (March 2010), LR 38:1952 (August 2012), LR 40:280 (February 2014), LR 43:1307 (July 2017), LR 44:745 (April 2018).

Shan N. Davis
Executive Director

1804#032

RULE

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

2017 Incorporation by Reference—Air Quality
(LAC 33:III.505, 507, 2160, 3003,
5116, 5122, 5311, and 5901)(AQ370ft)

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.505, 507, 2160, 3003, 5116, 5122, 5311, and 5901 (Log #AQ370ft).

This Rule is identical to federal regulations found in July 1, 2017, 40 CFR part 51, appendix M; July 1, 2017, 40 CFR part 60; July 1, 2017, 40 CFR part 61; July 1, 2017, 40 CFR part 63; July 1, 2017, 40 CFR part 68; July 1, 2017, 40 CFR part 70.6 and July 1, 2017, 40 CFR part 96, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or P.O. Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule is promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule incorporates by reference (IBR) into the *Louisiana Administrative Code* (LAC), Title 33, Part III, Air, the following federal regulations included in the July 1, 2017 edition of the *Code of Federal Regulations* (CFR): 40 CFR parts 51, appendix M, 60, 61, 63, 68, 70.6(a) and 96. Any exception to the IBR is explicitly listed in the Rule.

The Rule updates the references to July 1, 2017, for standard of performance for new stationary sources, 40 CFR part 60. It also updates the references to July 1, 2017, for the national emission standards for hazardous air pollutants (NESHAP) and for NESHAP for source categories, 40 CFR part 61 and 63.

In order for Louisiana to maintain equivalency with federal regulations, certain regulations in the most current *Code of Federal Regulations*, July 1, 2017, must be adopted into the *Louisiana Administrative Code* (LAC). This rulemaking is also necessary to maintain delegation authority granted to Louisiana by the Environmental Protection Agency. The basis and rationale for this Rule are to mirror the federal regulations as they apply to Louisiana's affected sources. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule is hereby adopted on the day of promulgation.

Title 33 ENVIRONMENTAL QUALITY Part III. Air

Chapter 5. Permit Procedures

§505. Acid Rain Program Permitting Requirements

A. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR part 72, July 1, 2017, are hereby incorporated by reference.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 21:678 (July 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2446 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2429, 2436 (October 2005), LR 32:1598 (September 2006), LR 33:2083 (October 2007) amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:746 (April 2018).

§507. Part 70 Operating Permits Program

A. - B.1. ...

2. No part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2017. Upon issuance of the permit, the part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006), LR 33:1619 (August 2007), LR 33:2083 (October 2007), LR 33:2630 (December 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), LR 37:2990 (October 2011), LR 38:1229 (May 2012), amended by the Office of the Secretary, Legal Division, LR 39:1276 (May 2013), LR 40:1334 (July 2014), LR 41:1274 (July 2015), LR 42:1085 (July 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:746 (April 2018).

Chapter 21. Control of Emission of Organic Compounds

Subchapter N. Method 43—Capture Efficiency Test Procedures

Editor's Note: This Subchapter was moved and renumbered from Chapter 61 (December 1996).

§2160. Procedures

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR 51, appendix M, July 1, 2017, are hereby incorporated by reference.

B. - C.2.b.iv. ...

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 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:809 (May 2006), LR 33:1620 (August 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), LR 37:2990 (October 2011), LR 38:1230 (May 2012), amended by the Office of the Secretary, Legal Division, LR 39:1277 (May 2013), LR 40:1334 (July 2014), LR 41:1274 (July 2015), LR 42:1085 (July 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:747 (April 2018).

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60

A. Except for 40 CFR 60, subpart AAA, and as modified in this Section, standards of performance for new stationary sources, published in the *Code of Federal Regulations* at 40 CFR 60, July 1, 2017, are hereby incorporated by reference as they apply to the state of Louisiana.

B. - C. ...

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 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006), LR 33:1620 (August 2007), LR 33:2092 (October 2007), LR 33:2626 (December 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2273 (October 2010), LR 37:2990 (October 2011), LR 38:1230 (May 2012), amended by the Office of the Secretary, Legal Division, LR 38:2754 (November 2012), LR 39:1039 (April 2013), LR 39:1277 (May 2013), LR 40:1335 (July 2014), LR 40:2540 (December 2014), LR 41:1274 (July 2015), LR 42:1086 (July 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:747 (April 2018).

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, national emission standards for hazardous air pollutants, published in the *Code of Federal Regulations* at 40 CFR 61, July 1, 2017, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

* * *

B. - C. ...

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 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1797 (October 1999), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:699 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 32:809 (May 2006), LR 33:1620 (August 2007), LR 33:2094 (October 2007), LR 34:1391 (July 2008), LR 35:1108 (June 2009), LR 36:2273 (October 2010), LR 37:2990 (October 2011), LR 38:1230 (May 2012), amended by the Office of the Secretary, Legal Division, LR 39:1277 (May 2013), LR 40:1335 (July 2014), LR 41:1274 (July 2015), LR 42:1086 (July 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:747 (April 2018).

Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

A. Except as modified in this Section and specified below, national emission standards for hazardous air pollutants for source categories, published in the *Code of Federal Regulations* at 40 CFR 63, July 1, 2017, are hereby incorporated by reference as they apply to major sources in the state of Louisiana.

B. - C.3. ...

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 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:2095 (October 2007), LR 33:2627 (December 2007), LR 34:1392 (July 2008), LR 35:1108 (June 2009), LR 36:2273 (October 2010), LR 37:2991 (October 2011), LR 38:1231 (May 2012), amended by the Office of the Secretary, Legal Division, LR 39:1278 (May 2013), LR 40:1335 (July 2014), LR 41:1275 (July 2015), LR 42:1086 (July 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:748 (April 2018).

Chapter 53. Area Sources of Toxic Air Pollutants

Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

A. Except as modified in this Section and specified below, national emission standards for hazardous air pollutants for source categories, published in the *Code of Federal Regulations* at 40 CFR 63, July 1, 2017, are hereby incorporated by reference as they apply to area sources in the state of Louisiana.

B. - C. ...

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 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569

(July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:810 (May 2006), LR 33:1620 (August 2007), LR 33:2096 (October 2007), LR 34:1392 (July 2008), LR 35:1108 (June 2009), LR 36:2274 (October 2010), LR 37:2991 (October 2011), LR 38:1231 (May 2012), amended by the Office of the Secretary, Legal Division, LR 38:2756 (November 2012), LR 39:1278 (May 2013), LR 40:1336 (July 2014), LR 41:1275 (July 2015), LR 42:1086 (July 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:748 (April 2018).

Chapter 59. Chemical Accident Prevention and Minimization of Consequences

Subchapter A. General Provisions

§5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR 68, July 1, 2017.

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:810 (May 2006), LR 33:1621 (August 2007), LR 34:1392 (July 2008), LR 35:1109 (June 2009), LR 36:2274 (October 2010), LR 37:2991 (October 2011), LR 38:1231 (May 2012), amended by the Office of the Secretary, Legal Division, LR 39:1278 (May 2013), LR 40:1336 (July 2014), LR 41:1275 (July 2015), LR 42:1086 (July 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:748 (April 2018).

Herman Robinson
General Counsel

1804#043

RULE

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

Major Sources (LAC 33:III.502)(AQ376ft)

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.502.A (Log #AQ376ft).

This Rule is identical to federal regulations found in 40 CFR 70.2, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or P.O. Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule is

promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule revises the definition of “major source” in LAC 33:III.502.A to parallel the federal definition of the term at 40 CFR 70.2.

A “major source” is a stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties, that are under common control of the same person (or persons under common control), and that meet certain additional criteria, such as having the potential to emit air pollutants at or above prescribed thresholds. On June 3, 2016, the U.S. Environmental Protection Agency (EPA) promulgated a Rule entitled “Source Determination for Certain Emission Units in the Oil and Natural Gas Sector” (81 FR 35622). This Rule amended the definition of “major source” in 40 CFR 70.2 to stipulate the circumstances under which EPA would consider two or more nominally separate onshore crude oil and natural gas production operations to be “adjacent.”

Although adoption of the amended definition is not mandatory, LDEQ published a Potpourri notice (1607Pot2) in the July 20, 2016 *Louisiana Register* explaining that the department will “now interpret the term adjacent consistent with the definitions of major source under 40 CFR 70.2 and building, structure, facility, or installation under 40 CFR 51.165(a)(1)(ii) and 40 CFR 51.166(b)(6) in order to be consistent with federal regulations.” The basis and rationale for this Rule are to revise the definition of “major source” in LAC 33:III.502.A to parallel the federal definition of the term at 40 CFR 70.2. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule is hereby adopted on the day of promulgation.

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

Chapter 5. Permit Procedures

§502. Definitions

A. Except where specifically provided in another Section herein, the following definitions apply to terms used in this Chapter. Except as provided in this Chapter, terms used in this Chapter retain the definition provided them in LAC 33:III.111 or the Louisiana air quality regulations. Wherever provisions related to the Acid Rain Program are concerned, the definitions provided in 40 CFR part 72 shall apply.

* * *

Major Source—for the purposes of determining the applicability of 40 CFR part 70 or of LAC 33:III.507, any stationary source or any group of stationary sources that are located on one or more contiguous or adjacent properties, that are under common control of the same person (or persons under common control) that belong to a single major industrial grouping, and that are described in Subparagraph a, b, or c of this definition. For the purposes of defining *major source*, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the

same two-digit code), as described in the *Standard Industrial Classification (SIC) Manual*, 1987. For onshore activities belonging to SIC major group 13: oil and gas extraction, pollutant emitting activities shall be considered adjacent if they are located on the same surface site as defined in 40 CFR 63.761, or if they are located on surface sites that are located within 0.25 miles of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices.

a. - c. ...

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 36:2553 (November 2010), LR 37:1148 (April 2011), LR 37:1391 (May 2011), amended by the Office of the Secretary, Legal Division, LR 41:2608 (December 2015), LR 42:564 (April 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:749 (April 2018).

Herman Robinson
General Counsel

1804#044

RULE

**Office of the Governor
Division of Administration
Office of State Procurement**

Procurement (LAC 34:V.Chapters 1-33)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of the Governor, Division of Administration, Office of State Procurement, has amended Chapters 1, 3, 5, 9, 11, 13, 15, 17, 18, 19, 20-23, 25, 27, 31 and 33, Procurement, of LAC 34:V. The rules were revised to further align with Act 864 of the 2014 Regular Legislative Session, effective January 1, 2015. The restructuring of the laws governing procurement and the consolidation of the Office of Contractual Review and the Office of State Purchasing into the Office of State Procurement and the subsequent restructuring of both offices’ LAC rules in December 2014, highlighted some redundancies were eliminated by merging into one section of the LAC. These changes also correct administrative errors, correct authority references to the Office of State Procurement, as applicable, provide additional information to clarify regulations as appropriate, amend requirements to allow for electronic transmission and/or signatures allowed by law, and enhance efficiencies and maximize the use of the e-procurement system used for purchasing and contracting transactions. This Rule is hereby adopted on the day of promulgation.

Title 34
GOVERNMENT CONTRACTS, PROCUREMENT
AND PROPERTY CONTROL

Part V. Procurement

Chapter 1. Procurement of Supplies, Services, and Major Repairs

§101. General Purpose and Policies
[Formerly LAC 34:I.301]

A. Definition and Purpose

1. *Specification*—any description of the physical functional, or performance characteristics, or of the nature of a supply, service, or major repair item. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or major repair item for delivery. Unless the context requires otherwise, the terms *specification* and *purchase description* are used interchangeably throughout these regulations.

2. ...

3. All definitions, whether listed here or elsewhere within Part V of these regulations, or as listed in R.S. 39:1556, shall apply.

a. *Invitation for Bids*—all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in R.S. 39:1594. Unless the context requires otherwise, invitation for bids (IFBs) and invitation to bid (ITB) are used interchangeably herein.

b. *Proposer*—a firm, venture or individual who responds to the competitive sealed proposal.

B. - C. ...

D. Escalation and De-Escalation Clauses. Solicitation specifications may contemplate a fixed escalation or de-escalation in accordance with a recognized escalation index.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

§105. Authority to Prepare Specifications
[Formerly LAC 34:I.305]

A. - B. ...

C. Authority to Contract for Preparation of Specifications

1. A contract to prepare specifications for state use in procurement of supplies, services, or major repairs may be entered into when a written determination is made by the chief procurement officer, or the head of a purchasing agency authorized to prepare such specifications, that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the state.

2. Whenever specifications are prepared by other than state personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of the Louisiana procurement code and of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1347 (July 2014),

LR 40:2547 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

§109. Definitions and Use
[Formerly LAC 34:I.309]

A. Proprietary Specifications

1. *Proprietary Specification*—a specification that cites brand name, model number, and some other designation as permitted by R.S. 39:1655, that identifies a specific product to be offered exclusive of others.

2. Use

a. Since use of a proprietary specification is restrictive, it may be used only when the chief procurement officer or his designee, or a governmental body delegated authority under R.S. 39:1566, makes a written determination that only the identified brand name item or items will satisfy the state's needs.

b. Some examples of circumstances which could necessitate proprietary procurement(s) are:

A.2.b.i. - B.2.d. ...

e. Repealed.

3. Competition

a. Specifications shall seek to designate as many different brands as are practicable as "or equal" references and shall state that substantially equivalent products to those designated will be considered for award.

b. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

c. Unless the chief procurement officer or the head of a purchasing or using agency authorized to finally approve specifications determines that the essential characteristics of the brand name included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

C. Qualified Products List

1. *Qualified Products List*—a specification developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable as eligible to be offered on the next solicitation; on approved brands list.

2. - 4.b. ...

D. Common or General Use Item

1. Definition. *Specification for a Common or General Use Item*—a specification which has been developed and approved for repeated use in procurement in accordance with the provisions of R.S. 39:1651.

2.-3.a.iii. ...

b. In the event a using agency requests the preparations of a specification for a common or general use item, the chief procurement officer, his designee, or a governmental body delegated authority under R.S. 39:1566, shall prepare such a specification if such officer determines the conditions in Clauses 3.a.i-iii of this Paragraph have been met.

c. Comments on the Draft. The chief procurement officer, his designee, or the head of a purchasing or using

agency preparing a specification for a common or general use item, shall provide an opportunity to appropriate parties to comment on the draft specification including, as reasonable, a number of manufacturers and suppliers as such officer deems appropriate.

d. Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the chief procurement officer, or his designee, or a governmental body delegated authority under R.S. 39:1566.

e. - f. ...

E. Use of Functional or Performance Descriptions. State agencies should emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the state to the extent practicable.

1. *Functional or Performance Specifications*—terms used interchangeably to designate an approach to specifications that is less interested in dimensions and materials and configurations and more interested in what a product does. These specifications describe the characteristics and capabilities that are pertinent to the intended use of the article and, at a minimum, would include an explanation of the results required, testing methods, and characteristics that the goods or service must perform.

2. *Design Specifications*—a term that customarily employs dimensional and other physical requirements of the item being purchased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1347 (July 2014), LR 40:2548 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

§111. Major Repairs and Labor and Material Service Projects

A. *Major repairs* is as defined in R.S. 39:1556(32).

1. Major repairs may include, but are not limited to the following:

- a. repair or replacement projects, such as painting, flooring installation, etc.;
- b. roof repairs which do not require specialty contractors or designers, or architects or engineers;
- c. repair or replacement of minor building components, such as fixtures.

B. *Services* is as defined in R.S. 39:1556(51). For purposes of this Part, “services” and “labor and material services” shall be used interchangeably.

1. Services do not include those items listed in R.S. 39:1556(51)(b); but, does include, though not limited to, the following:

- a. maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment;
- b. routine recurring maintenance of immovable property;
- c. housekeeping services;
- d. operation of government-owned equipment, immovable property, and systems;

e. information technology services.

2. When in doubt about what may be identified as a major repair or services, the final determination will be made by the chief procurement officer or his designee in collaboration with the Office of Facility Planning and Control, where applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:751 (April 2018).

Chapter 3. Competitive Sealed Bidding **§301. Content of the Invitation To Bid (ITB)** **[Formerly LAC 34:I.501]**

A. Invitation to Bid

1. Purchases where the estimated cost is over \$25,000 shall provide adequate public notice in accordance with R.S. 39:1594. Determination of “adequate public notice” shall take into consideration the nature and complexity of the solicitation. All advertisements, written invitations to bid, or other forms of solicitations allowed by law posted through a secure centralized electronic interactive environment pursuant to the Louisiana Uniform Electronic Transaction Act (R.S. 9:2601-2621) and applicable rules and regulations (i.e. LAC 4:XV.701 et seq.) shall contain general descriptions of the classes of commodities on which bids are solicited and shall state:

a. - c. ...

2. The invitation to bid shall be on the state’s standard forms containing all pertinent information and shall be full and complete including specifications, quantities, units, packaging and number of containers to the case.

B. Content. The invitation to bid shall include the following:

1. - 2. ...

C. Incorporation by Reference. The invitation to bid may incorporate documents by reference provided that the invitation to bid specifies where such documents can be obtained.

D. Special Conditions. If any special conditions are to apply to a particular contract, they shall be included in the invitation to bid.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1349 (July 2014), LR 40:2549 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:751 (April 2018).

§303. Bidding Time **[Formerly LAC 34:I.503]**

A. Bidding time is the period of time between the date of distribution of the invitation to bid and the date set for opening of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. For bids over \$25,000, a minimum of 10 days shall be provided unless the chief procurement officer or his designee deems that a shorter time is necessary for a particular procurement. However, in no case shall the bidding time be less than 10 days, except as provided in R.S. 39:1598 and Chapter 11 of these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1349 (July 2014), amended LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:751 (April 2018).

§305. Addenda Modifying Invitation To Bid
[Formerly LAC 34:I.505]

A. Addenda modifying invitation to bid shall not be issued within a period of 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays and any other legal holidays. If the necessity arises to issue an addendum modifying an invitation to bid within the 72 hours excluding Saturdays, Sundays and any other legal holiday(s), prior to the advertised time for the opening of bids, then the opening of bids shall be extended a minimum of 7 calendar days, without the requirement of re-advertising. Addenda shall be sent to all prospective bidders known to have received an invitation to bid

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1349 (July 2014), LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§307. Bidder Submissions
[Formerly LAC 34:I.507]

A. Bid Forms. All written bids, unless otherwise provided for, must be submitted on, and in accordance with forms provided, properly signed, including electronic signature, when applicable, and in the manner specified including receipt by mail, direct delivery, or through any secure electronic interactive environment permitted pursuant to the Louisiana Uniform Electronic Transaction Act and applicable rules and regulations. Bids submitted in the following manner will not be accepted:

1. bid submittal contains no signature indicating an intent to be bound as noted in LAC 34.V. 321.B.2;

2. ...

3. bids not received as specified in the invitation to bid, prior to bid opening time.

B. Bid Samples and Descriptive Literature

1. - 3. ...

4. The invitation to bid shall state whether bid samples or descriptive literature are required and state the deadline for submittal. Unsolicited bid samples may not be returned.

5. ...

C. Conditional Bids. Conditional bids are subject to rejection in whole or in part. A conditional bid may be accepted if the condition is not a substantial deviation from the invitation to bid.

D. - E. ...

F. Net Prices. Bid prices, unless otherwise specified, must be net including any and all transportation and handling charges prepaid by contractor to destination.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§309. Bidder Lists
[Formerly LAC 34:I.509]

A. ...

B. Where feasible, use should be made of the Office of State Procurement's computerized vendor list. It shall be the responsibility of the bidder to confirm that his company is in the appropriate bid category.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§311. Pre-Bid Conferences
[Formerly LAC 34:I.511]

A. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation to bid and shall be advertised and/or electronically posted if over \$25,000 and attendance is mandatory. The conference should be held long enough after the invitation to bid has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the invitation to bid unless a change is made by written addenda as provided in §305.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§315. Pre-Opening Modification or Withdrawal of Bids
[Formerly LAC 34:I.515]

A. Procedure. Bids may be modified or withdrawn in accordance with R.S. 39:1594(G). Method for submittal of bids, modifications, or withdrawals may be by written, telegraphic, fax notice, direct delivery or electronic transmission through a secure centralized interactive environment and received at the address designated in the invitation to bid prior to the time set for bid opening. Receipt shall be as recorded by date stamp or, received electronically in accordance with R.S. 9:2615(B) or applicable regulations, at the purchasing agency. Acceptable method of delivery of modification or withdrawal shall be as stated within the invitation to bid.

B. Withdrawal of Bids. A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of opening. If a bidder withdraws a bid, all bid documents shall remain the property of the state.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§317. Late Bids

[Formerly LAC 34:I.517]

A. Formal bids and addenda thereto, received at the designated place in the invitation to bid after time specified for bid opening will not be considered, whether delayed in the mail, in transmission or for any cause whatsoever. If receipt of a bid is delayed by actions of the Office of State Procurement or the using agency handling the solicitation, and this delay prejudices a vendor, then the Office of State Procurement or using agency shall cancel the solicitation and re-bid. In no case will late bids be accepted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

§319. Receipt, Opening and Recording of Bids

[Formerly LAC 34:I.519]

A. Receipt. Upon receipt, all bids and modifications will be time-stamped, if received other than electronically, but not opened. All bids received shall be secured until bid opening time.

1. Electronically received bids receipt time shall be determined in accordance with R.S. 9:2615(B).

B. Opening and Recording

1. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the invitation to bid. The names of the bidders and the bid price shall be read aloud or otherwise made available and shall be recorded.

2. ...

C. Postponed Openings Exceptions. In the event that bids are scheduled to be opened on a day that is a federal holiday, or if the governor by proclamation creates an unscheduled holiday, or for any cause that exists that creates a nonworking day, bids scheduled to be opened on that day shall be opened on the next working day at the same address and time specified in the invitation to bid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1992), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December

2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

§321. Mistakes in Bids

[Formerly LAC 34:I.521]

A. Correction or Withdrawal of Bids. Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders, and such actions may be taken only to the extent permitted under these regulations. A request to withdraw a bid after the bid opening must be made in accordance with R.S. 39:1594(G). If it is determined that the error is patently obvious, then the bid may be withdrawn, and if a bid guaranty was required it shall be returned to the bidder.

B. ...

1. return the number of signed bids required by the invitation to bid;

B.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

§323. Bid Guaranty and Bond

[Formerly LAC 34:I.523]

A. Bid Guaranty

1. When specified in the invitation to bid, a bid bond, cashier's check, or certified check, made payable to the Department of the Treasury of the state of Louisiana, for the amount specified, must accompany each bid.

A.2. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2552 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April).

§325. General Guaranty

[Formerly LAC 34:I.525]

A. - A.3. ...

4. Pay for all necessary permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made or the contract to be performed, and of the state of Louisiana including, when applicable, registration with the Secretary of State office.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1352 (July 2014), LR 40:2552 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

§327. Bid Evaluation and Award
[Formerly LAC 34:I.527]

A. General. The contract is to be awarded “to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid.” See R.S. 39:1594(H) (competitive sealed bidding, award) of the Louisiana procurement code. The invitation to bid shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the invitation to bid.

B. Responsiveness and Responsibility

Responsive Bidder—a person who has submitted a bid under R.S. 39:1594 which conforms in all substantive respects to the invitation to bid including the specifications set forth in the invitation.

Responsible Bidder or Proposer—a person who has the capability in all respects to perform the contract requirements and the integrity and reliability which will assure good faith performance

a. The Office of State Procurement, or using agency, whichever is applicable, may request suitable evidence that a vendor is a responsible bidder or proposer.

C. Product Acceptability

1. The invitation to bid shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

a. - c. ...

2. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the invitation to bid. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

D. Determination of Lowest Bidder

1. Following determination of product acceptability as set forth in Subsection C of this Section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the invitation to bid. Only objectively measurable criteria which are set forth in the invitation to bid shall be applied in determining the lowest bidder. Examples of such criteria include but are not limited to transportation cost, and ownership or life-cycle cost formula. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall:

a. - b. ...

E. Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that required by the invitation to bid unless the bid is also the lowest bid as determined under Subsection D of this Section. Further, this Section does not permit negotiation with any bidder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1352 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of

Administration, Office of State Procurement, LR 44:754 (April 2018).

§329. Tie Bids

[Formerly LAC 34:I.529]

A. Definition

Tie Bids—low responsive bids from responsible bidders that are identical in price and which meet all requirements and criteria set forth in the invitation to bid.

B. Resident Business Preference

1. ...

2. *Resident Business*—one authorized to do and doing business under the laws of this state, which either:

a. maintains its principal place of business in the state; or

B.2.b. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

§331. Awarding of Bids

[Formerly LAC 34:I.531]

A. ...

B. Information on Bid Results. Information pertaining to results of bids may be secured by visiting the agency, except weekends and holidays, during normal working hours, or by complying with §335.

C. - C.2. ...

D. Increase or Decrease in Quantities. Unless otherwise specified in the invitation to bid, the state reserves the right to increase or decrease the quantities of any item or items shown in the bid by 10 percent.

E. - F.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

§337. Assignments

[Formerly LAC 34:I.537]

A. No contract or purchase order or proceeds thereof may be assigned, sublet or transferred without prior written approval of the commissioner. This does not include agencies exempt in R.S. 39:1572.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014), LR 40:2554 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

§339. Deliveries

[Formerly LAC 34:I.539]

A. - D. ...

E. Contracts—Reduction in Prices. All state agencies will receive the benefit of any reduction in price on any unshipped portion of any commodity contract. In the event the contractor reduces his price to any one state agency or political subdivision of the state, or makes a general reduction in price, all state agencies being supplied under these contracts are automatically entitled to the lower price; and the contractor shall rebate to all state agencies in a proportional amount. Also, in the event the total purchases of all state agencies of any items covered by the contract entitle the state to a greater quantity discount, the state shall receive the quantity discount appropriated to the total amount of actual purchases made by all state agencies. All price reductions made by any supplier under these contracts, designed for the benefit of any state agency, shall be made directly to the Office of State Procurement, Division of Administration. Also, the state agencies shall report any offer of a reduction in contract price to the Office of State Procurement, and the right is reserved to accept or reject such offers; but the best interest of the state as a whole will always be considered.

F. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1354 (July 2014), LR 40:2554 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

Chapter 5. Reverse Auctions

§503. Application

[Formerly LAC 34:I.603]

A. Notwithstanding the provisions of subpart A of R.S. 39:1600, with the approval of the state chief procurement officer that the best interests of the state would be served, a reverse auction may be utilized for the acquisition of materials, supplies, services of any type, products, or equipment of any monetary amount, including small purchases.

B. Prior to the use of any reverse auction, the state chief procurement may require in the solicitation language that:

1. vendors shall register before the opening date and time, and as part of the registration, require that the vendors agree to any terms and conditions and other requirements of the solicitation;

2. vendors shall be prequalified prior to placing bids and allow only bidders who are prequalified to submit bids;

3. the solicitation shall designate an opening date and time and the closing date and time. The closing date and time may be fixed or remain open depending on the nature of the item being bid;

4. at the opening date and time, the using agency shall begin accepting online bids and continue accepting bids until the bid is officially closed. Registered bidders shall be allowed to lower the price of their bid below the lowest bid posted on the Internet until the closing date and time;

5. bidders' identities shall not be revealed during the bidding process; only, the successively lower prices, ranks, scores, and related bid details shall be revealed;

6. all bids shall be posted electronically and updated on a real-time basis;

7. the using agency shall retain the right to cancel the solicitation if it determines that it is in the agency's or the state's best interest;

8. the using agency shall retain its existing authority to determine the criteria that shall be used as a basis for making awards.

C. Adequate public notice for the purchase of materials, supplies, services, or equipment using a reverse auction shall be given. The advertisement or notice shall conform to the requirements for public notice of sealed bidding or small purchases as applicable, pursuant respectively to R.S. 39:1594 or 1596, such that the extent, timing, location, form, and duration of public notice activities for the reverse auction process shall be fully consistent with the public notice activities required for a sealed bid or small purchase of equivalent value.

D. The Office of State Procurement shall report annually to the legislature by September 1, on the use of reverse auctions and any savings achieved.

AUTHORITY NOTE: Promulgated in accordance with R.S.39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1406 (June 2012), repromulgated LR 40:1354 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:51 (January 2016), LR 44:755 (April 2018).

§505. Addenda Modifying a Reverse Auction

[Formerly LAC 34:I.605]

A. Addenda will be issued in accordance with §305 of these rules.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1406 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018).

§507. Price Submittals

[Formerly LAC 34:I.607]

A. ...

B. The preference provisions of R.S. 39:1604-1604.7 shall apply to the reverse auction process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018).

§509. Withdrawal of Bids

[Formerly LAC 34:I.609]

A. Withdrawal of bids will be handled in accordance with §321 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:25560 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018).

§517. Security

[Formerly LAC 34:I.617]

A. All reverse auctions shall be conducted in accordance with the electronic security requirements of R.S. 9:2615(B) of the Office of Technology Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:52 (January 2016), LR 44:756 (April 2018).

Chapter 9. Sole Source Procurement

§905. Conditions for Use of Sole Source Procurement

[Formerly LAC 34:I.905]

A. Determination

1. The determination as to whether a procurement of a supply, service, or major repair item or a professional, personal, consulting, or social services contract award shall be made as a sole source shall be made by the state chief procurement officer, a chief procurement officer or either officer's designee upon sufficient factors and cause, and shall be in the best interests of the state. Such determination shall be in writing. Such officer may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be in writing and accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

2. Sole source procurement is permissible only if a requirement is available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or proposer for that item. Examples of circumstances which could necessitate sole source procurement are:

a. - c. ...

d. procurement of public utility and services;

e. registered breeding stock may be purchased on a selective basis without use of a competitive process, after approval as to price and quality of such stock by the commissioner of agriculture and a specialist of Louisiana State University to be designated by the head of the College of Agriculture;

f. other livestock may be purchased on a selective basis without use of a competitive process after approval as to health by the commissioner of agriculture, provided that the cost per head does not exceed \$1,500. Any livestock purchases above this amount must have prior approval of the chief procurement officer.

B. Purchase of Antiques, Used or Demonstrator Equipment

1. Any agency may procure any equipment which is used, rebuilt/remanufactured/refurbished or preowned by an individual or corporation and where the procurement officer has determined that the procurement of said equipment is cost effective to the state.

2. The used equipment shall be purchased by the head of the agency within the price range set by the director of the Office of State Procurement in his statement of written approval for the purchase which must be obtained by the head of the agency prior to the purchase.

3. The head of the agency shall certify in writing to the director of the Office of State Procurement all of the following:

a. - d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982) amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:756 (April 2018).

Chapter 11. Emergency Procurement

§1109. Source Selection Methods

[Formerly LAC 34:I.1109]

A. ...

B. After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an invitation to bid are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1357 (July 2014), LR 44:756 (April 2018).

§1111. Determination and Record of Emergency

Procurement

[Formerly LAC 34:I.1111]

A. Determination. The procurement officer or the head of a purchasing agency shall make a written determination stating the basis for any emergency procurement or award of a professional, personal, consulting or social services contract, and for the selection of a particular contractor. Such determination shall be sent promptly to the state chief procurement officer or chief procurement officer as appropriate for approval or rejection.

B. Record

1. A record of emergency procurement shall be maintained in a form/format determined by the director of the Office of State Procurement that lists, for those entities under its jurisdiction, at a minimum, the following:

1.a. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995), LR

40:1357 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), LR 44:756 (April 2018).

Chapter 13. Cancellation of Solicitations; Rejection of Bids or Proposals

§1309. Rejection of Individual Bids or Proposals [Formerly LAC 34:I.1309]

A. General. This Subsection applies to rejections of individual bids or proposals in whole or in part.

1. *Proposals* (as used in this Section)—competitive solicitations solicited in accordance with R.S. 39:1595 and §2545 of these regulations.

B. Notice in Solicitation. Each solicitation issued by the state shall provide that any bid or proposal may be rejected in whole or in part when in the best interests of the state as provided in these regulations.

C. Reasons for Rejection. As used in this Section, *bid* means any bid or proposal submitted in compliance with competitive sealed bidding requirements and submissions under Chapter 7 (Small Purchases) or competitive sealed proposals governed by R.S. 39:1595. Reasons for rejecting a bid or proposal include but are not limited to:

1. the person that submitted the bid or proposal is nonresponsible as determined under §1511 of these regulations;

2. the bid or proposal is not responsive.; or

3. the supply, service, or major repair items is unacceptable, that is, it fails to meet the specifications or permissible alternates or other acceptability criteria set forth in the invitation to bid or request for proposal. See Chapter 3, §327.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

§1311. Disposition of Bids or Proposals [Formerly LAC 34:I.1311]

A. When bids or proposals are rejected, or a solicitation is canceled after bids/proposals have been opened, the bids/proposals shall be retained in the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

Chapter 15. Responsibility and Prequalification

§1501. Definitions

[Formerly LAC 34:I.1501]

Responsible Bidder or Proposer—a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. See also R.S. 39:1606 of the Louisiana procurement code. For the purpose of these regulations, “capability” as used in this definition means

capability at the time of award of the contract, unless otherwise specified in the invitation to bid.

Solicitation—an invitation to bid, or any other document, such as a request for quotations and requests for proposals issued by the state for the purpose of soliciting offers or proposals to perform a state contract.

Suppliers—as used in R.S. 39:1607 (prequalification of suppliers) of the Louisiana procurement code, means prospective bidders or proposers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), LR 40:1358 (July 2014), repealed by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

§1503. Application

[Formerly LAC 34:I.1503]

A. A determination of responsibility or nonresponsibility shall be governed by this Chapter and applicable sections of the procurement code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

§1505. Standards of Responsibility

[Formerly LAC 34:I.1505]

A. Standards

1. A reasonable inquiry to determine the responsibility of a bidder or proposer may be conducted in accordance with R.S. 39:1606. The following standards, as they relate to the particular procurement under consideration, may be used, but is not limited to the following:

a. has adequate financial resources for performance; or, has the ability to obtain such resources as required during performance;

b. has the necessary experience, organizations, technical qualifications, skills, and facilities, or has the ability to obtain them (including probable subcontractor arrangements);

c. is able to comply with the proposed or required time of delivery or performance schedule;

d. has a satisfactory record of integrity, judgment and performance (contractors who are seriously delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall in the absence of evidence to the contrary or evidence of compelling circumstances, be presumed to be unable to fulfill the requirement);

e. is otherwise qualified and eligible to receive an award under applicable laws and regulations.

2. Before making a determination of responsibility, the Office of State Procurement; or, the head of the using agency, shall have sufficient current information to satisfy himself that the prospective contractor meets the standards in Subsections A and B of this Section. Information from the

following sources may be utilized before making a determination of responsibility:

- a. information from the prospective contractor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;
- b. other existing information within the agency, including financial data, the list of debarred and ineligible bidders and records concerning contractor performance;
- c. publications, including credit ratings and trade and financial journals;
- d. other sources, including banks, other financial companies, and state departments and agencies.

3. When applicable, to the extent that a prospective contractor cannot meet the standard in Paragraph A.2 of this Section except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system or prospective major subcontractors are determined by the Office of State Procurement or the head of the using agency to satisfy that standard.

4. Nothing herein shall prevent the procurement officer from establishing additional responsibility standards, provided that these additional standards are set forth in the solicitation.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1359 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

§1511. Written Determination of Nonresponsibility Required
[Formerly LAC 34:I.1511]

A. If a bidder or proposer who otherwise would have been awarded a contract of \$5,000 or more is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the chief procurement officer, or head of a purchasing agency, as applicable. A copy of the determination shall be sent promptly to the nonresponsible bidder or proposer. The determination shall be made part of the procurement file.

1. Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, consideration of §§1505 and 2536.

B. Any such bidder or proposer who is proposed to be disqualified shall be given a reasonable opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the disqualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1359 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

Chapter 17. Types of Contracts

§1701. Centralization of Contracting Authority
[Formerly LAC 34:I.1701]

A. When a mandatory use statewide competitive contract for supplies or services is established all state governmental bodies, excluding those exempted from the central purchasing agency by R.S. 39:1572(B), shall use such statewide competitive contracts when procuring such supplies or services unless given written exemption by the chief procurement officer. The following exceptions may be considered:

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1359 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

§1709. Use of Brand Name, LaMAS (Louisiana Multiple Award Schedule), and Multi-State Contracts
[Formerly LAC 34:I.1709]

A. - B.3.c. ...

d. A listing of all contracts applicable to this Section will be maintained on the website of the Office of State Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 33:2650 (December 2007), repromulgated LR 40:1360 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

Chapter 18. Progressive and Multiple Awards

§1801. Progressive Award
[Formerly LAC 34:I.1801]

A. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required. A progressive award may be in the state's best interest when awards to more than one bidder or proposer for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014), amended LR 44:758 (April 2018).

§1803. Multiple Award
[Formerly LAC 34:I.1803]

A. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or proposer, and the state is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the state's best interest when award to two or more bidders or proposers for similar products is needed for

adequate delivery, service, or availability, or for product compatibility. 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 bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of using agencies. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014), amended LR 44:758 (April 2018).

Chapter 19. Multi-Year Contracts

§1903. Conditions for Purchasing and Contracting Use of Multi-Year Contracts [Formerly LAC 34:I.1903]

A. The multi-year method of contracting may be used as follows:

1. when purchasing supplies, services or major repairs and contract performance requires alteration in the contractor's facilities or operations involving high start-up costs;

2. when contracts for purchases of supplies, services or major repairs require uninterrupted services where the performance of such services involves high start-up costs, or where a changeover of service contractors involves high phase-in/phase-out costs during a transition period;

3. when establishing contracts for the installment purchase of supplies or equipment, including but not limited to data processing equipment and telecommunications equipment, procured in accordance with R.S. 39:1616;

4. when establishing contracts for professional, personal, consulting, or social services after determination in writing by the commissioner of administration or his designee.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018).

§1905. Multi-Year Contract Procedure [Formerly LAC 34:I.1905]

A. Solicitation. The solicitation shall state:

1. the amount of supplies, services or major repairs required for the proposed contract period;

2. whether a unit price discounted off of established catalog price shall be given for each supply, or service or major repair, and that such unit prices or discount shall be

the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

A.3. - C.2. ...

D. Multi-Year Contract Regulations Inapplicable. Section 1903 (Conditions for Use of Multi-Year Contracts) and §1905 (Multi-Year Contract Procedure) apply only to contracts for supplies or services described in this Section. Additional regulations, applicable to procurement of professional, personal, consulting, social services and energy efficiency contracts are found in Chapter 25 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018).

Chapter 21. Miscellaneous Contract Provisions for Supplies, Services, and Major Repairs

§2101. Contract Provisions

[Formerly LAC 34:I.2101]

A. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. When such a contract is awarded, exercise of the option shall be at the state's discretion only, and shall be at the mutual agreement of the state and the contractor.

B. Contract Clauses. Contracts for supplies, services and major repairs may permit or require the inclusion of clauses providing for equitable adjustments in prices, time for performance, or other contract provisions identified in R.S. 39:1661 in addition to the following, as appropriate:

1. - 1.f. ...

g. maximum compensation to be paid the contractor including due date of the payment(s);

2. - 4. ...

C. Additional Contract Clauses. Contracts may permit or require the inclusion of clauses providing for appropriate remedies and covering the following subjects:

1. liquidated damages as appropriate;

2. specified excuses for delay or nonperformance;

3. termination of the contract for default;

4. ...

5. an annual appropriation dependency clause;

6. audit language;

7. when a contract requires an original signature as provided by R.S. 9:2601-2621 and LAC 4:I.Chapter 7, Implementation of Electronic Signatures in Global and National Commerce Act—P.I., 106-229, is considered an original signature.

D. Additional contract clauses for contracts awarded from a competitive sealed proposal shall contain as a minimum:

1. description of the work to be performed or objectives to be met, when applicable;

2. amount and time of payments to be made;

3. description of reports or other deliverables to be received, when applicable;

4. date of reports or other deliverables to be received, when applicable;
5. responsibility for payment of taxes, when applicable;
6. circumstances under which the contract can be terminated either with or without cause;
7. remedies for default;
8. a statement giving the legislative auditor the authority to audit records of the individual firm;
9. performance measurement;
10. monitoring plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended LR 41:670 (April 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018).

§2103. Exercise of Option

[Formerly LAC 34:I.2103]

A. Before exercising any option for renewal, extension, or purchase, the chief procurement officer shall attempt to ascertain whether a re-solicitation is practical, in terms of current market conditions and trends and cost factors, and would be more advantageous to the state than renewal or extension of the existing contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

§2105. Goods Manufactured or Services Performed by Sheltered Workshops

[Formerly LAC 34:I.2105]

A. R.S. 39:1604.4 provides in part that a preference shall be given by all governmental bodies in purchasing products and services from state supported sheltered workshops for persons with severe disabilities.

B. Purchases of goods manufactured by or services performed by individuals with severe disabilities in state-operated and state-supported sheltered workshops as defined in R.S. 39:1604.4 shall be exempt from competitive sealed bidding in accordance with the provisions of R.S. 39:1594.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

Chapter 22. Inspection of Plant and Supplies; Audit of Records

§2203. Audit of Records

[Formerly LAC 34:I.2203]

A. The state may enter a contractor's or subcontractor's plant or place of business to:

1. audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to R.S. 39:1629 and 1629.1; and

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

Chapter 23. Reporting of Suspected Collusive Bidding or Negotiations

§2301. Anticompetitive Practices

[Formerly LAC 34:I.2301]

A. For the purposes of this Section, an anticompetitive practice is a practice among bidders or proposers which reduces or eliminates competition or restrains trade. An anticompetitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from business actions which have the effect of restraining trade, such as controlling the resale price of products. Indications of suspected anticompetitive practices include identical bids or proposals, rotated low bids or proposals, sharing of the business, "tie-in" sales, resale price maintenance, and group boycotts (see Identical Bidding, §2309).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

§2303. Independent Price Determination

[Formerly LAC 34:I.2303]

A. Every solicitation shall provide that by submitting a bid or proposal, the bidder or proposer certifies that the price submitted was independently arrived at without collusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

§2307. Detection of Anticompetitive Practices

[Formerly LAC 34:I.2307]

A. In order to ascertain whether or not an anticompetitive practice may have occurred or may be occurring, the procurement officer will often find it necessary to study past procurement including, as appropriate, the following:

1. - 2. ...

3. consultation with outside sources of information, such as bidders or proposers who have competed for similar state business in the past but who are no longer competing for such business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

§2309. Identical Bidding

[Formerly LAC 34:I.2309]

A. The term *identical bidding* means the submission by bidders or proposers of the same total price or the same price on a particular line item. The submission of identical bids may not signify the existence of collusion. In some instances, price controls imposed by state or federal governments result in the submission of identical bids. Bids may also be identical as a result of chance. Identical bids for supplies are more likely to occur due to chance if:

1. - 4. ...

B. In seeking to determine whether collusion has taken place, the procurement officer should view the identical bids or proposals against present and past pricing policies of the bidders or proposers, the structure of the industry involved, including comparisons of prices f.o.b. shipping point and f.o.b. destination, and the nature of the supply, service, or major repair involved, such as whether it is a basic chemical or material. Identical bids or proposals may also result from resale price maintenance agreements which are described in §2311.C of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:761 (April 2018).

§2311. Possible Anticompetitive Practices

[Formerly LAC 34:I.2311]

A. ...

B. Rotated Low Bids or Proposals. Rotated low bids or proposals result where all bidders or proposers participating in the collusive scheme submit bids, but by agreement alternate being the lowest bidder or proposers. In order to determine whether rotation may be occurring, the procurement officer must review similar past procurement in which the same bidders or proposers have participated.

C. ...

D. Sharing of the business occurs where potential bidders or proposers allocate business among themselves based on the customers or the territory involved. Thus a procurement officer might discover that a potential bidder or proposer is not participating in a state procurement because a particular state agency, or a particular territory has not been allocated to such bidder or proposer by the producer or manufacturer.

E. "Tie-In" Sales. "Tie-in" sales are those in which a bidder or proposer attempts to sell one supply or service only upon the condition that the procurement officer purchase another particular supply or service.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:761 (April 2018).

Chapter 25. Procurement of Professional, Personal, Consulting, Social Services, and Energy Efficiency Contracts

Subchapter A. General Provisions

§2501. Delegation of Authority

[Formerly LAC 34:V.101]

A. The director of the Office of State Procurement may delegate in writing certain responsibilities set forth herein in accordance with R.S. 39:1566.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:495 (December 1978), amended LR 7:179 (April 1981), LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1067 (November 1985), repromulgated LR 40:2556 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:761 (April 2018).

§2503. Definitions and Classes of Contractual Services

[Formerly LAC 34:V.103]

A. The following services shall be contracted out in accordance with these regulations.

1. *Personal Services*—for contracts with individuals who render work which requires use of creative or artistic skills including but not limited to those individual services identified in R.S. 39:1556(37) and entertainers, expert speakers and other services satisfying the requirements of the definition for personal services as added by regulation.

2. *Professional Service*—for contracts with a total amount of compensation of \$50,000 or more,—the definition of "professional service" shall be limited to lawyers, doctors, dentists, veterinarians, architects, engineers, landscape architects, accountants, claims adjusters, pharmacists, visiting professors, and scientists and any other profession that may be added by regulations adopted by the Office of State Procurement of the Division of Administration.

3. *Consulting Service*—for contracts as defined in R.S. 39:1556(10).

4. *Retroactive Claims Recovery Services*—those consulting services where third party coverage identification and verification represent the primary services, and any operations type activities such as information technology and/or claims submission are merely incidental to the total work tasks to be performed, and where such services will result in revenue enhancement to the state through a contingency fee arrangement. The RFP process for this type of consulting service shall require that at least 50 percent of total weighted criteria for evaluation be allocated to cost.

5. *Social Service*—for contracts as defined in R.S. 39:1556(54).

6.a. - 6.c. ...

7. Interagency contracts between governmental entities as defined in R.S. 39:1556(25) and 1556(30), respectively, for any of the services enumerated in Paragraphs 1, 2, 3, 4, 5 or 6 of this Subsection shall be governed by these regulations, except that contracts between boards of higher education and their respective institutions shall be exempt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1067 (November 1985), LR 13:652 (November 1987), LR 17:264 (March 1991), LR 20:542 (May 1994), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 41:1669 (September 2015), LR 40:2556 (December 2014), amended LR 40:2544 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1669 (September 2015), amended LR 44:761 (April 2018).

§2505. Performance-Based Energy Efficiency

Contracting [Formerly LAC 34:V.105]

A. Preparation of Requests for Proposals

1. Performance contracts shall be considered to be consulting services contracts under the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and shall be awarded in accordance with the provisions of that chapter, the rules and regulations promulgated by the Office of State Procurement pursuant to that chapter and this Section.

2. Prior to its preparation of an RFP, a state agency, as defined in R.S. 39:2 (hereinafter, "user agency") shall perform a needs analysis in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and the rules and regulations promulgated by the Division of Administration, through its Office of State Procurement ("OSP") pursuant to that chapter. Such needs analysis shall be in a form approved by the Commissioner of the Division of Administration or his designated agent and shall include a detailed audit of energy use.

3. ...

4. Upon approval of a user agency's needs analysis pursuant to this Section, such user agency shall prepare an RFP in a form approved by OSP, which form shall require proposers to separately itemize the costs and savings associated with each proposed energy cost savings measure ("ECSM"). In accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and the rules and regulations promulgated by OSP pursuant to that chapter, every RFP shall indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the performance contract, the criteria to be used in evaluating the proposals and the time frames within which the work must be completed. Prior to advertising its RFP, a user agency shall submit it to the Commissioner of Administration or his designated agent and obtain his written consent to the advertisement of the RFP.

5. Upon approval of a user agency's RFP, such user agency shall advertise its RFP in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and the rules and regulations promulgated by OSP pursuant to that chapter.

B. Evaluation of Submitted Proposals

1. A user agency shall review any proposals it timely receives in response to its RFP and shall submit to the Office of Facility Planning and Control ("FPC") the results of its review, along with each proposal that is responsive and responsible and otherwise in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section. A user agency shall not make a final selection from among the proposals it submits to FPC.

2. ...

a. whether proposed ECSMs are in compliance with the provisions of R.S. 39:1622;

2.b. - 3....

4. Prior to the award of any performance contract, the Commissioner of the Division of Administration or his designated agent may retain an independent consultant in accordance with this Section. Such independent third-party consultant shall evaluate all proposals and written evaluations submitted to the Commissioner of the Division of Administration or his designated agent. Such evaluation shall be in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section. After completing its evaluation, an independent consultant shall submit to the Commissioner of the Division of Administration or his designated agent the written results of such evaluation. An independent consultant shall not make a final selection from among the proposals it evaluates.

5. ...

6. After completing his review of the submitted proposals and evaluations prepared by the independent consultant, if any, pursuant to this Section, the Commissioner of the Division of Administration or his designated agent shall provide written notification to a user agency that the Commissioner of the Division of Administration or his designated agent has consented to the award of a performance contract to a specified energy services company ("ESCO") or that he has not consented to the award of a performance contract. Pursuant to the provisions of Title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section, such consent shall be given to the responsible ESCO whose proposal is determined by the Commissioner of the Division of Administration or his designated agent to be the most advantageous to the state of Louisiana, taking into consideration all of the evaluation factors set forth in the RFP, as well as any evaluations or recommendations provided by the user agency, and the independent consultant, if any. In the event that the Commissioner of the Division of Administration or his designated agent determines that consent to the award of a performance contract would not be advantageous to the state of Louisiana, he shall provide the user agency with written reasons for his decision to withhold his consent.

7. ...

C. Negotiation of Performance Contracts

1. A user agency shall negotiate with an approved ESCO a performance contract in a form approved by OSP. The process of such negotiation shall be in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section. The Commissioner of the Division of Administration or his designated agent may require that an independent consultant retained pursuant to this Section participate on behalf of a user agency in the negotiation of a performance contract with an approved ESCO.

1.a. - 3....

4. A user agency shall submit a negotiated performance contract to OSP for its review and approval. A

user agency's submission of a negotiated performance contract shall be in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section.

C.5. - E.4.h. ...

i. In accordance with the provisions of R.S. 39:1622(H), if at any time after the execution of a performance-based energy efficiency contract, a state agency makes a unilateral change or modification to the scope of work under the contract, the annual energy cost savings attributable to the services or equipment shall be adjusted to account for any expended costs and any projected savings that can no longer be measured or verified as a result of the change or modification. However, any adjustment that reduces the annual energy cost savings attributable to the services or equipment by 20 percent or more shall require approval of the Joint Legislative Committee on the Budget prior to the amendment of the contract. This Subsection shall apply to all performance-based energy efficiency contracts in effect on and after January 1, 2010, and all future contracts executed pursuant to this Section.

F. Grandfathered Performance Contracts

1. Notwithstanding any other provision of this Section, where an RFP or a proposed performance contract is exempt from the application of subparagraphs (a) through (d) of R.S. 39:1622(E)3.a.(ii), the selected ESCO shall, at the time a performance contract is executed, submit a certified or cashier's check, payable to the Commissioner of the Division of Administration or his designated agent, in a sum equal to no more than 1 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value and the means of calculating such total value shall be determined by the Commissioner of the Division of Administration or his designated agent and shall be set forth in the performance contract.

2. Where an RFP or a proposed performance contract is exempt from the application of subparagraphs (a) through (d) of R.S. 39:1622(E)3.a.(ii), such RFP or proposed performance contract shall not be subject to the application of Subsection A or B of this Section but shall be subject to the remaining provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office Facility Planning and Control, LR 31:640 (March 2005), amended LR 32:2049 (November 2006), repromulgated LR 40:2558 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:762 (April 2018).

§2506. Contracts Under Agency Delegation of Authority [Formerly LAC 34:V.106]

A. ...

B. The using agency shall submit a report to the Office of State Procurement, as requested. This report shall contain a listing of all delegated contracts to include: the name of contractor, amount of contract, specific nature of services rendered, date of contract, total dollar amount of all delegated contracts entered into by the using agency, and any other information required by Office of State Procurement policy for that requested time period. If no such

contracts have been entered into during this period, a report shall still be submitted notifying the Office of State Procurement.

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:179 (April 1981), amended LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1068 (November 1985), LR 17:265 (March 1991), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2561 (December 2014), amended LR 40:2545 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), repromulgated LR 41:1669 (September 2015), amended LR 44:763 (April 2018).

§2509. Contract Contents

[Formerly LAC 34:V.109]

A. Each contract for professional, personal, consulting and social services shall contain the contract provisions set forth in R.S. 39:1625.

B. Contracts funded fully or in part by federal funds, in addition to meeting all the requirements of these guidelines and R.S. 39:1551-1755 shall meet all applicable federal standards and shall contain all necessary clauses required by federal statutes, rules or regulations. The burden of complying with federal regulations shall rest with the using agency.

C. Travel expenses shall be reimbursed in accordance with Division of Administration Policy and Procedure Memorandum 49 (the state general travel regulations, LAC 4, Part V). Persons performing services under contracts approved by the Office of State Procurement shall be considered to be other persons under LAC 4:V.1503.C.3 (the state general travel regulations).

D.1. - E. ...

F. Include the right to suspend or terminate a contract based on non-appropriated funds; or for cause or to protect the best interest of the state.

G. An electronic signature as provided by LAC 4:I.Chapter 7 is considered an original signature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:496 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2561 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:763 (April 2018).

§2512. Modification of Contract

[Formerly LAC 34:V.112]

A. All amendments to contracts for professional, personal, consulting and social services shall be submitted to the Office of State Procurement and shall become effective only upon approval by the director of the Office of State Procurement. If an amendment extends a contract beyond one year, justification for a multi-year contract must be submitted with said amendment in accordance with Chapter 19 herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987), repromulgated LR 40:2562 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:763 (April 2018).

§2515. Termination of Contract

[Formerly LAC 34:V.115]

A. Whenever a contract is terminated prior to the termination date stated in the contract, the Office of State Procurement shall be notified in writing by the using agency of such prior termination, and the reasons therefor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), repromulgated LR 40:2562 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018).

§2518. Submission of Contracts

[Formerly LAC 34:V.118]

A. At least one copy of said contract and attachments shall be submitted to the Office of State Procurement. The Office of State Procurement shall submit a list of all contracts for \$25,000 or more to the Legislative Fiscal Office. Copies of such contracts shall be forwarded to the Legislative Fiscal Office upon request. The Office of State Procurement will not accept for review and approval any contract that is not accompanied by the necessary attachments and copies as required herein (attachments being submittal letters, R.S. 39:1623 certification, BA-22, etc.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987), repromulgated LR 40:2562 (December 2014), amended LR 41:671 (April 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018).

§2521. Contractual Review Process

[Formerly LAC 34:V.121]

A. Contracts arriving in the Office of State Procurement will be date stamped and logged in. Contracts should be submitted prior to their effective dates and no contract shall be approved which has been submitted 60 days after its effective date unless written justification is provided by the using agency and approval granted by the director of the Office of State Procurement or his designee. All Submittals will be required to have a cover letter attached thereto.

B. If a contract does not appear to be out of the ordinary and appears to have the necessary attachments and inclusions, it will be routed as appropriate to the Division of Administration budget analyst for the submitting agency. A BA-22, or its equivalent, shall be submitted with every

contract or amendment submitted to the Office of State Procurement, which contains any expenditures or reduction in expenditures.

C. Contracts that are incomplete as to form, or missing an attachment, may be returned to the submitting agency.

D. Contracts Returned from Budget

1. Not Recommended for Approval. If a contract is not recommended for approval, the Office of State Procurement shall discuss the reason with the budget analyst. If the problem cannot be resolved, the contract shall be returned to the submitting agency with an explanation.

2. ...

E. Legal and Content Review. There are a number of different types of contracts, and content requirements may vary a little. All contracts shall contain the following:

1. signatures of both the head of the using agency or his designee and the contractor. An electronic signature as provided by LAC 4:I.Chapter 7 shall be considered an original signature;

2. - 3. ...

4. beginning and termination dates for the contract. Normally, such contracts should be for a term no longer than one year, although the Director of State Procurement may approve contracts with terms up to three years. Contracts shall not include a clause permitting automatic renewal or extension of the original beyond a three-year period, unless authorized by the funding statute. Per R.S. 39:1622(C)(1) performance-based energy efficiency contracts shall have a term not to exceed 10 years;

5. ...

6. a statement giving the legislative auditor and/or the Office of the Governor, Division of Administration auditors authority to audit the financial records of the contractor relative to work done under the contract;

7. a clause providing that the contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the submitting agency thereto, provided, however, that claims for money due or to become due to the contractor from the using agency under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to both the using agency and the director of the Office of State Procurement;

8. the Office of State Procurement shall notify the using agency in writing when an assignment of proceeds notice has been received from a contractor;

9. ...

10. advance payments on all contracts except those for professional services are allowable if limited to less than or equal to 20 percent of the contract amount and if necessary to provide for the lowest cost delivery of service, and as provided by R S. 39:1613:

a. all such advances shall be approved by the director of the Office of State Procurement. If federal funds are to be advanced, federal guidelines shall prevail on the conditions and amount of the advance. Specific state statutory authority may override the 20 percent limit for certain contracts;

b. - b.ii. ...

F. Each contract over \$5,000 submitted for approval shall be accompanied by a certification letter as described in R.S. 39:1623, signed by the using agency's representative.

G - G.3. ...

4. If the contractor is a corporation not incorporated under the laws of the state of Louisiana, then the contractor must secure a certificate of authority pursuant to R.S. 12:301-302 from the secretary of the state of Louisiana and verification of such certificate must be made available to the Office of State Procurement.

5. The Office of Information Technology Services shall review and recommend any contract containing elements of telecommunication services before returning it to the Office of State Procurement for completion of the analysis.

H. Consulting Services Contracts for \$50,000 or More. If a contract is for services defined as consulting in R.S. 39:1556(10) and is for an amount equal to or exceeding \$50,000 for a 12-month period, it must have been awarded pursuant to the requirements of R.S. 39:1595(B), unless exempt by §2542 of this Part. Failure to so comply shall result in the using agency having to reconduct the process. A statement in accordance with R.S. 39:1595(B) as to why the award was made must be submitted with the contract.

I. Information technology consulting service contracts for more than \$100,000 shall be procured in accordance with Subchapter C of this Section.

J. Social Services Contracts for \$250,000 or More During a 12-Month Period. If a contract is for services defined as social services in R.S. 39:1556(54) it must have been awarded pursuant to the requirements of R.S. 39:1595(B) unless exempt by R.S. 39:1619. Failure to so comply shall result in the using agency having to reconduct the process. A statement in accordance with R.S. 39:1595(B) as to why the award was made must be submitted with the contract.

K. ...

L. When it has been determined that a contract is complete, the contract shall be returned to the submitting agency with an approval from the Office of State Procurement.

M. A performance evaluation for every personal, professional, consulting or social services contract shall be done by the using agency in accordance with R.S. 39:1569.1. This performance evaluation shall be retained by the using agency for all contracts approved under delegated authority. For all other contracts this performance evaluation shall be submitted to the Office of State Procurement within 120 days after the termination of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39: 1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:182 (April 1981), amended LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1069 (November 1985), LR 13:87 (February 1987), LR 13:653 (November 1987), LR 15:81 (February 1989), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 40:2562 (December 2014), amended LR 40:2545 (December 2014), LR 41:671 (April 2015), repromulgated LR 41:1669 (September 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018).

§2524. Exempt Occupations

[Formerly LAC 34:V.124]

A. The following list of occupations shall be construed as falling within the definition of medical, nursing or allied health fields given in R.S. 39:1626. Personnel employed in these fields would therefore be exempt from the prohibition contained in R.S. 39:1624(A)(4) which disallows personal, professional, consulting or social services contracts between the state of Louisiana and state employees:

I - 30. ...

B. Other specialists as may be included later by the director of the Office of State Procurement by issuance of a policy and procedure memorandum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:593 (November 1982), amended LR 10:457 (June 1984), LR 11:1070 (November 1985), LR 15:82 (February 1989), LR 17:266 (March 1991), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018).

§2527. Delegation of Signature Authority

[Formerly LAC 34:V.127]

A. R.S. 39:1595(A)(10)(b)(i), (ii) and 39:1595.1 requires that the head of the using agency or his designee shall sign all contracts for personal, professional, consulting or social services. All delegations of signature authority by the head of the using agency must be in writing and must be approved by the Office of State Procurement. Normally delegations of signature authority to the level of assistant secretary or equivalent will be approved if circumstances warrant the delegation. Delegations of signature authority to a level below that of assistant secretary may be granted in unusual situations, for example, where the volume of contracts is very heavy.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:593 (November 1982), amended LR 10:457 (June 1984), LR 11:1070 (November 1985), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018).

§2530. Confidentiality of Technical Data or Trade Secrets

[Formerly LAC 34:V.130]

A. The using agency shall be responsible for protecting technical data, financial information, overhead rates, and trade secrets which may come into their possession from individuals and businesses doing business with the state. Any such information received by the Office of State Procurement shall be returned to the using agency upon completion of said review.

B. A bidder or proposer who asserts a trade secret or confidentiality over any information contained in its bid or proposal but fails to provide OSP a redacted copy of its bid or proposal upon request of OSP, shall have the option to either waive its assertion of trade secret or confidentiality or have its bid or proposal rejected, subject to applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:593 (November 1982), LR 10:457 (June 1984), LR 11:1070 (November 1985), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018).

§2533. Multi-Year Contracts

[Formerly LAC 34:V.133]

A. Contracts in excess of one year shall be submitted to the Office of Contractual Review with written reasons why a multi-year contract is needed. Justification of multi-year contracts shall be submitted in accordance with R.S. 39:1615 in compliance with the delegation of authority from the Commissioner of Administration.

B. Any contracts which cross fiscal years should contain a funding-out clause in accordance with R.S. 39:1615.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:593 (November 1982), LR 10:458 (June 1984), LR 11:1070 (November 1985), LR 17:266 (March 1991), repromulgated LR 40:2564 (December 2014), amended LR 44:766 (April 2018).

§2534. Cost Reimbursement Contracts

[Formerly LAC 34:V.134]

A. - A.3.b. ...

c. If a single provider has multiple cost-reimbursement contracts subject to the requirements herein, then the provider may elect to have an audit done using the single audit model. In these instances, a major state contract means any state contract for which expenditures during the year exceed the greater of \$100,000 or 3 percent of such total expenditures.

d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B) and 39:1521.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 15:82 (February 1989), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2565 (December 2014), amended LR 40:2545 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:766 (April 2018).

§2536. Determination of Responsibility

[Formerly LAC 34:V.136]

A. In order to qualify as responsible, a proposer must meet the following standards as they relate to the particular procurement under consideration:

1. - 5. ...

B. A proposer shall present acceptable evidence of financial resources, experience, organization, technical qualifications, skills, and facilities, to perform the service called for by the contract.

C. No contract for consulting services for \$50,000 or more, or for social services for \$250,000 or more shall be awarded to any person or firm unless the head of the using agency has first determined that such person or firm is responsible within the meaning of Subsections A and B.

D. In any case where a contract for consulting services is for \$50,000 or more, or where a contract for social services

is for \$250,000 or more, the head of the using agency shall prepare, sign, and place in the contract file a statement of the facts on which a determination of responsibility was based. Any supporting documents or reports and any information to support determinations of responsibility of the proposer or potential subcontractors should be kept on file with the agency, subject to inspection upon the request by the director of state procurement or his designee.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:496 (December 1978), amended LR 8:593 (November 1982), LR 10:458 (June 1984), LR 11:1070 (November 1985), LR 13:654 (November 1987), repromulgated LR 40:2565 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:766 (April 2018).

§2539. Suspension, Debarment and Reinstatement

[Formerly LAC 34:V.139]

A. ...

1. The state shall also have the right to suspend or terminate a contract based on the absence of appropriated, funds for the acquisition of goods or services or for cause; or, when in the best interest of the state.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:594 (November 1982), amended LR 10:458 (June 1984), LR 11:1071 (November 1985), repromulgated LR 40:2566 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), amended LR 44:766 (April 2018).

Subchapter B. Contracts Let Via a Request for Proposals Process

§2542. Source Selection Methods

[Formerly LAC 34:V.142]

A. Pursuant to R.S. 39:1620-1621, professional or personal services contracts for any amount, consulting services contracts less than \$50,000 for a twelve-month period, and social services contracts meeting one of the requirements of R.S. 39:1619(B) may be awarded without competitive negotiation or bidding; therefore this Section shall be applicable to consulting services contracts for \$50,000 or more per 12-month period and which are not exempted by R.S. 39:1621, and social services contracts for \$250,000 or more per 12 month period which are not exempted by R.S. 39:1619(B).

1. Emergency Awards. An emergency award of a personal, professional, consulting, or social services contract shall be made in accordance with LAC 34:V.

2. Sole Source Awards. A sole source award of a personal, professional, consulting, or social services contract shall be made in accordance with LAC 34:V.

3. - 3.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:179 (April 1981), amended LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1071 (November 1985), LR 13:655 (November 1987), repromulgated LR 40:2566 (December

2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), amended LR 44:766 (April 2018).

§2545. Request for Proposals
[Formerly LAC 34:V.145]

A. ...

1. In addition to the requirements of R.S. 39:1595 and these regulations, a request for proposals should:

a. - f. ...

g. inform the potential contractors that the state reserves the right to use a best and final offer (BAFO) as a part of the competitive negotiation process to clarify the scope of work and/ or to obtain the most cost effective pricing available from the proposer along with the proposers most favorable terms in response to the solicitation. When used, inform the potential contractors of the evaluation criteria and associated weights, if different from the initial scoring criteria and weights;

h. require potential contractors to include the following information in their proposals:

i. a description of the firm's qualifications to include a specific list of personnel to be used in the services and their qualifications (at least list the number and the qualifications of each position). However, a résumé will be required on each of the key personnel. Additionally for consulting services, the contractor must stipulate that these personnel will not be removed from the contract without prior approval of the using agency;

ii. a list of the agencies with names and contact persons, for whom similar work has been done;

iii. if applicable, the length of time needed for the services, broken down by phases, if phasing is necessary;

iv. the proposed methodology for accomplishing the services with a precise statement of what the state will receive as an end product of the services (this is sometimes referred to as the technical section of the proposal);

v. for consulting services only, an itemized cost statement showing various classes of man-hours at appropriate rate, delineated by phases, if phasing is used, and an itemized listing of all other expenses or fees that are expected to be paid by the state and a complete breakdown of consultant overhead rate, if applicable;

vi. for social services only, a detailed budget or other cost breakdown as may be required by the using agency and/or the federal government.

2. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:495 (December 1978), amended LR 7:180 (April 1981), LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1072 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2567 (December 2014), amended LR 40:2545 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1283 (July 2015), repromulgated LR 41:1670 (September 2015), amended LR 44:767 (April 2018).

Subchapter C. Contracts for Information Technology
Consulting Services in an Amount
Greater than \$100,000

§2549. Procurement Support Team
[Formerly LAC 34:V.149]

A. Unless a procurement support team is formed in accordance with R.S. 39:200(I), a procurement support team shall be formed in accordance with the procedures defined herein for every contract for the procurement of information technology consulting services in an amount greater than \$100,000. At the discretion of the director of the Office of State Procurement, all other consulting services anticipated to cost \$140,000 or more may require PST review of the RFP, the selection process, and subsequent contract. The formation of a procurement support team shall be accomplished by the Office of State Procurement and shall include one or more representatives from each of the following: the Office of State Procurement, the Attorney General's Office; the using agency initiating the procurement action; and the Legislative Fiscal Office. The procurement support team shall submit a recommendation to the director of the Office of State Procurement concerning the final contract. Where a procurement support team is formed in accordance with R.S. 39:200(I), the requirements of this Section may be met by including a representative from the Attorney General's Office.

B. At least two members of each procurement support team should have formal training in computer contract negotiations. The Legislative Fiscal Office and the Attorney General's Office shall each designate in writing to the Office of State Procurement the names of a primary and an alternate team member, and should insure that at least one of these individuals has received formal training in computer contract negotiations. It shall thereafter be the responsibility of each named agency to keep the Office of State Procurement advised of any changes in designated individuals. At least four members, one from each office designated, must be present to constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:460 (June 1984), amended LR 11:1073 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2568 (December 2014), amended LR 40:2545 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:767 (April 2018).

§2551. Procurement Support Team Involvement
[Formerly LAC 34:V.151]

A. Procurement support team participation must include, as a minimum, review of the request for proposals, review of using agency evaluation of proposals and award of contract, and review and/or negotiation of contract terms. Procurements requiring a procurement support team will involve the active participation of all of the members of the procurement support team as a unit. There will be at least one joint meeting per phase during the process. The

procurement support team will make written evaluations and recommendations as a group; these will not supplant written individual agency approvals as required by statute or regulations. The team leader will be designated by the Office of State Procurement.

B. - C. ...

D. The individual agencies represented on procurement support teams will have the following primary responsibilities. The responsibilities may be enlarged or modified as appropriate to each given situation by the procurement support team leader with the concurrence of the Office of State Procurement.

1. - 2. ...

3. Office of State Procurement. The Office of State Procurement shall have primary responsibility for insuring compliance with RFP procedures and regulations.

4. ...

5. The Office of Information Technology Services shall provide technical staff to the procurement support team. They shall provide advice and support in the area of information technology techniques, negotiation techniques, and reviewing the structure and content of requests for proposals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:460 (June 1984), amended LR 11:1073 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:767 (April 2018).

§2554. Emergency and Sole Source Procurements **[Formerly LAC 34:V.154]**

A. Notwithstanding the guidelines established in §2542, procurements of information technology consulting services in an amount greater than \$100,000 under emergency or sole source conditions shall involve a procurement support team designated by the Office of State Procurement and under the direction of a team leader designated by the Office of State Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:461 (June 1984), amended LR 11:1074 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018).

§2557. Procurement Support Team; Procurement Schedule **[Formerly LAC 34:V.157]**

A. Each using agency contemplating a contract requiring more than \$100,000 of information technology consulting services shall write the director of the Office of State Procurement notifying him prior to the drafting of the request for proposals. The Office of State Procurement shall then contact the appropriate agencies and obtain from those agencies the names of the individuals designated to participate on the particular procurement support team (PST). The Office of State Procurement shall then designate a team leader, insure that at least two members of the procurement support team have received formal training in

computer contract negotiations, and forward to the team leader the names of the other team members, along with any information received from the using agency.

B. ...

C. At the end of the procurement process one copy of the documentation related to the procurement will be retained on file by the Office of State Procurement. The team leader will make written status reports at the end of each phase to the Office of State Procurement. Such status reports shall be presented to the Office of State Procurement at each regular meeting.

D. - E. ...

F. After a procurement process has been completed, PST team members and the using agency are encouraged to submit written evaluations and comments of the process, and suggestions for future improvements. Such evaluations, comments, and suggestions shall be sent to the Office of State Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:461 (June 1984), amended LR 11:1074 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018).

Subchapter D. Revised Statutes

§2587. Revised Statutes

[Formerly LAC 34:V.187]

A. ...

B. A rule or regulation shall not change any contract commitment, right, or obligation of the state or of a contractor under a state contract in existence on the effective date of that rule or regulation [R.S. 39:1564].

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:183 (April 1981), LR 8:596 (November 1982), LR 10:461 (June 1984), LR 11:1074 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2570 (December 2014), amended LR 40:2546 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:768 (April 2018).

Chapter 27. Intergovernmental Regulations

§2706. LaMAS (Louisiana Multiple Award Schedule)

State Contracts Based on GSA Prices

[Formerly LAC 34:I.2506]

A. The State Central Purchasing Agency of the Division of Administration may establish state contracts based on GSA (general service administration) pricing when it has been determined in writing by the director of the Office of State Procurement that certain conditions are met, which shall become part of the procurement file.

B. Materials, supplies, or equipment shall not be purchased on a state contract based on GSA pricing at a price higher than the price of the same item listed on any available statewide competitive contract established by the Office of State Procurement.

C. - D.2. ...

E. No use shall be made of a LaMAS contract without the participation of a Louisiana licensed dealer or distributor. Louisiana-licensed dealers or distributors must meet the requirement of a resident business defined in R.S. 39:1556(47) Louisiana licensed dealers or distributors shall agree to:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581 and R.S. 39:1702(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 29:2381 (November 2003), repromulgated LR 40:1365 (July 2014), LR 40:2573 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018).

Chapter 31. Protests and Appeals, Bidder Responsibility, Suspension and Debarment of Bidders, Contract Controversies

§3101. Definitions

[Formerly LAC 34:I.3101]

* * *

Interested Person—any person who has submitted a bid in response to an invitation to bid, a request for proposals, or other solicitation issued under the Louisiana procurement code who has or may have a pecuniary or other property interest which may be affected by a determination made in a protest hearing.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983), repromulgated LR 40:1365 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

§3103. Application

[Formerly LAC 34:I.3103]

A. The following rules shall only apply to hearings held by boards of higher education and institutions under their jurisdiction in accordance with R.S. 39:1671, 1672, and 1673 of title 39 of the *Louisiana Revised Statutes*, unless the institution is operating under a pilot procurement code in accordance with R.S. 17:3139.5(5)(c)(i) which has adopted rules or procedures that supersede these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 9:210 (April 1983), amended LR 23:67 (January 1997), repromulgated LR 40:1366 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2546 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1671 (September 2015), amended LR 44:769 (April 2018).

§3105. Initiation of Hearing

[Formerly LAC 34:I.3105]

A. Responsibility of Bidders and Proposers. A hearing held to consider the disqualification of a bidder or proposer shall be commenced with the giving of written notice issued by the chief procurement officer, the commissioners or head of a governmental body.

B. Protest of aggrieved person in connection with the solicitation, award, or issuance of written notice of intent to award. Any person who is aggrieved in connection with the solicitation, award, or issuance of written notice of intent to award may protest to the chief procurement officer. Protests with respect to a solicitation shall be submitted in writing at least 2 days prior to the opening of bids or proposals. Protests with respect to the award of a contract or the issuance of written notice of intent to award a contract shall be submitted in writing within 14 days after contract award.

1. - 2. ...

C. Suspensions and Debarments. A hearing for a candidate for suspension or debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such debarment shall be initiated by issuance of written notice thereof in accordance with the procurement code.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983), amended LR 22:280 (April 1996), repromulgated LR 40:1366 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

§3113. Decisions and Orders of the Hearing Officer

[Formerly LAC 34:I.3113]

A. - B. ...

1. The final decision of the hearing officer shall not be subject to the review of the commissioner when the decision is rendered in a proceeding to determine responsibility of a bidder or proposer. Notice of the right to judicial review of the final decision shall accompany service of the final decision.

C. A bidder or proposer who is disqualified shall have the right to request a rehearing before the hearing officer. This right must be exercised within 10 days of the date of receipt of the decision of disqualification. The grounds for rehearing shall be limited to the following:

1.a. - 1.d. ...

2. the request for rehearing on behalf of a bidder or proposer disqualified after hearing on his responsibility shall be in writing and shall set forth the grounds which justify a rehearing. In the event a rehearing is granted by the hearing officer, it shall be confined to the grounds upon which the rehearing was granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:211 (April 1983), repromulgated LR 40:1368 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

§3115. Administrative Appeal to the Commissioner

[Formerly LAC 34:I.3115]

A. - D.2. ...

E. Appeal of Contractor Controversy. A party shall file his appeal with the commissioner within 14 days of the receipt of the determination under R.S. 39:1673(C). The commissioner shall decide within 14 days the contract or

breach of contract controversy. A copy of the decision shall be mailed or otherwise furnished immediately to the contractor. The decision of the commissioner on appeal shall be final and conclusive unless:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:212 (April 1983), repromulgated LR 40:1368 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

§3117. Judicial Appeal from Administrative Decisions **[Formerly LAC 34:I.3117]**

A. Solicitation and Award of Contracts. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a bidder, proposer, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. Such actions shall extend to all kinds of actions, whether for monetary damages or for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691(A) shall be commenced within 14 days after receipt of the decision of the commissioner under R.S. 39:1683(C).

B. - C. ...

D. Disqualification of Bidders or Proposer. A bidder or proposer disqualified after a hearing conducted pursuant to R.S. 39:1601 shall have a right of appeal to the Nineteenth Judicial District Court. Any action for review of a hearing conducted pursuant to R.S. 39:1601 shall be commenced within 30 days after receipt of the hearing officer's decision or within 30 days of the receipt of a decision on an application for rehearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:212 (April 1983), repromulgated LR 40:1369 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:770 (April 2018).

§3119. Procedure upon Judicial Review **[Formerly LAC 34:I.3119]**

A. An appeal to the Nineteenth Judicial District Court for review of a decision of the commissioner shall be instituted within the time delays established in the preceding Section entitled "Judicial Appeal from Administrative Decisions" by the filing of a petition. An appeal to the decision of a hearing officer in a hearing involving the responsibility of a bidder or proposer shall likewise be filed within the delay provided in the preceding Section and shall be instituted by the filing of a petition.

B.1. The filing of the petition does not stay enforcement of a decision in proceedings involving responsibility of a bidder or proposer, suspension or debarment, or controversies between the state and a contractor. The commissioner may grant, or the Nineteenth Judicial District Court may order, a stay upon appropriate terms.

B.2. - D.5. ...

6. Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:213 (April 1983), repromulgated LR 40:1369 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:770 (April 2018).

Chapter 33. Vendors

§3301. Vendor Fees

[Formerly LAC 34:I.3301]

A. The state reserves the right to charge an annual subscription fee to vendors, upon written notice of no less than 30 days. The fees may be used to ensure sustainability of various services to vendors that assist them in conducting business with the state of Louisiana relative to procurement and procurement related opportunities, such as training, instructive publications, etc.

A.1. - B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 12:833 (December 1986), amended LR 13:342 (June 1987), LR 17:660 (July 1991), repromulgated LR 40:1370 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:770 (April 2018).

Paula B. Tregre
Director

1804#018

RULE

Office of the Governor Real Estate Commission

Compensation (LAC 46:LXVII.1805)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Real Estate Commission has amended LAC 46:LXVII.1805. The purpose of the Rule is to promote broker responsibility in the areas of supervision, record keeping, and compensation. The Rule is to ensure that brokers are taking the task of supervising their agents seriously to ensure that practicing agents are serving the public to the

best of their abilities. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LXVII. Real Estate
Subpart 1. Real Estate

Chapter 18. Broker Responsibilities

§1805. Compensation

A. Licensees who are part of a group or team shall not receive compensation for acts or services subject to R.S. 37:1431.(24) from anyone within their team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 43:954 (May 2017), amended LR 44:771 (April 2018).

Bruce Unangst
Executive Director

1804#033

RULE

Department of Health
Board of Medical Examiners

Licensure and Certification; Continuing Medical Education
on Controlled Dangerous Substances
(LAC 46:XLV.Chapter 40)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq., pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1270, the Louisiana Podiatry Practice Act, La. Rev. Stat. §§37:621, 37:628; the Louisiana Physician Assistant Practice Act, La. Rev. Stat. §37:1360.23, the Louisiana Medical Psychology Practice Act, La. Rev. Stat. §§37:1360.51-1360.72, and in conformity with the Uniform Controlled Dangerous Substances Law, R.S. 40:978, as amended by Act 76 of the 2017 Regular Session of the Louisiana Legislature, the Louisiana State Board of Medical Examiners (Board) has adopted rules requiring continuing medical education (CME) on controlled dangerous substances (CDS) prerequisite to licensure renewal for health care providers licensed by the Board whose scope of practice includes CDS prescriptive authority. The rules, which are set forth below, are hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLV. Medical Professions
Subpart 2. Licensure and Certification

Chapter 40. Continuing Medical Education on
Controlled Dangerous Substances

Subchapter A. General Provisions

§4001. Scope of Chapter

A. The rules of this Subchapter provide for the one-time continuing medical education (CME) requirement for controlled dangerous substances prerequisite to license renewal of an authorized prescriber, and prescribe

definitions and the procedures applicable to approved/qualifying CME, credit for satisfaction, documentation, non-compliance, an exception and conflict resolution with other CME rules of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(8), 1270(B)(6), 37:621, 37:628, 37:1360.23 and 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:7710 (April 2018).

§4003. Definitions

A. As used in this Subchapter, the following terms and phrases shall have the meanings specified.

Authorized Prescriber—a physician, podiatrist, physician assistant, medical psychologist and any other category of health care provider as may hereafter be licensed by the board under this Part, whose scope of practice includes authority to prescribe, dispense, or administer CDS.

Board—the Louisiana State Board of Medical Examiners, as constituted under R.S. 37:1263.

Controlled Dangerous Substances or *CDS*—any substance defined, enumerated or included in federal or state statute or regulations 21 CFR §§1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations and statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(8), 1270(B)(6), 37:621, 37:628, 37:1360.23 and 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:771 (April 2018).

§4005. Continuing Medical Educational Requirement
for Controlled Dangerous Substances

A. CME Requirement for Authorized Prescribers of CDS. Notwithstanding any other provision of this Part, every authorized prescriber seeking the renewal of a license for the first time on and after January 1, 2019, shall, as part of the CME required by this Part, and as a condition prerequisite to licensure renewal, successfully complete three hours of CME approved by the board on CDS prescribing practices (the CME requirement). Such CME shall include instruction relating to drug diversion training, best practices regarding prescribing of CDS, appropriate treatment for addiction and, for physicians, the treatment of chronic pain. The CME requirement may be satisfied by completing a three-hour CME program, three one-hour CME programs, or any other combination of CME programs totaling three-hours.

B. Approved/Qualifying Continuing Medical Education Programs. Any:

1. category 1 CME program sponsored or offered by an organization or entity approved under Sections 437, 1375, 1529.D or 3955 of this Part to sponsor or offer CME for purposes of license renewal of physicians, podiatrists, physician assistants, or medical psychologist, respectively, shall be deemed approved for purposes of satisfying the CME requirement provided:

a. the board or its designee determines the CME program adequately addresses the areas of required instruction set forth in Section 4005.A; and

b. such organization or entity is capable of submitting proof of an attendee's completion of the CME activity electronically to the board;

2. CME program developed by the board, whether category 1 or otherwise, shall be deemed approved for purposes of satisfying the CME requirement;

3. information on how to access approved, qualifying CME will be maintained by the board and made available on its website www.lsbme.la.gov.

C. CME Credit. An authorized prescriber required to complete the CME requirement shall receive an hour-for-hour credit towards the annual requirement for CME provided in this Part for license renewal.

D. Documentation:

1. authorized prescribers shall request the organization or entity sponsoring or offering the CME to submit proof of completion of the CME activity electronically to the board in a form and manner specified by the board;

2. an authorized prescriber shall maintain a record of completion of the CME activity for four years. Satisfactory evidence shall consist of a certificate or other documentation which shall, at a minimum, contain the:

- a. program title(s);
- b. sponsor(s) name;
- c. attendee's name;
- d. inclusive date or dates and location of the CME event; and
- e. documented verification of successful completion of the CME activity by stamp, signature, official or other proof acceptable to the board;

3. if more than one CME activity is taken to meet the CME requirement a record of completion of each activity shall be maintained;

4. CME which is not approved by the board shall not satisfy the CME requirement.

E. Non-Compliance; Reinstatement of Licensure. The license of an authorized prescriber:

1. who fails to comply with the CME requirement shall not be renewed by the board;

2. which has not been renewed for failure to satisfy the CME requirement may be reinstated upon application to the board, accompanied by payment of the renewal fee required by Subpart 1 of these rules, in addition to all other applicable fees and costs, together with confirmation of completion of the CME required by this Section.

F. Exception. An authorized prescriber renewing his/her license for the first time on and after January 1, 2019, may be excused from the CME requirement upon the submission of certification, in a form and manner specified by the board, attesting that he/she has not prescribed, administered or dispensed any CDS during the entire year covered by the authorized prescriber's expiring license. The certification shall be verified by the board through the Louisiana Prescription Monitoring Program Act, R.S. 40:1001 et seq. An exempted individual who subsequently prescribes, administers or dispenses a CDS shall satisfy the CME requirement as a condition to license renewal for the year immediately following that in which the CDS was prescribed, administered or dispensed.

G. Conflict. In the event of a conflict between the provisions of this Section concerning the one-time CME requirement for CDS, and those of any other Section in this Part, the provisions of this Section shall govern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(8), 1270(B)(6), 37:621, 37:628, 37:1360.23 and 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:771 (April 2018).

Vincent A. Culotta, Jr., M.D.
Executive Director

1804#041

RULE

Department of Health Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Intellectual Disabilities—Public Facilities Reimbursement Rate Increase (LAC 50:VII.32969)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:VII.32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities

Chapter 329. Reimbursement Methodology

Subchapter C. Public Facilities

§32969. Transitional Rates for Public Facilities

A. Effective October 1, 2012, the department shall establish a transitional Medicaid reimbursement rate of \$302.08 per day per individual for a public ICF/ID facility over 50 beds that is transitioning to a private provider, as long as the provider meets the following criteria:

1. - 2.a. ...

3. incurs or will incur higher existing costs not currently captured in the private ICF/ID rate methodology; and

4. shall agree to downsizing and implement a pre-approved OCDD plan:

a. any ICF/ID home that is a cooperative endeavor agreement (CEA) to which individuals transition to satisfy downsizing requirements, shall not exceed 6-8 beds.

B. - F.4. ...

G. Effective for dates of service on or after October 1, 2014, the transitional Medicaid reimbursement rate shall be increased by \$1.85 of the rate in effect on September 30, 2014.

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 39:326 (February 2013), amended LR 40:2588 (December 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 44:60 (January 2018), LR 44:772 (April 2018).

Rebekah E. Gee MD, MPH
Secretary

1804#026

RULE

**Department of Health
Bureau of Health Services Financing**

Therapeutic Group Homes
Licensing Standards
(LAC 48:I.Chapter 62)

The Department of Health, Bureau of Health Services Financing has amended LAC 48:I.Chapter 62 as authorized by R.S. 36:254 and R.S. 40:2009. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 62. Therapeutic Group Homes

Subchapter A. General Provisions

§6201. Introduction

A. ...

B. Therapeutic group homes provide a 24 hours per day, seven days per week, structured and supportive living environment. The purpose of a TGH is to provide community-based services in a secured, homelike environment to clients under the age of 21 who are determined to need psychiatric or psychological services.

C. ...

D. The goal of a TGH is to maintain the client's connections to their community, yet receive and participate in a more intensive level of treatment in which the client lives safely in a 24-hour setting.

1. Community reintegration may be progressive and with individual consideration of the client's safety, prior involvement in and potential for aberrant and criminal activity, mental health status, and elopement consideration.

E. - E.6. ...

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 38:401 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:773 (April 2018).

§6203. Definitions

Active Treatment—implementation of a professionally developed and supervised comprehensive treatment plan that is developed no later than seven days after admission and designed to achieve the client's discharge from inpatient status within the shortest practicable time. To be considered active treatment, the services shall contribute to the achievement of the goals listed in the comprehensive treatment plan. Tutoring, attending school, and transportation are not considered active treatment. Recreational activities can be considered active treatment when such activities are community based, structured and integrated within the surrounding community.

Cessation of Business—provider is non-operational and/or has stopped offering or providing services to the community.

Department—the Louisiana Department of Health, or "LDH."

Employed—performance of a job or task for compensation, such as wages or a salary. An employed person may be one who is contracted or one who is hired for a staff position.

Health Standards Section—the Louisiana Department of Health, Health Standards Section or "HSS."

Non-Operational—the TGH location is not open for business operation as stated on the licensing application and business location signage.

Secretary—the secretary of the Louisiana Department of Health, or his designee.

Time Out—the restriction of a client for a period of time to a designated area from which the client is not physically prevented from leaving, for the purpose of providing the client an opportunity to regain self-control.

Validated Complaint—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, Bureau of Health Services Financing, LR 38:402 (February 2012), amended LR 41:1293 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:773 (April 2018).

Subchapter B. Licensing

§6207. General Provisions

A. All TGH providers shall be licensed by the Department of Health. The department is the only licensing authority for TGH providers in Louisiana. It shall be unlawful to operate as a therapeutic group home without possessing a current, valid license issued by the department. Each TGH shall be separately licensed.

B. A TGH license shall:

1. ...

2. be valid only for the TGH to which it is issued and only for the specific geographic address of that TGH;

3. enable the provider to operate as a TGH within a specific LDH region;

B.4. - C.1. ...

2. There shall always be at least two employees on duty at the TGH at all times.

D. - G. ...

H. No new TGH shall accept clients until the TGH has written approval and/or a license issued by HSS. If the provider is currently maintaining a license as a child residential facility from DCFS, the provider may remain operational under its DCFS license during the TGH application process.

I. Plan Review. Construction documents (plans and specifications) are required to be submitted and approved by both the OSFM and the Department of Health as part of the licensing procedure and prior to obtaining a license.

1. Applicable Projects. Construction documents require approval for the following types of projects:

a. - b. ...

c. major alterations;

i. cosmetic changes to the TGH, such as painting, flooring replacement or minor repairs shall not be considered an alteration or substantial rehabilitation.

2. ...

a. Submittal Requirements

i. One set of the final construction documents shall be submitted to the OSFM for approval. The fire marshal's approval letter and final inspection shall be sent to the LDH.

ii. One set of the final construction documents shall be submitted to the OSFM, or its designated plan review entity, along with the required review fee and a "plan review application form" for approval.

b. Design Criteria. The project shall be designed in accordance with the regulations and requirements of LAC Title 51, *Public Health Sanitary Code* and of the OSFM applicable to residential facilities/group homes.

i. - vi. Repealed.

c. Construction Document Preparation.

Construction documents submitted to OSFM, or its designated plan review entity, shall be prepared in accordance with the regulations and requirements of LAC Title 51, *Public Health Sanitary Code* and of the OSFM applicable to residential facilities/group homes.

i. - vi. Repealed.

3. Waivers. The secretary of LDH may, within his/her sole discretion, grant waivers to building and construction guidelines which are not part of or otherwise required under the provisions of the state *Sanitary Code*. The provider shall submit a waiver request in writing to HSS. The provider shall demonstrate how patient safety and quality of care offered is not compromised by the waiver, and shall demonstrate the undue hardship imposed on the TGH if the waiver is not granted. The provider shall demonstrate its ability to completely fulfill all other requirements of service. The department will make a written determination of the requests.

a. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances related to the waiver.

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 38:403 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:773 (April 2018).

§6209. Initial Licensing Application Process

A. ...

B. Currently licensed DCFS providers that are converting to TGHs shall comply with all of the initial licensure requirements, except plan review, and may be eligible for the exception to the bedroom space requirement of this Chapter.

C. An applicant shall submit a completed initial licensing application packet to the department, which shall include:

1. ...

2. a copy of the approval letter of the architectural plans for the TGH from the department and from the OSFM, and any other office/entity designated by the department required to review and approve the provider's architectural plans;

3. - 7. ...

8. an 8 1/2 x 11 inch floor sketch or drawing of the premises to be licensed;

9. ...

10. any other documentation or information required by the department for licensure, including but not limited to, proof of approvals from local agencies such as local zoning boards and ordinances.

D. - D.8. ...

E. If the initial licensing packet is incomplete when submitted, the applicant will be notified of the missing information and will have 90 days from receipt of the notification to submit the additional requested information. If the additional requested information is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a TGH provider shall submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

F. Once the initial licensing application packet has been approved by the department, notification of the approval shall be forwarded to the applicant. Within 90 days of receipt of the approval notification, the applicant shall notify the department that the TGH is ready and is requesting an initial licensing survey. If an applicant fails to notify the department within 90 days, the initial licensing application shall be closed. After an initial licensing application has been closed, an applicant who is still interested in becoming a TGH shall submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

G. Applicants shall be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the TGH provider will be issued an initial license to operate.

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 38:404 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:774 (April 2018).

§6211. Types of Licenses

A. - A.4.a. ...

b. A provisional renewal license may be issued for the following reasons:

i. ...

ii. the existing licensed TGH has more than three substantiated complaints in a one-year period;

b.iii. - c.i. ...

ii. If the on-site follow-up survey determines that the TGH has not corrected the deficient practices or has not maintained compliance during the period of the provisional license, the provisional renewal license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee, if no timely informal reconsideration or administrative appeal of the deficiencies is filed pursuant to this Chapter.

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 38:404 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:774 (April 2018).

§6213. Changes in Licensee Information or Personnel

A. Any change regarding the TGH’s name, “doing business as” name, mailing address, phone number, or any combination thereof, shall be reported in writing to the department within five days of the change. Any change regarding the TGH name or “doing business as” name requires a change to the provider license and shall require a \$25 fee for the issuance of an amended license.

B. Any change regarding the TGH’s key administrative personnel shall be reported in writing to the department within five days of the change.

B.1. - C.2. ...

D. A TGH that intends to change the physical address of its geographic location is required to have plan review approval, Office of State Fire Marshal approval, Office of Public Health approval, compliance with other applicable licensing requirements, and an on-site licensing survey prior to the relocation of the TGH.

1. A written notice of intent to relocate shall be submitted to HSS when the plan review request is submitted to the department for approval.

2. Relocation of the TGH’s physical address results in a new anniversary date and the full licensing fee shall be paid.

E. Any request for a duplicate license shall be accompanied by the required fee.

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 38:405 (February 2012), amended LR 41:1293 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:775 (April 2018).

§6215. Renewal of License

A. To renew a license, a TGH shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

A.1. - C. ...

D. The renewal of a license does not in any manner affect any sanction, civil fine, or other action imposed by the department against the provider.

E. If an existing licensed TGH has been issued a notice of license revocation, suspension, or termination, and the provider’s license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal 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 38:406 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:775 (April 2018).

§6217. Deemed Status

A. A licensed TGH may request deemed status from the department. The department may accept accreditation in lieu of a routine on-site licensing survey provided that:

1. ...

2. all services provided under the TGH license shall be accredited; and

A.3. - D. ...

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 38:406 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:775 (April 2018).

§6219. Licensing Surveys

A. Prior to the initial license being issued to the TGH, an initial licensing survey shall be conducted on-site at the facility to assure compliance with licensing standards. Except for providers currently maintaining a license as a child residential facility from DCFCS, a TGH shall not provide services to any client until the initial licensing survey has been performed and the provider found in compliance with the licensing standards. The initial licensing survey shall be an announced survey.

B. - E.5. ...

F. Surveyors and staff on behalf of the department shall be:

1. ...

2. allowed to interview any provider staff, client, or participant as necessary to conduct the survey.

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 38:406 (February 2012), amended LR 41:1293 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:775 (April 2018).

§6221. Complaint Surveys

A. - B. ...

C. An acceptable plan of correction may be required by the department for any complaint survey where deficiencies have been cited. If the department determines other action, such as license revocation is appropriate, a plan of correction may not be required and the TGH will be notified of such action.

D. A follow-up survey may be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices. If the department determines that other action, such as license revocation, is appropriate, a follow-up survey may not be required. The TGH will be notified of any action.

E. ...

F. LDH surveyors and staff shall be given access to all areas of the TGH and all relevant files during any complaint survey. LDH surveyors and staff shall be allowed to interview any TGH staff, client, or participant, as necessary or required to conduct the survey.

G. A TGH which has been cited with violations or deficiencies on a complaint survey has the right to request an informal reconsideration of the validity of the violations or deficiencies. The written request for an informal reconsideration shall be submitted to the department’s Health Standards Section. The department shall receive the written request within 10 calendar days of the provider’s receipt of the notice of the violations or deficiencies.

H. A complainant shall have the right to request an informal reconsideration of the findings of the complaint survey or investigation that resulted from his/her complaint. The written request for an informal reconsideration shall be submitted to the department’s Health Standards Section. The department shall receive the written request within 30 calendar days of the complainant’s receipt of the results of the complaint survey or investigation.

I. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as a desk review. The provider or complainant, as applicable shall submit all documentation or information for review for the informal reconsideration and the department shall consider all documentation or information submitted. There is no right to appear in person at the informal reconsideration of a complaint survey or investigation. Correction of the violation or deficiency shall not be the basis for the reconsideration. The provider and the complainant, as applicable, shall be notified in writing of the results of the informal reconsideration.

J. ...

1. - 2. 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, Bureau of Health Services Financing, LR 38:407 (February 2012), amended LR 41:1293 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:775 (April 2018).

§6223. Statement of Deficiencies

A. - A.2. ...

B. Any statement of deficiencies issued by the department to a TGH shall be available for disclosure to the public after the provider submits an acceptable plan of correction to the department or 30 calendar days after the survey/investigation is conducted, whichever occurs first.

C. - C.3. ...

4. Except as provided for complaint surveys pursuant to R.S. 40:2009.11 et seq., and as provided in this Chapter for license denials, revocations, and denial of license renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

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 38:407 (February 2012), amended LR 41:1293 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:776 (April 2018).

§6225. Cessation of Business

A. Except as provided in §6295 or 6297 of this Chapter, a license shall be immediately null and void if a TGH ceases to operate.

B. - H. ...

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 38:407 (February 2012), amended LR 41:1293 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:776 (April 2018).

§6227. Denial of License, Revocation of License, or Denial of License Renewal

A. - B. ...

1. The department shall deny an initial license when the initial licensing survey finds that the TGH applicant is noncompliant with any licensing laws or regulations or with any other required statutes, laws, ordinances, rules or regulations and such noncompliance presents a potential

threat to the health, safety, or welfare of the clients who will be served by the provider.

B.2. - C. ...

1. If a TGH fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

2. If a provider fails to timely renew its license, the TGH shall immediately cease providing services, unless the provider is actively treating clients, in which case the provider shall:

a. ...

b. immediately provide written notice to the prescribing physician and to every client, parent, legal guardian, or legal representative of the following:

i. voluntary non-renewal of the provider's license;

ii. date of closure of the facility; and

iii. plans for orderly transition of the client;

c. - d. ...

3. If a TGH fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning a TGH for a period of two years.

D. Revocation of License or Denial of License Renewal. A TGH license may be revoked or may be denied renewal for any of the following reasons, including but not limited to:

1. - 11. ...

12. failure to allow or refusal to allow the department to conduct an investigation or survey, or to interview provider staff or the clients;

13. ...

14. failure to allow or refusal to allow access to the provider or client records by authorized departmental personnel;

15. bribery, harassment, or intimidation of any client or family member designed to cause that client or family member to use or retain the services of any particular TGH provider;

D.16. - 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 38:408 (February 2012), amended LR 41:1294 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:776 (April 2018).

§6229. Notice and Appeal of License Denial, License Revocation, Denial of License Renewal, and Appeal of Provisional License

A. Notice of a license denial, license revocation or denial of license renewal shall be given to the provider in writing.

B. The TGH provider has a right to an informal reconsideration of the license denial, license revocation, or denial of license renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The TGH provider shall request the informal reconsideration within 15 calendar days of the receipt of the notice of the license denial, license revocation, or denial of license renewal. The request for informal reconsideration

shall be in writing and shall be forwarded to the Health Standards Section.

2. The request for informal reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. - 7. ...

C. The TGH provider has a right to an administrative appeal of the license denial, license revocation, or denial of license renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by the TGH.

1. The TGH shall request the administrative appeal within 30 calendar days of the receipt of the notice of the results of the informal reconsideration of the license denial, license revocation, or denial of license renewal.

a. The TGH provider may forego its rights to an informal reconsideration, and if so, the TGH shall request the administrative appeal within 30 calendar days of the receipt of the notice of the license denial, license revocation, or denial of license renewal.

2. The request for administrative appeal shall be in writing and shall be submitted to the DAL or its successor. The request shall include any documentation that demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the DAL or its successor, the administrative appeal of the license revocation or denial of license renewal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the DAL issues a final administrative decision.

a. If the secretary of the department determines that the violations of the provider pose an imminent or immediate threat to the health, welfare, or safety of a client, the imposition of the license revocation or denial of license renewal may be immediate and may be enforced during the pendency of the administrative appeal. The TGH shall be notified of this determination in writing.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation, or denial of license renewal shall not be a basis for the administrative appeal.

D. ...

E. If a timely administrative appeal has been filed by the provider on a license denial, denial of license renewal, or license revocation, the DAL or its successor shall conduct the hearing pursuant to the Administrative Procedure Act.

1. If the final DAL decision is to reverse the license denial, the denial of license renewal, or the license revocation, the provider's license will be re-instated or granted upon the payment of any licensing fees or other fees due to the department and the payment of any outstanding sanctions due to the department.

2. If the final DAL decision is to affirm the denial of license renewal or the license revocation, the provider shall discharge any and all clients receiving services according to the provisions of this Chapter. Within 10 days of the final agency decision, the provider shall notify the department's licensing section in writing of the secure and confidential location of where the clients' records will be stored.

F. - G.2. ...

3. The provider shall request the informal reconsideration in writing, which shall be received by the HSS within five calendar days of receipt of the notice of the results of the follow-up survey from the department.

G.4. - H. ...

1. A stay may be granted upon application by the provider at the time the administrative appeal is filed and only after a contradictory hearing and upon a showing that there is no potential harm to the clients being served by the provider.

I. If a timely administrative appeal has been filed by a provider 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 DAL or its successor shall conduct the hearing pursuant to the Administrative Procedure Act.

1. ...

2. If the final DAL decision is to uphold the deficiencies and affirm the expiration of the provisional license, the provider shall discharge all clients receiving services. Within 10 calendar days of the final agency decision, the provider shall notify HSS in writing of the secure and confidential location of where the client's records will be stored.

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 38:409 (February 2012), amended LR 41:1294 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:776 (April 2018).

Subchapter C. Administration and Organization **§6233. General Provisions**

A. Purpose and Organizational Structure. The purpose of the TGH shall be clearly defined in a statement filed with the department. The statement includes the:

1. - 3. ...

4. geographic area served;

5. - 7. ...

8. an organizational chart of the TGH which clearly delineates the line of authority.

B. - B.4. ...

C. A TGH shall make any required information or records, and any information related to assessment of compliance with these requirements, available to the department.

D. - E. ...

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 38:410 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:777 (April 2018).

§6237. Governing Body

A. - A.3. ...

B. The governing body of a TGH shall:

1. - 3. ...

4. designate qualified persons to act as supervising practitioner and clinical director and delegate sufficient authority to these persons to manage the TGH;

5. - 7. ...

8. inform the department, or its designee, prior to initiating any substantial changes in the services provided by the provider;

9. ensure statewide criminal background checks in accordance with R.S. 15:587.1; and

10. ensure direct service worker registry checks in accordance with LAC 48:I.Chapter 92.

C. - C.6. ...

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 38:410 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:777 (April 2018).

§6239. Policies and Procedures

A. The TGH shall have written policies and procedures approved by the owner or governing body, which shall be implemented and followed, that address at a minimum the following:

1. - 15. ...

B. A TGH shall have written personnel policies, which shall be implemented and followed, that include:

B.1. - D. ...

1. The TGH shall develop and implement written policies and procedures for the management of behaviors to be used on facility-wide level, insuring that procedures begin with the least restrictive, most positive measures and follow a hierarchy of acceptable measures. The policies and procedures shall be provided to all TGH staff and shall include:

a. - d. ...

E. House Rules and Regulations. A TGH shall have a clearly written list of rules and regulations governing conduct for clients in care and shall document that these rules and regulations are made available to each staff member, client and, where appropriate, the client's parent(s) or legal guardian(s). A copy of the house rules shall be given to clients and, where appropriate, the client's parent(s) or legal guardian(s) upon admission and shall be posted and accessible to all employees and clients.

F. Limitations on Potentially Harmful Responses or Punishments. A TGH shall have a written list of prohibited responses and punishments to clients by staff members and shall document that this list is made available to each staff member, client and, where appropriate, the client's parent(s) or legal guardian(s).

1. - 1.m. ...

n. any other cruel, severe, unusual, degrading or unnecessary discipline.

2. A TGH shall not discipline groups of clients for actions committed by an individual.

3. Children shall neither discipline nor supervise other children except as part of an organized therapeutic self-government program that is conducted in accordance with written policy and is supervised directly by staff. Such programs shall not be in conflict with regulations regarding behavior management.

4. Discipline shall not be administered by any persons who are not known to the client.

G. - I. ...

J. Copies of the behavior management policy, the prohibited response and discipline policy, including restraint prohibitions and time out procedures, shall be provided in

duplicate to each new employee upon hiring. The employee shall sign both copies. The employee shall retain one copy and the provider shall retain the other copy in the employee's personnel record.

K. ...

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 38:411 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:778 (April 2018).

§6241. Personnel Records

A. A TGH shall have a personnel file in the facility for each staff member who provides services for the TGH. Each record shall contain:

1. - 5. ...

6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the center;

7. the employee's starting and termination dates; and

8. the results of criminal history and registry checks.

B. - C. ...

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 38:412 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:778 (April 2018).

Subchapter D. Provider Responsibilities

§6247. Staffing Requirements

A. ...

B. The staff of a TGH shall have the appropriate qualifications to provide the services required by its clients comprehensive treatment plans. Each member of the direct care staff may not practice beyond the scope of his/her license or certification.

C. - C.2. ...

3. A ratio of not less than one staff to five clients is maintained at all times; however, two staff shall be on duty at all times with at least one being direct care staff when there is a client present.

D. - E.2.m. ...

F. Training. All staff shall receive training according to provider policy at least annually and as deemed necessary depending on the needs of the clients. The TGH shall maintain documentation of all training provided to its staff. The TGH shall meet the following requirements for training.

1. - 3. ...

4. Staff training shall include training exercises in which staff members successfully demonstrate in practice the techniques they have learned for managing emergency safety situations.

5. Staff shall be trained and demonstrate competency before participating in an emergency safety intervention.

6. All training programs and materials used by the TGH shall be available for review by HSS.

G. ...

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 38:413 (February 2012), amended LR 41:1294 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:778 (April 2018).

§6249. Personnel Qualifications and Responsibilities

A. - A.1. ...

a. A supervising practitioner shall be one of the following:

i. a physician with an unrestricted license to practice in Louisiana and who meets all of the following qualifications:

(a). ...

(b). if the physician holds an additional license(s) in another state or jurisdiction, that license(s) shall be unrestricted and be documented in the employment record;

(c). ...

(d). satisfactory completion of a specialized psychiatric residency training program accredited by the Accreditation Council for Graduate Medical Education (ACGME), as evidenced by a copy of the certificate of training or a letter of verification of training from the training director, which includes the exact dates of training and verification that all ACGME requirements have been satisfactorily met. If training was completed in a psychiatric residency program not accredited by the ACGME, the physician shall demonstrate that he/she meets the most current requirements as set forth in the American Board of Psychiatry and Neurology's Board policies, rules and regulations regarding information for applicants for initial certification in psychiatry;

ii. a psychologist/medical psychologist shall have the following:

1.a.ii.(a). - 2.a. ...

b. The clinical director shall have the appropriate qualifications to meet the responsibilities of the clinical director and the needs of the TGH's clients. A clinical director may not practice beyond his/her scope of practice license.

c. If the TGH treats clients with both mental health and substance abuse conditions, then the clinical director shall have the training and experience necessary to practice in both fields.

2.d. - 4. ...

a. The TGH shall have a licensed registered nurse who shall supervise the nursing services of the TGH. He or she shall be operating within his/her scope of practice and have documented experience and training in the treatment of children or adolescents.

b. All nursing services shall be furnished by licensed nurses. All nursing services furnished in the TGH shall be provided in accordance with acceptable nursing professional practice standards.

c. - c.v. ...

d. The responsibilities of all licensed nurses include, but are not limited to:

4.d.i. - 5.a.ii.(b). ...

b. The house manager's responsibilities include, but are not limited to the following:

i. supervising the activities of the TGH when the professional staff is on call, but not on duty;

5.b.ii. - 6. ...

a. All direct care staff shall have at least the following qualifications:

i. ...

ii. at least 18 years of age, but shall also be at least three years older than all clients under the age of 18;

iii. a minimum of two years of experience working with clients of the population served, be equivalently qualified by education in the human services field, or have a combination of work experience and education with one year of education substituting for one year of experience;

iv. ...

v. be certified in crisis prevention/management (example: CPI, Mandt, etc.); and

vi. be proficient in de-escalation techniques.

vii. Repealed.

b. - b.viii. ...

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 38:414 (February 2012), amended LR 41:1294 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:779 (April 2018).

§6253. Client Funds and Assets

A. - A.4. ...

B. If the TGH manages a client's personal funds, the provider shall furnish a written statement listing the client's rights regarding personal funds to the client and/or his/her legal or responsible representative.

C. If a client chooses to entrust funds with the TGH, the TGH shall obtain written authorization from the client and/or his/her legal or responsible representative for the safekeeping and management of the funds.

D. The TGH shall:

1. provide each client with an account statement upon request with a receipt listing the amount of money the provider is holding in trust for the client;

D.2. - E. ...

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 38:417 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:779 (April 2018).

§6255. Quality Improvement Plan

A. A TGH shall have a quality improvement (QI) plan which puts systems in place to effectively identify issues for which quality monitoring, remediation, and improvement activities are necessary. The QI plan shall include plans of action to correct identified issues including monitoring the effect of implemented changes and making needed revisions to the action plan.

B. - C. ...

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 38:417 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:779 (April 2018).

Subchapter E. Admission, Transfer, and Discharge

§6259. Admission Requirements

A. - E. ...

F. Pretreatment Assessment. To be admitted into a TGH, the individual shall have received a pretreatment assessment by the Medicaid Program, or its designee, that recommends admission into the TGH. The TGH shall ensure that requirements for pretreatment assessment are met prior to treatment commencing. The referral PTA shall contain clinical information to support medical necessity to the

therapeutic group home and to establish that TGH is the most appropriate service to meet the client's treatment needs.

G. ...

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 38:417 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:779 (April 2018).

§6261. Transfer and Discharge Requirements

A. The goal of the TGH is to return the client to a less restrictive level of service as early as possible in the development of the plan.

B. Discharge planning begins at the date of admission, and goals toward discharge shall be continually addressed in the multi-disciplinary team meetings and when the comprehensive treatment plan is reviewed. Discharge may be determined based on the client no longer making adequate improvement in this TGH (and another TGH being recommended) or the client no longer having medical necessity at this level of care.

C. - E.1.b. ...

c. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary on the health, developmental issues, behavioral issues, social issues, and nutritional status of the client. Upon written request and authorization by the client or authorized representative, a copy of the discharge summary shall be disclosed to the client or receiving provider. The written discharge summary shall be completed within five business days of the notice by the client or authorized representative that the client has selected another provider or has decided to discontinue services. The provider's preparation of the discharge summary shall not impede or impair the client's right to be transferred or discharged immediately if the client so chooses; and

d. ...

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 38:418 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:780 (April 2018).

Subchapter F. Services

§6265. General Provisions

A. Upon admission, the TGH shall conduct an initial diagnostic interview. A nursing assessment shall be completed by a registered nurse within 24 hours of admission.

B. - C. ...

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 38:418 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:780 (April 2018).

§6267. Comprehensive Treatment Plan

A. ...

B. The multi-disciplinary team shall be made up of at least the supervising practitioner, clinical director, registered nurse, and therapist. The client and the client's guardian/family shall be included as treatment planning

members in the development of the comprehensive treatment plan and in the update of treatment goals as clinically indicated.

C. In the event the supervising practitioner is not present at a treatment team meeting during a review of a comprehensive treatment plan, the supervising practitioner shall review and sign the comprehensive treatment plan within 10 calendar days following the meeting.

D. The TGH shall have an original completed, dated and signed team meeting document with signatures of all who attended as well as evidence of invitations extended to the meeting, such as copies of letters, emails or service logs, as clinically indicated.

E. - G.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 38:418 (February 2012), amended LR 41:1295 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:780 (April 2018).

§6271. Medications

A. All TGHs that store and/or dispense scheduled narcotics shall have a site-specific Louisiana controlled substance license and a United States Drug Enforcement Administration (DEA) controlled substance registration for the provider in accordance with the Louisiana Uniform Controlled Dangerous Substance Act and title 21 of the *United States Code*.

B. The TGH shall have written policies and procedures that govern the safe administration and handling of all prescription and nonprescription medications.

C. The TGH shall have a written policy governing the self-administration of all medications. Such policy shall include provisions regarding age limitations for self-administration, multi-disciplinary team recommendations, and parental consent, if applicable. Those clients that have been assessed to be able to safely self-administer medications shall be monitored by licensed or qualified staff to ensure medication is taken as prescribed in the comprehensive treatment plan.

D. The TGH shall ensure that medications are either self-administered or administered by licensed persons according to state law.

E. The TGH shall have a written policy for handling medication taken from the facility by clients on pass.

F. The TGH shall ensure that any medication given to a client for therapeutic and medical purposes is in accordance with the written order of a physician.

F.1. - O. ...

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 38:419 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:780 (April 2018).

§6273. Food and Diet

A. - B. ...

C. Meals, whether prepared by the provider or contracted from an outside source, shall meet the following conditions:

C.1. - N. ...

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 38:420 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:780 (April 2018).

§6275. Transportation

A. ...

B. Any vehicle used to transport clients, whether such vehicle is operated by a staff member or any other person acting on behalf of the provider, shall be:

1. - 4. ...

C. The provider shall have documentation of current liability insurance coverage for all owned and non-owned vehicles used to transport clients. The personal liability insurance of a provider's employee shall not be substituted for the required coverage.

D. Any staff member of the TGH, or other person acting on behalf of the TGH, who is operating a vehicle for the purpose of transporting clients shall be properly licensed to operate that class of vehicle in accordance with state law.

E. Upon hire, the provider shall conduct a driving history record of each employee, and annually thereafter.

F. The TGH provider shall not allow the number of persons in any vehicle used to transport clients to exceed the number of available seats with seatbelts in the vehicle.

G. The TGH provider shall ascertain the nature of any need or problem of a client which might cause difficulties during transportation. This information shall be communicated to agency staff responsible for transporting clients.

H. - H.3. ...

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 38:421 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:781 (April 2018).

Subchapter G. Client Protections

§6279. Client Rights

A. A TGH shall develop and implement policies to protect its client's rights and to respond to questions and grievances pertaining to these rights. A TGH and its staff shall not violate a client's rights.

B. - D. ...

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 38:421 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:781 (April 2018).

Subchapter H. Physical Environment

§6285. General Provisions

A. Location of Therapeutic Group Homes. To ensure a more home-like setting, the TGH shall be located in a residential community to facilitate community integration through public education, recreation, and maintenance of family connections as applicable. The setting shall be geographically situated to allow ongoing participation of the child's family. The child or adolescent shall attend a school in the community (e.g., a school integrated with children not from the institution and not on the institution's campus). In

this setting, the child or adolescent remains involved in community-based activities and may attend a community educational, vocational program or other treatment setting.

1. The child or adolescent may attend school in an alternative setting, as approved by the local parish school board and in accordance with state law, as applicable.

B. - D. ...

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 38:422 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:781 (April 2018).

§6287. Interior Space

A. - D. ...

1. Single rooms shall contain at least 80 usable square feet and multi-bed rooms shall contain at least 50 usable square feet per bed. Rooms shall have at least a 7 1/2 foot ceiling height.

D.2. - O.2. ...

3. All gas heating units and water heaters shall be vented adequately to carry the products of combustion to the outside atmosphere. Vents shall be constructed and maintained to provide a continuous draft to the outside atmosphere in accordance with the recommended procedures of the American Gas Association Testing Laboratories, Inc.

4. All heating units shall be provided with a sufficient supply of outside air so as to support combustion without depletion of the air in the occupied room.

P. ...

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 38:422 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:781 (April 2018).

§6291. Equipment

A. Equipment shall be clean and in operating condition for the safety and well-being of the clients.

B. - D. ...

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 38:424 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:781 (April 2018).

Subchapter I. Facility Operations

§6293. Safety and Emergency Preparedness

A. - A.1. ...

2. A provider shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers and labeled as to the contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of clients, staff and visitors.

3. ...

4. A provider shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

A.5. - B.1.i. ...

2. Continuity of Operations. The provider shall have a written emergency preparedness plan to maintain continuity

of the provider's operations in preparation for, during and after an emergency or disaster. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the provider's ability to render care and treatment, or threatens the lives or safety of the clients.

3. ...

a. provisions for the evacuation of each client, delivery of essential services to each client, whether the client is in a shelter or other location or the provider has elected to shelter in place;

b. - f.v. ...

4. If the state, parish or local Office of Homeland Security and Emergency Preparedness (OHSEP) orders a mandatory evacuation of the parish or the area in which the provider is serving, the provider shall ensure that all clients are evacuated according to the provider's emergency preparedness plan.

5. - 8. ...

9. All TGH employees shall be trained in emergency or disaster preparedness and shall be knowledgeable of the provider's emergency preparedness policies and procedures. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

10. - 10.e. ...

11. At any time that the TGH has an interruption in services or a change in the licensed location due to an emergency situation, the provider shall notify the HSS no later than the next business day.

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 38:424 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 44:781 (April 2018).

§6297. Inactivation of License due to a Non-Declared Emergency or Disaster

A. A licensed TGH provider in an area or areas which have been affected by a non-declared emergency or disaster may seek to inactivate its license, provided that the following conditions are met:

1. the licensed TGH provider shall submit written notification to the Health Standards Section within 30 days of the date of the non-declared emergency or disaster stating that:

a. the TGH provider has experienced an interruption in the provisions of services as a result of events that are due to a non-declared emergency or disaster;

b. the licensed TGH provider intends to resume operation as a TGH provider in the same service area;

c. the licensed TGH provider attests that the emergency or disaster is the sole causal factor in the interruption of the provision of services; and

d. the licensed TGH provider's initial request to inactivate does not exceed one year for the completion of repairs, renovations, rebuilding or replacement of the facility;

NOTE: Pursuant to these provisions, an extension of the 30-day deadline for initiation of request may be granted at the discretion of the department.

2. the licensed TGH provider continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties and/or civil fines; and

3. the licensed TGH provider continues to submit required documentation and information to the department, including but not limited to cost reports.

B. Upon receiving a completed written request to temporarily inactivate a TGH provider license, the department shall issue a notice of inactivation of license to the TGH provider.

C. Upon the provider's receipt of the department's approval of request to inactivate the provider's license, the provider shall have 90 days to submit plans for the repairs, renovations, rebuilding or replacement of the facility, if applicable, to the OSFM and the LDH-OPH as required.

D. The licensed TGH provider shall resume operating as a TGH provider in the same service area within one year of the approval of renovation/construction plans by the OSFM and the OPH as required.

EXCEPTION: If the provider requires an extension of this timeframe due to circumstances beyond the provider's control, the department will consider an extended time period to complete construction or repairs. Such written request for extension shall show the provider's active efforts to complete construction or repairs and the reasons for request for extension of the provider's inactive license. Any approval for extension is at the sole discretion of the department.

E. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a TGH provider which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

1. the TGH provider shall submit a written license reinstatement request to the licensing agency of the department;

2. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing or physical environment survey, where applicable; and

3. the license reinstatement request shall include a completed licensing application with appropriate licensing fees.

F. Upon receiving a completed written request to reinstate a TGH provider license, the department may conduct a licensing or physical environment survey. The department may issue a notice of reinstatement if the provider has met the requirements for licensure including the requirements of this Subsection.

G. No change of ownership in the TGH provider shall occur until such TGH provider has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a TGH provider.

H. The provisions of this Subsection shall not apply to a TGH provider which has voluntarily surrendered its license and ceased operation.

I. Failure to comply with any of the provisions of this Subsection shall be deemed a voluntary surrender of the TGH provider license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:782 (April 2018).

Rebekah E. Gee MD, MPH
Secretary

1804#027

RULE

Department of Health Office of Public Health

Administrative Procedures (LAC 51:I.Chapter 1)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH) has amended Part I (General Provisions) of the Louisiana *Public Health—Sanitary Code* (LAC 51) regarding administrative procedures. The amendments to Part I set forth the manner in which service of compliance orders and other matters required to be served or delivered to the respondents thereof may be accomplished. For reasons set forth above, Part I (General Provisions) of the Louisiana state *Sanitary Code* (LAC 51) is amended as follows. This Rule is hereby adopted on the day of promulgation.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part I. General Provisions

Chapter 1. General

§101. Definitions

[formerly paragraph 1:001]

A. ...

B. Unless otherwise specifically provided herein, the following words and terms used in this Chapter are defined for the purposes thereof as follows.

Department—the Louisiana Department of Health.

Person—any natural person, individual, partnership, corporation, limited liability company, association, governmental subdivision, receiver, tutor, curator, executor, administrator, fiduciary, or representative of another person, or public or private organization of any character.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and R.S. 40:5(A)(3)(7)(17)(19)(20)(21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1693, (October 2001), repromulgated LR 28:1209 (June 2002), amended LR 28:2528 (December 2002), LR 34:652 (April 2008), LR 38:2375 (September 2012), LR 38:2790 (November 2012), amended by the Department of Health, Office of Public Health, LR 44:783 (April 2018).

§109. Service of Orders, Notices, and Other Documents

A. Whenever any provision of law or of this Code requires or authorizes service of a letter, notice, order, or other document to be made upon a person, then, in addition to any other method authorized by this code for such service, the following shall constitute good and valid service for all purposes related to this Code:

1. service made in any manner authorized by the *Louisiana Code of Civil Procedure* or the *Louisiana Revised Statutes* of 1950;

2. service made by U.S. Postal Service certified mail, return receipt requested, addressed to the registered agent of the person as indicated in the records of the Secretary of State;

3. service made by U.S. Postal Service certified mail, return receipt requested, addressed to the person at his/her dwelling house or usual place of abode;

4. service made by U.S. Postal Service certified mail, return receipt requested, addressed to the last mailing address provided in writing to the department by the person; or

5. for a person holding a permit, certificate, or license issued by the department:

a. service made by U.S. Postal Service certified mail, return receipt requested, addressed to the mailing address provided to the department in accordance with §120 of this Part; or

b. service by e-mail sent to the e-mail address provided to the department in accordance with §120 of this Part, even if returned as undeliverable. A document served by e-mail must be in printable document format (PDF) and may be either attached, in which case the entire e-mail with the attachment cannot exceed 20 megabytes (MB), or linked within the body of the e-mail to a file sharing site from which it can be viewed or downloaded.

B. Whenever service by certified mail is authorized by this Section or any other provision of the Code, if a certified mail receipt shows that service has been refused or unclaimed, then service shall nevertheless be deemed complete and valid if the department, within 15 days of receiving the certified mail receipt so marked, sends by regular mail a copy of the letter, notice, order, or other document to the person at the address to which the certified mailing was sent. Service by such regular mail shall be deemed complete 7 days after mailing.

C. A certified mailing sent in accordance with Paragraphs A.2, A.3, A.4, or Subparagraph A.5.a of this Section shall be deemed good and valid service if a signed receipt is returned to the department, regardless of whether the person to whom the mailing was addressed personally signed the return receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and 40:5(A)(3)(7)(17)(19)(20)(21).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 44:783 (April 2018).

§120. Duty of Permit, Certificate, or License Applicant or Holder to provide the State Health Officer with both a Valid, Current Mailing and E-Mail Address

A. No permit, certificate, or license required by this code shall be issued by the state health officer or the Louisiana Department of Health, Office of Public Health (LDH-OPH) unless the applicant provides both a valid, current mailing and e-mail address at which the applicant can receive correspondence and official notices from LDH-OPH.

B. A holder of a permit, certificate, or license issued pursuant to this code by the state health officer or the LDH-OPH, regardless of whether such holder was the original applicant thereof, must notify LDH-OPH of any change in the mailing or e-mail address by one of the following means:

1. written notice via U.S. mail addressed to:
ATTN: Change of Address Notification
LDH-OPH State Health Officer
Louisiana Department of Health
P.O. Box 4489
Baton Rouge, LA 70821-4489; or
2. e-mail with a subject line that reads "Change of Address Notification" sent to any e-mail address expressly designated for change of address purposes on the OPH portion of the LDH's website.

C. Any notification received by LDH-OPH of such change in mailing address or e-mail address shall not be deemed complete until such applicant or holder receives acknowledgement thereof from LDH-OPH via e-mail or U.S. mail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and 5.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 44:783 (April 2018).

Jimmy Guidry, MD
State Health Officer
and
Rebecca E. Gee, MD, MPH
Secretary

1804#001

RULE

Department of Insurance Office of the Commissioner

Regulation 46—Long-Term Care Insurance (LAC 37:XIII.Chapter 19)

Section 1945 is being repromulgated to correct a citation error. This Rule may be viewed in its entirety on pages 1393-1416 of the July 20, 2017 *Louisiana Register*.

The Department of Insurance, pursuant to the authority of the Louisiana insurance code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended Regulation 46, Long-Term Care Insurance.

The purpose of the amendments to Regulation 46 is as follows:

1. to adopt changes made to date to the National Association of Insurance Commissioners' long-term care insurance model regulation ("model regulation"), to adopt model regulation definitions, and to make necessary technical amendments and redesignations to existing sections of Regulation 46 to accommodate the model regulation;
2. to amend §1937.B for clarity, consistent with the drafting notes of the model regulation;
3. to update cross-references to redesignated sections of title 22 of the *Louisiana Revised Statutes*, which were redesignated pursuant to Act 415 of the 2008 Regular Session;
4. to amend §1907.A consistent with Act 811 of the 2014 Regular Session, revising terminology referring to persons with disabilities and other persons with exceptionalities. This Rule is hereby adopted on the day of promulgation.

Title 37 INSURANCE Part XIII. Regulations Chapter 19. Regulation 46—Long-Term Care Insurance

§1945. Standards for Marketing (Formerly §1943)

A. Every insurer, health care service plan, or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

1. establish marketing procedures and producer training requirements to assure that:
 - a. any marketing activities, including any comparison of policies by its producers or other producers will be fair and accurate; and
 - b. excessive insurance is not sold or issued;
2. display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following:

Notice to Buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.

3. provide copies of the disclosure forms required in §1915.D (Appendices B and F) to the applicant;
4. inquire, and otherwise make every reasonable effort to identify, whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness, or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required;

5. establish auditable procedures for verifying compliance with §1945.A;

6. if the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program, approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that such a program is available and the name, address and telephone number of the program;

7. for long-term care health insurance policies and certificates, use the terms *noncancellable* or *level premium* only when the policy or certificate conforms to §1909.A.3 of this regulation;

8. provide an explanation of contingent benefit upon lapse provided in §1955.D.3 and, if applicable, the additional contingent benefit upon lapse provided to policies with fixed or limited premium paying periods in §1955.D.4.

B. In addition to the practices prohibited in R.S. 22:1961 et seq., the following acts and practices are prohibited.

Cold Lead Advertising—making use directly, or indirectly, of any method of marketing which fails to disclose, in a conspicuous manner, that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.

High Pressure Tactics—employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether

explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

Misrepresentation—misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

Twisting—knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

C.1. With respect to the obligations set forth in §1945.C.1, the primary responsibility of an association, as defined in R.S. 22:1184(4)(b), when endorsing or selling long-term care insurance shall be to educate its members concerning long-term care issues, in general, so that its members can make informed decisions. Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

2. The insurer shall file with the insurance department the following material:

- a. the policy and certificate;
- b. a corresponding outline of coverage; and
- c. all advertisements requested by the insurance department.

3. The association shall disclose in any long-term care insurance solicitation:

a. the specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

b. a brief description of the process under which the policies, and the insurer issuing the policies, were selected.

4. If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

5. The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

6.a. The association shall also:

i. at the time of the association's decision to endorse, engage the services of a person with expertise in long-term care insurance, not affiliated with the insurer, to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;

ii. actively monitor the marketing efforts of the insurer and its producers; and

iii. review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

b. Clauses 1945.C.6.a.i-iii shall not apply to qualified long-term care insurance contracts.

7. No group long-term care insurance policy or certificate may be issued to an association unless the insurer

files with the state insurance department the information required in §1945.C.

8. The insurer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in §1945.C.

9. Failure to comply with the filing and certification requirements of §1943 constitutes an unfair trade practice in violation of R.S. 22:1961 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1186(A), 22:1186(E), 22:1188(C), 22:1189, and 22:1190.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 19:1153 (September 1993), amended LR 23:975 (August 1997), LR 31:473 (February 2005), LR 43:1401 (July 2017) (effective January 1, 2018), repromulgated LR 44:784 (March 2018).

James J. Donelon
Commissioner

1804#029

RULE

Department of Revenue Policy Services Division

Corporate Deductions; Add-Back of Certain Intangible Expenses; Interest and Management Fees (LAC 61:I.1115)

Under the authority of R.S. 47:1511 and in accordance with the provisions of R.S. 47:287.82 and the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division has adopted LAC 61:I.1115.

The primary purpose of this regulation is to implement Act 16 of the 2016 First Extraordinary Session of the Louisiana Legislature. This Rule is hereby adopted on the day of promulgation.

Title 61

REVENUE AND TAXATION

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

Chapter 11. Corporation Income Tax

§1115. Corporate Deductions; Add-Back of Certain Intangible Expenses; Interest and Management Fees

A. General. R.S. 47:287.82 provides that otherwise deductible interest expenses and costs, intangible expenses and costs, and management fees directly or indirectly paid to a related member shall be added back to the corporation's gross income.

B. Exceptions. The taxpayer shall make the add-back unless:

1. the item of income corresponding to the taxpayer's expense, cost, or fee, was in the same taxable year subject to a tax based on or measured by the related member's net income in Louisiana or any other state; or

2. the item of income corresponding to the taxpayer's expense, cost, or fee, was in the same taxable year subject to a tax based on or measured by the related member's net

income in a foreign nation which has in force an income tax treaty with the United States, if the recipient was a “resident” as defined in the income tax treaty with the foreign nation; or

3. the transaction giving rise to the expense, cost, or fee between the taxpayer and the related member did not have as a principal purpose the avoidance of any Louisiana tax; or

4. the expense, cost, or fee that was paid or accrued to a related member was “passed through” by the related member or members to an unrelated third party in an arms-length transaction via a corresponding expense, cost, or fee payment; or

5. the add-back is unreasonable. The add-back will be considered unreasonable if the taxpayer establishes that, based on the entirety of the taxpayer's particular facts and circumstances, the add-back adjustments would increase the taxpayer's Louisiana income tax liability to an amount that bears no reasonable relation to the taxpayer's Louisiana presence.

C. Definitions

Indirectly Paid—interest expenses and costs, intangible expenses and costs, and management fees subject to add-back include expenses, costs, and fees incurred by a taxpayer if the expense is related to an intermediate expense, cost, or fee incurred in a transaction between one related member and a second related member.

a. **EXAMPLE.** Corporations B and C are related members with respect to Corporation A. Corporation A is a Louisiana taxpayer that sells products it purchases from Corporation B on a cost plus basis. Corporation B licenses intangible property from Corporation C and makes intangible expense payments to Corporation C based in part on the sales Corporation B makes to Corporation A. To the extent the intangible expenses Corporation B pays to Corporation C are reflected in the costs of the products Corporation A purchases from Corporation B, the direct intangible expenses of Corporation B are considered to be indirect intangible expenses of Corporation A. Furthermore, Corporation A is deemed to directly pay an intangible expense to Corporation B and indirectly pay an intangible expense to Corporation C.

Intangible Expenses—includes but is not limited to:

a. expenses, accruals, and costs for, related to, or directly or indirectly incurred in connection with the acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property. “Intangible property” includes stocks, bonds, financial instruments, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, “know how”, and similar types of intangible assets;

b. costs related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;

c. royalty, patent, technical, and copyright fees;

d. licensing fees;

e. other similar expenses, accruals, and costs.

Management Fees—includes but is not limited to expenses and costs, including intercompany administrative charges, pertaining to accounts receivable, accounts payable, employee benefit plans, insurance, legal matters, payroll, data processing, including assembled workforce and/or employment data processing, purchasing, procurement,

organizational matters, business structuring matters, taxation, financial matters, securities, accounting, marketing, reporting, and compliance matters or similar activities.

Related Entity—

a. a stockholder who is an individual, or a member of the stockholder's family set forth in 26 U.S.C. 318 if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock;

b. a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or

c. a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the *Internal Revenue Code* if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

Related Member—a person that, with respect to the taxpayer during all or any portion of the taxable year, is:

a. a related entity;

b. a related party;

c. a component member as defined in subsection (b) of 26 U.S.C. 1563;

d. a person to or from whom there is attribution of stock ownership in accordance with subsection (e) of 26 U.S.C. 1563; or

e. a person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in Subparagraphs a to c, inclusive.

Related Party—any member of a controlled group of corporations as defined in 26 U.S.C. 1563, or any other person that would be a member of a controlled group if rules similar to those of 26 U.S.C. 1563 were applied to that person.

Reported and Included in Income for Purposes of a Tax on Net Income—to the extent reported and included in post-allocation income or apportioned income for purposes of a tax applied to the net income apportioned or allocated to the taxing jurisdiction.

State—a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Subject to a Tax Based on or Measured by the Related Member's Net Income—that the receipt or accrual of the payment by the recipient related member is reported and included in income for purposes of a tax on net income, and not offset or eliminated in a combined or consolidated return which includes the payor.

D. Operating Rules

1. Upon request by the secretary of the Louisiana Department of Revenue, the taxpayer shall produce documentation substantiating any exceptions to add-back claimed by the taxpayer.

2. The exceptions described in Paragraphs B.1. and B.2 of this Section. (corresponding item of income subject to tax) are allowed only to the extent the recipient related member includes the corresponding item of income in post-allocation income or apportioned income reported to the taxing jurisdiction or jurisdictions. Income offset or eliminated in a combined reporting regime would not qualify for the subject to tax exception.

a. EXAMPLE. Corporation A, a Louisiana taxpayer, incurs a \$100 intangible expense in a transaction with Corporation B, a related member with respect to Corporation A. Corporation B files an income tax return in State B where it apportions and/or allocates 5 percent of its income, but files no other income tax returns. Only \$5 of the intangible expense was allocated/apportioned to State B. Corporation A must add-back \$95 of the otherwise deductible \$100 intangible expense incurred in the transaction with Corporation B.

3. Upon request of the secretary of the Louisiana Department of Revenue, the exception described in Paragraph B.3 of this Section. (non-tax business purpose for conducting a transaction) must be supported by contemporaneous documentation. Documentation shall be considered contemporaneous if the documentation is in existence and compiled before the due date (including extensions) for the filing of a return containing the transaction(s). Mere statements or assertions that a transaction was intended to allow for better management or greater utilization of intangible assets, or similarly unsubstantiated claims are not sufficient to establish a principal non-tax business purpose. Examples of principal non-tax business purposes include:

a. EXAMPLE. Taxpayer purchases administrative services such as accounting, legal, human resources, purchasing, etc., from a Related Member and does so at rates comparable to rates that would be charged by third party service providers.

b. EXAMPLE. Taxpayer borrows funds from a Related Member and does so at an interest rate and with other terms that are comparable to rates and terms that would be required by an unrelated third party lender.

c. EXAMPLE. Taxpayer incurs royalty expense in connection with the use of intangible assets provided by a Related Party. The royalty rates and other terms of agreement are comparable to rates and terms that would be required by an unrelated third party.

4. The exception described in Paragraph B.4 of this Section. (expense "passed through" to an unrelated third party) is limited if the expenses, costs, and fees paid to a related member are greater than the expenses, costs, and fees the related member pays to unrelated third parties because only a portion of the expenses, costs, and fees incurred in connection with a transaction with a related member is considered to have "passed through" to the unrelated third parties.

a. EXAMPLE. Taxpayer A, a Louisiana taxpayer, incurs a \$100 management fee to Related Member B. Related Member B receives a total of \$400 of related member management fee income (\$100 from Taxpayer A plus \$300 from other related payors). Related Member B pays \$200 of management fees to unrelated third parties. Related Member B will be deemed to have passed through to unrelated third parties only 50 percent

of the interest expense/income it received from Taxpayer A. Only \$50 of Taxpayer A's \$100 related member management fee payment to Related Member B will be deemed to have been passed through to unrelated third parties and qualify for the exception described in section B.4. (expense "passed through" to an unrelated third party).

5. With respect to both interest and intangible expenses, if the interest or intangible expense rate charged the taxpayer by the related member exceeds the interest or intangible expense rate charged the related member by unrelated third party payees, then the excess expense will not qualify for the exception described in section B.5 (add-back is unreasonable) and must be added back. If multiple transaction arrangements exist between the taxpayer and the related member, or the related member and the unrelated third-party, then a weighted average rate should be calculated by dividing total expense by total amounts of each base amount used to determine the expense amounts. The weighted average rate should then be used to determine the existence of non-qualifying excess interest or intangible expense.

a. EXAMPLE. Taxpayer B incurs interest expense of \$100 during its taxable year to its parent Company A (a related member) in order to service a \$1,000 debt between B and A. Company A's related member interest rate is 10 percent calculated by dividing its related member interest expense (\$100) by its related member debt (\$1000). Company A makes interest expense payments of \$200 to Unrelated Lenders C and D to service the \$4,000 of total debt existing between A and Unrelated Lenders C and D. A's weighted average unrelated third party interest rate is five percent (5 percent) calculated by dividing total unrelated third party interest expense (\$200) by total unrelated third party interest bearing debt (\$4,000). Company B's non-qualifying excess interest is \$50. Company B's debt to Company A (\$1,000) is multiplied by the excess interest rate Company B incurred over Company A's average interest rate to unrelated lenders (10 percent-5 percent).

6. With respect to interest expense, if the taxpayer's debt over asset percentage exceeds the consolidated unrelated third-party debt over asset percentage of its federal consolidated group (as represented by interest-bearing debt reported on the schedule L balance sheet(s) included in the consolidated and pro forma federal income tax returns), then the interest expense associated with the excess debt must be added back and cannot qualify for the exception described in Paragraph B.5 of this Section. (add-back is unreasonable). The debt over asset test only applies to the unreasonable exception.

a. EXAMPLE. Company A and Taxpayer B are related members. Taxpayer B's separate company federal income tax return Schedule L balance sheet shows \$1,500 of assets and \$1,000 of interest bearing debt which produces a debt over asset percentage of 66.7 percent. The Company A and Subsidiaries' federal consolidated income tax return Schedule L balance sheet shows \$6,000 of assets and \$3,000 of unrelated third party interest bearing debt which produces a debt over asset percentage of 50 percent. Because Taxpayer B's debt over asset percentage of 66.7 percent, exceeds the group's unrelated third party debt over asset percentage, 50 percent, the amount of Taxpayer B's related member interest expense that may qualify for the exception described in section B.5. (add-back is unreasonable) is limited. The limitation is calculated by multiplying B's assets (\$1,500) by the lower of the taxpayer's debt over asset percentage or the group's unrelated third party debt over asset percentage (50 percent) and then multiplying the product (\$750) by the lower of the taxpayer's related member interest rate or the related member's unrelated third party interest rate (5 percent), which yields an ultimate limitation of \$37.50.

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

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:785 (April 2018).

Kimberly Lewis Robinson
Secretary

1804#050

RULE

Department of Revenue Policy Services Division

Electronic Progressive Mega Jackpot Bingo (LAC 42:I.Chapter 17)

Under the authority of R.S. 4:707 and 729 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 has repealed and reenacted LAC 42:I.1703, 1781, 1783, 1785, 1787, 1789, 1791, and 1793 pertaining to investigations and civil penalties and has adopted LAC 42:I.1785, Electronic Progressive Mega Jackpot Bingo. This Rule is needed to provide guidelines and clarification for the Office of Charitable Gaming's administering requirements for the use of statewide electronic progressive mega jackpot bingo system.

Act 214 of the 2017 Regular Session of the Louisiana Legislature amended R.S. 4:707(J) to authorize the governing authority of a municipality or parish to transfer regulatory authority over charitable gaming in that municipality or parish to the Office of Charitable Gaming. The transfer from the municipality or parish to the Office of Charitable Gaming shall be by ordinance. The Act also amends R.S. 4:732 and 739 to allow progressive mega jackpot bingo to be conducted with electronic bingo dabber devices. This Rule is hereby adopted on the day of promulgation.

Title 42

LOUISIANA GAMING

Part I. Charitable Bingo, Keno, Raffle

Subpart 1. Bingo

Chapter 17. Charitable Bingo, Keno and Raffle

Subchapter A. General Requirements

§1703. Definitions

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

Act—licensing law enacted as R.S. 4:701 et seq., on regulation of charitable gaming including all amendments thereto that may hereafter be enacted.

Applicant—the organization, its members, officers, agents, or employees who have applied for any license from the division.

Bona Fide, Active, or Volunteer Member—a person accepted for membership in an organization eligible to be licensed under this Part upon application, with such action being recorded in the official minutes of a regular meeting or who has held full and regular membership status in the organization. The member functions shall not be limited to gaming-related activities.

Certain Related Offenses—include the following offenses committed contrary to the laws of this state, local jurisdictions, other states, the federal government, or other countries:

- a. any felony offense;
- b. any offense directly or indirectly related to gambling or gaming laws;
- c. the misdemeanor offense of any theft or related offense, any attempted theft or related offense, issuing worthless checks, illegal possession of stolen things, or false swearing or related offense.

Charitable Gaming—the conducting or assisting in the conducting of any game of chance authorized by R.S. 4:701 et seq.

Charitable Gaming Supplies—any supplies (except raffle tickets), equipment, device, goods or wares intended for use in the conducting of any charitable gaming provided by law. It includes, but is not limited to, the receptacle and numbered objects to be drawn from it, the master board upon which the objects drawn are placed, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the number or designation as they are drawn, and all other articles essential to the operation, conducting and playing of bingo, keno, pull-tabs or raffles. It also includes any computer system, software or cash register designed for the primary purpose of accounting for and reporting the transactions involved in the selling of share or shares to participate in charitable gaming. Bingo game sets commonly manufactured and sold as children's games for a retail price of \$20 or less shall be presumed not to be bingo equipment for these purposes unless used by a licensee in the licensee's gaming activity.

Department—the Louisiana Department of Revenue and shall include the Office of Charitable Gaming, Louisiana Department of Revenue.

Director—the revenue tax director consistent with civil service regulations, designated by the secretary of the Louisiana Department of Revenue to head the office.

Expenses—ordinary, necessary and reasonable costs incurred in preparation for or in the conduct of the gaming activity.

Ideal Net Proceeds—the projected gross amount to be collected upon sale of all pull-tabs in a set or deal minus:

- a. the actual cost of the pull-tabs to the organization; and
- b. the projected total amount of prizes or winnings in the set or deal.

Immediate Family—the subject individual's spouse, children, parents, brothers and sisters, spouses of children, and spouses of brother and sisters.

Licensee—any organization licensed to conduct charitable gaming activity pursuant to R.S. 4:701 et seq., or licensed as a manufacturer or distributor of charitable gaming supplies, manufacturer or distributor of electronic video bingo machines, commercial lessors, or licensed as a private contractor for cable television bingo.

Non-Commercial Lessor—a bona fide non-profit organization licensed by the division to conduct games of chance which leases any building or structure used for

charitable gaming to other organizations licensed by the division.

Office—the Office of Charitable Gaming, Louisiana Department of Revenue.

Patriotic—in addition to any other commonly accepted meaning, an organization whose membership is composed of veterans of the United States of America Military to include without limitation, United States Army, United States Air Force, United States Marines, United States Navy, and United States Coast Guard, and said organization has acquired an appropriate nonprofit designation issued by the federal Internal Revenue Service with its registered office and/or place of domicile in the state of Louisiana, or an auxiliary organization to such a veterans' organization.

Private Contractor—a firm or person possessing demonstrated skills in the conduct and administration of charitable games of chance, and licensed by the division to provide for the operation and management of cable television bingo and any employee or agent of such firm or person.

Promotional Game—any game, contest, or arrangement used by any entity in order to stimulate sales or attendance, where absolutely no purchase or fee is necessary in order to participate in or win the game, contest or event.

Pull-Tab or Charity Game Ticket—a single or a banded ticket or card with its face covered to conceal one or more numbers or symbols where one or more cards or tickets in each set has been designated in advance as a winner.

Pull-Tab Set or Deal—any form, series or group of pull-tabs having the same serial number.

Raffle—a type of lottery in which several persons pay, in shares, the value of something put up as a stake, and then determine by chance which one of them shall become the sole possessor of it and any portion or share is retained by the person(s) conducting the raffle.

Reasonable Market Rental Rate—that rate at which similar facilities or equipment available for similar purposes, in the community may be leased or rented.

Session—represents authorized games of chance played within a time limit of 2 consecutive hours, within the same calendar day, with a minimum of 12 hours between sessions. The 4-hour session limit shall not apply to sessions held in conjunction with a bona fide fair or festival on property where no rent is paid for the session and payout of prizes is determined by the number of persons playing. Sessions are limited to not more than 1 session per day per licensee. In no instance, shall the total prize amounts exceed \$4,500 per session without a special license. A session of keno or bingo, when the licensee possesses a special license is limited to 6 consecutive hours.

Special License—a license to conduct one bingo session where the total prize amount shall not exceed \$25,000 in cash or things of equal value. No organization shall be issued more than two special licenses a year.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:701.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 12:157 (March 1986), amended LR 13:99 (February 1987), LR 17:383 (April 1991), Louisiana Legislature, House Concurrent Resolution Number 94 of the 1997 Regular Session, LR 25:205 (January 1999), amended by the Department of Revenue, Policy Services Division, LR 44:788 (April 2018).

Subchapter F. Progressive Bingo

§1781. Progressive Bingo

[Formerly §1789]

A. Any licensed charitable organization or organizations playing at the same location may deposit a predetermined amount of money up to the limit set by R.S. 4:732(A)(2) before each licensed call bingo session into a special account in order to offer a jackpot prize.

B. Participating organizations may conduct up to two progressive bingo games which may be conducted in conjunction with the organizations' regular bingo games.

C. A progressive bingo jackpot consists of all contributions made by participating organizations excluding the \$200 start-up fee during the series of progressive bingo jackpot games.

D. A progressive bingo jackpot is won along with the regular jackpot prize when a player achieves a predetermined bingo pattern within a certain number of balls preapproved by the office. If no bingo is achieved within the predetermined number of balls, the organization's regular bingo game shall continue. The office may upon written request and adequate justification issue a written approval allowing organizations to increase the number of balls called to achieve a bingo.

E. If additional sheets are sold, they must be sold at \$2 per sheet for the play of the progressive bingo games. The cut and configuration of sheets shall be established by the organization and shall be approved by the office in writing prior to use.

F. Each participating organization shall provide a start-up fee of \$200 at the commencement of a progressive bingo game series for deposit into a charitable gaming progressive jackpot account. The \$200 start-up fee deposit shall remain in the account until the progressive bingo games are discontinued by the organizations and shall be refundable upon termination of the games or to any single organization withdrawing from the games.

G. A separate checking account shall be opened by the participating organizations and the commercial or non-commercial lessor for the progressive bingo jackpot.

1. The account shall be in the name of charitable gaming progressive jackpot account which shall be imprinted on all checks. Checks from this account shall require two signatures.

2. The commercial or noncommercial lessor shall designate a representative who shall make deposits of all monies contributed to the progressive bingo jackpot by the close of bank business on the next banking day and who shall be responsible for maintaining the charitable gaming progressive jackpot account in accordance with generally accepted accounting principles approved by the office.

3. Designated representatives of the commercial or noncommercial lessor and each participating organization shall be authorized signatories on the account and shall be in attendance at the location at the conclusion of each respective organization's progressive bingo games for the purpose of issuing a check bearing the signatures of the hall representative and the organization representative from the special account to the winner.

4. All banking fees and costs shall be borne by the commercial or noncommercial lessor.

H. Each participating organization shall submit a check to the designated commercial or noncommercial lessor representative in a predetermined amount not to exceed the limit set by R.S. 4:732(A)(2) prior to the commencement of the organization's scheduled call bingo session. The check shall be made payable to the charitable gaming progressive jackpot account. The predetermined contribution shall be nonrefundable except in the event of hall closure due to an act of God. Each predetermined contribution shall not constitute part of the total amount of prizes awarded during that call bingo session.

I. The dollar amount of the progressive bingo jackpot shall be continuously and conspicuously displayed only during call bingo sessions conducted by participating organizations at the location and within view of all patrons purchasing progressive and regular bingo sheets.

J. All checks written to the charitable gaming progressive jackpot account shall be reported in a manner acceptable to the office and the governing authority of the municipality or parish.

K. In accordance with R.S. 4:732(B)(1), participating organizations may establish a maximum jackpot or cap only upon written application to and receipt of written permission from the office. Once approved by the office, any subsequent change to the maximum jackpot or cap shall require written approval from the office. Participating organizations may, prior to the progressive bingo jackpot being won, raise but may not lower the maximum jackpot or cap.

1. Such request for written approval shall include at least the following information:

- a. the location where the progressive bingo jackpot game shall be conducted;
- b. the name and license number of each organization participating in the game;
- c. the total amount of funds currently in the charitable gaming progressive jackpot account;
- d. the current progressive jackpot in the charitable gaming progressive jackpot account;
- e. the current amount of organizations' start-up fees in the charitable gaming progressive jackpot account;
- f. the requested maximum jackpot or cap and the proposed date in which such maximum jackpot or cap shall be offered as the progressive bingo jackpot prize.

2. In the event that the maximum jackpot or cap established with the office is reached, organizations may continue to make contributions to the charitable gaming progressive jackpot account in the predetermined amount in order to accumulate a second or subsequent jackpots. However, once the maximum jackpot or cap is reached, participating organizations shall not offer any subsequent progressive bingo jackpot prize until such time that the first progressive bingo jackpot prize is won.

3. The dollar amount of the maximum jackpot or cap as established with the office shall be continuously and conspicuously displayed with the current accumulated dollar amount of the progressive bingo jackpots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:732.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Charitable Gaming Division LR 20:448 (April 1994), amended LR 21:472 (May 1995),

LR 22:111 (February 1996), amended by the Department of Revenue, Policy Services Division, LR 44:789 (April 2018).

§1783. Progressive Mega Jackpot Bingo
[Formerly §1791]

A. In accordance with R.S. 4:706(A) and (B) and R.S. 4:707(J), the governing authority of any municipality or parish shall decide whether a progressive mega jackpot bingo game shall be permitted within the municipality or parish. Such game shall be the aggregate of predetermined contributions made by a group of licensed charitable organizations before each licensed call bingo session deposited into one special account in order to offer a prize for a specific progressive mega jackpot bingo game. For the purpose of conducting a progressive mega jackpot bingo game, such organizations shall:

1. establish links or networks as provided in R.S. 4:732.(A)(1);

2. contribute a predetermined amount of money not to exceed limits set by 4:732(A)(2) per participating organization into one special account before each licensed call bingo gaming session. Each contribution shall be in the predetermined amount and shall not be considered part of the total amount of prizes awarded during that session.

B. Participation. Organizations shall participate in only one progressive mega jackpot bingo game at a time and only within the jurisdictional limits approved by the office.

C. Requirements Prior to Start-Up. Each location, hall, commercial or noncommercial lessor that has any licensed organization(s) participating in the progressive mega bingo jackpot game shall transmit by facsimile to the office and to the respective governing authority of the parish or municipality or the certified public accountant or management company contracted to oversee the progressive mega jackpot bingo game, if applicable, the following information and documentation prior to the start-up of a progressive mega jackpot bingo game or before any additional organizations are allowed to enter:

1. list of names of licensed charitable organizations participating in the progressive mega jackpot bingo game and the respective gaming location's name and physical address, and the designated organization representative as provided in Paragraph I.2 of this Section and any subsequent changes;

2. a copy of the authorized signatory cards for the progressive mega jackpot bingo account and any subsequent changes;

3. a copy of the ordinance from the governing authority of the municipality or parish allowing the progressive mega jackpot bingo game;

4. the governing authority of the municipality or parish, or the certified public accountant or management company contracted to oversee the progressive mega jackpot bingo game, if applicable;

5. the proposed starting date and session time of the progressive mega jackpot bingo game.

D. Entry and Withdrawal. Each participating organization shall provide a start-up fee in the amount of \$200 at the commencement of or entry into a progressive mega jackpot bingo game for deposit into a charitable gaming progressive mega jackpot bingo account. All organizations electing to participate in a progressive mega jackpot bingo game shall contribute the additional

predetermined contribution prior to the commencement of a progressive mega jackpot bingo game which shall constitute the progressive mega jackpot bingo prize for the first 24-hour period. This contribution is nonrefundable and shall also be considered part of the total amount of prizes awarded for each organization's first scheduled session of the progressive mega jackpot bingo game.

1. Each participating organization shall submit a check to the designated hall, commercial or noncommercial lessor representative in the predetermined amount during its licensed four-hour session and prior to the commencement of the organization's first scheduled call bingo game made payable to the charitable gaming progressive mega jackpot bingo account. This predetermined contribution is nonrefundable and shall constitute part of the progressive mega jackpot bingo prize for the following day and shall not be considered part of the total amount of prizes awarded during that session.

2. If a participating organization voluntarily or involuntarily discontinues participation in the progressive mega jackpot bingo game for any reason, that organization shall not be allowed to re-enter the progressive mega jackpot bingo game until the current progressive mega jackpot bingo prize is won.

3. The \$200 start-up fee deposit shall remain in the account until the progressive mega jackpot bingo game is discontinued by the organizations and shall be refundable upon discontinuance of the progressive mega jackpot bingo blackout game or to any single organization withdrawing, whether voluntarily or involuntarily, from the progressive mega jackpot bingo game within three calendar days of withdrawal.

4. Except as otherwise provided in Paragraph 2 of this Subsection, organizations shall be allowed entry into the progressive mega jackpot bingo game at any time before the progressive mega jackpot bingo blackout prize is won.

5. All monies accumulated in the progressive mega jackpot bingo account for a game shall be given away if all participating organizations in that game withdraw, voluntarily or involuntarily, and discontinue that progressive mega jackpot bingo game.

E. Structure of Game. The progressive mega jackpot bingo game shall be conducted in conjunction with the organizations' regular blackout bingo games and the structure of such game shall be as follows.

1. Only separate additional 3 on 1 up sealed vertical bingo sheets shall be sold at \$2 per sheet for the play of only the progressive mega jackpot bingo game. Purchase of the 3 on 1 up sealed vertical bingo sheet shall afford patrons a chance to win the progressive mega jackpot bingo game and the regular blackout bingo prize.

2. Only those patrons who have purchased a minimum buy-in package for the organization's regular session games shall be allowed to purchase separate 3 on 1 up sealed vertical bingo sheets for the progressive mega jackpot bingo game at that session. The minimum buy-in package shall not contain sheets of cards that entitle a patron to win the progressive mega jackpot bingo prize, but the purchase of any such package shall afford a patron the opportunity to win only the respective organization's regular blackout bingo prize.

3. Any card or sheet that is altered from the original manufacturer's cut, collation, or print shall be invalid.

4. No progressive mega jackpot bingo game 3 on 1 up sealed vertical bingo sheets shall be sold after the first ball is called for the progressive mega jackpot bingo game. Such progressive mega jackpot bingo sheets shall:

a. be purchased by the organization from a licensed distributor;

b. have an assigned fixed value for each participating organization approved by the office in writing prior to start-up of or entry into any progressive mega jackpot bingo game and shall only be good for the session date stamped;

c. be stamped with the words "progressive mega jackpot bingo game", the organizations' name, license number, and session date to be valid and shall not be purchased as part of a buy-in package.

5. The progressive mega jackpot bingo game shall be completed as the last called bingo game of the licensed session.

F. Amount of Prizes Awarded. A progressive mega jackpot bingo account consists of all contributions made by participating organizations excluding the \$200 start up fee as provided in Subsection D of this Section during the progressive mega jackpot bingo game.

1. Except as otherwise provided in Subsection D of this Section, the dollar amount of the progressive mega jackpot bingo game shall be the accumulated dollar amount of all contributions deposited or due to be deposited into the progressive mega jackpot bingo account by all participating organizations in a progressive mega jackpot bingo game for the period ending at 12 a.m. (midnight) of the previous calendar day.

2. The dollar amount of any progressive mega jackpot bingo game shall not exceed the limit set by R.S. 4:732(B)(1). Participating organizations shall not cap the progressive mega jackpot bingo prize in an amount less than the limit. Once the limit is reached for any progressive mega jackpot bingo game, participating organizations shall continue to make contributions to the progressive mega jackpot bingo account to accumulate a second or subsequent jackpots. However, in the event that the limit is reached, organizations shall not offer any subsequent progressive mega jackpot bingo prize until such time that the progressive mega jackpot prize is won. Only one progressive mega jackpot prize of participating organizations shall be awarded during any 24-hour period as provided in Subsection G of this Section.

G. Time of Game. The organizations' licensed session starting time and date shall be the basis for determining the winner(s) to be paid during a 24-hour period. For purposes of determining the time of a progressive mega jackpot bingo prize winner(s), a 24-hour period shall include all licensed sessions of participating organizations licensed to commence beginning on or after 12:01 a.m. and ending 24 hours later on or before 12 a.m. (midnight).

H. Winner(s). A progressive mega jackpot bingo game shall be won when any player(s) achieves a blackout in 48 balls called or less only on the 3 on 1 up sealed vertical bingo sheet and only during the 24-hour period described in Subsection G of this Section. Each face on any 3 on 1 up

vertical bingo sheet shall be considered when determining the number of winners.

1. In the event that a patron achieves a blackout in 47 balls called or less on a sheet of cards from a minimum buy-in package, that patron shall win only the regular blackout bingo prize of the respective organization and that regular blackout bingo game shall end. If such a blackout is achieved in 47 balls called or less, play shall resume until the 48th ball is called, and once called, the progressive mega jackpot bingo game shall end. If no blackout is achieved, the game shall continue until a consolation prize is won as provided in Paragraph 5 of this Subsection.

2. In the event a patron achieves a blackout on sheets of cards from a minimum buy-in package on the same number of balls called as a patron who achieves a blackout on a 3 on 1 up sealed vertical bingo sheet, the regular blackout bingo prize of the respective organization shall be divided equally between all verified winners of the progressive mega jackpot bingo game at that session. The progressive mega jackpot bingo game shall be won only by a patron(s) who achieves a blackout on the 3 on 1 up sealed vertical bingo sheet as provided in this Subsection.

3. In the event there is more than one winner of the progressive mega jackpot bingo game during the 24- hour period as provided in Subsection G of this Section, the progressive mega jackpot bingo prize shall be divided equally between all verified winners of that progressive mega jackpot bingo game.

4. A patron who achieves a blackout on a 3 on 1 up sealed vertical bingo sheet in fewer balls called than a patron who achieves a blackout on a 3 on 1 up sealed vertical bingo sheet at another licensed session of a participating organization shall share the progressive mega jackpot bingo prize equally with all verified winners during the 24-hour period as provided in Subsection G of this Section.

5. If no blackout is achieved in 48 balls called or less, the organization's progressive mega jackpot bingo game shall continue until a consolation prize is won. The consolation prize shall be the respective organization's regular blackout bingo prize and shall constitute part of the total amount of prizes awarded during that called bingo session.

6. A ball shall not be considered called unless it has been announced by the caller.

7. The office may, upon written request and adequate justification, issue a written approval allowing participating organizations in a progressive mega jackpot bingo game to increase the number of balls called to achieve a progressive mega jackpot bingo prize winner. Such request shall be signed by all bingo chairpersons of each participating organization.

I. Noninterest Bearing Account. A separate noninterest bearing checking account shall be opened by the participating organizations for the progressive mega jackpot bingo game.

1. The account shall be in the name of charitable gaming progressive mega jackpot bingo account which shall be imprinted on all checks. Checks from this account shall require two signatures.

2. Each location, hall, commercial or non-commercial lessor that has any licensed organization(s) participating in the progressive mega jackpot bingo game shall designate in

writing and submit to the office a representative who shall make deposits and obtain bank receipts of all monies contributed and deposited into the progressive mega jackpot bingo game account before the close of bank business on the next banking day.

3. At least two designated representatives of each participating organization shall be authorized signatories on the account.

4. Monthly bank statements for the progressive mega jackpot bingo game account shall be mailed directly to the governing authority of the municipality or parish, or the contracted certified public accountant or management company overseeing the progressive mega jackpot bingo game, if applicable.

5. All banking fees and other costs related to the progressive mega jackpot bingo game shall be borne as provided in Subsection N of this Section.

J. The dollar amount of the progressive mega jackpot bingo game shall be continuously and conspicuously displayed by participating organizations during call bingo sessions conducted only by participating organizations at least within the location and within view of all patrons purchasing progressive mega jackpot bingo sheets.

K. All revenues related to the progressive mega jackpot bingo game, and all checks written to and issued from the charitable gaming progressive mega jackpot bingo account shall be reported by each participating organization in a manner acceptable to the office, the governing authority of the municipality or parish, and the contracted certified public accountant or management company overseeing the progressive mega jackpot bingo game, if applicable.

L. Any licensed charitable organizations playing bingo within the state who participates in a progressive mega jackpot bingo game shall contract a certified public accountant or management company selected by the participating organizations and who shall be approved by the office to oversee the progressive mega jackpot bingo game and account in the event that the governing authority of the municipality or parish does not have a regulatory body to oversee the game. The governing authority of the municipality or parish, or if applicable, the contracted certified public accountant or management company approved by the office shall be responsible for, but not limited to the following:

1. reconciling bank statements monthly;

2. ensuring that each contribution for each session played has been properly deposited in a timely manner, as described in Subsection R of this Section;

3. ensuring that all banking fees and other related costs as provided in Subsection N of this Section are recovered from the proper parties;

4. ensuring that checks written on the account are disbursed only to verified progressive mega jackpot bingo blackout prize winners, to organizations requesting refunds of the \$200 start-up fee due to voluntary or involuntary withdrawal from the progressive mega jackpot bingo game as provided in Subsection D of this Section, or for those purposes as may be necessary, if approved in writing by the office;

5. immediately notifying by facsimile all organizations participating in the progressive mega jackpot bingo game that the limit has been reached.

M. Equipment. Each location, hall, commercial lessor or noncommercial lessor that has any licensed organization(s) participating in the progressive mega jackpot bingo game shall have at least the following equipment on site and operational at all times:

1. facsimile machine installation at each such location capable of transmitting to the office, the governing authority of the parish or municipality, or the certified public accountant or management company contracted to oversee the progressive mega jackpot bingo game, if applicable;

2. a minimum of at least one camera and one monitor at each such location that is capable of televising the first and the next ball to be called and the winning card(s) of the progressive mega jackpot bingo game(s) to the patrons at that session;

3. an office approved recording device at each such location capable of monitoring and recording any winning card and all bingo balls as they are extracted from the bingo machine and announced to the patrons along with any hand movement of the caller during the entire progressive mega jackpot bingo game;

4. a minimum of at least two bingo boards at each such location capable of displaying the bingo balls called for the regular games, the blackout game, the bonanza games, and the progressive mega jackpot bingo game;

5. a master verification checkbook or similar verification device at each such location depicting the faces of the bingo cards printed by the manufacturer of the bingo cards being used for the progressive mega jackpot bingo game.

N. Costs. Each location, hall, commercial or non-commercial lessor that has any licensed organization(s) participating in the progressive mega jackpot bingo game shall bear all costs, related to, but not limited to, the following:

1. facsimile machine installation at each such location capable of transmitting the required data and information to the office, the governing authority of the parish or municipality, or the certified public accountant or management company contracted to oversee the progressive mega jackpot bingo game for the parish or parishes, if applicable;

2. banking fees and other related costs, accounting fees of the certified public accountant or management company contracted to oversee all deposits, disbursements, and reporting and tax requirements of the progressive mega jackpot bingo game account(s), if applicable. These costs shall be shared by each such location proportionate to the number of sessions held at each site;

3. attorney fees as may be required for any progressive mega jackpot bingo game. These costs shall be shared by each such location proportionate to the number of sessions held at each site;

4. a minimum of at least one camera and one monitor at each such location that is capable of televising the first and next ball to be called and the winning card(s) of the progressive mega jackpot bingo game to patrons at that session;

5. an office approved recording device capable of monitoring and recording any winning card and all bingo balls as they are extracted from the bingo machine and announced to the patrons along with any hand movement of

the caller during the entire progressive mega jackpot bingo game;

6. a minimum of at least two bingo boards capable of displaying the bingo balls called for the regular games, the blackout game, the bonanza games and the progressive mega jackpot bingo game;

7. a master verification checkbook or similar verification device at each such location depicting the faces of the bingo cards printed by the manufacturer of the bingo cards being used for the progressive mega jackpot bingo game.

O. Organization Requirements and Verification Procedures. All licensed charitable organizations participating in a progressive mega jackpot bingo game shall use the following procedures in verifying the play and winner(s) of the progressive mega jackpot bingo game:

1. use at each of its games the required camera, monitor, and office-approved recording device at its gaming location to televise and record the following:

a. the caller announcing the organization's name, license number, session date and time prior to calling the first ball of the progressive mega jackpot bingo game;

b. all bingo balls as they are extracted from the bingo machine and announced to the patrons along with any hand movement of the caller during the entire progressive mega jackpot bingo game;

c. the winning card(s) of the progressive mega jackpot bingo game and to display on the monitor such card(s) to the patrons at that session;

2. use at each of its sessions at least two bingo boards for its progressive mega jackpot bingo game;

3. ensure that all bingo balls are available and have not been modified in any way from their original manufacture before placing them in play. Bingo balls shall be inspected by at least the hall manager, session manager, bingo manager, caller, and at least two bingo patrons before placing them in play for the progressive mega jackpot bingo game;

4. ensure that any office, parish, or municipal representative, any bona fide active member of the participating organizations, any participating hall owner or representative(s), and any participating patron present has the right and ample opportunity to view and inspect any ball or balls for the progressive mega jackpot bingo game before placing them in play and after any winner has been achieved;

5. the caller shall announce:

a. the organization's name, license number, session date and time, and record this information on the video cassette prior to calling the first ball of the progressive mega jackpot bingo game;

b. the dollar amount of the progressive mega jackpot bingo prize prior to the start of each gaming session;

c. that the progressive mega jackpot bingo game shall commence at least five minutes before the first ball is called for the progressive mega jackpot bingo game;

d. when the forty-eighth ball is called and ask if there are any winners;

e. any progressive mega jackpot bingo game winners from another organization's licensed session for the 24-hour period as provided in Subsection H of this Section prior to the first called bingo game of a session or upon

receipt of a the facsimile as provided in Paragraph 12 of this Subsection;

f. in order to be eligible to win the progressive mega jackpot bingo game and to collect the prize, one must possess two of the four types of personal identification as provided in Subsection P of this Section;

6. reduce to writing the sequence that the bingo balls are actually called for the progressive mega jackpot bingo game. Such record shall be in ink and shall become part of the session records and shall be maintained for a period of three years as required by this Part;

7. in the event that there is a progressive mega jackpot bingo game winner as provided in Subsection H of this Section, the office-approved recording device shall immediately be rendered incapable of further recording, and secured by the session manager of that organization:

a. the organization shall verify that the winning progressive mega jackpot bingo card(s) compares to the actual balls called. Such verification shall be made by at least the session manager, bingo manager, and the caller;

b. the organization shall use at each of its games the master verification checkbook or similar verification device at its gaming location to compare to the winning card(s) of the progressive mega jackpot bingo game to ensure that such winning card(s) is a valid winner and has not been altered. Such verification shall be made by at least the session manager, bingo manager, and the caller;

c. the organization shall forward such office approved recording to the office or to the governing authority of the municipality or parish within three business days where it shall be reviewed and retained for a period of one year;

8. in the event that a licensed bingo session is not held by any participating organization, such organization shall transmit a facsimile immediately to the office and the governing parish or municipal regulatory body or the contracted certified public accountant or management company, if applicable, stating that a licensed session was not held and the reason why the session was not held. This facsimile shall be signed by the organization's member-in-charge;

9. ensure that the contracted certified public account or management company, if applicable, receives a copy of the participating organization's licensed scheduled sessions prior to beginning the progressive mega jackpot bingo game and any subsequent changes to said license;

10. vouchers. All organizations participating in a progressive mega jackpot bingo game shall utilize the same type of carbon copy voucher when awarding progressive mega jackpot bingo prize winners. All required information on the voucher(s) shall be accurately completed and properly signed immediately after the winning progressive mega jackpot bingo card(s) has been verified as provided by this Subsection. The voucher(s) shall contain, but shall not be limited to, the following information:

a. organization name, license number, session date, and session starting time;

b. printed names and signatures of the session manager, bingo manager, and caller;

c. name of the hall;

d. number of winners for the session;

e. number of balls called for the winning card;

f. printed name, signature, current address, Social Security number, and telephone number of the winner;

11. any winner(s) of the progressive mega jackpot bingo game shall be given the original voucher, and the carbon copy voucher(s) shall be retained along with the winning 3 on 1 up sealed vertical bingo sheet(s) by the organization awarding the progressive mega jackpot bingo prize. The progressive mega jackpot bingo winner(s) printed name(s), signature(s) and Social Security number(s) shall be affixed to the back of the winning card(s) in order to be valid;

12. any participating organization(s) which has a progressive mega jackpot bingo winner(s) at its licensed session shall immediately transmit by facsimile the completed voucher(s), the session record as provided in Paragraph 6 of this Subsection and the winning card(s) of the progressive mega jackpot bingo game to the following:

a. the office;

b. governing parish or municipal regulatory body, if applicable;

c. the contracted certified public accountant or management company approved by the office for that progressive mega jackpot bingo game, if applicable;

d. all locations, halls, commercial and non-commercial lessors whose organizations participate in the progressive mega jackpot bingo game.

P. Payment of the Winner(s). The original voucher(s), the carbon copy voucher(s) and the original winning 3 on 1 up sealed vertical bingo sheet(s) shall be presented to the governing parish or municipal regulatory body or the contracted certified public accountant(s) or management company, if applicable, within three working days for verification. No winner(s) of the progressive mega jackpot bingo prize shall be certified and no winner shall be paid until verified by the governing parish or municipal regulatory body or the contracted certified public accountant or management company, if applicable. Any winner of the progressive mega jackpot bingo game shall be paid only by check from the charitable gaming progressive mega jackpot bingo account. No winner(s) of the progressive mega jackpot bingo prize shall be paid unless two of the following types of personal identification are presented by the winner(s) to the governing parish or municipal regulatory body or the certified public accountant or management company overseeing the progressive mega jackpot bingo account, if applicable:

1. Social Security card;

2. valid driver's license;

3. voter's registration card;

4. birth certificate.

Q. Any organization awarding a progressive mega jackpot bingo prize shall be responsible for all local, parish, state, and federal tax withholding and reporting requirements.

R. Each location, hall, commercial or non-commercial lessor that has any licensed organization participating in the progressive mega jackpot bingo game shall:

1. prepare a detailed deposit slip(s) for all participating organizations' contributions to the progressive mega jackpot bingo game to be deposited from the previous calendar day indicating each licensed organization's name, license number, and the amount to be deposited;

2. deposit all participating organizations' contributions to the progressive mega jackpot bingo game from the previous calendar day(s) into the progressive mega jackpot bingo account before close of bank business on the next banking day, and maintain a detailed log of such deposits;

3. transmit daily by facsimile the detailed deposit slip and proof of deposit as provided in Paragraphs 1 and 2 of this Subsection to the governing parish or municipality regulatory body or the contracted certified public accountant or management company overseeing the progressive mega jackpot bingo account for that game, if applicable;

4. immediately and conspicuously display at each participating progressive mega jackpot bingo game site for a period of one week after the awarding of the progressive mega jackpot bingo game prize at least the following information concerning the progressive mega jackpot bingo winner:

a. the location, hall, commercial hall or noncommercial hall where the progressive mega jackpot bingo prize was won;

b. date and time that the progressive mega jackpot bingo was prize won;

c. the organization's name, license number, and session starting time from which the progressive mega jackpot bingo prize was won;

d. the amount of the progressive mega jackpot bingo prize awarded;

e. the number of winners for that progressive mega jackpot bingo prize;

5. ensure that all bingo equipment, including but not limited to, the required camera, monitor, office approved recording device, bingo boards, and the verification device is properly maintained and is functional before and during each licensed session;

6. ensure that all bingo balls are available and have not been modified in any way from their original manufacture before placing them in play;

7. ensure that the progressive mega jackpot bingo prize amount is continuously posted and conspicuously displayed prior to and during the entire progressive mega jackpot bingo game of each respective organization;

8. ensure that a copy of the progressive mega jackpot bingo rules are continuously posted and conspicuously displayed for all patrons to review;

9. ensure that in the case of a hall closure that the participating organizations have the opportunity to hold a final session to award the progressive mega jackpot bingo prize as provided in Subsection D of this Section.

S. The following persons shall be strictly prohibited from playing for the progressive mega jackpot bingo prize.

1. No charitable gaming employee or volunteer shall play for the progressive mega jackpot bingo prize while on duty at the gaming site. For purposes of this Section, a gaming employee or volunteer is any member of the licensed organization holding, operating or conducting any game or games of chance or any member of another licensed organization assisting in the holding, operating or conducting of any game or games of chance. A gaming employee or volunteer working any part of a session or taking a temporary break shall be considered on duty for that gaming session. A charitable gaming employee or volunteer

may play bingo, while off duty, at another gaming site other than the site where their organization(s) conduct(s) a licensed gaming session.

2. No location, hall, commercial or non-commercial lessor owners, or its shareholders, directors, employees or agents shall play the progressive mega jackpot bingo game at their licensed location.

3. No licensed distributor owners, or its shareholders, directors or agents shall play the progressive mega jackpot bingo game at any site.

4. No licensed manufacturer owners, or its shareholders, directors or agents shall play the progressive mega jackpot bingo game at any site.

5. No licensed private casino contractor owners, or its shareholders, directors or agents shall play the progressive mega jackpot bingo game at any site.

6. No employee who regulates charitable games of chance on a state, parish or local level shall play the progressive mega jackpot bingo game at any site.

T. Players of the progressive mega jackpot bingo game shall not be allowed to play bingo cards for any person enumerated in Subsection S of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:732.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Charitable Gaming Division, LR 22:116 (February 1996), amended by the Department of Revenue, Policy Services Division, LR 44:790 (April 2018).

§1785. Electronic Progressive Mega Jackpot Bingo

A. Definitions

Electronic Progressive Mega Jackpot Bingo Game System—all components in electronic, computer, mechanical, or other technologic form that link and network together to support the play of one or more progressive mega jackpot bingo games including all functions.

Local Server—a computer server, located at the physical location where progressive mega jackpot bingo games will occur, that stores the game application software and which stores and communicates all game play information and accounting and inventory data records to a central server, to which a licensed distributor or progressive mega jackpot bingo game provider has access.

Point-of-Sale Terminal—a computerized checkout or cash register system that meets the standards as outlined below.

Progressive Mega Jackpot Bingo Game Equipment—the equipment used in the conduct of a linked and networked progressive mega jackpot bingo games and the EBCDDs solely used to play the progressive mega jackpot bingo games.

Progressive Mega Jackpot Bingo Game Provider—a person licensed as an electronic bingo card dabbler device manufacturer or distributor who contracts with a licensed organization to provide electronic progressive mega jackpot bingo game system, equipment, or services to any licensed organization.

B. Each location, commercial lessor or noncommercial lessor, that offers progressive mega bingo jackpot game shall notify the office and the respective local governing authority, if a local license is required, a list of licensed organization(s) participating prior to the start-up of a progressive mega

jackpot bingo game. Licensed organization(s) shall participate in progressive mega jackpot bingo games only within the jurisdictional limits approved by the office.

C. Contracts with the electronic progressive mega jackpot bingo game provider will be required to be approved by the office prior to commencement of electronic progressive mega jackpot bingo games. Any changes to the existing contracts shall be approved by the office in writing prior to the changes occurring. All contracts will contain, at a minimum, the following:

1. safeguard the operation and oversight of the electronic progressive mega jackpot bingo game(s);
2. ensure jackpot limits set by R.S. 4:732(B)(2) are not exceeded;
3. ensure number of games per hour limitations set by R.S. 4:732(I) are not exceeded;
4. shall set forth entry and early withdrawal requirements for licensed organizations;
5. confirm in detail how the revenue proceeds split between the charity, the distributor and the progressive mega jackpot game provider will be handled by the progressive mega jackpot bingo game provider;
6. guarantee licensed organizations' share of revenue proceeds established by R.S. 4:732(H) are disbursed to charities at least monthly and no later than by the fifteenth day of the following month;
7. ascertain that all monies accumulated in the electronic progressive mega jackpot bingo account for the games shall be given away if all participating licensed organizations in that game withdraw, voluntarily or involuntarily, and discontinue the electronic progressive mega jackpot bingo game;
8. determine the lease price, if any, of the electronic bingo card dabber device to the licensed organizations;
9. any changes to an existing contract shall be approved by the office in writing before such changes can occur.

D. Winner(s). An electronic progressive mega jackpot bingo game shall be won when any player(s) achieves a winning pattern as prescribed in a format approved by the office. The progressive mega jackpot bingo game provider shall be responsible for all local, parish, state, and federal tax withholding and reporting requirements.

E. An electronic progressive mega jackpot bingo game system must, at a minimum, contain or be capable of the following:

1. capable of recording and maintaining the following information for the sales or purchases of progressive mega jackpot bingo game for a period of at least three years:
 - a. date, time and price of individual of sales;
 - b. the progressive mega jackpot bingo game provider's unique identification code;
 - c. detailed sales and accounting reports, including the price and the number of electronic progressive mega jackpot bingo game sheets or facsimiles of bingo game sheets sold at each permitted premises;
 - d. the quantity of electronic progressive mega jackpot bingo games conducted; and
 - e. display the current value of currency given to a player;

2. capable of recording and maintaining the following information for each redeemed electronic progressive mega jackpot bingo game prize for a period of at least three years:

- a. date, time and amount of prize payout;
 - b. the series number of the winning electronic progressive jackpot bingo game sheet;
 - c. display the value of currency awarded to a player;
 - d. have the capability of producing a printout for any and all games in play at any time; and
 - e. have the capability of printing out the final game record once an electronic progressive mega jackpot bingo game is closed;
3. capable of recording and maintaining all financial transaction reports and a log of significant events or exceptions relating to accounting, sales, and payouts. The electronic progressive mega jackpot bingo game system must be capable of printing such reports on demand by the office;
 4. allow secured off site access by office and other authorized personnel to real time data including all accounting for sales, prizes and credits per device;
 5. contains a point of sale terminate as part of the electronic progressive mega jackpot game system;
 6. contain an electronic random number generator for the selection of bingo numbers;
 7. contain a means of entering electronic serial and face numbers within the database for verification of winning bingo faces;
 8. possess a database of all known bingo perms used in conjunction with the electronic progressive mega jackpot game and will not allow for changes and/or modifications to the bingo faces;
 9. not allow more than one electronic bingo card dabber device per player;
 10. maintain an internal clock with current synchronized time for all components in a 24-hour format. The clock must be able to report the time stamping of significant events, including all sales and draw events as well as reference time for reporting; and
 11. be protected by a surge protector and an uninterruptible power supply so that existing data is preserved.

F. An electronic progressive mega jackpot game system shall have an automatic system to save all sales, financial, and game data separate from local server.

G. An electronic progressive mega jackpot bingo game system must be tested by an office approved independent testing laboratory certifying the system meets the requirement of this Section. Any changes in a version or code build number that has an effect on the outcome or a previously approved game must be re-tested by a certified independent testing laboratory.

H. All application software must be owned by the progressive mega jackpot bingo game provider. The progressive mega jackpot bingo game provider must provide the office with documentation establishing ownership of the intellectual property rights to the entire game application software and system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:707 and 732 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:795 (April 2018).

Subchapter G. Investigations

§1787. Investigation of License Holders

[Formerly §1781]

A. The department may, upon its own motion, investigate the actions of any licensee, licensed manufacturer or distributor. The investigation shall be undertaken for the purpose of gathering evidence and determining whether a violation of the Act, rule or other statutes of the state of Louisiana has occurred. All licensees, including licensed manufacturers and distributors shall fully cooperate with the office in any such investigation. Cooperation shall include but not be limited to making available for inspection all premises, equipment, books of accounts, records, documents and such information the office may require to insure compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(6) and R.S. 4:721(B)(5).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 13:104 (February 1987), repromulgated by the Department of Revenue, Policy Services Division, LR 44:797 (April 2018).

§1789. Suspension and Revocation of License Holders

[Formerly §1783]

A. The department may suspend any license held by an alleged violator after opportunity for hearing when:

1. the department receives:

a. a certified copy (or other credible evidence) of any judgment or conviction of any licensee or his agent, servant or employee for any violation of any criminal law or ordinance of the United States, the state of Louisiana or any Louisiana parish, city or town relating to charitable gaming or gambling; or

b. a certified copy of the record (at other credible evidence) of the forfeiture by any permittee or his agent or employee of bond to appear to answer charges of violating any law or ordinance relating to charitable gaming or gambling; or

2. the department, after investigation, has reasonable cause to believe that any license holder, his agent or employee has violated the provisions of the Act or these rules.

B. The department may suspend a license prior to the opportunity for hearing, when the department, after investigation has reasonable cause to believe continued operation of the licensee endangers public health, safety or welfare. During the period of suspension, the licensee shall not conduct charitable gaming.

C. A license may be revoked, subsequent to opportunity for a hearing, as penalty for violation of the Act or these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(4) and R.S. 4:718(D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 12:157 (March 1986), amended LR 13:104 (February 1987), repromulgated by the Department of Revenue, Policy Services Division, LR 44:797 (April 2018).

§1791. Right to Fair Hearing—Judicial Review

[Formerly §1785]

A. When the department revokes, suspends, restricts or denies an application for license renewal, the applicant may request a hearing. The request for a hearing shall be made in writing to the department within 15 days of the revocation, suspension, restriction, or denial by the department. Upon the department's receipt of written request, a hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(11)(a) and R.S. 718(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Charitable Gaming Division, LR 12:157 (March 1986), amended LR 13:105 (February 1987), LR 20:448 (April 1994), repromulgated by the Department of Revenue, Policy Services Division, LR 44:797 (April 2018).

Subchapter H. Civil Penalties

§1793. Penalty Provisions

[Formerly §1787]

A. Civil penalties may be assessed by the office against any person, licensee or other legal entity in accordance with the following schedule.

1. Except as provided in LAC 42:I.1755.B, violations of statutes or administrative rules relative to reporting requirements including, but not limited to, submission of quarterly reports shall be subject to a civil penalty not in excess of \$100 per violation.

2. Violations of statutes or rules relative to the conducting of games of chance, including but not limited to, conducting unauthorized games, participation by unauthorized persons, unauthorized distribution or procurement of supplies or equipment, failure to maintain proper records of gaming sessions, failure to properly use and retain records relative to the model accounting system shall be subject to a civil penalty not to exceed \$500 per violation.

3. Violations of statutes or administrative rules relative to making false statements in documents submitted to the division and maintained by the organization including, but not limited to, the applications, monthly or quarterly financial reports, inventories, session records, and any supporting documentation shall be subject to a civil penalty not in excess of \$1,000 per violation.

4. Violations of statutes or rules relative to the use of charitable gaming proceeds including, but not limited to, using net gaming proceeds in whole or in part for any uses other than educational, charitable, patriotic, religious or public spirited shall be subject to a civil penalty not to exceed \$2,000 per violation.

5. Violations of statutes or rules relative to theft or misappropriation of charitable gaming proceeds shall be subject to a civil penalty not to exceed \$5,000 per violation.

6. Failure to comply with orders, warnings or mandates of the office or to comply with agreements entered into with the office shall be subject to a civil penalty of \$500 per violation.

7. Any other violation of a statutory provision or administrative rule for which a penalty is not provided for in

this Section shall be subject to a civil penalty not to exceed \$500 per violation.

B. In addition to denial of a license, refusal to renew a license, restriction, suspension, revocation, civil penalty, or bar from participation in charitable gaming activities, the office may order any person, licensee, or other entity to make full restitution in the amount of any misused, misappropriated or stolen charitable gaming proceeds to the organization or persons deprived thereof and may institute appropriate action for the collection of said amounts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(8), R.S. 4:721(D)(1) and R.S. 4:735.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 13:105 (February 1987), amended LR 18:283 (March 1992), repromulgated by the Department of Revenue, Policy Services Division, LR 44:797 (April 2018).

Kimberly Lewis Robinson
Secretary

1804#009

RULE

**Department of Wildlife and Fisheries
Office of Wildlife**

Threatened and Endangered Species (LAC 76:I.317)

The Department of Wildlife and Fisheries, Office of Wildlife, does hereby update the list of threatened and endangered species in Louisiana. This Rule is hereby adopted on the day of promulgation.

Title 76

WILDLIFE AND FISHERIES

**Part I. Wildlife and Fisheries Commission
and Agencies Thereunder**

**Chapter 3. Special Powers and Duties
Subchapter E. Louisiana Natural Heritage**

§317. Threatened and Endangered Species

A. The secretary of the Department of Wildlife and Fisheries hereby determines that those species designated as endangered or threatened pursuant to the Federal Endangered Species Act (ESA) of 1973 (87 stat. 884, as amended; 16 U.S.C. 1531 et seq.), are designated as such by the U.S. Fish and Wildlife Service at 50 CFR 17.11. Based upon the above determination, said species, which are enumerated below, are deemed to be endangered or threatened species under the provisions of *Louisiana Revised Statutes* title 56, chapter 8, part IV.

1. Invertebrates		
Pink Mucket	<i>Lampsilis abrupta</i>	E
Louisiana Pearlshell	<i>Margaritifera hembeli</i>	T
Fat Pocketbook	<i>Potamilus capax</i>	E
Inflated Heelsplitter	<i>Potamilus inflatus</i>	T
Rabbitsfoot	<i>Quadrula cylindrica</i>	T
2. Fish		
Gulf Sturgeon	<i>Acipenser oxyrinchus desotoi</i>	T
Pallid Sturgeon	<i>Scaphirhynchus albus</i>	E
Smalltooth Sawfish	<i>Pristis pectinata</i>	E
3. Amphibians		
Dusky Gopher Frog	<i>Lithobates sevosus</i>	E

4. Reptiles (including eggs)		
Loggerhead Sea Turtle	<i>Caretta caretta</i>	T
Green Sea Turtle	<i>Chelonia mydas</i>	T
Hawksbill Sea Turtle	<i>Eretmochelys imbricata</i>	E
Kemp's Ridley Sea Turtle	<i>Lepidochelys kempii</i>	E
Leatherback Sea Turtle	<i>Dermochelys coriacea</i>	E
Ringed Map Turtle	<i>Graptemys oculifera</i>	T
Gopher Tortoise	<i>Gopherus polyphemus</i>	T
Black Pinesnake	<i>Pituophis melanoleucus lodingi</i>	T
5. Birds (including eggs)		
Whooping Crane	<i>Grus americana</i>	E
Piping Plover	<i>Charadrius melodus</i>	T
Red Knot	<i>Calidris canutus rufa</i>	T
Interior Least Tern	<i>Sterna antillarum athalassos</i>	E
Red-cockaded Woodpecker	<i>Picoides borealis</i>	E
6. Mammals		
West Indian Manatee	<i>Trichechus manatus</i>	T
Northern Long-eared Bat	<i>Myotis septentrionalis</i>	T
Sperm Whale	<i>Physeter macrocephalus</i>	E
Florida Panther	<i>Felis concolor coryi</i>	E
7. Plants		
American Chaffseed	<i>Schwalbea americana</i>	E
Earth-fruit	<i>Geocarpon minimum</i>	T
Louisiana Quillwort	<i>Isoetes louisianensis</i>	E
Pondberry	<i>Lindera melissifolia</i>	E
E = Endangered; T = Threatened		

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1904.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Wildlife, LR 15:1099 (December 1989), amended LR 18:877 (August 1992), LR 37:2438 (August 2011), LR 44:798 (April 2018).

Jack Montoucet
Secretary

1804#017

RULE

**Workforce Commission
Office of Workers' Compensation Administration**

Fees and Forms (LAC 40:I.6665)

Editor's Note: Section 6665 is being repromulgated to correct a typographical error. This Rule may be viewed in its entirety on pages 102-107 of the January 20, 2018 *Louisiana Register*.

The Louisiana Workforce Commission has amended certain portions of the *Louisiana Administrative Code*, Title 40, *Labor and Employment*, Part I, Workers' Compensation Administration, Subpart 3, Hearing Rules, Chapter 66, as well as Part III, Workers' Compensation Second Injury Board, Chapter 5, regarding fees and forms. This Rule is promulgated by the authority vested in the director of the Office of Workers' Compensation found in R.S. 23:1291 and R.S. 23:1310.1(C).

Title 40

LABOR AND EMPLOYMENT

**Part I. Workers' Compensation Administration
Subpart 3. Hearing Rules**

Chapter 66. Miscellaneous

Subchapter E. Forms

**§6665. Workers' Compensation Records
Request Form; LWC-WC-1150**

WORKERS' COMPENSATION RECORDS REQUEST FORM

Mail completed form to:

Louisiana Workforce Commission
 OWCA Records Management Section
 1001 N. 23rd Street
 P.O Box 94040
 Baton Rouge, LA 70804-9040
 Telephone No.: 225-342-7565

Status of your records request: (Office use only.)

- Will be processed.
- Is being returned. *See Section III, Page 2.*
- Has been processed. You owe a copying fee, *See Section III, Page 2.*
- Is complete. *See Section III, Page 2.*

Note: Copies of documents provided through this request shall adhere to the provisions of La. R.S. 23:1020.1, *et seq.* and La. R.S. 44:1, *et seq.*, which limits the inspection and copying of workers' compensation records. ***A \$25.00 fee is required per employee search. (Exception: Requests for LWC-WC-1002 will NOT be assessed a \$25.00 search fee.)** Copying fees are \$0.25 per page. Make all checks payable to the **OWCA Administrative Fund.**

SECTION I: TO BE COMPLETED BY REQUESTOR

1. Select all that apply:

- I am the Employee **OR** Legal Representative of the Employee. (*Attach letter of representation.*)
- I am the Employer/Insurer **OR** Legal Representative of the Employer/Insurer. (*Attach letter of representation.*)
- I am **NOT** a party to a workers' compensation claim. (*Attach employee authorization, LWC-WC- 1151.*)
- I am a Prospective Employer. (*Attach employee authorization, LWC-WC- 1151.*)

2. Name of Requestor (Please Print)	3. Phone Number
4. Company Name (If Applicable)	5. Fax Number
6. Address, City, State ZIP	7. Email

SECTION II: RECORDS REQUESTED

1. Employee's Name (<i>Please use a separate form for each employee.</i>)	2. Employee's Social Security Number
<p>3. Identify the workers' compensation claim you are requesting:</p> <p>Workers' Compensation Claim Docket # _____ Date of Injury _____</p> <p>ALL cases for this injured worker. - If known, list the Docket # and Date of Injury for each claim in the <u>Additional Comments Section</u>, see right. <i>You will be assessed a \$25.00 search fee for each workers' compensation docket number.</i></p>	<p>Additional Comments:</p>
<p>4. Additional records I am requesting:</p> <p>Notice Of Payment, Modification, Suspension, Termination or Controversion of Compensation or Medical Benefits (LWC-WC-1002). *Only available to Employee or Employee Representative per La. R.S. 23:1201.1. <i>You will NOT be assessed a \$25.00 search fee for this records request.</i></p> <p>Other documents requested. <i>Please specify in the <u>Additional Comments</u> section.</i></p>	
<p>5. Need records certified? (If certified, you will be assessed \$25.00.)</p> <p style="text-align: center;">Yes No</p>	

I have read and understand this form and the accompanying instructions. I certify that all information provided by me to the Office of Workers' Compensation Administration is accurate and correct to the best of my knowledge. I understand that providing false or misleading information may subject me to prosecution.

Signature of Requestor _____

Date _____

SECTION III: TO BE COMPLETED BY OWCA RECORDS MANAGEMENT SECTION

1. This records request will NOT be processed due to the following:

- \$25.00 Search fee not received.
- No Social Security Number/incomplete number.
- Employee Authorization form required.
- Incomplete information. Please provide: _____
- *Your request will NOT be processed until the information is provided.

2. Your request has been processed.

_____ Pages of responsive records have been found. Please submit a check in the amount of \$_____ to the OWCA Administrative Fund. *No records will be sent until the check is received by the OWCA.

Your request has produced more than one employee claim. _____ claims have been found. Please submit a check in the amount of \$_____ to the OWCA Administrative Fund. *No records will be sent until the check is received by the OWCA.

3. Your request is complete. The records search has: No Records Found See Attached records.

Records request completed by _____ Date: _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and R.S. 23:1293.

Sheral Kellar
Director

1804#019

RULE

Board of Elementary and Secondary Education

Bulletin 139—Louisiana Child Care and Development Fund Programs (LAC 28:CLXV.103, 511, 512, 515, and 519)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 139—Louisiana Child Care and Development Fund Programs*: §103, Definitions; §511, Household Certification Period; §512, Redetermination of Household Certification for Non-Categorically Eligible Households; §515, Payments Made on Behalf of Households; and §519, Termination or Refusal of Renewal of Household Certification and Ineligibility Periods for Households. The revisions ensure that the childcare assistance program is federally compliant while meeting the needs of low-income, working families. This Rule is hereby adopted on the day of promulgation.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Workers' Compensation Administration, LR 44:641 (January 2018), repromulgated LR 44:798 (April 2018).

**Title 28
EDUCATION**

**Part CLXV. Bulletin 139—Louisiana Child Care and Development Fund Programs
Chapter 1. Child Care Assistance Program
§103. Definitions**

Back Scans—attendance scans by head of household or household designee utilizing tracking of time services (TOTS) point-of-service machine (POS) or interactive voice response (IVR) that are made at a time other than the actual times of arrival and departure of the child.

Excessive Back Scans—four or more back scans in a seven consecutive day period or ten or more back scans in one calendar month.

Excessive Unexplained Absences—six or more unexplained absences from the child care provider during any certification month.

Head of Household—an individual who is over the age of 18 or under the age of 18 and emancipated by law with whom the child customarily resides more than half the time.

The head of household is either the child's parent or an adult household member with primary responsibility for the child's financial support and care, if the parent is not living in the home or is living in the home but is under age 18 and not emancipated by law, or is disabled and is unable to care for himself and his child(ren).

* * *

Unexplained Absence—an absence for which the head of household has not provided verbal or written notification to the provider or the department about the absence.

* * *

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2109 (October 2015), amended LR 42:42 (January 2016), LR 42:1870 (November 2016), LR 43:1279 (July 2017), LR 44:800 (April 2018).

Chapter 5. CCAP Household Eligibility

§511. Household Certification Period

A. Eligible households may be certified for up to 24 months except as provided in Subsection B of this Section.

B. Households relying on the exception to eligibility requirements for parents and persons acting as parents who are experiencing homelessness, as provided in §509.A.5.b, and that have the 20-hours-per-week employment and training requirement waived, may be certified for up to one year.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 42:44 (January 2016), amended LR 42:2176 (December 2016), LR 44:801 (April 2018).

§512. Redetermination of Household Certification for Non-Categorically Eligible Households

A. A redetermination of eligibility for child care services shall be made prior to the expiration of certification period, but no sooner than 12 months following the initial determination or most recent redetermination.

B. Graduated Phase-Out. At the time of redetermination, households whose income has risen above the initial state threshold for eligibility but remain below the federal

threshold for eligibility of 85 percent of state medium income, shall be eligible for 12 additional months of child care services as part of a graduated phase-out.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:801 (April 2018).

§515. Payments Made on Behalf of Households

A. - F.5. ...

G. Registration Fees. Payments for registration fees will be made to providers on behalf of all households once per certification period. Allowable registration fees are based on the amount recorded in the provider certification agreement or the current market rate, whichever is lower.

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

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

§519. Termination or Refusal of Renewal of Household Certification and Ineligibility Periods for Households

A. The department may terminate or refuse renewal of a household's certification and impose a period of ineligibility on the household for program violations, which include but are not limited to the following acts by a member of the household:

1. - 4. ...
5. excessive unexplained absences;
6. excessive back scanning.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 42:45 (January 2016), amended LR 44:801 (April 2018).

Shan N. Davis
Executive Director

1804#031

Notices of Intent

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 §107 add the following requirements for those applying to become a structural pest control licensee: that the required four years of work experience shall be within the past six years, applicants for structural fumigation shall have completed a minimum of 30 jobs before applying, and applicants for ship fumigation shall have completed a minimum of 200 jobs before applying. The amendments to §113 change the time period for registered technicians to complete their continuing education requirements from July 1-June 30 to January 1-December 31. The amendments to §117 clarify the timeframe in which licensees shall make records available to LDAF employees and the requirements for fumigation records. The amendments to §147 clarifies requirements for fumigation equipment calibration.

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.

Termites—all species of the order *Isoptera* which infest timbers and/or other materials containing cellulose in buildings and/or contents thereof, subdivided into two groups according to their habits, as follows.

a. *Subterranean Termites*—all species of termites which make tubes, but not pellets, and normally require contact with soil; especially species of the genera *Reticulitermes* and *Coptotermes*.

b. *Dry-Wood Termites*—any of various termites that live and feed in dry wood without a soil connection and includes some which are destructive pests in domestic constructions, of the genera *Kaloterms*, *Cryptotermes* and *Incisitermes*.

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 Agriculture and Environmental Sciences, Structural Pest Control Commission, LR 39:300 (February 2013), LR 41:333 (February 2015), LR 42:213 (February 2016), LR 44:

§107. License to Engage in Structural Pest Control Work Required

A. No person shall perform structural pest control work until licensed and permitted to do so by the commission.

B. Each applicant for license shall possess one of the following qualifications in order to take the examination(s):

1. general pest control commercial vertebrate control and commodity fumigation:

a. a degree from an accredited four-year college or university with a major in entomology; or

b. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience within the last six years as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination; or

c. four years of experience within the last six years as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination; or

d. four years of experience within the last six years as a technician under the supervision of a structural pest control operator in another state in the licensee phase for which the individual desires to take the examinations. Experience with an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission;

2. termite control:

a. a degree from an accredited four-year college or university with a major in entomology and complete a commission approved comprehensive termite program; or

b. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience within the last six years as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination and complete a commission approved comprehensive termite program; or

c. four years of experience within the last six years as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination and complete a commission approved comprehensive termite program; or

d. four years of experience within the last six years as a technician under the supervision of a structural pest control operator in another state in the licensee phase for which the individual desires to take the examinations and complete a commission approved comprehensive termite program. Experience with an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission;

3. structural fumigation:

a. a degree from an accredited four-year college or university with a major in entomology and having completed 30 jobs in structural fumigation within the last six years, as a registered technician under the supervision of a licensee in structural fumigation; or

b. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience within the last six years, having completed 30 jobs in structural fumigation as a registered technician under the supervision of a licensee in structural fumigation; or

c. four years of experience within the last six years, having completed 30 jobs in structural fumigation as a registered technician under the supervision of a licensee in structural fumigation; or

d. four years of experience within the last six years, having completed 30 jobs in structural fumigation as a technician under the supervision of a structural pest control operator in another state in the licensee phase for which the individual desires to take the examinations. Experience with an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission.

C. Each applicant for a ship fumigation license shall possess one of the following qualifications in order to take the examination:

1. a degree from an accredited four-year college or university with a major in entomology and having completed 200 jobs in ship fumigation working under the supervision of a licensee in ship fumigation; or

2. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience, having completed 200 jobs in ship fumigation within the last six years as a registered technician under the supervision of a licensee in ship fumigation; or

3. experience as a registered technician having completed 200 jobs in ship fumigation, working under the supervision of a licensee in ship fumigation, during a two-year period within the last six years;

4. four years of experience, having completed 200 jobs in ship fumigation within the last six years as a technician under the supervision of a structural pest control operator in another state in ship fumigation. Experience with an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission.

D. - F.3. ...

G. Out-of-state applicants for licensure shall meet the educational requirements shown in Paragraph B.1 of this Section or produce evidence satisfactory to the commission of four years of experience within the last six years, under the supervision of a recognized and reputable pest control operator. Experience in pest control work in another state will be verified with the appropriate regulatory agency of the other state before out-of-state applicant will be allowed to take the examination for licensure in Louisiana.

H. - 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), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 42:213 (February 2016), LR 44:

§113. Registration of Employees; Duties of Licensee and Registered Employee with Respect to Registration

A. - O. ...

P. Each registered technician shall participate in an entire continuing education program as a condition of maintaining his or her status as a registered technician at least once annually (January 1 to December 31).

1. - 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 42:213 (February 2016), LR 44:

§117. Obligations of the Licensee/Permittee

A. - G. ...

H. Any person applying pesticides for a fee and the permittee or the primary licensee shall maintain records according to LAC 7:XXV.117.H, at the physical address listed on the place of business permit of all applications of pesticides on a record keeping form or in a format approved by the director of Pesticide and Environmental Programs of the department. These records shall be retained for a period of two years after the date of the pesticide application for ship and commodity fumigation, general pest control and commercial vertebrate control and a period of two years after the expiration of applicable contracts for termite and other wood destroying insect control. The licensee shall make a copy of these records available to any employee of

the department for inspection during normal working hours within 48 hours upon notification, excluding legal holidays.

1. - 3.m. ...

* * *

- n. applicator, department I.D. number; and
- o. fumigation instrument calibration.

H.4. - Q. ...

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, LR15:956 (November 1989), LR 21:930 (September 1985), :R 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 42:214 (February 2016), LR 44:

§147. Fumigation

A. - A.6. ...

7. The licensee shall have all gas detection/monitoring instruments for the fumigant being used properly calibrated to meet manufacturer standards prior to the application of the fumigant.

B. - D.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 11:332 (April 1985), amended LR 17:251 (March 1991), LR 37:293 (January 2011), LR 44:

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 Analysis

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule 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 Kelly Moore, Assistant 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 the 10th day of May, 2018. No preamble is available.

Public Hearing

A public hearing will be held on May 29, 2018, at 10 a.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 Kelly Moore at the address given below 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. The proposed rule changes define and clarify regulated terms used by the structural pest control industry, modify certain work requirements related to structural pest control licensure, change the time periods for continuing education completion, specify the timeframe for record availability for Louisiana Department of Agriculture (LDAF) employees, and add requirements for fumigation equipment calibration.

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

The proposed rule changes will decrease revenue for LDAF by approximately \$400 annually. On average, LDAF processes 40 new applicants for structural pest control operator licensure each year, and approximately 80% of these individuals meet the new requirements in the proposed rule changes. Under the proposed rules, 8 applicants (40 applicants * 20%) would no longer qualify for a structural pest control operator license. The current cost for each license is \$50, resulting in a revenue loss of \$400 (8 applicants * \$50).

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

The proposed rule changes may restrict access to licensure for certain applicants depending on work history. To the extent these individuals qualify under current rule but do not under proposed rule, these individuals may not realize the economic benefit they may have received qualifying to work as a licensed structural pest control operator.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes may have a minimal impact on employment for individuals seeking to become licensed pest control operators. Current rules require certain work experience for each type of structural pest control license. The proposed rule changes would require that any work experience would have been obtained within the last six (6) years. Under proposed rule changes, approximately eight (8) applicants each year would no longer qualify for a structural pest control operator's license. However, nothing in the proposed rule changes will preclude these individual from employment in the structural pest control industry as a registered technician under the supervision of a current licensed pest control operator.

Dane Morgan
Assistant Commissioner
1804#037

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment
Standards and Practices (LAC 28:XI.6913)

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 (BESE) approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: §6913, Performance Standards, regarding LEAP connect scaled score ranges.

**Title 28
EDUCATION**

Part XI. Accountability/Testing

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

**Chapter 69. LEAP Alternate Assessment, Level 1
Subchapter D. Alternate Achievement Levels and
Performance Standards**

**§6913. Performance Standards
[Formerly LAC 28:CXI.1913]**

A. ...

B. LAA 1 Alternate Achievement Levels and Scaled-Score Growth Ranges

1. English Language Arts and Mathematics Scaled Score Ranges

a. English Language Arts

Performance Level	English Language Arts						
	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 11
Level 4	1251-1290	1258-1290	1256-1290	1253-1290	1255-1290	1250-1290	1255-1290
Level 3	1240-1250	1240-1257	1240-1255	1240-1252	1240-1254	1240-1249	1240-1254

Performance Level	English Language Arts						
	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 11
Level 2	1234-1239	1234-1239	1232-1239	1231-1239	1236-1239	1230-1239	1236-1239
Level 1	1200-1233	1200-1233	1200-1231	1200-1230	1200-1235	1200-1229	1200-1235

b. Mathematics

Performance Level	Mathematics						
	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7	Grade 8	Grade 11
Level 4	1254-1290	1251-1290	1255-1290	1249-1290	1254-1290	1249-1290	1249-1290
Level 3	1240-1253	1240-1250	1240-1254	1240-1248	1240-1253	1240-1248	1240-1248
Level 2	1236-1239	1233-1239	1231-1239	1234-1239	1232-1239	1234-1239	1234-1239
Level 1	1200-1235	1200-1232	1200-1230	1200-1233	1200-1231	1200-1233	1200-1233

B.2. ...

* * *

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), amended by the Board of Elementary and Secondary Education, LR 44:472 (March 2018), LR 44:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. noon, May 9, 2018, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 118—Statewide Assessment Standards and Practices**

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

There will be indeterminable costs to local school districts as a result of the changes. In October 2017, BESE approved revisions to Bulletin 118, Statewide Assessment Standards and Practices, relative to Louisiana's approved education plan pursuant to the federal Every Students Succeeds Act (ESSA).

The policy stated that the LDE would propose, for approval by BESE, LEAP Connect scaled-score ranges during the 2017-2018 school year. LEAP Connect is a state assessment developed to ensure that students with significant cognitive disabilities are able to participate in an assessment that measures student knowledge based upon the grade-level Louisiana Connectors, as required by federal law.

When taken in conjunction with other changes to the school, district and state accountability system contained in Bulletins 118 and 111, potential implications for schools which are labeled "Urgent Intervention Required" and "Comprehensive Intervention Required". Schools receiving such ratings will be required to develop a plan that describes goals, strategies, and monitoring processes that will be used to address identified deficiencies.

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

Schools may be eligible for competitive grants from the Department of Education to address curriculum, assessment, and professional development needs aimed at improving student performance.

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

Public charter schools will experience similar impacts to those identified for traditional public schools.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

School districts have expressed concerns that lower school performance scores will make it more difficult to attract high quality teachers.

Beth Scioneaux
Deputy Superintendent
1804#049

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Fee Increase (LAC 33:I.1203 and 1911; III.211, 223, 307, 309, and 319; V.5123 and 5139; and IX.1309)(MM020)

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 nonapplicable regulations, LAC 33:I.1203 and 1911; III.211, 223, 307, 309, and 319; V.5123 and 5139; and IX.1309 (MM020).

This Rule provides for miscellaneous amendments and corrections necessary for fee changes authorized by Act 451 of the 2016 Regular Legislative Session. This Act authorized certain fee increases, new fees and other changes to the regulations pertaining to fees. This Rule is required to correct errors found during the implementation of MM018, the original fee increase Rule. The basis and rationale for this Rule are to implement the fee changes authorized in Act 451 of the 2016 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 I. Office of the Secretary

**Subpart 1. Departmental Administrative Procedures
Chapter 12. Requests for Review of Environmental
Conditions**

§1203. Procedure for Submittal of Request

A. All requests for reviews by the department of reports of environmental conditions shall be accompanied by an initial \$1,650 minimum fee.

A.1. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 2011(D)(25), and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:447 (March 2007), amended LR 33:2079 (October 2007), LR 35:2178 (October 2009), amended by the Office of the Secretary, Legal Division, LR 38:2749 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR43:2136 (November 2017), LR 44:

**Chapter 19. Facility Name and Ownership/Operator
Changes Process**

**§1911. Fees for Name and Ownership/Operator
Changes**

A. Notifications of name or ownership/operator changes at a facility shall be submitted by the new owner or operator with the appropriate fees. The fees listed below cover the cost of reviewing, evaluating, and processing a name or ownership/operator change that has occurred at the facility.

Name and Ownership/Operator Change Fees	
Program	LAC Citation for Fee
Air	LAC 33:III.223, Fee Number 2000
Solid Waste: Type I, I-A, II, and II-A Facilities	LAC 33.VII.1501.C (N/A for name change alone)
Solid Waste: Type III Facilities or Beneficial Use Facilities	LAC 33.VII.1501.D (N/A for name change alone)
LPDES	LAC 33:IX.1309.D.4 (N/A for name change alone)

§223. Fee Schedule Listing

A. Table 1—Fee Schedule Listing

Table 1 Fee Schedule Listing						
Fee Number	Air Contaminant Source	SICC	Annual Maintenance Fee	New Permit Application Fee	Modified Permit Fees	
					Major	Minor

0050	Natural Gas Liquids per Unit	1321 MIN.	\$417.00	\$2,082.00	\$1,248.00	\$417.00 \$500.00

0410	Commercial Printing: Color per Press	2752 MIN.	\$416.00 \$2,053.00	\$2,079.00 \$10,274.00	\$1,249.00 \$6,164.00	\$416.00 \$2,053.00

0590	Charcoal per Oven	2861 MIN.	\$417.00	\$2,082.00	\$1,248.00	\$417.00 \$500.00

0775	Plastics Injection Moulding and Extrusion per Line	3079 MIN.	\$417.00	\$2,082.00	\$1,248.00	\$417.00 \$500.00

0990	Secondary Smelting of Non-Ferrous Metals per Furnace	3341 MIN.	\$1,248.00 \$2,569.00	\$6,241.00 \$12,843.00	\$3,745.00 \$7,706.00	\$1,248.00 \$2,569.00

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:2429 (October 2005), amended LR 35:2178 (October 2009), LR 36:2552 (November 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

Part III. Air

**Chapter 2. Rules and Regulations for the Fee System
of the Air Quality Control Programs**

§211. Methodology

A. - B.13.d. ...

i. if the minor modification fee is greater than \$2,000, then the minimum minor modification fee is equal to 25 percent of the minor modification fee; and

ii. if the minor modification fee is \$500 to \$2,000, then the minimum minor modification fee is \$500.

13.e. - 15.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 26:2444 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2082 (October 2007), LR 33:2620 (December 2007), LR 37:1145 (April 2011), amended by the Office of the Secretary, Legal Division, LR 43:935 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

Table 1 Fee Schedule Listing						
Fee Number	Air Contaminant Source	SICC	Annual Maintenance Fee	New Permit Application Fee	Modified Permit Fees	
					Major	Minor
1010	Aluminum Foundries (Castings) per Unit	3361 MIN.	\$332.00	\$1,665.00	\$997.00	\$332.00 \$500.00
1020	Brass/Bronze/Copper-Based Alloy Foundry per Furnace	3362 MIN.	\$417.00	\$2,082.00	\$1,248.00	\$417.00 \$500.00
* * *						
1130	Painting Topcoat per Line	3479 MIN.	\$417.00	\$2,082.00	\$1,248.00	\$417.00 \$500.00
1140	Potting per Line	3479 MIN.	\$250.00	\$1,248.00	\$748.00	\$250.00 \$500.00
1150	Soldering per Line	3479 MIN.	\$250.00	\$1,248.00	\$748.00	\$250.00 \$500.00
* * *						
1430 *Note 11*	Natural Gas Comp per 100 H.P. (Turbines)	4922 MIN.	\$8.29 \$250.00	\$41.58 \$500.00	\$24.95 \$500.00	\$8.29 \$500.00
* * *						
1500 *Note 10*	Coal Gassification per \$100,000 Capital Cost	4925 MIN. MAX.	\$8.29 \$1,317.00 \$66,614.00	\$41.58 \$6,587.00 \$333,067.00	\$24.95 \$3,952.00 \$199,840.00	\$8.29 \$1,317.00 \$66,614.00
1510 *Note 10*	Co-Generation per \$100,000 Capital Cost	4939 MIN. MAX.	\$8.29 \$1,317.00 \$41,612.00	\$41.58 \$6,587.00 \$208,060.00	\$24.95 \$3,952.00 \$124,836.00	\$8.29 \$1,317.00 \$41,612.00
1520	Incinerators: A) 1,000 Lb/Hr and Greater Capacity	4953	\$526.00	\$2,634.00	\$1,580.00	\$526.00
* * *						
1525	Sanitary Landfill per Million Mg of Planned Capacity	4953 MIN.	\$146.00 \$291.00	\$726.00 \$1,452.00	\$436.00 \$872.00	\$146.00 \$500.00
* * *						
1540	Steam Gen. Units per 1000 Lb/Hr Steam Cap: Natural Gas or Comb Non-Fossil Fuels	4961 MIN.	\$2.06 \$341.00	\$10.41 \$1,712.00	\$6.22 \$1,027.00	\$2.06 \$500.00
* * *						

B. Table 2—Additional Fees

Table 2 Additional Fees		
Fee Number	Fee Description	Amount
2000 *Note 22*	Name and Company Ownership/Operator Changes under LAC 33:I.Chapter 19	\$500.00
2010	The Issuance or Denial of Variances, and Permit Exemptions. The fee for a variance shall be waived for sources operating under an air permit.	\$500.00
* * *		
2300 *Note 14*	Criteria Pollutant Annual Fee per Ton Emitted on an Annual Basis (Non-Title V Facility): Nitrogen oxides (NOx) Sulfur dioxide (SO2) Non-toxic organic (VOC) Particulate (PM10)	\$14.11/ton
2310 *Note 14*	Criteria Pollutant Annual Fee per Ton Emitted on an Annual Basis (Title V Facility): Nitrogen oxides (NOx) Sulfur dioxide (SO2) Non-toxic organic (VOC) Particulate (PM10)	\$14.11/ton
* * *		

NOTE: Explanatory Notes for Fee Schedule

NOTE 1. - NOTE 22. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, 2341, and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), repromulgated LR 18:31

(January 1992), amended LR 18:706 (July 1992), LR 18:1256 Section 223 Section 223 Title 33, Part III 32 October 2017 Environmental Regulatory Code (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496, 1499 (November 1997), LR 23:1662 (December 1997), amended by the Office of Environmental Assessment,

Environmental Planning Division, LR 26:267 (February 2000), LR 26:485 (March 2000), LR 26:1606 (August 2000), repromulgated LR 27:192 (February 2001), amended LR 29:672 (May 2003), LR 29:2042 (October 2003), LR 30:1475 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2620 (December 2007), LR 34:2560 (December 2008), LR 37:1145 (April 2011), amended by the Office of the Secretary, Legal Division, LR 43:936 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

Chapter 3. Regulatory Permits

§307. Regulatory Permit for Oil and Gas Well Testing

A. - F.3. ...

G. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit shall be \$500. There shall be no annual maintenance fee associated with this regulatory permit.

H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:457 (March 2009), amended by the Office of the Secretary, Legal Division, LR 43:942 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:1898 (October 2017), LR 44:

§309. Regulatory Permit for Release of Natural Gas from Pipelines and Associated Equipment

A. - H.3. ...

I. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit shall be \$500. There shall be no annual maintenance fee associated with this regulatory permit.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:458 (March 2009), amended by the Office of the Secretary, Legal Division, LR 43:942 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

§319. Regulatory Permit for Flaring of Materials Other than Natural Gas

A. - H.2.c. ...

I. In accordance with LAC 33:III.223, Table 1, the fee for this regulatory permit shall be \$500. There shall be no annual maintenance fee associated with this regulatory permit.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 39:1039 (April 2013), LR 43:942 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 51. Fee Schedules

§5111. Treaters, Storers, and/or Disposers Application Fees

A. The applicant is required to calculate the appropriate application fee and, if applicable, siting fee according to the schedule included in the permit application form. Payment

shall be made in accordance with the requirements of LAC 33:V.5127.

B. Application Fee Schedule

Item	Fee
Site Analysis—per acre site size	\$413 ¹
Process and Plan Analysis	\$1,650
Facility Analysis—per unit ²	\$825
Management/Financial Analysis	\$1,650

[Note: Fee equals total of the four items.]

¹ Up to 100 acres, no additional fee thereafter.

² Incinerator, land farm, treatment pond, etc., each counted as a unit.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:318 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 18:724 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:288 (March 2001), LR 29:685 (May 2003), LR 29:2048 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2179 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:943 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

§5119. Treaters, Storers, and/or Disposers Annual Maintenance Fees

A. Fee per Facility

Off-Site Disposer (Commercial)	\$131,670
Reclaimer (compensated for waste removed)	\$57,750
Reclaimer (uncompensated for waste removed or pays for waste removed)	\$41,250
Off-Site Disposer (Noncommercial)	\$33,000
On-Site Disposer	\$16,500

NOTE: The higher fee for off-site disposal is due to the cost of the manifest system and emergency response to transport spills (neither cost is applicable to on-site disposers)

B. Fee per Hazardous Waste Unit Type

Unit Type	Fee
Storage:	
Container/Tank/Waste Pile/etc.	\$5,400
Treatment:	
Incinerator/Boiler/Industrial Furnace/Filtration Unit/etc.	\$8,695
Disposal:	
Landfill/Miscellaneous Unit/etc.	\$13,645

C. - H.2. ...

* * *

I. Formula to Apportion Fees

Annual Maintenance Fee = Fee per Facility + Fee per Unit + Fee based on Volume + Administrative Cost Fee + Land Disposal Prohibitions Fee + Groundwater Protection Annual Fee + Incineration Inspection and Monitoring Fee + Boiler/Industrial Furnace Inspection and Monitoring Fee + Annual Landfill Inspection and Monitoring Fee + Annual Land Treatment Unsaturated Zone Monitoring Inspection Fee

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:318 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 15:378 (May 1989), LR 16:684 (August 1990), LR 16:1057 (December 1990), LR 18:723 (July 1992), LR 18:1375 (December 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:685 (May 2003), LR 29:2049 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2179 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:943 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

§5123. Annual Fee for Facilities with Closed Hazardous Waste Units in Post Closure

A. Post Closure Annual Fee. This is an annual fee applied to defray the cost of annually inspecting the facilities with closed hazardous waste units in post-closure care and with no operating unit/permit. This fee shall be \$4,125 annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:945 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

§5139. Groundwater Protection Permit Review Fee

A. ...

* * *

B. Oversight of Abandonment Procedures. This fee covers the cost of reviewing plans to plug and abandon all permitted groundwater monitoring systems (monitoring wells, piezometers, observations wells, and recovery wells) to ensure that they do not pose a potential threat to groundwater:

1. casing pulled—\$146 each;
2. casing reamed out—\$291 each;
3. casing left in place—\$726 each.

AUTHORITY NOTE: Promulgated in accordance with 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Groundwater Division, LR 14:621 (September 1988), amended LR 16:685 (August 1990), amended by the Hazardous Waste Division, LR 18:725 (July 1992), LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:687 (May 2003), LR 29:2050 (October 2003), amended by the Office of the Secretary, Legal Division, LR 43:945 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 13. Louisiana Water Pollution Control Fee System Regulation

§1309. Fee System

- A. - M.3. ...
N. Other Fees

Permit Type	Amount
Gen-LAG 03-Barge Cleaner	I: \$380 II: \$2,750 III: \$5,500 IV: \$11,000
* * *	

Permit Type	Amount
Gen-LAR10-Construction	\$291

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B), and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:626 (September 1988), LR 18:731 (July 1992), LR 21:798 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of Water Resources, LR 24:326 (February 1998), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2052 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1493 (August 2009), LR 35:2181 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:948 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

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 MM020. Such comments must be received no later than June 6, 2018, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to 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 MM020. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on May 30, 2018, 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
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Fee Increase**

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

There are no anticipated implementation costs as a result of the proposed rule change.

The proposed rule change is being promulgated in order to correct errors found in the original rule authorized by Act 451 of 2016.

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

The Department of Environmental Quality anticipates increased revenues of \$60,000 annually as a result of the proposed rule change. The department will now begin assessing all fees at the authorized rate. The department began assessing some fee increases authorized by Act 451 upon promulgation of the rule in May 2017, however for certain fees the department continued to collect the amount from the existing fee structure. The state regulated community is responsible for the fees.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

The state regulated community will incur minimal costs as a result of the proposed rule change.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no anticipated effect on competition and employment as a result of the proposed rule change.

Herman Robinson
General Counsel
1804#046

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Stage II Vapor Recovery Systems
Decommissioning Vapor Recovery Equipment
(LAC 33:III.2132)(AQ377)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.2132 (AQ377).

Currently LAC 33:III.2132 stage II requires certain motor vehicle fuel dispensing facilities (MVDF) to install vapor recovery equipment as required by section 202(a)(6) of the Clean Air Act. The U.S. Environmental Protection Agency (EPA) has determined that the systems used at gas station pumps to capture gasoline vapors while refueling cars can be phased out. Modern vehicles are equipped to capture those emissions with onboard refueling vapor recovery (ORVR) technologies.

This Rule will amend §2132 to:

(1) terminate the requirement to install stage II vapor recovery systems at new MVDF;

(2) provide standards and requirements for decommissioning existing stage II equipment at MVDF; and

(3) require the decommissioning of existing stage II equipment within 18 months of final approval of a SIP revision by the U.S. EPA to eliminate stage II requirements.

The basis and rationale are to update the regulations to reflect the EPA determination that stage II vapor recovery equipment can be phased out. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

**Chapter 21. Control of Emission of Organic
Compounds**

Subchapter F. Gasoline Handling

**§2132. Stage II Vapor Recovery Systems for Control of
Vehicle Refueling Emissions at Gasoline
Dispensing Facilities**

A. - B.1. ...

2. Except as provided in Subsection J of this Section, new facilities constructed after promulgation of this regulation shall comply with the requirements of this regulation upon start-up of the facility.

3. Except as provided in Subsection J of this Section, all facilities existing when these rules are promulgated that dispense greater than 10,000 gallons of gasoline per month (50,000 gallons of gasoline per month in the case of an independent small business marketer of gasoline) are subject to this regulation and shall demonstrate to the administrative authority their average monthly volume of motor vehicle fuel dispensed. This information shall be submitted to the administrative authority no later than 90 days after promulgation of this regulation. The criteria that mandate the installation of gasoline vapor recovery equipment are determined by calculating the average volume of motor vehicle fuel dispensed per month, without facility shutdown, for the most recent two-year period, and shall be calculated monthly. If data for two years is not available, this calculation shall be based on the monthly average for the most recent 12 calendar months, including only those months for which the facility was operating.

4. Except as provided in Subsection J of this Section, facilities subject to the provisions of this Section shall demonstrate compliance according to the following schedule:

a. - d. ...

5. Except as provided in Subsection J of this Section, no owner or operator as described in Paragraphs B.1, 2, and 3 of this Section shall cause or allow the dispensing of motor vehicle fuel at any time unless all fuel dispensing operations are equipped with and utilize a stage II vapor recovery system certified by CARB on or before March 31, 2001, that is properly installed and operated in accordance with the corresponding CARB executive order. The vapor recovery equipment must also be installed and operated within the

guidelines of the National Fire Protection Association (NFPA) 30. The vapor recovery equipment utilized shall be certified by CARB or equivalent certification authority approved by the administrative authority* to attain a minimum of 95 percent gasoline vapor control efficiency. This certified equipment shall have coaxial hoses and shall not contain remote check valves. In addition, only CARB or equivalent approved aftermarket parts and CARB or equivalent approved rebuilt parts shall be used for installation or replacement use. CARB certified enhanced vapor recovery systems and/or individual parts are approvable by the administrative authority* as equivalent alternatives.

6. Except as provided in Subsection J of this Section, the regulated facility shall submit the following application information to the Office of Environmental Assessment prior to installation of the stage II vapor recovery system:

a. - c.iv. ...

7. Once a facility becomes subject to this regulation, that facility shall continue to be subject to this regulation even if throughput drops back below the throughput exemption level until the facility decommissions its stage II equipment in accordance with Paragraph J.4 of this Section.

8. - 9. ...

C. Training

1. Except as provided in Subsection J of this Section, at least one owner/operator/employee from each facility shall receive training in the categories listed in this Section. For each person who successfully completes training, a certificate or other proof of training shall be required. The required training shall be completed prior to the initiation of operation of a facility's stage II vapor recovery equipment. Training shall include the following areas:

1.a. - 2. ...

D. Testing

1. Except as provided in Subsection J of this Section, the owner/operator of the facility shall have the installed vapor recovery equipment tested prior to the start-up of the facility. The owner or operator shall notify the Office of Environmental Assessment at least five calendar days in advance of the scheduled date of testing. Testing must be performed by a contractor that is certified with the Department of Environmental Quality. Compliance with the emission specification for stage II equipment shall be demonstrated by passing the following required tests or equivalent for each type of system:

1.a. - 3. ...

E. Labeling. Except as provided in Subsection J of this Section, the facility owner/operator shall post operating instructions conspicuously on the front of each gasoline dispensing pump using a stage II vapor recovery system. The instructions shall include:

1. - 3. ...

F. Inspection

1. Until the stage II equipment is decommissioned in accordance with Paragraph J.4 of this Section, the facility owner or operator shall maintain the stage II vapor recovery system in proper operating condition as specified by the manufacturer and free of defects that could impair the effectiveness of the system, including but not limited to:

F.1.a. - H.2.b. ...

I. Fees. The fees are defined in LAC 33:III.223.

J. Termination of Stage II Program

1. The provisions of this Subsection shall be effective upon the effective date of final approval by the EPA of a revision to the state implementation plan (SIP) to incorporate this Subsection.

2. Notwithstanding any other provision, a new facility constructed after EPA approval of the SIP revision in Paragraph J.1 of this Section is exempt from requirements of this Section.

3. An existing facility with stage II vapor recovery equipment shall complete decommissioning of the stage II equipment no later than 18 months from EPA approval of the SIP revision in Paragraph 1 of this Subsection. The failure to properly and timely decommission a stage II vapor recovery system in accordance with this Subsection shall be a violation of the Act and these regulations and subject to an enforcement action, which may include requiring decommissioning of the stage II vapor recovery system and/or the prohibition of the sale/dispensing of gasoline at the facility. Once the decommission of the stage II vapor recovery system has been completed in accordance with this Subsection, the facility is no longer subject to the requirements of this Section, except to comply with notifications, procedures, and recordkeeping associated with decommissioning.

4. Decommissioning

a. All decommissioning shall be performed in accordance with this Paragraph.

i. Notice

(a). The owner or operator of a facility shall submit written notification of intent to decommission the stage II vapor recovery equipment at least 30 calendar days prior to the beginning of any decommissioning activity to the Louisiana Department Environmental Quality. The notice of intent shall include:

- (i). gasoline dispensing facility name and location address;
- (ii). owner name, address, and phone number;
- (iii). operator name, address, and phone number;
- (iv). on-site supervisor/contractor name, address, and phone number; and
- (v). planned decommissioning start date.

(b). If decommissioning activities are not initiated within 180 calendar days after the date the notice of intent to decommission is received by the department, the owner or operator of the gasoline dispensing facility shall refile the notice of intent to decommission for the gasoline dispensing facility location.

(c). The owner or operator of the gasoline dispensing facility shall notify the department in writing no later than 10 calendar days after completion of all decommissioning activity at the gasoline dispensing facility.

b. Required Decommissioning Activities

i. Only technicians who have received appropriate training, have all of the required tools, and possess the required regulatory and equipment-manufacturer certifications shall perform the stage II decommissioning procedure.

ii. The owner or operator of the gasoline dispensing facility shall perform and complete all of the

following decommissioning activities, as applicable, in a manner consistent with the 2009 *Petroleum Equipment Institute Recommended Practices* 300-09 (PEI/RP 300-09), section 14 for the particular stage II vapor recovery system equipment installed at the gasoline dispensing facility, including:

- (a). initiate safety procedures appropriate to the facility;
- (b). relieve pressure in the tank ullage by removing all pressure/vacuum vent valves;
- (c). drain all liquid collection points and vapor pumps for individual dispensers;
- (d). remove all centrally located vapor pumps;
- (e). disconnect all electrical components of the stage II system so that no electrical hazards are created (e.g., all vapor pumping or processing units and dispenser electronics);
- (f). reprogram the dispenser electronics to reflect that stage II vapor recovery is no longer in service;
- (g). securely seal the below-grade vapor piping at a height below the level of the base of the dispenser using only threaded plugs, threaded caps, or glued fittings;
- (h). disconnect and seal off the vapor piping at the tank top if this can be done without excavation and without interfering with the vent line using only threaded plugs, threaded caps, or glue fittings;
- (i). securely seal the lower end of the vapor piping inside the dispenser cabinet using only threaded plugs, threaded caps, or glue fittings;
- (j). replace the stage II hanging hardware including hoses, nozzles, swivels, and breakaway components with conventional, industry-standard hanging hardware;
- (k). install appropriate pressure/vacuum vent valve(s);
- (l). remove any stage II instructions from the dispenser cabinet;
- (m). conduct a visual check to verify that the visible components of the storage system are left in a condition that will reliably prevent the release of any vapors or liquids from any components of the storage system;
- (n). conduct a pressure decay test;
- (o). disconnect the central vacuum motor if present on the stage II system and seal piping using only threaded plugs, threaded caps, or glue fittings;
- (p). provide written documentation, as provided on the department website, including the stage II decommissioning checklist and any contracts, work orders, certifications, or other appropriate record that the appropriate work to decommission stage II equipment was performed; and
- (q). complete all decommissioning activity at a gasoline dispensing facility location within 30 calendar days after the date decommissioning activity was initiated.

iii. Stage II dispensers may be removed and replaced with conventional dispensers, provided any applicable procedures in Clause ii of this Subparagraph are performed in a manner consistent with the *Petroleum Equipment Institute Recommended Practices* 300-09 (PEI/RP 300-09), section 14 for the particular stage II vapor recovery system equipment installed at the gasoline dispensing facility.

c. Decommissioning Completion Notice

i. The owner or operator of the gasoline dispensing facility shall notify, in writing, the department no later than 10 calendar days after completion of all decommissioning activity at the gasoline dispensing facility. Notification shall include:

- (a). gasoline dispensing facility name and location address;
- (b). owner name, address, and telephone number;
- (c). operator name, address, and telephone number; and
- (d). provide a copy of the documentation, including the checklist, demonstrating the appropriate actions for decommissioning of stage II equipment.

d. The stage II equipment shall be considered as decommissioned upon receipt of the decommissioning completion notice by the department.

e. The facility owner/operator shall maintain all documents related to decommissioning activities for at least four years and present them to an authorized representative of the department upon request. These documents may include:

- i. checklists, contracts and invoices associated with decommissioning of the stage II vapor recovery system; and
- ii. contracts, invoices, check lists, and results for required testing for decommissioning of the stage II vapor recovery system.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:1254 (November 1992), repromulgated LR 19:46 (January 1993), amended LR 23:1682 (December 1997), LR 24:25 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 29:558 (April 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2086 (October 2007), LR 34:1890 (September 2008), LR 34:2397 (November 2008), LR 37:1147 (April 2011), amended by the Office of the Secretary, Legal Division, LR 38:2752 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2138 (November 2017), LR 44:

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 AQ377. Such comments must be received no later than June 6, 2018, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to 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 AQ377. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on May 30, 2018, 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 Baratavia Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Stage II Vapor Recovery Systems Decommissioning Vapor Recovery Equipment

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

The Department of Environmental Quality anticipates a savings after all Stage II vapor recovery systems are eliminated. The department will no longer be required to conduct inspections and process the necessary paperwork once the systems are eliminated. The department anticipates all systems will be phased out by FY 21.

The proposed rule is in response to the EPA's determination that Stage II vapor recovery systems used at gas station pumps to capture gasoline vapors while refueling cars can be phased out. This is due to modern vehicles having the capability to capture the emissions with onboard refueling vapor recovery technologies. The proposed rule provides standards and requirements for decommissioning existing Stage II equipment and requires the decommissioning of existing Stage II equipment to take place within eighteen months of final approval by the EPA. This date has not yet been set, but is anticipated to be in 2018.

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

There will be a reduction in statutorily dedicated revenues after entities no longer utilize Stage II vapor recovery systems. Currently, there is an application fee of \$146 and an annual facility inspection fee of \$218. The department collected approximately \$60,000 in FY 17, and will no longer collect these revenues beginning in FY 21 when the department anticipates all systems to be phased out.

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

The proposed revision to the regulation will result in a positive net economic benefit to the regulated community. Although there will be a cost associated with removal or decommissioning of Stage II equipment, this will be offset by the elimination of fees associated with the equipment and the cost of maintaining it.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson
General Counsel
1804#047

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Adult Residential Care Providers
Licensing Standards
Involuntary Termination of Residency Agreement
(LAC 48:I.6837)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.6837 governing the licensing standards for adult residential care providers as authorized by R.S. 36:254 and R.S. 40:2166.1-2166.8 et seq. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing adopted provisions governing the licensing standards for adult residential care providers (*Louisiana Register*, Volume 41, Number 6). The department now proposes to amend the provisions governing the licensing standards for adult residential care providers (ARCPs) in order to correct a citation in the June 20, 2015 Rule relative to the involuntary termination process for ARCP residency agreements, and to ensure that these provisions are appropriately promulgated in the *Louisiana Administrative Code*.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 68. Adult Residential Care Providers

Subchapter C. Residency Criteria, Person-Centered

Service Plans, and Residency Agreements

§6837. Termination of Residency Agreements

A. - B.2.d.iii. ...

3. The resident and/or the resident's representative, if applicable, shall have the right to dispute any involuntary termination of the residency agreement in accordance with §6833.G.6-7.

B.4. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1097 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

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, 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, Bureau of Health Services Financing, 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, May 30, 2018 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Adult Residential Care Providers Licensing Standards—Involuntary Termination of Residency Agreement

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 17-18. It is anticipated that \$432 from the state general fund will be expended in FY 17-18 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 or licensing fee collections since the licensing fees, in the same amounts, will continue to be collected

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

This proposed Rule amends the provisions governing the licensing standards for adult residential care providers (ARCPs) in order to correct a citation in the June 20, 2015 Rule relative to the involuntary termination process for ARCP residency agreements, and to ensure that these provisions are appropriately promulgated in the Louisiana Administrative Code. It is anticipated that the implementation of this proposed rule will not result in economic costs to ARCPs for FY 17-18, FY 18-19 and FY 19-20, but will be beneficial by providing accurate, clearly identified licensing standards

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

Cecile Castello
Health Standards Section Director
1804#023

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Federally-Qualified Health Centers
Reimbursement Methodology—Cost Reporting
(LAC 50:XI.10503 and 10701)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XI.10503 and 10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the reimbursement methodology for federally qualified health centers (FQHCs) in order to establish cost reporting requirements when there is a change in the scope of services rendered by the FQHC. This action is also being taken to align these provisions with the corresponding approved Medicaid State Plan, and to ensure that these provisions are appropriately codified into the *Louisiana Administrative Code* in a clear and concise manner.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XI. Clinic Services

Subpart 13. Federally-Qualified Health Centers

Chapter 105. Provider Participation

§10503. Standards for Participation

[Formerly §10303]

A. - D. ...

1. Each member of the instructional team must:

a. be a certified diabetes educator certified by the National Certification Board for Diabetes Educators; or

b. ...

2. At a minimum, the instructional team must consist of one of the following professionals who is a certified diabetes educator:

2.a. - 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, Office of the Secretary, Bureau of Health Services Financing, LR 30:2328 (October 2004), repromulgated LR 30:2488 (November 2004), amended LR 32:1901 (October 2006), amended LR 37:2630 (September 2011), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Chapter 107. Reimbursement Methodology

§10701. Prospective Payment System

A. - F. ...

G. Cost Reports. FQHCs shall submit cost reports when there is an increase or decrease in their scope of services.

1. *Change in Scope of Services*—an addition, removal or relocation of services sites, and the addition or deletion of specialty and non-primary care services that were not included in the base line rate calculation.

2. The final PPS rate shall be calculated using the first two years of audited Medicaid cost reports, which shall include documentation of the change in scope.

3. Cost reports shall not be accepted for rate changes without a change in the scope of service.

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 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011), LR 39:3076 (November 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973.

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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele 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, May 30, 2018 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.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Federally Qualified Health Centers Reimbursement Methodology—Cost Reporting

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 17-18. It is anticipated that \$270 will be collected in FY 17-18 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed Rule amends the provisions governing the reimbursement methodology for federally qualified health centers (FQHCs) in order to establish cost reporting requirements when there is a change in the scope of services rendered by the FQHC, and to align these provisions with the corresponding approved Medicaid State Plan and operational practices. It is anticipated that implementation of this proposed rule will not have economic costs to FQHCs for FY 17-18, FY 18-19 and FY 19-20, but will be beneficial by clearly identifying the circumstances which require the submission of cost reports.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1804#025

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Managed Care for Physical and Behavioral Health
Applied Behavior Analysis-Based Therapy Services
(LAC 50:I.3103 and 3507)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.3103 and §3507 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing managed care for physical and behavioral health in order to clarify that Medicaid recipients who are in need of applied behavior analysis-based therapy must access these services through a managed care organization under the Healthy Louisiana program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Managed Care for Physical and Behavioral Health

Chapter 31. General Provisions

§3103. Recipient Participation

A. - A.1.k. ...

B. Mandatory, Voluntary Opt-In Participants

1. Participation in an MCO for the following participants is mandatory for specialized behavioral health, applied behavior analysis (ABA)-based therapy and non-emergency medical transportation (NEMT) services (ambulance and non-ambulance) only, and is voluntary for physical health services:

B.1.a. - I. ...

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 40:310 (February 2014), LR 40:1096 (June 2014), LR 40:2258 (November 2014), LR 41:929 (May 2015), LR 41:2363 (November 2015), LR 42:754 (May 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1522 (September 2016), LR 43:663 (April 2017), LR 43:1553 (August 2017), LR 44:

Chapter 35. Managed Care Organization

Participation Criteria

§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 dental services;

D.7. - H.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 37:1585 (June 2011), amended LR 39:92 (January 2013),

repromulgated LR 39:318 (February 2013), LR 41:936 (May 2015), LR 41:2367 (November 2015), LR 42:755 (May 2016), amended the Department of Health, Bureau of Health Services Financing, LR 44:61 (January 2018), LR 44:

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will ensure continued access to applied behavior analysis-based therapy services for Medicaid recipients who have opted out of the physical health coverage through managed care organizations.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it reduces the financial burden for families of Medicaid recipients who have opted out of physical health coverage through managed care organizations that are in need of applied behavior analysis-based therapy services.

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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele 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, May 30, 2018 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.

Rebekah E. Gee MD, MPH
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Managed Care for Physical
and Behavioral Health—Applied Behavior
Analysis-Based Therapy Services**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 17-18. It is anticipated that \$270 will be collected in FY 17-18 for the federal share of the expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This proposed Rule amends the provisions governing managed care for physical and behavioral health in order to clarify that Medicaid recipients who are in need of applied behavior analysis-based therapy must access these services through a managed care organization under the Healthy Louisiana program. Recipients will benefit from this proposed rule since it ensures that voluntary, opt-in Healthy Louisiana participants continue to receive ABA services through the managed care organizations (MCOs). There is no anticipated impact to MCOs or providers as these are services that are currently provided and associated costs are already built into the managed care rate structure. It is anticipated that implementation of this proposed rule will not have economic costs to providers or MCOs for FY 17-18, FY 18-19 and FY 19-20.

**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.

Jen Steele
Medicaid Director
1804#024

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Office of Public Health**

Water Supplies (LAC 51:XII.101, 105, 302, 319, and 355)

Under the authority of R.S. 40:4, 40:4.13, and 40:5 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH-OPH), intends to amend Part XII (Water Supplies) of the Louisiana state *Sanitary Code* (LAC 51). When effective, the proposed amendments to Part XII will assist LDH-OPH in ensuring the continued protection of public health from contaminated drinking water. The intent of the amendments is to add four requirements to the list of significant deficiencies (see §319)

as approved by the Water Committee on March 8, 2018. Public water systems are required to correct significant deficiencies identified by LDH-OPH personnel during a sanitary survey. Sanitary surveys (onsite inspections) are required by federal regulations to be conducted every 3 to 5 years depending on the water system type, and therefore the compliance deadline for the new requirements will vary by water system and may be extended on an as needed basis. The intent of §302 amendments is to clarify that the new design standards in Chapter 1 and 2 as published in the February 20, 2018 *Louisiana Register* will supersede Chapter 3 design standards for new public water systems or any proposed new construction or modification to an existing public water system. The remaining amendments in the proposed Rule are just clarifications and do not impose any new requirements. The effective date of the below proposed amendments is planned to be on August 1, 2018 to coincide with the effective date of the previously mentioned new design standards. For these reasons set forth above, Part XII (Water Supplies) of the Louisiana state *Sanitary Code* (LAC 51:XII) is proposed to be amended as follows.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part XII. Water Supplies

Chapter 1. General

§101. Definitions

[formerly paragraph 12:001]

A. Unless otherwise specifically provided herein, the following words and terms used in this Part of the *Sanitary Code*, and all other Parts which are adopted or may be adopted, are defined for the purposes thereof as follows.

Critical Component—a component is considered critical if failure is expected to result in a quality or quantity of finished water that fails to meet the requirements of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:258(B), R.S. 36:254(B)(7), R.S. 40:4(A)(8), R.S. 40:4.13(D)(1)(2), R.S. 40:5(A) (2)(3)(5)(6)(17)(20), and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1318 (June 2002), amended LR 28:2513 (December 2002), LR 30:1194 (June 2004), LR 30:2326 (October 2004), LR 35:484 (March 2009), LR 35:1240 (July 2009), LR 38:2375 (September 2012), LR 38:2793 (November 2012), LR 38:3232 (December 2012), amended by the Department of Health, Office of Public Health, LR 43:84 (January 2017), LR 44:296 (February 2018), effective August 1, 2018, LR 44:

**§105. Permit Requirements for a Potable Water
Supply**

[formerly paragraph 12:002-2]

A. - B. ...

C. Submission of plans for maintenance and replacement of existing facilities in-kind shall not be required.

1. Interior coating of potable water storage tanks is not considered maintenance and shall be submitted to the state health officer for approval. Submission for pre-approval of materials for minor repairs is allowable.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8), 40:4.13(D)(1)(2) and R.S. 40:5(A)(2)(3) (5)(6)(7)(17)(19).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1320 (June 2002), amended LR 38:2376 (September 2012), amended by the Department of Health, Office of Public Health, LR 44:297 (February 2018), effective August 1, 2018, LR 44:

Chapter 3. Water Quality Standards

§302. Relationship with this Part

A. Effective August 1, 2018, LAC 51:XII.111-191 and §§201-277 of this Part supersede, for any new public water system or any proposed new construction or modification to an existing public water system, any other design provisions in this Chapter.

B. Nothing in this Section shall be construed to allow any exception to compliance with the significant deficiency requirements of §319 of this Part, which is applicable to all public water systems, irrespective of construction date.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(8), 40:4.13(D)(1)(2) and 40:5(A)(2)(3)(5)(6)(7)(17).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 44:

§319. Significant Deficiencies Identified in Sanitary Surveys

A. - C. ...

D. For all public water systems, except as otherwise specified in this Part, failure to comply with any of the following requirements has been determined by the state health officer to be a significant deficiency and shall be corrected in accordance with §319.B of this Part:

1. §105.A, §105.B or §105.D of this Part;

2. §135.A of this Part [standby power] for any community water supply and non-community water supply serving a hospital. A standby power supply shall be provided through a dedicated portable or in-place auxiliary power of adequate supply and connectivity;

3. §161.A of this Part [flood protection] for any community water supply. Use of a levee system or flood walls are acceptable for meeting §161.A of this Part;

4. §169.B.2 of this Part [secondary source] for any community water supply and non-community water supply serving a hospital. Connection to another public water supply of sufficient capacity or providing an LDH-approved annual public notice to customers may be considered in lieu of meeting §169.B.2 of this Part;

5. §237.A of this Part [minimum system pressure of 20 psig];

6. §309.A of this Part;

7. there shall be no pathway for contamination into the well casing or discharge piping. The well site grading, the well slab and all well appurtenances including casing, sanitary seal, vent, and drawdown tube shall be maintained to prevent the introduction of contamination into the well casing and discharge piping;

8. every potable water well, and the immediate appurtenances thereto that comprise the well, shall be located at a safe distance from all possible sources of contamination. The state health officer has deemed that due to the horizontal distance to a possible source of pollution that is currently causing, or may reasonably be expected to cause contamination to be introduced into the water being delivered to consumers, action is necessary to eliminate or mitigate this potential source of contamination;

9. §315.A of this Part;

10. §325.A of this Part;

11. §327.A.15 of this Part;

12. §329.A.6 of this Part;

13. §331.A of this Part;

14. §337.C of this Part;

15. §343.A of this Part;

16. §344.A of this Part;

17. general equipment design shall be such that feeders will be able to supply, at all times, the necessary amounts of chemicals at an accurate rate throughout the range of feed;

18. for fluoride only, day tanks shall be provided where bulk storage of liquid chemical is provided, meet all the requirements of §203.J, hold no more than a 30-hour supply, and be scale mounted or have a calibrated gauge painted or mounted on the side if liquid levels can be observed in a gauge tube or through translucent sidewalls of the tank. In opaque tanks, a gauge rod extending above a reference point at the top of the tank, attached to a float can be used. The ratio of the area of the tank to its height shall be such that unit readings are meaningful in relation to the total amount of chemical fed during a day;

19. no drain on a water storage structure shall have a direct connection to a sewer or storm drain. The design shall allow draining the storage facility for cleaning or maintenance without causing loss of pressure in the distribution system;

20. system shall have a monitoring plan that includes a list of all routine compliance samples required on a daily, weekly, monthly, quarterly, and annual basis and identify the sampling location where samples are to be collected. The public water system shall revise and re-submit its monitoring plan if changes to a plant or distribution system require changes to the sampling locations or if any significant changes to the disinfection methods are made. In addition, the public water system shall update and re-submit its monitoring plan when the system's sampling requirements or protocols change;

21. §1503.A.1 of this Part;

22. §1503.C of this Part;

23. storage tanks and pipelines for liquid chemicals shall be specified for use with individual chemicals and shall not be used for different chemicals. Offloading areas shall be clearly labeled to prevent accidental cross-contamination;

24. system shall ensure that no critical water system component is in poor condition or defective;

25. all potable water systems shall be designed, constructed, and maintained so as to prevent leakage of water due to defective materials, improper jointing, corrosion, settling, impacts, freezing, or other causes. Valves and blow-offs shall be provided so that necessary repairs can be made with a minimum interruption of service; and

26. other condition which is deemed by the state health officer to be a significant deficiency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8), 40:13(D)(1)(2) and R.S. 40:5(A)(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 43:85 (January 2017), amended LR 44:345 (February 2018), effective August 1, 2018, LR 44:

§355. Mandatory Disinfection

[formerly paragraph 12:021-1]

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

B. All new groundwater systems installed after July 1, 1996 shall provide at least 30 minutes contact time prior to the first customer. It is recommended that all existing systems provide the 30 minutes contact time prior to the first customer. Additions to or extensions of existing systems are exempt from the 30 minutes contact time.

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 42:408 (March 2016), amended by the Department of Health, Office of Public Health, LR 44:

Family Impact Statement

1. The effect on the stability of the family. None
2. The effect on the authority and rights of parents regarding the education and supervision of their children. None
3. The effect on the functioning of the family. None
4. The effect on the family earnings and family budget. The proposed Rule adopts four new requirements for public water systems effective August 1, 2018. The proposed Rule may increase the monthly water bill for households if served drinking water by a public water system (PWS) that does not currently meet one or more of the four requirements. The PWS may determine a need to increase their revenue collections (i.e., increase water bills) to cover some or all Rule implementation costs. The actual effect on water bills is hard to predict due to variables in the applicable requirements based upon the PWS's size, location, compliance status and financial status. Therefore, the effect of the Rule on households is unknown.
5. The effect on the behavior and personal responsibility of children. None
6. The ability of the family or local government to perform the function as contained in the proposed Rule. None for the family. The proposed Rule adopts four new requirements for public water systems effective August 1, 2018. Local governmental units that own/operate a public water system (PWS) may determine a need to increase their revenue collections (i.e., increase water bills) to cover the cost of complying with this Rule. The increase in revenue collections needed for compliance with these requirements is not estimable as it would vary and depend on the PWS's size, location, Rule compliance status and financial status.

Poverty Impact Statement

1. The effect on household income, assets, and financial security. The proposed Rule adopts four new requirements for public water systems effective August 1, 2018. The proposed Rule may increase the monthly water bill for households if served drinking water by a public water system (PWS) that does not currently meet one or more of the four requirements. The PWS may determine a need to increase their revenue collections (i.e., increase water bills) to cover some or all Rule implementation costs. The actual effect on water bills is hard to predict due to variables in the applicable requirements based upon the PWS's size, location, Rule compliance status and financial status. Therefore, the effect of the Rule on households is unknown.

2. The effect on early childhood development and preschool through postsecondary education development. There will be no effect on childhood development and preschool through postsecondary education development.

3. The effect on employment and workforce development. The proposed Rule will likely cause an increase in competition to hire and retain qualified and certified water plant operators. The Rule will require water plant operators to become more knowledgeable of plant and distribution system processes and controls. The competition to hire and retain a competent operator will be higher based on his/her qualifications. This will cause an increase in employment of more knowledgeable and qualified individuals to properly operate, maintain, monitor, and take appropriate corrective actions to remain in compliance with said Rule.

4. The effect on taxes and tax credits. There will be no effect on taxes and tax credits.

5. The effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance. There will be no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

In accordance with the Regulatory Flexibility Act (R.S. 49:965.2-965.8), this Small Business Regulatory Flexibility Analysis and Small Business Economic Impact Statement is being submitted for the rules and regulations proposed for adoption, amendment, or repeal (proposed Rule).

The impact of the proposed Rule on small businesses as required by the Regulatory Flexibility Act has been considered. The purpose of the proposed Rule is to require existing public water systems (PWSs) to comply with four design requirements to protect drinking water from contamination and to ensure continuous water service to the public. The four requirements include: 1. standby power; 2. secondary water source; 3. flood protection for critical facilities; and 4. increases the required minimum system pressure from 15 pounds per square inch (psi) to 20 psi. The first three requirements are applicable to community water systems and to those non-community water systems that serve a hospital. Some flexibility is provided regarding compliance options. The minimum system pressure increase is proposed for all existing PWSs with no flexibility. The effective date of the proposed Rule is proposed for August 1, 2018. However, since the Louisiana Department of Health (LDH) performs inspections on PWS every 3 to 5 years, the compliance deadline for these four requirements will vary by PWS and may be extended on an as-needed basis. The remaining amendments in the proposed Rule are just clarifications and do not impose any new requirements.

For purposes of assessing the impacts of the Rule on small entities, LDH considers PWSs serving 10,000 or fewer people to be small entities. Such systems include municipal/publicly-owned, state-owned and privately-owned PWSs which may be for-profit businesses where the provision of water is ancillary, such as a mobile home park. A screening analysis was conducted to determine if the proposed Rule would have a significant economic impact on small PWSs. LDH estimated that the first three requirements of the proposed Rule may have a significant economic impact on 30 percent of the small PWSs. LDH does not

anticipate that the fourth requirement of the proposed Rule will have a significant economic impact on a substantial number of small PWSs. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in drafting the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impacts 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. Per HCR 170, "provider" means an organization that provides services for individuals with developmental disabilities. In particular, there should be no known or foreseeable effect on the:

1. staffing level requirements or qualifications required to provide the same level of service;
2. total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments on the proposed Rule. Such comments must be received no later than Wednesday, May 30, 2018 at COB, 4:30 p.m., and should be addressed to Amanda Laughlin, Chief Engineer, Engineering Services Section, Office of Public Health, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7303. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 North Fourth Street - Room 125, Baton Rouge, LA 70802.

Public Hearing

LDH-OPH will conduct a public hearing at 1 pm on Tuesday, May 29, 2018, in Room 173 of the Bienville Building, 628 North Fourth Street, Baton Rouge, LA. Persons attending the hearing may have their parking ticket validated when one parks in the 7-story Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets. (cater-corner and across the street from the Bienville Building). All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Jimmy Guidry, MD
State Health Officer
and
Rebekah E. Gee, MD, MPH,
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Water Supplies

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

The proposed rule amends standards for public water systems (PWSs) that were approved by the Louisiana Standards for Water Works Construction, Operation, and Maintenance Committee by adding four new requirements to the list of significant deficiencies to include standby power, secondary water source, flood protection, and a minimum system pressure of 20 psi.

State and local agencies that own/operate a PWS will incur costs to update their water systems to comply with the four requirements in this proposed rule change. The cost to these agencies depends on the system's current compliance status, size and location. LDH records indicate the following state and local agencies that own/operate a PWS may be impacted by the proposed rule after August 1, 2018.

LDH estimates that there are 66 PWSs that do not meet the proposed standby power requirement. The projected cost for a PWS to install standby power (a generator) is \$55 K.

LDH estimates that there are 29 PWSs that do not meet the proposed secondary water source requirement. The projected cost for a PWS to install a secondary water source (a water well) is \$350 K.

LDH estimates that there are 94 PWSs that do not meet the proposed flood protection requirement. The projected cost for a PWS to install flood protection (a floodwalls/levee system) is \$78 K.

LDH is unable to estimate the number of PWSs that do not meet the proposed minimum system pressure of 20 psi requirement. The projected cost for a PWS to meet the minimum system pressure (install a booster pump station) is \$120 K.

Louisiana Department of Health – Office of Public Health (LDH-OPH) will incur approximately \$950 in costs associated with publishing this proposed rule change.

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

The proposed rule does not directly affect state or local governmental revenue collections. However, state or local governmental units that own/operate a PWS may determine a need to increase its revenue collections (i.e., increase water bills) to cover the cost of complying with this rule. Similar to implementation costs, the increase in revenue collections needed for compliance with these requirements is not estimable as it would vary and depend on the PWS's size, financial status, and location.

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

PWSs will incur costs to comply with the four requirements in this proposed rule change. The cost to these agencies depends on the system's current compliance status, size and location. The projected costs to these systems are detailed in Section I of this impact statement.

If a PWS is notified by OPH that it has one of these deficiencies, then it has 90 days to submit a corrective action plan to OPH. If the PWS fails to comply with its corrective plan and also is in violation of other drinking water standards, then the PWS may be issued an Administrative Order per the Environmental Protection Agency's (EPA) Enforcement Escalation Policy. An Administrative Order provides a deadline in which the deficiency must be corrected. Failure to correct the deficiency by the deadline may result in the PWS being assessed a maximum penalty of \$3,000 per day.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will likely cause an increase in competition to hire and retain qualified and certified water plant operators. The rule will require water plant operators to become more knowledgeable of plant and distribution system processes and controls. The competition to hire and retain a competent operator will be higher based on his/her qualifications. This will cause an increase in employment of more knowledgeable and qualified individuals to properly operate, maintain, monitor, conduct assessments and take

appropriate corrective actions to remain in compliance with the proposed rule.

Jimmy Guidry, MD
State Health Officer
1804#048

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Physical Therapy Board

Licensing and Certification (LAC 46:LIV.Chapters 1-5)

The Louisiana Physical Therapy board, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2405, hereby amends *Professional and Occupational Standards*, Physical Therapy Board, LAC 46:LIV 103, 105, 107, 111, 113, 119, 121, 123, 125, 129, 133, 135, 137, 139, 143, 145, 151, 157, 161, 163, 165, 167, 171, 172, 173, 175, 180, 181, 183, 185, 187, 195, 198, 303, 305, 307, 311, 313, 318, 321, 325, 330, 331, 333, 335, 337, 339, 341, 343, 345, 351, 357, 359, 365, 367, 369, 371, 373, 375 377, 379, 381, 383, 387, 392, and 501.

The amendments to LAC 46:LIV are mostly a clean-up effort to cite statutes and eliminate redundancy in language. The amendments to LAC 46:LIV.135-139 streamline the process for licensing foreign-trained physical therapists (PTs) and creates a process for licensing foreign-trained physical therapy assistants (PTAs) and military trained physical therapist assistants (PTAs). Section 151 was amended to eliminate the requirement for a face-to-face interview prior to obtaining a license and to require all initial applicants complete the state jurisprudence exam. Section 171 was amended to remove the mandate of remediation requirements for those who fail the examination by changing wording from “shall” to “may” regarding remediation recommendations for passing the national board exam. The board also set a limit for low score failed attempts to align with the national board examination limitations. Section 180 has been added to create a new license status of “inactive,” allowing those not practicing physical therapy in the state of Louisiana to continue to renew their license but waive the continuing education requirements. Section 311 was amended to remove the requirement of 2-years’ experience working as a licensed physical therapist prior to undertaking 50 hours of dry needling education and to change the process for documenting informed consent of patients. Section 318 adopts R.S. 40:1223.1 et seq., and corresponding amendments to govern telehealth in practice for physical therapy. Section 325 has been amended to provide exemptions to licensure to professionals in good standing from other jurisdictions in the United States or foreign trained. Section 333.B.2.a provides clarification for supervision of physical therapist assistants regarding initial evaluation of patients and delegation or subsequent treatment. Section 341 updates language regarding documentation standards for physical therapists and physical therapist assistants. Section 345 proposes structural changes, moving language as it exists from §373, Violations, to §345,

Unprofessional Conduct, to help licensees navigate the rules better, while also adding the requirement of professionals to notify the board of felony convictions. If not noted here, the rules have no substantial change and have been changed mostly to cite existing law.

These amendments are proposed in response to the decision made by the majority of members at the board meetings held January 24, 2018 and March 21, 2018. The basis and rationale for the proposed Rule are to comply with R.S. 37:2405.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIV. Physical Therapy Examiners

Subpart 1. Licensing and Certification

Chapter 1. Physical Therapists and Physical Therapists Assistants

Subchapter A. Board Organization

§103. Board Domicile

A. Domicile. The board shall be domiciled in accordance with R.S. 37:2403(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2403(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, the Physical Therapy Board, LR 37:3031 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§105. Meetings

[Formerly §179]

A. Meetings. Meetings of the board shall be held at least six times a year to transact business. The board shall comply with R.S. 37:2404(A) when scheduling regular meetings, calling special meetings, and providing notice and waivers.

B. Location. Unless otherwise noticed, board meetings shall be held at the board office. The board may meet at other locations as determined by the board with notice of such location posted at least five days prior to the meeting date. The location of the meeting shall not be changed after such notice is given without reasonable notice of such change provided to all board members and to others who have requested such notification.

C. Quorum. The number of board members that constitute a quorum for any business before the board will be the number set in R.S. 37:2404(B). A majority vote of those present in a meeting is required for passage of a motion before the board.

D. Open Meetings. All board meetings and hearings shall be open to the public. The board may, in its discretion and according to R.S. 42:16-17, conduct any portion of its meeting in executive session, closed to the public and may request the participation in such executive session of staff members or others as may be needed for consideration of the business to be discussed in executive session.

E. Attendance. Board members are expected to attend regularly scheduled meetings, special meetings, open forums and hearings, which may be scheduled in conjunction or separate from regular scheduled meetings. Attendance constitutes active participation in at least 80 percent of the entire meeting. Missing two meetings per year is generally acceptable. Exceptions may be granted by the board for

good cause. Notification of an expected absence shall be submitted to the board office as early as possible prior to the commencement of the meeting.

F. Rules of Order. The most current edition of *Robert's Rules of Order* shall govern all proceedings of the board unless otherwise provided by board rules or policy.

G. Public Comments. A public comment period shall be held during each board meeting and in accordance with R.S. 42:19(D). Persons desiring to present comments shall notify the executive director of the board prior to the beginning of the meeting. However, to assure that an opportunity is afforded to all persons who desire to make comments, the chairman shall inquire at the beginning of the meeting if there are additional persons present who wish to comment. The chairman shall allot the time available for the public comments in an equitable manner among those persons desiring to comment. Each person making public comments shall identify himself and the group, organization, company, or entity he represents, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2404(A), R.S. 37:2404(B), and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 26:1446 (July 2000), amended by the Physical Therapy Board, LR 37:3031 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§107. Officers

A. - D. ...

E. Term. Officers of the board shall be elected in accordance with the schedule set forth in R.S. 37:2404(A) and shall serve a one-year term or until the election of their successors. An officer elected to a position vacated before the end of its term shall serve only for the remainder of that term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2404(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§111. Compensation

A. Per Diem and Expenses. Per diem and expenses shall be provided in accordance to and as authorized by R.S. 37:2404(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2404(C) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§113. Finances

A. ...

B. Administrative Costs. Board orders in disciplinary proceeding may require the respondent to reimburse the board as authorized by R.S. 37:2405(B)11.

C. - D.5. ...

E. Travel Expenses. Board members, committee members and employees shall be entitled to reimbursement in accordance with R.S. 2404(C). The board shall adopt policies to provide guidance to the executive director in determining "reasonable" expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2404(C), R.S. 37:2424(A), and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§119. Affiliations

A. Professional Organizations and Associations. The board may join and pay dues to such professional organizations and associations organized to promote the improvement of standards of practice in physical therapy or to advance and facilitate the operation of the board as an entity. In participating in such organizations or associations, the board may accept reimbursement of conference fees and travel expenses as are available generally to organizational members of those organizations or associations. Any participant who accepts complimentary admission, lodging, or transportation to and from an educational or professional development seminar or conference shall file an affidavit with the Board of Ethics in accordance with R.S. 42:1123(41).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§121. Declaratory Statements

[Formerly §351]

A. Issuing of Statements. The board may issue a declaratory statement on its own initiative or in response to a request for clarification of the effect of the provisions contained in the Practice Act, R.S. 37:2401 et seq., and/or the board's rules, LAC 46:LIV.Chapter 1 et seq.

1. - 2. ...

3. The declaratory statement of the board in response to the petition shall be in writing and shall be made available on the board website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3033 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

Subchapter B. General Provisions

§123. Definitions

[Formerly §§103, 113, 119, 303, and 305]

Editor's Note: This Section was amended utilizing information from the Sections enumerated. The Historical Note reflects prior action for those enumerated Sections. A comprehensive revision of the Louisiana Physical Therapy Board book (LAC 46:LIV) was effective via the board's October 2011 Rule in the *Louisiana Register*.

A. As used in this Title, the following terms and phrases, unless specifically defined within the Physical Therapy Practice Act, R.S. 37:2401 et seq., shall have the meanings specified herein.

* * *

Applicant Review Committee—the panel designated by board policy to review a license application and attached materials and evidence, including, but not limited to, a criminal history record, and to conduct interviews to examine whether an applicant has presented evidence satisfactory of his qualifications for licensure as required under the Practice Act and board rules and to recommend

indicated action on an application. The applicant review committee acts on behalf of the board and shall be composed of one or more board members and the executive director, but may also include one or more advisory committee member(s) and legal counsel.

Board—the Louisiana Physical Therapy Board (formerly the Louisiana State Board of Physical Therapy Examiners) created by R.S. 37:2403 within the Louisiana Department of Health, acting through its members as a body or through its executive director, staff, and agents carrying out the rules, policies and precedents established by the board.

Child or *Children*—as used in R.S. 37:2418(C)(1), an individual or individuals under the age of 21 years.

Client—a person seeking or receiving information, advice, education and/or recommendations for activities related to wellness and preventive services including conditioning, injury prevention, reduction of stress, or promotion of fitness.

Clinical Supervisor—a licensed PT or PTA in good standing and selected with approval of the board who directly supervises a CAPTE graduate pending examination holding a provisional license in the clinical environment. A clinical supervisor may directly supervise a foreign-educated physical therapist or foreign-educated physical therapist assistant while completing the period of supervised clinical practice requirements of §331. However, to supervise a foreign-educated PT or PTA, the clinical supervisor must be a licensed PT in good standing and selected with approval of the board with at least three years of clinical experience.

Competence—the application of knowledge, skills, and professionalism required to function effectively, safely, ethically and legally within the context of the patient/client role and environment.

Consent Order—an order of the board that has been contractually entered into by the board and respondent, which shall include, in part, a factual basis for the consent order, the violations of law and rule related to the licensee's conduct, and stipulations which may include revocation, suspension, other restrictions, or any combination thereof as mutually agreed between the parties.

Consultative Services—information, advice, education and/or recommendations provided by a physical therapist with respect to physical therapy.

Continuing Education Year—beginning April 1 and ending March 31 of the following year.

Continuous Supervision—observation and supervision of the procedures, functions, and practice rendered by a CAPTE graduate PTA provisional licensee pending examination, PT or PTA student, or PT technician, by a supervising PT of record who is physically within the same treatment area.

Coursework Tool (CWT)—a tool developed by the FSBPT as a standardized method to evaluate the educational equivalence of non-CAPTE graduates to CAPTE graduates. Each CWT reflects the general and professional educational

requirements for substantial equivalence at the time of graduation with respect to a U.S. first professional degree in physical therapy.

CWT—see *coursework tool*.

Discharge Summary—see Documentation Standards, §341.

FEPT—see §135.A.1.

FEPTA—see §135.A.2.

Foreign-Educated Physical Therapist (FEPT)—see §135.A.1.

Foreign-Educated Physical Therapist Assistant (FEPTA)—see §135.A.2.

Impairment or *Impaired*—a condition that causes an infringement on the ability of an individual to practice, or assist in the practice, of physical therapy with reasonable skill and safety to patients. Impairment may be caused by, but is not limited to, alcoholism, substance abuse, addiction, mental and/or physical conditions.

In Good Standing—a person who holds a current, valid Louisiana license, who is not subject to a board order or consent order, and whose license is not restricted. The board is the ultimate arbiter of whether a licensee is in good standing.

Inactive—a license status indicating voluntary termination of the right or privilege to practice physical therapy in Louisiana. The board may allow a licensee who is not engaged in the practice of physical therapy in Louisiana to inactivate the license as an alternative to an expired license.

Incompetence—lacking competence, as defined in §123.

Initial Physical Therapy Evaluation—as defined in R.S. 37:2407(A)(1).

Jurisdiction of the United States—any state, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any American territory.

Letter of Concern—is non-disciplinary and notifies the licensee that while evidence found does not merit formal disciplinary action, the board believes that the licensee should become educated about the requirements of the Practice Act and board rules. A letter of concern shall be placed in the permanent record of a licensee following the conclusion of a complaint or upon the granting or renewal of a license. A letter of concern shall not be reportable to NPDB, shall not be published with board disciplinary actions, and shall be deemed confidential pursuant to R.S. 37:2406(B). A letter of concern may be utilized as evidence in subsequent disciplinary actions.

License—the lawful authority of a PT or PTA to engage in the practice of physical therapy in the state of Louisiana, as evidenced by a license duly issued by and under the official seal of the board.

MEPTA—see §135.A.3.

Military-Educated PTA Applicant (MEPTA)—see §135.A.3.

* * *

NPDB—see *national practitioner databank*.

NPTE—see *national physical therapy examination*.

National Physical Therapy Examination—a national examination administered by the FSBPT and approved by the board for the licensure of a physical therapist or the licensure of a physical therapist assistant.

National Practitioner Databank (NPDB)—(formerly the “healthcare integrity and protection data bank” or “HIPDB”) a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers, preventing practitioners from moving state-to-state without disclosure or discovery of previous damaging performance and promoting quality health care and deterring fraud and abuse within health care delivery systems created by the Health Care Quality Improvement Act of 1986 (HCQIA), as amended, title IV of Public Law 99-660 (42 U.S.C. 11101 et seq.). Section 1921 of the Social Security Act, as amended, (42 U.S.C. 1396r-2) mandates reporting to the NPDB of adverse licensure actions taken against licensees.

* * *

On Premises—the supervising PT of record is physically present in the treating facility and immediately available to the treatment area.

* * *

Patient—an individual receiving physical therapy services pursuant to a plan of care, treatment plan or program.

Patient Care Conference—see Documentation Standards, §341.

Per Diem—compensation to a board member or committee member for each day during which he is participating in or carrying out an official board approved activity pursuant to R.S. 37:2404(C).

* * *

Physical Therapist—as defined in R.S. 37:2407(A)(2), and is licensed by the board pursuant to the Practice Act and rules.

Physical Therapist Assistant—as defined in R.S. 37:2407(A)(3), and is licensed by the board pursuant to the Practice Act and rules.

Physical Therapy—as defined in R.S. 37:2407(A)(4).

Physical Therapy Evaluation—as defined in R.S. 37:2407(A)(1).

Physical Therapy Technician—a worker not licensed by the board who operates under the direction and control of a licensed physical therapist and functions in a physical therapy clinic, department or business and assists with preparation of the patients for treatment and with limited patient care.

* * *

Plan of Care—documentation created and signed by the physical therapist specifying the measurable goals, specific treatments to be used and the proposed duration and frequency of specified treatment. It is an integral component of a PT evaluation and must be created by the physical

therapist prior to delegating appropriate treatment to a PTA or PT technician and incorporating documentation standards provided for in §341.

Practice of Physical Therapy—as defined in R.S. 37:2407(A)(5).

* * *

Preventive Services—the use of physical therapy knowledge and skills by a PT or PTA to provide education or activities in a wellness setting for the purpose of injury prevention, reduction of stress and/or the promotion of fitness and for conditioning. This does not include the administrations of physical therapy treatment.

Probation—license status in which the licensee may practice physical therapy in Louisiana, but may be required to work under certain conditions and/or restrictions as specified and made public in a board order or board agreement.

Progress Note—see Documentation Standards, §341.

Provisional License—a temporary license issued to practice physical therapy in Louisiana. Three types of provisional licenses issued include:

a. *CAPTE graduate pending examination*—applicant pending results of a fixed-date examination;

b. *foreign-educated provisional license*—physical therapist or physical therapist assistant applicant pending completion of the supervised clinical practice requirement of §137;

c. *temporary reciprocal provisional license*—applicant licensed elsewhere and working temporarily in Louisiana under the provisions of §147.

PT—see *physical therapist*.

PTA—see *physical therapist assistant*.

Reassessment or Reevaluation—see Documentation Standards, §341.

* * *

Respondent—a licensee who is the subject of an informal complaint, as addressed in §381, or a formal administrative complaint, as addressed in §387, alleging violation of the Practice Act or board rules.

Restricted—license status indicating that the board has placed restrictions or conditions on a license including, but not limited to, scope of practice, place of practice, supervision of practice, or patient demographic.

* * *

Revoked—license status indicating annulment of a license by an action of the board pursuant to formal disciplinary action which terminates the right to practice physical therapy in Louisiana.

* * *

State—see *jurisdiction of the United States*.

* * *

Subversion—engaging in any activity contrary to honesty, justice, or good morals in an attempt to undermine the integrity of the examination or to receive a passing score on the examination as defined in R.S. 37:2414 and required by R.S. 37:2409-2411.2. For purposes of this Chapter, subversion also includes any unauthorized use or reproduction of copyrighted materials.

* * *

Treatment Record—see Documentation Standards, §341.

Week—any consecutive seven days.

* * *

Written Record of Physical Therapy—documentation including the prescription or referral (if such exists), the initial evaluation, treatment notes, notes of patient care conferences, progress notes, reevaluations or reassessments, referral to an appropriate healthcare provider pursuant to R.S. 37:2418(B)(2)(b) (if such exists), and patient status at discharge documenting the complete course of patient care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2407(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744, 745, 748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662, 666 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 24:39, 40 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1908 (September 2008), amended by the Physical Therapy Board, LR 37:3033 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§125. Additional Definitions

[Formerly §306]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 31:441 (February 2005), amended by the Physical Therapy Board, LR 37:3036 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

Subchapter C. Graduates of Approved Schools of Physical Therapy or Physical Therapist Assisting

§129. Qualifications for License, Provisional License [Formerly §107]

A. To be eligible for a license as a PT, an applicant shall meet the requirements of R.S. 37:2409, as well as the following requirement:

1. furnish the board with his Social Security number.

B. To be eligible for a license as a PTA, an applicant shall meet the requirements of R.S. 37:2411, as well as the following requirements:

1. be a citizen of a jurisdiction of the United States or an alien lawfully admitted for permanent residence, or an alien otherwise authorized to work lawfully in the United States; and

2. furnish the board with his Social Security number.

C. ...

D. To be eligible for a provisional license as a PT or PTA, a CAPTE graduate applicant shall possess all of the qualifications for license in this Section except R.S. 37:2409(5) and R.S. 37:2411(4), respectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2409, R.S. 37:2411 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:662 (July 1991), LR

19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1443 (July 2000), amended by the Physical Therapy Board, LR 37:3036 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§133. Approved Schools of Physical Therapy or Physical Therapist Assisting [Formerly §111]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2411 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3037 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

Subchapter D. Foreign-Educated Graduates

§135. Scope of Subchapter

[Formerly §115]

A. Applicants. In accordance with R.S. 37:2410(6), the rules of this Subchapter specify additional qualifications, requirements and procedures for the licensing of the following individuals:

1. *foreign-educated physical therapist (FEPT)*—a person whose education in physical therapy was obtained outside of a jurisdiction of the United States in a program not accredited by CAPTE;

2. *foreign-educated physical therapist assistant (FEPTA)*—a person whose education in physical therapy was obtained outside of a jurisdiction of the United States in a program not accredited by CAPTE;

3. *military-trained physical therapist assistant (MTPTA)*—a person whose education in physical therapy was obtained in a military program not accredited by CAPTE.

B. Foreign-educated applicants seeking initial licensure in the United States in Louisiana must obtain a provisional license and complete a period of supervised clinical practice prior to obtaining a permanent license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1444 (July 2000), LR 28:1979 (September 2002), amended by the Physical Therapy Board, LR 37:3037 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§137. Qualification for License, Provisional License for Foreign Graduates

[Formerly §115]

A. The burden of satisfying the board's requirements and qualifications for licensure as a foreign-educated physical therapist (FEPT) in accordance with R.S. 37:2410, a foreign-educated physical therapist assistant (FEPTA) in accordance with R.S. 37:2411.1, and a military-trained physical therapist assistant (MTPTA) in accordance with R.S. 37:2411.2 is upon the applicant. An applicant shall not be deemed to

possess required qualifications unless the applicant demonstrates and evidences such qualifications in the manner satisfactory to the board.

B. Credentials Evaluation. A FEPT, FEPTA and MTPTA applicant must submit to the board a credentials evaluation prepared no more than 18 months prior to the date of the application for licensure. The credentials evaluation report shall be submitted to the board directly by the credential evaluation agency evaluating the professional education and training. The approved credentials evaluation shall determine substantial equivalence of the applicant's education. Such education shall include no less than 150 total semester-hour credits including no less than 90 semester-hours credits of physical therapy education and no less than 60 semester-hour credits of general education. The applicant is responsible for any expense associated with the credentials evaluation.

1. The credentials evaluation must provide documentation that the applicant's education from outside a state or territory of the U.S. is substantially equivalent to the education of a PT who has graduated from a physical therapy education program accredited by CAPTE. The evaluation must also establish that the institution at which the applicant received his physical therapy education is recognized by the ministry of education or an equivalent agency in that country.

2. To determine substantial equivalency, the credentialing evaluation entity shall use a course work tool (CWT) adopted by the FSBPT and approved by the board.

3. To determine substantial equivalency for individuals seeking initial licensure, the credentialing agency shall use the current CWT.

4. To be considered substantially equivalent to the requirements established in this rule, the applicant's foreign education must contain evidence of the content and distribution of coursework identified in the appropriate CWT identified in Paragraph B.3 of this Section.

5. An evaluation prepared by a credentialing agency reflects only the findings and conclusion of that agency, and shall not bind the board. If the board determines that the applicant's education is not substantially equivalent to an entry-level physical therapy program accredited by CAPTE, the board will notify the applicant in writing, identifying the deficiencies.

C. Exam Score. The applicant must achieve a passing score on the national physical therapy examination (NPTE).

D. Authorization to Work in the U.S. The applicant must be a citizen of a jurisdiction of the United States or an alien lawfully admitted for permanent residence, or an alien otherwise authorized to work lawfully in the United States.

E. The board will issue a provisional license to a FEPT or FEPTA only after the applicant is physically present in the U.S. and has met all requirements for licensure except the completion of a supervised clinical practice as required by R.S. 37:2410(5) and R.S. 37:2411.1(5).

F. If a document required by this Title is in a language other than English, the applicant shall arrange for its translation into English by a translation service acceptable to the board and shall submit a translation signed by the translator attesting to its accuracy.

G. Designated Representative Letter

1. An applicant may designate a person as a representative by providing a written authorization to the board which includes the name, telephone number, and address of the person stating that the person will be the designated representative for the applicant.

2. This authorization must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy of the notarized authorization shall be sent to the designated representative by the applicant.

3. A designated representative may obtain confidential information regarding the application.

4. The authorization to represent an applicant will be valid until the applicant receives his provisional license or the board is notified in writing by the applicant that the designated representative has been terminated or replaced. An applicant may have only one designated representative at any time.

5. The designated representative is not required by the board to have power of attorney for the applicant. A designated representative or power of attorney for an applicant may not sign for the applicant any document requiring the notarized signature of the applicant. Documents submitted by a designated representative or power of attorney for the applicant must be submitted in accordance with the requirements set by the Practice Act and rules. Any falsification of, or misrepresentation in, documents required for licensing submitted by a designated representative or a person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.

H. Supervised Clinical Practice. To be eligible for an FEPT and FEPTA provisional license to engage in supervised clinical practice as required in §331, a FEPT or FEPTA applicant shall meet all of the substantive qualifications for license as specified by R.S. 37:2010 or R.S. 37:2411.1 respectively. The FEPT or FEPTA applicant and the board-approved supervisor for the period of supervised clinical practice shall participate in a personal meeting with a member of the board, or a designee of the board, by appointment prior to being issued a provisional license to engage in supervised clinical practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1444 (July 2000), LR 28:1979 (September 2002), amended by the Physical Therapy Board, LR 37:3037 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§139. Licensing Procedures for Foreign-Educated Graduates

A. Licensing procedures for FEPT and FEPTA applicants are as follows:

1. application for initial licensure by examination as a FEPT or FEPTA shall:

a. complete the license application process as set forth in §137;

b. satisfy the procedures and requirements for application provided by §§149-153 of this Chapter;

c. satisfy the procedures and requirements for examination administered by the board provided in §§155-171; and

d. have successfully completed at least six months of approved supervised clinical practice as required in §331.

2. licensure by reciprocity for FEPT and FEPTA applicants shall be in accordance with §145.

a. the period of supervised clinical practice may be waived for individuals who have engaged in physical therapy practice for 20 hours or more per week for at least 12 months immediately preceding application in a Jurisdiction of the United States.

B. Licensing procedures for military trained physical therapist assistants (MTPTA) are as follows:

1. application for initial licensure by examination as a MTPTA shall:

a. complete the substantive qualification as specified in §137;

b. satisfy the procedures and requirements for application provided by §§149-153 of this Chapter; and

c. satisfy the procedures and requirements for examination administered by the board provided in §§155-171.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3038 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§143. Procedural Requirements for FEPT, FEPTA, and MTPTA Applicants [Formerly §117]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1444 (July 2000), LR 28:1979 (September 2002), amended by the Physical Therapy Board, LR 37:3039 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

Subchapter E. Licensure by Reciprocity

§145. Qualifications for Licensure by Reciprocity [Formerly §121]

A. ...

B. Graduates of Approved Schools of Physical Therapy or Physical Therapist Assisting

1. An applicant who possesses and meets all of the qualifications and requirements specified by R.S. 37:2409 and R.S. 37:2411, as interpreted by §§129-139 of this Chapter, but who has taken the board approved licensing exam in another jurisdiction, shall nonetheless be eligible for licensure by reciprocity in accordance with R.S. 37:2412 if the following requirements are satisfied:

a. the applicant possesses, as of the time the application is filed and at the time the board passes upon

such application, a current, unrestricted license in good standing or its equivalent issued by another jurisdiction;

b. the applicant has not been disciplined in any jurisdiction for an act which would have constituted grounds for refusal, suspension, or revocation of a license to practice physical therapy in this state at the time the act was committed;

c. the jurisdiction from whence the applicant comes accords a similar licensing privilege to individuals licensed as PTs and PTAs in Louisiana; and

d. the requirements for licensure in the other jurisdiction were, at the date of licensing therein, substantially equal to the requirements for licensure in Louisiana, specifically §129, as set forth now or at the time of licensure in the other jurisdiction.

C. Foreign-Educated Physical Therapist (FEPT) or Foreign-Educated Physical Therapist Assistant (FEPTA)

1. An FEPT or FEPTA is eligible for licensure by reciprocity as a PT or PTA in accordance with R.S. 37:2412 if the following requirements are satisfied:

a. the applicant possesses, as of the time the application is filed and at the time the board passes upon such application, a current, unrestricted license in good standing or its equivalent issued by another jurisdiction;

b. the applicant has not been disciplined in any jurisdiction for an act which would have constituted grounds for refusal, suspension, or revocation of a license to practice physical therapy in this state at the time the act was committed;

c. the jurisdiction from whence the applicant comes accords a similar licensing privilege to individuals licensed as PTs and PTAs in Louisiana; and

d. the requirements for licensure in the other jurisdiction were, at the date of licensing therein, substantially equal to the requirements for licensure of foreign-educated PT and PTAs in Louisiana, specifically §137, as set forth now or at the time of licensure in the other jurisdiction.

2. An FEPT or FEPTA who meets the requirements of §145.C.1 and who has engaged in the practice of physical therapy for a minimum of 20 hours per week for at least for at least one year in another jurisdiction, may be eligible for licensure by reciprocity as a PT or PTA without completing the period of supervised clinical practice as set forth in §137.C, at the discretion of the board. Such request shall be made in writing and submitted with license application and acceptable documentation of clinical experience.

3. In accordance with R.S. 37:2410(6) and R.S. 37:2411.1(6), the board may, in its discretion, mandate completion of a board approved self-assessment tool, various education activities, or supervised practice prior to issuance of a license by reciprocity to a foreign-educated PT or PTA.

D. To be eligible for licensure under Subsections B and C of this Section, applicants shall have met the continuing education requirements contained in the Practice Act and/or board rules for the 24 months preceding their application for the jurisdiction where they are currently licensed and practicing physical therapy.

E. An applicant for reciprocity who has a current, unrestricted license in good standing or its equivalent issued by another jurisdiction, but has not engaged in the practice

of physical therapy in any jurisdiction or country for a period of four or more years shall be subject to these additional requirements:

1. licensee shall be subject to a three-month period of supervised clinical practice;

2. licensee may only practice under the on premises supervision of a board-approved PT who has practiced no less than three years with a Louisiana license in good standing;

3. completion of the practice assessment and satisfactory completion of continuing education courses indicated by that tool to bring the applicant's knowledge to current standards;

4. a supervision agreement must be approved by the executive director before a provisional license will be issued. The supervision agreement shall be in force for the entire three-month supervisory period. This licensee may only practice in those facilities and under the supervision of the PT named in the approved supervision agreement. Any change in practice site or supervisor must be submitted in a revised supervision agreement prior to the change taking place. At the end of the supervisory period, the supervising PT of record shall report to the board the satisfactory or unsatisfactory completion of the supervision period. If an unsatisfactory supervision period is reported by the supervising PT of record, the board, in its discretion, may require an additional three-month supervisory period; and

5. completion of remedial courses which may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2412 and (4) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 19:208 (February 1993), LR 34:1906 (September 2008), amended by the Physical Therapy Board, LR 37:3039 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

Subchapter F. License Application

§151. Requirements [Formerly §125]

A. - B.3. ...

4. such other information and documentation as the board may require to evidence qualification for licensure and completion of the requirements for licensure;

5. the application fees due from an applicant shall follow the fee schedule described in §501; and

6. completion of the Louisiana jurisprudence examination.

C. An applicant for whom supervised clinical practice is required must forward to the board a supervisory request form for approval, including the name of the PT or PTA who is requested to supervise his clinical practice. The supervisor must consent to the supervision and be approved by the board prior to issuance of a provisional license.

D. An applicant must pass of the Louisiana jurisprudence exam.

E. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2413 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy

Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 19:208 (February 1993), LR 26:1444 (July 2000), amended by the Physical Therapy Board, LR 37:3040 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1299 (August 2016), LR 44:

Subchapter G. Examination

§157. Eligibility for Examination [Formerly §133]

A. To be eligible for examination by the board, an applicant shall possess all qualifications for licensure prescribed by §129. However, an applicant who has completed, or will complete prior to examination, his physical therapy or physical therapist assistant education, but who does not yet possess a degree or certificate, shall be deemed eligible for examination upon submission to the board of a letter subscribed by the authorized representative of an approved school certifying that the applicant has completed all academic education at such school or college, that a degree in physical therapy or physical therapist assisting will be conferred at the next scheduled convocation of such school, and specifying the date on which such degree will be awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3042 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§161. Administration of Examination [Formerly §137]

A. - B. ...

C. An applicant scheduled for examination shall:

1. ...

2. fully and promptly comply with any and all rules, policies, procedures, instructions, directions, or requests made or prescribed by the testing service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§163. Subversion of Examination Process [Formerly §139]

A. An applicant who engages or attempts to engage in conduct which subverts or undermines the integrity of the examination process shall be subject to the sanctions specified in §167.

B. Conduct which subverts or undermines the integrity of the examination process includes, but is not limited to:

1. refusing or failing to fully and promptly comply with any rules, policies, procedures, instructions, directions, or requests made or prescribed by representatives of the testing service;

2. ...

3. reproducing or reconstructing any portion of the licensing examination by copying, duplication, written notes or electronic recording;

4. selling, distributing, buying, receiving, obtaining, or having unauthorized possession of any portion of current, future, or previously administered licensing examination;

5. any unauthorized use or reproduction of copyrighted materials;

6. communicating in any manner with any other examinee or any other person during the administration of the examination;

7. copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the examination;

8. having in one's possession during the administration of the examination any materials or objects other than the examination materials distributed, including, without limitation, any books, notes, recording devices, or other written, printed or recorded materials or data of any kind;

9. impersonating an examinee by appearing for an applicant and taking the examination for, and in the name of an applicant other than himself;

10. permitting another person to appear for and take the examination on one's behalf and in one's name; or

11. engaging in any conduct which disrupts the examination process for other examinees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§165. Finding of Subversion [Formerly §141]

A. When, during the administration of examination, there exists reasonable cause to believe that an applicant is engaging, or attempting to engage, in subversion of the exam process, appropriate action shall be taken by the testing service to promptly terminate such conduct and ensure the integrity of the examination. In the event that the testing entity takes action against an applicant, such testing entity shall report such conduct to the board in a timely manner.

B. When the board has reasonable cause to believe that an applicant has engaged in or attempted to engage in conduct which subverts the examination process, either prior to or during the administration of the examination, the board shall notify the applicant and provide him with an opportunity for a hearing pursuant to the Administrative Procedure Act and applicable board rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:663 (July 1991), LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§167. Sanctions for Subversion of Examination [Formerly §143]

A. An applicant who is found by the board to have engaged in or attempted to engage in conduct which subverts or undermines the integrity of the examination process shall be deemed to have failed the examination. Such failure shall be recorded in the official records of the board.

B. In addition to the sanctions permitted or mandated by §167.A as to an applicant found by the board to have engaged in or attempted to engage in conduct which subverts the examination process, either prior to or during the administration of the examination, the board may:

1. revoke, suspend, or impose probationary conditions on any license which has been issued to such applicant;

2. disqualify the applicant, permanently or for a specific period of time from eligibility for licensure in the state of Louisiana; or

3. disqualify the applicant, permanently from eligibility for examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3043 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§171. Restriction, Limitation on Examinations, Additional Requirements [Formerly §§147, 153, and 155]

A. ...

B. An applicant, who has failed the examination for the first time, shall have no more than two years from the date of the first examination and no more than four attempts to successfully pass the examination.

1. Upon approval by the board of a written request made in compliance with Paragraph 2 of this Subsection, the board may extend the time-period for the following applicants to successfully pass the examination:

a. applicants on extended military service for a period in excess of three months during the two-year time period immediately following initial examination failure; or

b. applicants who were unable to successfully pass the examination within the two-year time period immediately following initial examination failure because of illness, natural disaster, or other personal hardship.

2. Written request for an exemption under Paragraph 1 of this Subsection shall include supporting documentation.

C. Applicants who have failed the examination on three occasions, may, prior to reapplication:

C.1. - D. ...

E. Low Score Limit. An applicant who has failed the examination and has been identified as failing on two occasions with a "low score," as that term is defined by the exam vendor selected by the board, shall not be made eligible for examination. A very low score is specified in examination policies adopted by the exam vendor selected by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387, 388 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), LR 26:1446 (July 2000), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3043 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

Subchapter H. Provisional License

§172. CAPTE Graduate Applicants Pending Examination

A. ...

B. A provisional license granted to a CAPTE graduate pending examination pursuant to this Rule shall be issued for 90 days and shall designate board-approved supervisors at each worksite. No more than one such provisional license shall be issued to an applicant.

C. - D. ...

E. When the NPTE is available on an "on-demand" or "continuous" basis to applicants, such provisional licenses will not be issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3043 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§173. Foreign-Educated Provisional License [Formerly §159]

A. A foreign-educated applicant who possesses all of the qualifications for licensure prescribed by §137 of this Chapter, except for §137.C, shall be issued a provisional license to engage in supervised clinical practice under the requirements of §331 for the purpose of fulfilling in whole or part the requirement of §137.C.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3044 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

Subchapter I. License Issuance, Termination, Renewal, Reinstatement

§175. Issuance of License [Formerly §161]

A. - C. ...

D. Evidence of license status may be verified from the board website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2415(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 26:1446 (July 2000), amended by the Physical Therapy Board, LR 37:3044 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§180. Inactive License

A. Upon written request, the board may approve inactive status to a licensee if, at the time of request, the license is current and in good standing.

B. Upon approval of inactive status by the board, the licensee shall not engage in the practice of physical therapy within the state of Louisiana. Engaging in the practice of physical therapy while inactive is a violation of this Section and may subject the licensee to disciplinary action.

C. Inactive Status Renewal

1. For inactive licensees, continuing education requirements for renewal are waived.

2. Inactive status shall be renewed in accordance with §181.

3. The inactive license renewal fee is equivalent to the fee to renew an active license, as specified in §501.

D. Reactivation of License

1. To restore an inactive license to an active status, the inactive licensee shall:

a. provide documentation satisfactory to the board of completion of the continuing education requirements specified in §194 for the continuing education period immediately preceding reactivation;

b. provide documentation satisfactory to the board that he has engaged in physical therapy practice in any jurisdiction or country within four years preceding his request to restore active license status. An individual who has not engaged in physical therapy practice for four or more years prior to restoring active license status shall comply with Paragraph D.2 of this Section.

2. The board shall restore active status of an inactive license for an individual who has not engaged in the practice of physical therapy in any jurisdiction or country for a period of four or more years under the following conditions:

a. licensee shall be subject to a three-month period of supervised clinical practice;

b. licensee may only practice under the on-premises supervision of a board approved PT who has practiced no less than three years with a Louisiana license in good standing;

c. completion of the practice assessment and satisfactory completion of continuing education courses indicated by that tool to bring the applicant's knowledge to current standards;

d. a supervision agreement must be approved by the executive director before a provisional license will be issued. The supervision agreement shall be in force for the entire three-month supervisory period. This licensee may only practice in those facilities and under the supervision of the PT named in the approved supervision agreement. Any change in practice site or supervisor must be submitted in a revised supervision agreement prior to the change taking place. At the end of the supervisory period, the supervising PT of record shall report to the board the satisfactory or unsatisfactory completion of the supervision period. If an unsatisfactory supervision period is reported by the supervising PT of record, the board, in its discretion, may require an additional three-month supervisory period; and

e. completion of remedial courses which may be prescribed by the board.

E. The inactive status of any licensee does not deprive the board of its authority to institute or continue any disciplinary or enforcement action against the licensee.

F. Licensees who voluntarily agree to abstain from the practice through an agreement with the board shall be placed on inactive status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2415(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health, Physical Therapy Board, LR 44:

§181. Renewal of License
[Formerly §165]

A. Licensees shall be notified by the board of license renewal deadlines. Standard procedure for license renewal and the payment of required fees is by online application through the board website. Upon written request, a renewal application shall be mailed to the licensee. Failure to receive notification of license renewal deadlines shall not be a defense for failure to timely renew a license.

B. Renewal applications received:

1. by March 31 shall be assessed a renewal fee pursuant to §501;

2. after March 31 and before April 30 shall be assessed a late renewal fee, pursuant to §501, as provided by law;

3. after April 30 shall be deemed as applications for license reinstatement pursuant to §187.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2417 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), amended by the Physical Therapy Board, LR 37:3044 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1300 (August 2016), LR 44:

§183. Restrictions on License Renewal; Restoration

A. As required by R.S. 37:2951, the board shall deny an application for renewal if a licensee has defaulted on a loan from the Louisiana Student Financial Assistance Commission. Upon notice from the Louisiana Student Financial Assistance Commission that a repayment agreement has been established, the license shall be renewed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2417 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3045 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§185. Reinstatement of Suspended or Revoked License
[Formerly §349]

A. An application for reinstatement of a suspended license requires satisfaction of the requirements of §187.E.

B. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3045 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§187. Reinstatement of Lapsed License
[Formerly §167]

A. - E.6. ...

7. verification of licensure from all jurisdictions in which the applicant has applied for or held a license/permit.

F. ...

G. Any person whose license has lapsed and who has not practiced physical therapy for more than four years may apply for reinstatement of licensure upon payment of the renewal fee and the reinstatement fee under the following conditions:

1. licensee shall be subject to a three-month period of supervised clinical practice;

2. licensee may only practice under the on premises supervision of a board-approved physical therapist who has practiced no less than three years with a Louisiana license in good standing;

3. completion of a practice assessment and satisfactory completion of continuing education courses indicated by that tool to bring the applicant's knowledge to current standards;

4. a supervision agreement must be approved by the executive director before a provisional license will be issued to complete the three-month period of supervised clinical practice. The supervision agreement shall be in force for the entire three-month supervisory period. The licensee may only practice in those facilities and under the supervision of the PT named in the approved supervision agreement. Any change in practice site or supervisor must be submitted in a revised supervision agreement prior to the change taking place. At the end of the supervisory period, the supervising physical therapist shall report to the board the satisfactory or unsatisfactory completion of the supervision period. If an unsatisfactory supervision period is reported by the supervising physical therapist, the board, in its discretion, may require an additional three-month supervisory period; and

5. completion of remedial courses which may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 28:1979 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3045 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1300 (August 2016), LR 44:

Subchapter J. Continuing Education

§195. Content Criteria
[Formerly §169]

A. - B.4.b.iv. ...

c. a maximum of five-hours credit during the renewal period for publication of scientific papers, abstracts, textbook chapters and poster or platform presentations at conferences relating to PT. Textbook chapter credit will be given only for the year of publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(B)(7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR

15:388 (May 1989), amended LR 17:664 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 16:1446 (July 2000), LR 28:1980 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3047 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1300 (August 2016), LR 44:

§198. Exemptions from CE Requirements
[Formerly §173]

A. PTs or PTAs licensed in Louisiana are exempt from the Subchapter J continuing education requirements for the continuing education year, beginning April 1 and ending March 31 of the following year, in which they graduate from an accredited physical therapy education program. For the second year of the licensee's renewal period, 15 contact hours must be completed and reported in keeping with the requirements of §194.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(B)(7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:665 (July 1991), amended LR 19:208 (February 1993), LR 21:394 (April 1995), LR 34:1908 (September 2008), amended by the Physical Therapy Board, LR 37:3047 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

Subpart 2. Practice

Chapter 3. Practice

Subchapter A. General Provisions

§303. Professional Standards
[Formerly §§307 and 315]

Editor's Note: This Section was amended utilizing information from the Sections enumerated. The Historical Note reflects prior action for those enumerated Sections. A comprehensive revision of the Louisiana Physical Therapy Board book (LAC 46:LIV) was effective via the board's October 2011 Rule in the *Louisiana Register*.

A. - B. ...

C. A PT shall exercise sound professional judgment based upon his knowledge, skill, education, training, and experience, and shall perform only those procedures for which he is competent. If, during evaluation, reassessment or screening, the PT finds that treatment which is outside the scope of his knowledge, experience, or expertise is needed, the PT shall notify the patient or client and provide a referral to an appropriate healthcare provider.

D. ...

E. A PTA may act as a clinical instructor for a PTA student, a supervisor of a PTA CAPTE provisional licensee pending examination, or a supervisor of a foreign-educated PTA (FEPTA) provisional licensee, provided that the PTA clinical instructor has one year of supervised work experience in the practice setting in which he will act as the clinical instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 21:395 (April 1995), LR 24:40 (January 1998), LR 26:1447 (July 2000), LR 34:1909, 1910 (September 2008), amended by the Physical Therapy Board, LR 37:3048 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§305. Practice with Prescription or Referral

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

§307. Physical Therapy Services without Prescription or Referral
[Formerly §306]

A. These rules are intended to facilitate and implement the provisions of R.S. 37:2418(C)(4). They are meant as practical guidelines, while maintaining flexibility in the rendering of physical therapy services, without eliminating the opportunity for oversight and supervision.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 31:441 (February 2005), amended by the Physical Therapy Board, LR 37:3049 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§311. Treatment with Dry Needling

A. ...

B. Dry needling is a physical therapy treatment which requires specialized physical therapy education and training for the utilization of such techniques. Prior to utilizing dry needling techniques in patient treatment, a PT shall provide documentation to the executive director that he has successfully completed a board-approved course of study consisting of no fewer than 50 hours of face-to-face instruction in intramuscular dry needling treatment and safety. Online and other distance learning courses will not satisfy this requirement. Practicing dry needling without compliance with this requirement constitutes unprofessional conduct and subjects a licensee to appropriate discipline by the board.

C. ...

D. Prior to performing the initial dry needling treatment on a patient the physical therapist shall educate the patient of the potential risks and benefits of dry needling and receive informed consent from the patient. Documentation of the education and consent shall be maintained in the patient treatment record.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§313. Transfer of Patient Care

A. A PT shall notify the patient and shall document the transfer of care of the patient, as appropriate, to another health care provider in the event of elective termination of physical therapy services by the PT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§319. Use of Telehealth in the practice of Physical Therapy

A. The board hereby adopts R.S. 40:1223.1 et seq., known as the “Louisiana Telehealth Access Act”, including any amendments thereto, and promulgates these rules to provide for, promote, and regulate the use of telehealth in the delivery of physical therapy services through telehealth. Physical therapists and physical therapist assistants owe a duty to patients to provide quality physical therapy services in accordance with the laws and rules governing the practice of physical therapy regardless of the mode in which those services are rendered. These rules shall be interpreted, construed and applied so as to give effect to such purposes and intent.

B. Individuals who are licensed physical therapists and physical therapist assistants in good standing in Louisiana may provide physical therapy via telehealth to a patient in an originating site as defined in R.S. 40:1223.3 within the jurisdiction of Louisiana and shall follow all requirements for standard of practice and documentation as provided in the Practice Act and board rules. The standard of care for telehealth services shall be at least equivalent to the standard of care for services delivered in person.

C. When providing telehealth services, a licensee shall have documented procedures in place to address remote medical or clinical emergencies at the patient’s location.

D. A physical therapist licensed in good standing in another jurisdiction who is providing information, advice, or opinion through telehealth to a physical therapist licensed in Louisiana regarding patient care shall be exempt from Louisiana licensure requirements.

E. A Louisiana licensee providing telehealth services to a patient in an originating site as defined in R.S. 40:1223.3 in a jurisdiction outside of Louisiana may be required to be licensed or registered in the jurisdiction in which the originating site is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health, Physical Therapy Board, LR 44:

Subchapter B. Prohibitions

§321. Unauthorized Practice; Practice Restrictions [Formerly §307]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2423 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Examiners, LR 21:395 (April 1995), LR 24:40 (January 1998), LR 26:1447 (July 2000), LR 34:1909 (September 2008), amended by the Physical Therapy Board, LR 37:3050 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

§325. Exemptions [Formerly §309]

A. In accordance with R.S. 37:2408(B), a person employed as a physical therapist or a physical therapist assistant by the United States government, or any department, agency, or bureau thereof, shall not be required to obtain a license under the provisions of this Chapter. However, such person may engage in the practice of physical therapy outside the course and scope of such federal

employment only after obtaining a license in accordance with this Chapter.

B. ...

C. A physical therapist or physical therapist assistant licensed in another jurisdiction of the United States or credentialed in another country performing physical therapy incidental to teaching, demonstrating or providing physical therapy services in connection with teaching or participating in an educational seminar of no more than 60 days in a calendar year, provided such physical therapist or physical therapist assistant is licensed in good standing in another jurisdiction or credentials are in good standing in another country, or holds an appointment on the faculty of a school approved for training physical therapists or physical therapist assistants.

D. Any physical therapist or physical therapist assistant licensed in a jurisdiction of the United States or credentialed in another country performing physical therapy as part of his training within a post professional residency or fellowship program in this state shall be exempt from licensure in Louisiana, provided such physical therapist is licensed in good standing in another jurisdiction or credentials are in good standing in another country.

E. A physical therapist or physical therapist assistant licensed in a jurisdiction of the United States or credentialed in another country contracted or employed to provide physical therapy to patients/clients affiliated with or employed by established athletic teams, athletic organizations or performing arts companies temporarily practicing, competing or performing in the jurisdiction for no more than 60 days in a calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Examiners, LR 24:40 (January 1998), LR 34:1909 (September 2008), amended by the Physical Therapy Board, LR 37:3051 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

Subchapter C. Supervised Practice

§330. Supervision Requirements for Graduates of Approved Schools of Physical Therapy or Physical Therapist Assisting Pending Examination

A. A PT holding a provisional license pending examination shall engage in the practice of physical therapy under the supervision of one or more board-approved supervisor(s).

B. ...

1. daily face-to-face communication between one board-approved supervisor and the provisional license holder;

2. on premises, as defined in §123, observation of patient care by board-approved supervisors in the provisional licensee’s approved practice location(s), a minimum of 2 hours per day with a minimum total of 10 hours per week; and

3. availability of the supervisor at all times to provide advice to the provisional license holder and to the patient during physical therapy treatment given by the provisional license holder.

C. ...

D. Supervisor Absence. If the board-approved clinical supervisor cannot fulfill his supervisory obligations for a CAPTE graduate pending examination provisional licensee:

1. if absent for five or fewer consecutive days, another PT in good standing may supervise in his place. In such case, the substitute PT is not required to be approved by the board; however, the board designated supervisor, the substitute supervisor, and the supervised individual, shall all be held accountable for the care provided by those supervised;

2. if absent for more than five consecutive days, the board-approved clinical supervisor of the CAPTE graduate pending examination provisional licensee shall send a written request to the executive director for approval of a substitute supervising physical therapist during his period of absence. The substitution can only occur once written approval is provided by the executive director to the designated supervisor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405.2(A)(4).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3051 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§331. Supervised Clinical Practice of Foreign-Educated Physical Therapist Provisional Licensees and Foreign-Educated Physical Therapist Assistant Provisional Licensees [Formerly §§317 and 319]

Editor's Note: This Section was amended utilizing information from the Sections enumerated. The Historical Note reflects prior action for those enumerated Sections. A comprehensive revision of the Louisiana Physical Therapy Board book (LAC 46:LIV) was effective via the board's October 2011 Rule in the *Louisiana Register*.

A. The clinical supervisor for a foreign-educated provisional licensee must be an APTA certified clinical instructor or, within the three years prior to serving as a supervisor, have previously served as clinical instructor for a PT or PTA student as part of an approved school of physical therapy or physical therapist assisting. To be approved as a clinical supervisor of a foreign-educated provisional licensee, a PT shall have at least three years of clinical experience with an unrestricted license. A clinical supervisor is subject to ratio restrictions pursuant to R.S. 37:2418(F)(2)(a).

B. Before a foreign-educated physical therapist or foreign-educated physical therapist assistant applicant for initial licensure is issued a provisional license, the applicant shall submit to the board:

1. - 3. ...

C. The executive director shall approve or deny a request made under §331 after assessing whether the facility provides the opportunity for a provisional license holder to attain the knowledge, skills, and attitudes to be evaluated according to a board-approved performance evaluation tool and determines if the site provides a broad base of clinical experience to the foreign-educated provisional licensee including a variety of physical agents, therapeutic exercises, evaluation procedures, and patient physical therapy diagnoses.

1. ...

D. As authorized by R.S. 37:2410(6), a foreign-educated provisional licensee shall not begin practicing physical therapy until the executive director has approved the clinical supervisor and the worksite, the foreign-educated provisional licensee has completed the personal interview with a board representative, and the executive director has issued his provisional license.

E. A provisional licensee shall complete a supervised clinical practice at a board-approved clinical site for a minimum of four hours per day, with on premises supervision by a board-approved clinical supervisor who is a physical therapist.

1. ...

2. The board-approved clinical supervisor of the foreign-educated initial applicant shall cosign all of the foreign-educated provisional licensee's treatment documentation within five days of treatment.

F. Supervisor Absence. If, due to illness or continuing education, the board-approved clinical supervisor for the foreign-educated provisional licensee cannot fulfill his supervisory obligations:

1. if absent for five or fewer consecutive days, another PT in good standing may supervise in his place. In such case, the substitute PT is not required to be approved by the board; however, the board-approved clinical supervisor of the foreign-educated provisional licensee, the substitute clinical supervisor of the foreign-educated provisional licensee, and the supervised foreign-educated provisional licensee shall all be held accountable for the care provided to the patient;

2. if absent for more than five consecutive days, the board-approved clinical supervisor of the foreign-educated provisional licensee shall send a written request to the executive director for approval of a substitute supervising physical therapist during his period of absence. The substitution can only occur once written approval is provided by the executive director to the designated supervisor.

G. The approved clinical supervisor shall:

1. observe, assist and support the provisional licensee during the supervised clinical practice;

2. rate the provisional licensee's performance during his clinical practice using a board-approved performance evaluation form or tool, indicating the dates of observation, demonstration or discussion of each skill;

3. assess skills required for success in such setting with recommendations for improvement upon completion of a supervised clinical practice site;

4. submit the results of the supervised clinical practice to the board in a timely manner. Approval of the next clinical placement or granting of license, shall not take place until this report is received and evaluated by the executive director; and

5. continue with supervised clinical practice until the supervised foreign-educated provisional licensee receives notice of termination of supervision by issuance of permanent license.

H. A provisional licensee shall not supervise any personnel unless assistance is required to ensure the safety and welfare of the patient during ambulation, transfers, or functional activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:667 (July 1991), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), amended by the Physical Therapy Board, LR 37:3051 (October 2011), amended by the Department of Health, Physical Therapy, LR 44:

§333. Physical Therapist Responsibilities; Supervision of Physical Therapist Assistants
[Formerly §321]

A. A supervising PT of record is responsible for and shall participate in the patient's care.

1. - 4. ...

B. ...

1. The level of responsibility assigned to a PTA is at the discretion of the supervising PT of record who is ultimately responsible for the care provided by this PTA.

2. ...

a. perform an initial physical therapy evaluation and create the plan of care on each patient prior to delegation of treatment;

B.2.b. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3052 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§335. Supervision of Physical Therapy Technicians
[Formerly §321]

A. - A.2. ...

3. To ensure the safety and welfare of a patient during ambulation, transfers, or functional activities, the PTA may utilize one or more physical therapy technicians for physical assistance without the physical therapist on premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§337. Clinical Instruction of Student PTs and PTAs
[Formerly §321]

A. A clinical instructor shall provide continuous supervision to a PT or PTA student in all practice settings. A PTA may act as a clinical instructor for a PTA student in all practice settings provided that the PT supervisor of the PTA is available by telephone or other communication device.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§339. Limitation on Supervision Ratios
[Formerly §321]

A. Supervision Ratio. Limitations on supervision for a physical therapist shall comply with R.S. 37:2418(F)(2)(a).

B. It is the responsibility of each PT to determine the number of individuals he can supervise safely and within the ratio set forth by law.

C. The number of individuals supervised by PTAs shall be included in the number of individuals supervised by the supervising PT of record for any given day. In no case shall the number of individuals supervised by a PTA on any given day exceed two, nor exceed the following limitations:

1. no more than one PTA provisional licensee; and

2. no more than one PTA student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§341. Documentation Standards
[Formerly §323]

A. A written record of physical therapy treatment shall be maintained for each patient. A complete record shall include written documentation of prescription or referral (if such exists), initial evaluation, treatment(s) provided, PT/PTA conferences, progress notes, reevaluations or reassessments, and patient status at discharge all as defined in §123.

1. A prescription or referral, if it exists, may initially be a verbal order and may be later confirmed in writing. The verbal order shall be documented by the PT in the patient's record.

2. An initial physical therapy evaluation, as defined in R.S. 37:2407(A)(1), shall be created and signed by the PT performing the evaluation within seven days after performing the evaluation.

3. Progress note is the written documentation of the patient's subjective status, changes in objective findings, and progression to or regression from established goals. A progress note shall be created and signed only by the supervising PT of record or PTA. A progress note shall be written a minimum of once per week, or if the patient is seen less frequently, then at every visit.

4. Reassessment or reevaluation is the written documentation which includes all elements of a progress note, as well as the interpretation of objective findings compared to the previous evaluation with a revision of goals and plan of care as indicated. A reassessment shall be written

at least once per month, or, if the patient is seen less frequently, then at every visit. A reassessment shall be created and signed by the supervising PT of record.

5. ...

6. Patient care conference is the documentation of the meeting held between a PTA who is providing patient care and the PT supervising that care to discuss the status of patients. This conference shall be conducted where the PT and PTA are both physically present at the same time and place, or through live communication through the use of interactive, multimedia equipment that includes, at minimum, audio or video equipment, or any combination thereof, permitting two-way, real-time, and interactive communications conducted in accordance with all standards required by federal and state laws governing privacy and security of a patient's protected health information. The patient care conference shall be signed and dated by the PT and PTA and shall be entered in the patient treatment record within five days of the conference, documenting treatment recommendations and decisions made.

7. Discharge summary is the written documentation of the reasons for discontinuation of care, degree of goal achievement and a discharge plan which shall be created and signed by the supervising PT of record. A discharge summary shall be written at the termination of physical therapy care when feasible.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 21:395 (April 1995), LR 26:1447 (July 2000), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

Subchapter D. Disciplinary Proceedings

§343. Sanctions in Disciplinary Proceedings [Formerly §325]

A. ...

B. Board orders in disciplinary proceeding may require the respondent to reimburse the board in accordance with R.S. 37:2405(B)(11).

C. In placing a respondent on suspension or probation, the board may impose such additional terms, conditions and restrictions as it deems appropriate for the period of suspension or probation. The board shall specify in its order the exact duration of the suspension or probationary period. Upon finding that a respondent placed on probation has failed to comply with the terms and conditions of the board order, the board may take such additional disciplinary action as it deems appropriate, following notice and hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3054 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§345. Unprofessional Conduct [Formerly §327]

A. The board shall deem a violation any charge of conduct which fails to conform to the Practice Act, and board rules to carry out the provisions of the Act, and shall take appropriate action where violations are found. The rules of this Chapter complement the board's authority to deny, suspend, revoke or take such other action against a licensee, as it deems appropriate.

B. As used in R.S. 37:2420(A)(7) of the Practice Act and in these rules, the term unprofessional conduct does not require actual injury to a patient, and includes, but is not limited to, the following:

1. departure from, failure to conform to, or failure to perform on a continuing basis to the minimal standards of acceptable and prevailing physical therapy practice as defined in §123, or the commission of any act contrary to honesty, justice, good morals, patient safety or the best interest of the patient, whether committed in the course of the licensee's practice or otherwise, regardless of whether actual injury to a patient results therefrom, including, but not limited to:

a. ...

b. failing to assess a patient's status at every visit;

c. performing or attempting to perform procedures for which the licensee is not qualified by education, experience, licensure, or training;

d. failure to inform and refer the patient or client to an appropriate practitioner, when the licensee becomes aware of findings and/or the need for treatment which are outside the scope of the PT's competence;

e. providing treatment interventions that are not warranted by the patient's condition or continuing treatment beyond the point of reasonable benefit to the patient;

f. providing substandard care as a PTA by exceeding the authority to perform components of physical therapy interventions selected by the supervising PT of record or through a deliberate or negligent act or failure to act, whether or not actual injury to any person occurred;

g. causing, or permitting another person to cause, physical or emotional injury to the patient, or depriving the patient of his individual dignity; or

h. abandoning a patient without documenting the transfer of care or by inappropriately terminating the patient/practitioner relationship;

2. ...

a. delegate professional, physical therapy, or, if applicable, physical therapist assistant responsibilities to a person the PT or PTA knows, or has reason to know, is not qualified by education, training, experience or licensure to perform the function or responsibility involved; or

2.b - 6. ...

7. conviction of any crime or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or related to the practice of physical therapy or which constitutes behavior which could put the person or property of patients at risk of harm from a treating licensee, or failing to notify the board of the same within seven days of conviction or entry of a plea of guilty or nolo contendere;

8. - 9. ...

10. making or participating in any communication, advertisement, or solicitation which is false, fraudulent, deceptive, misleading or unfair in violation of board rules, or which contains a false, fraudulent, deceptive, misleading or unfair statement or claim, including, but not limited to:

a. documenting services provided which have not been provided as documented or billing for services which have not been provided;

11. ...

12. practicing or enabling practice by an impaired provider as defined in §123, a licensee shall not:

a. engage in the practice of physical therapy while under the influence of a mood-altering substance that compromises the professional judgment or practice or has the potential to compromise the medical judgment or practice;

b. enable practice by an impaired provider;

c. fail to submit to physical or mental examination or for drug screening or testing at the time and place directed by the executive director following receipt of apparently reliable information or report alleging impairment, pursuant to §351, or as otherwise provided in the rules;

13. ...

14. allowing another person to use a licensee's wall certificate, pocket identification card, license number, national provider identifier, or other official document which identifies the holder as a licensee for any purpose other than to identify himself as the lawful holder of those credentials;

15. failure to notify the board of a felony arrest or arrest related to habitual intemperance as defined in §351, institution of formal criminal charges either by indictment or bill of information, and conviction, including, but not limited to, a guilty plea or a plea of nolo contendere, within seven days of such arrest, criminal charge, or conviction.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3054 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§351. Substance Abuse and Habitual Intemperance [Formerly §327]

A. - A.1. ...

2. the ingestion, self-administration, or other use of legally controlled substances or medications which affect the central nervous system, other than pursuant to and used in accordance with a lawful prescription and/or medical advice; or

3. repeated excessive use or abuse of any mood altering or mind altering substance that may negatively impact the ability of a licensee to safely practice physical therapy.

B. ...

C. If the board receives apparently reliable information, including, but not limited to, reports made pursuant to R.S. 37:1745.14, which information or report puts in question a licensee's or applicant's current fitness and ability to practice physical therapy with reasonable skill and safety to patients,

the licensee or applicant shall submit to such physical or mental examination, evaluation, test, or drug/alcohol screen as requested by the executive director to determine the licensee's or applicant's fitness and ability to practice physical therapy with reasonable skill and safety to patients.

D. A respondent shall appear for drug screening and testing at the facility designated by the executive director within six hours of initial contact by the board representative sent to the telephone number or email address designated for such purposes by respondent pursuant to §355, or as otherwise provided in the rules.

E. Records of such examinations, evaluations, tests, and screens shall be maintained by the board in confidence unless such records are admitted into the record of any adjudication proceeding before the board or subpoenaed by a court order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3056 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§353. Recovering Physical Therapy Program (RPTP)

A. Under the provisions of R.S. 37:2402 and following, the board has the authority to establish and implement recovery programs for PTs and PTAs as an alternative to the disciplinary process. The RPTP is established to assist board licensees who have demonstrated actual or potential inability to practice physical therapy with reasonable skill and safety to patients because of impairment as defined in §123. The goal of the RPTP is for PTs or PTAs to be treated and to return to practice in a manner which will not endanger public health, safety and welfare.

B. Eligibility. The following persons are eligible for participation in the RPTP:

1. a Louisiana-licensed PT or PTA;

2. a graduate of a school of physical therapy or physical therapist assisting eligible for licensure in Louisiana;

3. a PT or PTA currently enrolled in a peer assistance/alternative program in another jurisdiction and requesting licensure in Louisiana;

C. Objective. The RPTP objectives are:

1. to ensure the health, safety and welfare of the public through a program which closely monitors practitioners whose capacity to practice physical therapy with reasonable skill and safety to patients has been, or may potentially be, compromised because of impairment as defined by §123;

2. to encourage voluntary participation of licensees in appropriate rehabilitative medical treatment and ongoing aftercare and monitoring;

3. to promote safe physical therapy care by preventing and/or restricting the practice of impaired licensees; and

4. to provide a structured program for participants seeking recovery from impairment.

D. Referrals to RPTP. Upon receipt of a complaint which involves a licensee, or reliable information of the impairment of persons eligible for participation in the RPTP as specified in Subsection B of this Section, the executive

director may refer eligible persons for participation in the RPTP. Only eligible persons whose conditions have reliable indicators for return to safe practice will be permitted to participate in the RPTP.

E. Defer or Suspend Disciplinary Proceedings. When disciplinary proceedings have been initiated or could be initiated against a licensee pursuant to R.S. 37:2401-2424, such proceedings may be deferred or suspended to allow the licensee to participate in the RPTP.

F. An eligible person as defined in Subsection B of this Section not meeting the criteria of §357 may be admitted into the RPTP by the board pursuant to any adjudication order.

G. In addition to providing an alternative to discipline, the RPTP accepts eligible persons who have been diagnosed with a physical, and/or mental impairment, or substance abuse and/or dependency and eligible persons already subject to discipline ordered by the board.

H. When a licensee ceases to be in compliance with his RPTP agreement, he shall be referred back to the board for regular disciplinary proceedings or such action as authorized in the RPTP agreement.

I. Use of Outside Contractor. The RPTP may be administered by board staff directly or the board may delegate to a qualified outside contractor the administration and operation of all or part of RPTP on such terms as it deems prudent. Such contractor shall be charged with the powers and responsibilities set forth in these rules. If delegated to a qualified outside contractor, the board shall cooperate with a contract operator of RPTP and shall act responsibly to meet its obligations under the Practice Act, board rules, RPTP agreements and contracts with outside contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3056 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§355. Objectives of RPTP

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3056 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

§357. Admission to the Confidential Recovering Physical Therapy Program (CRPTP)

A. Participation in CRPTP may be voluntary, non-punitive, confidential, and in place of formal disciplinary proceedings for eligible persons who meet the following admission criteria:

1. voluntary request for admission to RPTP whether referred by self or other sources;
2. addiction to or use of alcohol and/or other mood altering substances including prescription drugs, or has a physical or mental condition, which impairs or potentially impairs the ability of the eligible person to perform duties safely;
3. no previous disciplinary action involving impairment by any licensing authority;

4. has no criminal convictions or pending criminal charge that involves violence or danger to another person, or involves a crime which constitutes a threat to patient care;

5. no diversion of chemicals;

6. no dealing or selling of illicit drugs;

7. no coexisting untreated physical, emotional or psychiatric problems which would impair physical therapy competency;

8. no related practice problems involving death or significant harm to a patient; and

9. agrees to comply with all RPTP requirements and signs the RPTP agreement including a statement acknowledging chemical dependency or other impairment.

B. Involvement by the participant in the CRPTP will remain confidential and shall not be subject to discovery in a legal proceeding except as required by federal and state confidentiality laws as long as the licensee complies with all stipulations of the RPTP agreement.

1. The board may cause to be made non-confidential the records, files and information related to a successfully completed RPTP in the event that a former participant becomes the subject of a subsequent disciplinary action for violation of the Practice Act or board rules related to substance abuse and/or chemical dependency unless such records are protected by federal and state confidentiality laws and regulations.

C. When a licensee ceases to be in compliance with his confidential RPTP agreement, he shall be referred back to the board for regular disciplinary proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3056 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§359. Discretionary Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3057 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

§365. Licensure of Persons with a History of Substance Abuse

A. As authorized by R.S. 37:2420(A)(5), the board may refuse to license any applicant, or may refuse to renew the license of any person, or may restrict, suspend or revoke any license upon proof that a person has been habitually intemperate or abused controlled dangerous substances as defined by federal or Louisiana law.

B. In reviewing a history of substance abuse, the board may consider, among other evidence, the following in determining fitness to practice physical therapy and appropriate board action:

B.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3057 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§367. Substance Abuse Recovery Program
[Formerly §355]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3057 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

§369. Disclosure of Financial Interest and Abuse of Referrals
[Formerly §327]

A. Declaration of Purpose; Interpretation and Application. Physical therapists and physical therapist assistants owe a fiduciary duty to patients to exercise their professional judgment in the best interests of their patients in providing, furnishing, recommending, or referring patients for health care items and services, without regard to personal financial recompense. The purpose of these rules and the laws they implement is to prevent payments by or to a health care provider as a financial incentive for the referral of a patients to a health care provider for diagnostic or therapeutic services or items. These rules shall be interpreted, construed and applied so as to give effect to such purposes and intent.

B. ...

C. Violation of R.S. 37:1744 shall be a violation of these rule and the laws they implement.

D. Violation of R.S. 37:1745 shall be a violation of these rules and the laws they implement.

E. General Exceptions. Any payment, remuneration, practice, or arrangement, which is not prohibited by or unlawful under §1128B(b) of the federal Social Security Act (Act), 42 U.S.C. §1320a-7b(b), as amended, with respect to health care items or services for which payment may be made under title XVIII or title XIX of the Act, including those payments and practices sanctioned by the secretary of the United States Department of Health and Human Services, through the Office of the Inspector General, pursuant to §1128B(b)(3)(E) of the Act, through regulations promulgated at 42 CFR §1001.952, as the same may hereafter be amended, shall not be deemed a payment prohibited by R.S. 37:1745(B) or by §369 of these rules with respect to health care items or services for which payment may be made by any patient, private, or governmental payer.

F. Sanctions. Upon proof of a violation, the board may suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license and shall order the refund of all such sums received in payment for the goods and services furnished or rendered without disclosure of financial interest. Such a refund shall be paid to the individual patient, third-party payor, or other entity who made the payment.

G. The board shall submit to the commissioner of insurance an annual report listing the investigations undertaken pursuant to this Section, including the number of violations and the sanctions imposed, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February

1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3058 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§371. Cease and Desist Orders; Injunctive Relief
[Formerly §353]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2422 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3058 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

§373. Violations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2421 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3058 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

§375. Disciplinary Process and Procedures
[Formerly §329]

A. - C. ...

D. Pursuant to 45 CFR 60.1, the board is required to report certain information, including final adverse actions it has taken against its licensees, to the NPDB. The board may designate an agent to act on its behalf to report information and submit queries to the NPDB as required by federal law, as may be amended from time-to-time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 26:2792 (December 2000), amended by the Physical Therapy Board, LR 37:3059 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§377. Initiation of Complaints
[Formerly §331]

A. Complaints may be initiated by any person or by the board on its own initiative. A licensee is obligated to report to his supervisor or employer, and to the board, violations of the Practice Act, board rules or the minimal standards of acceptable and prevailing physical therapy practice as defined in §123.

B. Failure by a licensee to report such violations to his supervisor or employer and to the board may subject the licensee to disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 19:208 (February 1993), LR 26:1448 (July 2000), amended by the Physical Therapy Board, LR 37:3059 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§379. Emergency Action
[Formerly §343]

A. In accordance with R.S. 49:961, if the board finds that public health, safety, and welfare require emergency action and incorporates a finding to that effect in its order, a

summary suspension of a license may be ordered pending proceedings for suspension, revocation or other action. Such proceedings shall be promptly instituted and determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3059 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§381. Disposition of Complaints [Formerly §§333 and 335]

Editor's Note: This Section was amended utilizing information from the Sections enumerated. The Historical Note reflects prior action for those enumerated Sections. A comprehensive revision of the Louisiana Physical Therapy Board book (LAC 46:LIV) was effective via the board's October 2011 Rule in the *Louisiana Register*.

A. - A.2. ...

3. *letter of concern*, as defined in §123;

4. consent order. If the respondent and the board member participating in the Investigative Committee agree on the essential facts and law arising out of the complaint and on sanctions to be imposed on the respondent, the complaint may be resolved by a consent order to be presented by the participating board member or by board legal counsel for approval, amendment or rejection. If accepted by the board and the respondent, the consent order shall be finalized as a board order and shall be reported to the NPDB and published as a disciplinary action of the board;

5. dismissal:

a. a complaint may be dismissed for the following reasons:

- i. the absence of adequate, credible evidence; or
- ii. other reasons which the Investigative Committee believes are justification for dismissal;

b. when it is the decision of the Investigative Committee to dismiss a complaint, the complainant shall be provided with a letter explanation for dismissal of the complaint;

6. education. After review and investigation of a complaint, the Investigative Committee may require the licensee to participate in an educational meeting with the Investigative Committee, or other persons as delegated by the Investigative Committee, to discuss the laws and rules as they apply to the practice of physical therapy. Request for an educational meeting shall be in writing and shall provide the date, time, location, and matters to be discussed. This meeting shall be confidential and shall not be reported to the NPDB nor published as a disciplinary action of the board. Failure to comply with the request for an educational meeting shall be deemed a failure to cooperate with the board in violation of §383.A.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:390, 391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3059 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§383. Failure to Respond or Cooperate with the Board [Formerly §341]

A. ...

1. respond or provide information or items requested, respond to a subpoena, comply to a request for a meeting, or complete an evaluation within the time designated by the board or its staff;

A.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3060 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§387. Formal Hearings [Formerly §337]

A. - C.1. ...

2.a. The complaint is investigated by the Investigative Committee as defined in §123 to determine if there is sufficient evidence to warrant disciplinary proceedings. Once the complaint is under investigation, no board member (except board members serving as members of an Investigative Committee) shall receive or review any information relevant to the subject matter of the investigation or communicate with the respondent or his legal representative, potential witnesses, or any member of the Investigative Committee concerning any issue of fact or law relevant to the investigation. A board member who has served on the Investigative Committee shall not serve as a member of a hearing panel of the board in the adjudication of a case previously investigated by the board member.

2.b. - 6....

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:205(B)(10) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3060 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

§392. Order of Hearing [Formerly §337]

A. - A.3. ...

a. which evidence may include, but is not limited to, all evidence admissible pursuant to R.S. 49:956(2) and (3);

b. as part of the board's case in chief, the board's representative may call the respondent under cross examination;

4. - 5. ...

a. which evidence may include, but is not limited to, all evidence admissible pursuant to R.S. 49:956(2) and (3);

6. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(B)(10) and Act 535 of 2009.

HISTORICAL NOTE: promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3062 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

Subpart 3. Fees

Chapter 5. Fees

§501. Fees

A. - B. ...

C. If the biennial renewal fee is received by the board office on or subsequent to May 1, the applicant shall apply for reinstatement pursuant to §187 and shall pay the renewal fee and the reinstatement fee.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 17:667 (July 1991), LR 18:963 (September 1992), LR 21:396 (April 1995), LR 28:1982 (September 2002), amended by the Physical Therapy Board, LR 37:3063 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1301 (August 2016), LR 44:

Family Impact Statement

These amendments will have no direct effect on the stability of the family. If there is any effect, it would be a positive effect on the stability of the family, as it will allow licensees more flexibility in maintaining a license to practice physical therapy in Louisiana without having to allow it to expire or continue to pay for coursework and for coursework approval by creating an Inactive status of license. The amendment will not affect the authority and rights of persons regarding the education and supervision of their children and will not have an effect on the functioning of the family. This amendment will impact the family budget of individuals who choose inactive status because they will not have to pay for courses in Louisiana to maintain a license if they change it to inactive status. This amendment will not affect the behavior or personal responsibility of children. This amendment will not have an effect on the ability of the family or local government to perform any functions that they currently are performing.

Poverty Impact Statement

The proposed amendments have no foreseeable impact on any child, individual or family as defined by R.S. 49:973(B).

Provider Impact Statement

The proposed amendment do 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 until 4:30pm, May 10, 2018, to Charlotte F. Martin, Louisiana Physical Therapy Board, 104 Fairlane Drive, Lafayette, LA 70507.

Charlotte Martin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Licensing and Certification

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

The proposed rule changes will result in administrative cost increases for the LA Physical Therapy Board (LPTB) that the

board anticipates will be absorbed utilizing existing resources. For reference, the LPTB's budget is funded entirely using self-generated revenues. A majority of the proposed rule changes are technical in nature, and consist of clarification and further elaboration of existing rules to conform with statute and present board practice. However, the proposed rule changes also include substantive revisions for licensure of foreign-trained physical therapists (PTs) and physical therapy assistants (PTA), the creation of an "inactive" status for PT licenses, and promulgation of rules regarding the use of telehealth by PTs.

Up-front costs associated with the proposed rule changes are publication costs for publishing the notice of intent and associated form in the Louisiana Register, as well as editing the policies, forms, and the website to reflect the proposed rule changes. The aforementioned costs associated with editing policies, forms, and the LPTB will be minimum, since a majority of LPTB forms and policies are electronic and available on the LPTB website.

Furthermore, the proposed rule changes create an exception for license applicants who fail the initial licensing examination and may not be able to retake the examination within the required 2-year period after the initial examination. Revisions to Rule 171 allow for an extension of the 2-year examination period under circumstances upon written request and approval by the board (see Part III). The board does not anticipate this rule change to affect expenditures, as cases requiring exceptions to the 2-year retake period are rare.

The proposed rule changes include substantive revisions to Rules 135-139 that streamline the process for licensing foreign-trained physical therapists (PTs) and physical therapy assistants (PTAs). While the process for licensing foreign-trained PTs and PTAs is streamlined, the LPTB reports few applications for licensure by foreign-trained persons prior to the proposed rule changes (approximately 2 annually), and does not anticipate an increase of applications as a result of the streamlined process.

Creation of an "inactive" license status for PT and PTA licenses may result in a marginal cost and workload increase for the LPTB, as the board may grant inactive license status to applicants upon review of a written request. However, the extent to which this will affect costs and workload for the board is unknown, though likely marginal.

The LPTB promulgating rules associated with PTs providing care through telehealth do not carry explicit costs or workload increases for the board, but allow PTs another method through which they can provide services (see Part III).

Lastly, the proposed rule changes eliminate the requirement that persons seeking licenses must interview with an LPTB member prior to licensure. Elimination of this requirement may result in a savings for the LPTB to the extent members received per diem and/or expense reimbursements for interviewing potential licensees.

The proposed rule changes will not affect expenditures of local governmental units.

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

The proposed rule changes will not affect revenue collections of state or local governmental units.

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

Foreign-trained PTs and PTAs will benefit from the proposed rule changes, as they will now be able to obtain licensure in Louisiana without completing 333 clinical hours in a hospital setting, which previously made obtaining licensure more difficult.

The proposed rule changes may benefit applicants for licensure who fail the initial examination and are unable to retake the examination within the required 2-year period after the initial examination. Revisions to Rule 171 allow for an

extension of the 2-year examination period under certain circumstances upon written request and approval by the board. Circumstances include applicants engaged in military deployment for 3 or more months during the 2-year period and applicants who are unable to retake within in the 2-year period due to illness, natural disaster or other personal hardship. Therefore applicants meeting and proving the aforementioned circumstances may benefit by having a longer time to take the licensure exam.

PTs and PTAs seeking inactive license status will benefit from the proposed rule changes due to continuing education requirements being waived for those seeking inactive license status. As a result, persons seeking inactive status will realize a savings by no longer having to take continuing education classes. However, persons holding inactive license status will still be subject to the current license renewal fee of \$140 per year.

Providers may benefit from the adoption of telehealth provisions by the LPTB, as it would allow them to another means by which to provide care and consult with patients. However, the telehealth provisions also require licensees providing telehealth services to have documented procedures to address emergent clinical or medical emergencies at patient locations, which may result in an indeterminable workload increase for providers utilizing telehealth to deliver services.

Persons seeking licensure from the LPTB may benefit from the repeal of provisions requiring an interview with a member of the LPTB. No longer having to be interviewed prior to licensure may expedite the process and result in applicants receiving their licenses quicker.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Adoption of rules associated with providing services via telehealth may increase employment opportunities for PTs and PTAs to the extent clinics begin to utilize telehealth. However, the aggregate effect on employment from the adoption of telehealth services cannot be determined because the number of firms that may elect to provide services in this manner is unknown.

Furthermore, adoption of rules associated with telehealth may affect competition to the extent electing to providing services in this manner allows some firms to gain competitively over firms that do not. However, the aggregate effect on competition cannot be determined and is dependent upon the number of firms electing to deliver services via telehealth.

Charlotte Martin
Executive Director
1804#006

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 60—Advertising of Life Insurance (LAC 37:XIII.4101 and 4117)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., hereby gives notice of its intent to amend Regulation 60 by repealing §4117.C.

The purpose of the amendment to Regulation 60 is to remove the requirement that insurers file a certificate of compliance in regards to advertisements.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 41. Regulation 60—Advertising of Life Insurance

§4101. Purpose

A. The purpose of this regulation is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts. This rule is being amended to remove the requirement that insurers file a certificate of compliance in regards to advertisements.

AUTHORITY NOTE: Promulgated in accordance with R.S. Title 22, Section 3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1224 (December 1996), amended LR 44:

§4117. Enforcement Procedures

A. - B. ...

C. In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of part XXVI, unfair trade practices, of the Louisiana insurance code, which regulates the trade practices on the business of insurance by defining and providing for the determination of all acts, methods, and practices which constitute unfair methods of competition and unfair or deceptive acts and practices in this state, and to prohibit the same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1228 (December 1996), amended LR 28:2366 (November 2002), LR 44:

Family Impact Statement

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed amended regulation should have no impact upon the ability

of the family or a local governmental unit to perform the function as contained in the Rule.

Poverty Impact Statement

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Analysis

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Provider Impact Statement

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed amended regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed amended regulation will have no effect.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments must be received no later than May 20, 2018, by 4:30 p.m. and should be addressed to Ryan Boyle, Louisiana Department of Insurance, and may be mailed to P.O. Box 94214, Baton Rouge, LA 70804-9214, faxed to (225) 342-1632, or emailed to rboyle@ldi.la.gov. If comments are to be shipped or hand-delivered, please deliver to Poydras Building, 1702 North Third Street, Baton Rouge, LA 70802.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 60 Advertising of Life Insurance

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

The proposed rule change will not result in any additional costs or savings to state or local governmental units. The proposed rule change removes the requirement that insurers file a certificate of compliance with a statement confirming that advertisements for life insurance producers in a given year complied with existing laws and administrative rules. The LA Dept. of Insurance (LDI) will continue requiring life insurance producers to maintain complete files containing their advertisements. Life insurance producers will continue to file advertisements with LDI for approval.

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

The proposed rule change will not affect revenue collections for state or local governmental units.

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

The proposed rule change will result in a marginal workload decrease for life insurance producers, who will no longer be required to file a certificate of compliance with a statement confirming that advertisements for life insurance producers in a given year complied with existing laws and administrative rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition and employment.

Mary E. Butler
Chief of Staff
1804#051

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of State Fire Marshal

Amusement Attractions and Ride Safety
(LAC 55:V.Chapter 25)

Under the authority of R.S. 40:1484.2(B) et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Public Safety, Public Safety Services, Office of State Fire Marshal, hereby proposes to repeal §§2501 through 2059 in their entirety and create §§2501 through 2593. Act 462 of the 2016 Regular Session created a new regulatory scheme for the testing, inspection, and operation of inflatable amusement devices, amusement attractions, and amusement rides, including the registering of all inflatable amusement devices, amusement attractions, and amusement rides being operated in the state of Louisiana. These regulations will set forth the procedures and requirements for becoming licensed to perform testing, inspections, and the operation of inflatable amusement devices, amusement attractions, and amusement rides and a fine schedule for any violation of the statute or regulation. These regulations also provide basic safety measures for certain inflatable amusement devices, amusement attractions, and amusement rides and a mechanism for reporting accidents resulting in injury or death.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 25. Amusement Attractions and Rides

§2501. Purpose

A. The purpose of these rules is to regulate the activity of firms, employees of firms, and individuals who own, operate, set-up, and/or inspect inflatable amusement devices, amusement attractions, or amusement rides in the interest of protecting and preserving human lives pursuant to the authority of R.S. 40:1484.1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2503. Administration

A. The Office of State Fire Marshal, which administers the provisions of R.S. 40:1484.1 et seq., relating to the amusement rides safety law, is located at 8181 Independence Blvd., Baton Rouge, LA 70806.

B. The following nationally recognized standards are to be used in the formulation and enforcement of these rules and regulations. Should there arise a conflict between these standards and R.S. 40:1484.1 et seq., or the rules and regulations, the provisions of R.S. 40:1484.1 et seq., and/or these rules shall apply:

1. ASTM F2374-10, *Standard Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices*; (approved Feb. 1, 2010; published March 2010);

2. ASTM F1159-15b, *Standard Practice for Design of Amusement Rides and Devices that are Outside the Purview*

of Other F24 Design Standards; (approved Nov. 1, 2015; published November 2015);

3. ASTM F1193-16, *Standard Practice for Quality, Manufacture, and Construction of Amusement Rides and Devices*; (approved Feb. 15, 2016; published March 2016);

4. ASTM F2959-16, *Standard Practice for Aerial Adventure Courses*; (approved May 1, 2016; published May 2016);

5. ASTM F2970-15, *Standard Practice for Design, Manufacture, Installation, Operation, Maintenance, Inspection and Major Modification of Trampoline Courts*; (approved Feb. 15, 2015; published April 2015);

6. ASTM F2291-15, *Standard Practice for Design of Amusement Rides and Devices*; (approved Aug. 1, 2015; published October 2015);

7. ASTM F2375-09, *Standard Practice for Design, Manufacture, Installation and Testing of Climbing Nets and Netting/Mesh used in Amusement Rides, Devices, Play Areas and Attractions*; (approved March 1, 2009; published April 2009);

8. ASTM F2974-15, *Standard Guide for Auditing Amusement Rides and Devices*; (edition approved Sept. 1, 2015; published December 2015);

9. ASTM F3099-14, *Standard Practices for Parasailing*; (edition approved Sept. 1, 2014; published September 2014);

10. ASTM F770-15, *Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices*; (edition approved May 1, 2015; published May 2015);

11. ASTM F2007-12, *Standard Practice for Design, Manufacture, and Operation of Concession Go-Karts and Facilities*; (approved March 1, 2012; published March 2012);

12. ASTM F2460-11, *Standard Practice for Special Requirements for Bumper Boats*; (edition approved March 1, 2011; published April 2011);

13. ASTM F2960-16, *Standard Practice for Permanent Amusement Railway Ride Tracks and Related Devices*; (edition approved Nov. 1, 2016; published November 2016);

14. ASTM F3054-15, *Standard Practice for Operations of Amusement Railway Rides, Devices, and Facilities*; (edition approved Dec. 1, 2015; published January 2016);

15. ASTM F747-15, *Standard Terminology Relating to Amusement Rides and Devices*; (edition approved Oct. 1, 2015; published November 2015);

16. ASTM F1957-99 (Reapproved 2011), *Standard Test Method for Composite Foam Hardness-Durometer Hardness*; (edition approved Jan. 15, 2011; published June 2011);

17. ASTM F2137-16, *Standard Practice for Measuring the Dynamic Characteristics of Amusement Rides and Devices*; (edition approved Oct. 15, 2016; published November 2016);

18. ASTM F2376-13, *Standard Practice for Classification, Design, Manufacture, Construction, and Operation of Water Slide Systems*; (edition approved June 1, 2013; published May 2014);

19. ASTM F2461-09, *Standard Practice for Manufacture, Construction, Operation, and Maintenance of Aquatic Play Equipment*; (edition approved March 15, 2009; published May 2009);

20. ASTM F1957-99 (Reapproved 2011), *Standard Test Method for Composite Foam Hardness-Durometer Hardness*; (edition approved Jan. 15, 2011; Published June 2011);

21. NFPA 101 (2015 edition), *Life Safety Code*; and

22. NFPA 70 (2014 edition), *National Electrical Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2505. Applicability of Rules

A. These rules shall apply to all firms and persons engaged in the activity of owning, operating, setting up of, and/or inspecting inflatable amusement devices, amusement attractions, or amusement rides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2507. Notices of Violations and Penalties; Cease and Desist Orders

A. Any notice required to be given by the state fire marshal or his designee to any firm, owner, or operator found to have violated the provisions of R.S. 40:1484 et seq., or these rules shall include any proposed penalty and may be provided in the following manner:

1. by personal service, to include hand delivery to the firm, owner, operator, employee, or individual;

2. by domiciliary service, to include hand delivery to a person of suitable age and discretion who resides with the owner, operator, employee, or individual;

3. when mailed, postage prepaid, to the subject person's residence or entity address as it appears in the records in the Office of State Fire Marshal;

4. by electronic transmission or electronic mail (email) if the electronic transmission or email is retrievable in a perceivable form and the Office of State Fire Marshal and the recipient have consented in writing to the use of such form of electronic transmission or email for purposes of notice or communication between the parties; or

5. on the seventh calendar day after it is mailed with correct postage to the most recent address of the firm, owner, operator, employee, or individual furnished in writing or electronically to the Office of State Fire Marshal.

B. It is the responsibility of the person or entity involved to ensure that the office has a correct email address or electronic notification information for the person or firm. It is the responsibility of the person or entity involved to ensure that the office has a correct address for the person or firm.

C. Any cease and desist order issued by the Office of State Fire Marshal in accordance to R.S. 40:1484.1 et seq., or these rules must be given in the following manners:

1. personal service; or

2. mail, certified return receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2509. Definitions

A. As used in this Part, the following terms have the meanings specified in this Section, except where the context expressly indicates otherwise.

AIMS—the Amusement Industry Manufacturers and Suppliers association.

ANSI—the American National Standards Institute.

ASTM—the American Society of the International Association for Testing and Materials.

Certificate of Licensure—that document issued by the Office of State Fire Marshal to a firm or individual authorizing it or him to engage in such activities as defined in R.S. 40:1484.1 et seq., and these rules.

Employee—a person who works for a "firm" as defined by R.S. 40:1484.1 et seq., in return for financial or other compensation.

a. For the purposes of the licensing requirements, contained in R.S. 40:1484.1 et seq., employees shall not include secretaries, drivers, accounting, or other administrative personnel.

b. For the purposes of licensing requirements, the firm owner or owners shall be considered an "employee" if he or she is or will be inspecting or operating an inflatable amusement device, amusement attraction, or amusement ride.

Endorsement—a category of license authorizing its holder to operate, and/or perform inspections of inflatable amusement devices, amusement attractions, or amusement rides.

Event Foreman—that employee at least 18 years of age or older designated by an inflatable amusement device, amusement attraction, or amusement ride operating firm as the person responsible for amusement event operations. A foreman is not required to be licensed, but the employing firm shall provide to the Office of State Fire Marshal the name and contact information of at least one foreman for each event. The foreman shall also be knowledgeable of the required notification procedures involving reportable accidents at an event.

Event Tag—a tag that is affixed to inflatable amusement devices, amusement attractions, or amusement rides designating the duration of an individual event. The color of the tag determines whether the ride is approved for use or identifies impairments.

Go-Kart Track—a fixed course, either open to the public or operated on a private or semi-public basis, whether or not operated for profit, wherein the use of go-karts (karts) for rides, rentals, demonstrations, and/or testing is the principal use of such business. It does not include tracks or courses solely operated for competitive racing, time trials, or similar activities reasonably connected therewith.

Limited Third-Party Specialty Inspector Endorsement—that document issued by the Office of State Fire Marshal authorizing its holder to test and inspect only inflatable amusement devices.

Major Modification—any change in the structural or operational characteristics of the inflatable amusement device, amusement attraction, or amusement ride which may alter the safety or performance characteristics from that specified in the original design criteria of the manufacturer.

Material and/or Structural Testing—the nondestructive testing of inflatable amusement devices, amusement attractions, or amusement rides, conducted by licensed third-party inspectors at least annually for safety in accordance with ASTM-F-24 and other applicable standards, regulations, manuals, service bulletins, and notices. This differs from the set-up and functional status of inflatable amusement devices, amusement attractions, or amusement rides at an individual event.

Minor Modification—a change that does not affect the original manufacturer safety or performance characteristics or criteria of an inflatable amusement device, amusement attraction, or amusement ride. Examples of minor modifications are changes in signage or the thematic references of an inflatable amusement device, amusement attraction, or amusement ride.

NAARSO—the National Association of Amusement Ride Safety Officials.

NFPA—the National Fire Protection Association.

OSFM-IMS—the Office of State Fire Marshal information management system.

Operator—a person who possesses the appropriate training or experience enabling an inflatable amusement device, amusement attraction, or amusement ride firm to obtain an operator firm license. An operator shall be a paid employee of the firm and shall be actively engaged in the direct supervision of operations of the licensed firm and its employees. Every operating firm shall employ and license at least one operator.

Office—the Office of State Fire Marshal.

Operator Endorsement—that document issued by the Office of State Fire Marshal authorizing its holder to manage, coordinate, or possess the duty to control the operation of the inflatable amusement devices, amusement attractions, or amusement rides at an event.

Reidentification—the creation by an operator or owner of a new name, number, or both of an inflatable amusement device, amusement attraction, or amusement ride that has been the subject of a major modification.

Reinspection—an inspection conducted by a licensed inspector subsequent to an initial inspection during which deficiencies were identified. The purpose of a reinspection is to ensure corrective measures have been taken that will result in bringing the inflatable amusement device, amusement attraction, or amusement ride into compliance with R.S. 40:1484.1 et seq., manufacturer specifications, and these rules.

Set-Up Inspector Endorsement—that document issued by the Office of State Fire Marshal authorizing its holder to conduct the set-up inspection prior to the opening of an amusement attraction or prior to the operation of an inflatable amusement device or amusement ride at each event in accordance with R.S. 40:1484.1 et seq., and these rules.

Third-Party Inspector Endorsement—that document issued by the Office of State Fire Marshal authorizing its holder to test and inspect inflatable amusement devices, amusement attractions, and amusement rides in accordance with R.S. 40:1484.1 et seq., and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2511. Registration of Inflatable Amusement Devices, Amusement Attractions, Amusement Rides; Registration Requirements

A. Required

1. Any owner of an inflatable amusement device, amusement attraction, or amusement ride shall register each of his inflatable amusement devices, amusement attractions, or amusement rides with the Office of State Fire Marshal in accordance with these rules prior to its use in this state.

B. Registration Requirements

1. To register the inflatable amusement device, amusement attraction, or amusement ride being used in this state, the owner shall electronically submit the following information utilizing the Office of State Fire Marshal information management system (OSFM-IMS) or in writing on the forms provided by the Office of State Fire Marshal and accompanied by the required fee as specified in R.S. 40:1484.18 et seq., and these rules:

- a. a registration application;
- b. a certificate of inspection dated no earlier than 60 days prior to the date of submission of a registration application; and
- c. a copy of the general liability insurance policy in which all inflatable amusement devices, amusement attractions, and amusement rides being registered are listed on the submitted insurance declaration page.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2513. Certificate of Registration; Registration Plates; Placement; Annual Decals; Replacement Fees

A. Certificate of Registration

1. Upon approval of the firm or individual to be licensed by the Office of State Fire Marshal, a certificate of registration shall be issued to the owner of each inflatable amusement device, amusement attraction, or amusement ride registered. The certificate or a copy thereof shall be kept where it is accessible upon demand by the state fire marshal or his representative.

B. Registration Plates

1. Once an inflatable amusement device, amusement attraction, or amusement ride is registered, a registration plate shall be issued bearing a permanent registration number. The plate is to be permanently affixed to the amusement attraction or amusement ride in a conspicuous location.

2. To prevent damage to inflatable devices, owners and operators shall be allowed to temporarily affix the plate to or near the inflating mechanism or to a grommet at or near the inflating mechanism for the duration of each event where the device is in use. It shall be the responsibility of the owner and operator to ensure that the correct plate is affixed to the registered inflatable device.

C. Annual Decals

1. Annual Registration Renewal. After renewing the annual registration of an inflatable amusement device,

amusement attraction, or amusement ride, a decal signifying the month and year of the annual renewal shall be issued by the Office of State Fire Marshal.

2. The registration decal shall be affixed to the front, bottom-right corner of the registration plate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2515. License Required; Firm Applicability;

Individual Applicability; Types of Endorsement

A. Each firm engaged in the activity of operating, and/or inspecting inflatable amusement devices, amusement attractions, or amusement rides shall obtain a certificate of licensure from the Office of State Fire Marshal, as provided by R.S. 40:1481.1 et seq., and these rules prior to conducting any such activity in this state.

B. Firm License Applicability

1. The following shall apply to firms.

a. Changes of Ownership. The change of a firm's majority ownership invalidates the current license. To ensure continuance of the firm's ability to operate and/or inspect inflatable amusement devices, amusement attractions, or amusement rides in the state, an application for a new certificate shall be submitted to the Office of State Fire Marshal within 10 days after any change in ownership.

b. Change of Firm Officers. Any change in corporate officers of an incorporated firm or members and/or managers of a limited liability corporation or similar entities within the licensure period, must be reported in writing to the Office of State Fire Marshal within 10 days of the change.

c. Changes in Firm Address. The firm shall give written or electronic notification to the Office of State Fire Marshal of the physical location of their principal place of business. If, after notification, the location of their principal place of business changes, the firm shall notify the Office of State Fire Marshal within 10 days of the change.

d. Duplicates. A duplicate certificate of licensure must be obtained from the Office of State Fire Marshal to replace a lost or destroyed certificate. The firm must submit written or electronic notification of the loss or destruction within 10 days, accompanied by the required fee pursuant to R.S. 40:1484.1 et seq.

e. Revisions/Changes to License. The change of a firm's name, location, or mailing address or operating status requires a revision of the certificate of registration. Licenses requiring changes must be surrendered to the Office of State Fire Marshal within 10 days after the change requiring the revision. The firm must submit written or electronic notification of the change with the surrendered license, accompanied by the required fee specified in by R.S. 40:1484.1 et seq.

f. Non-Transferability. A certificate of licensure is not transferable from one firm to another.

g. Validity. A certificate of licensure is valid for one year from date of issue, and must be renewed annually.

C. Each person or employee engaged in the activity of operating and/or inspecting inflatable amusement devices, amusement attractions, or amusement rides shall obtain a

license from the Office of State Fire Marshal, as provided by R.S. 40:1484.1 et seq., and these rules prior to conducting any such activity in this state. This does not apply to ride operators as defined in R.S. 40:1484.3.

D. Applications for individual licenses shall be deemed as an acknowledgement from the employer certifying the applicant's competency to perform inspections of inflatable amusement devices, amusement attractions, and amusement rides authorized by the endorsements applied for and that the individual is an employee who receives a W-2 or K-1 tax form from the firm.

E. Individual License Applicability

1. The following shall apply to individual persons.

a. Changes in Licensed Individual's Address. An individual licensed with the Office of State Fire Marshal to inspect inflatable amusement devices, amusement attractions, or amusement rides shall give written or electronic notification to the Office of State Fire Marshal of his home address. If, after notification, the location of their principal place of business changes, the individual responsible shall immediately notify the Office of State Fire Marshal of the change.

b. Pocket Licenses issued by the Office of State Fire Marshal are for immediate identification purposes and shall be kept on the recipient's person at all times when conducting regulated activity. The pocket license need not be visibly displayed when working in areas where the license may be damaged or lost. The license must still be available for inspection upon request. The license shall bear the name of firm that employs the person.

c. Duplicate Licenses. A duplicate license must be obtained from the Office of State Fire Marshal to replace a lost or destroyed license. The license holder or his employer must submit written or electronic notification within 10 days of the loss or destruction of a license, accompanied by the required fee as specified in R.S. 40:1484.18(H).

d. Revised Licenses. The change of a licensee's employer, home or mailing address, or employment status requires a revised license. Licenses requiring revision must be surrendered to the Office of State Fire Marshal within 10 days after the change. The license holder or his employer must submit written or electronic notification of the necessary change with the surrendered license, accompanied by the required fee as specified in R.S. 40:1484.18(H).

e. Non-Transferable. A license is not transferable from one person to another.

f. Validity. A license is valid for one year from date of issue, and must be renewed annually.

g. Transfer of Employer. When a currently licensed employee transfers to a new employer, a revised license shall be required indicating the new firm's information. Upon receipt of the revision application by the Office of State Fire Marshal, the individual may go to work for the new employer while waiting for the processing of the license. This go-to-work allowance shall not authorize the employee to engage in any activity for which he/she was not previously licensed to perform or for which the firm is not currently licensed to perform.

h. Age Limitations. For the purpose of licensing, no one under the age of 21 shall be eligible for a license.

F. Types of Endorsement

1. Each license shall be identified by endorsement, which indicates the authorized act or acts which may be performed by the licensee. The endorsements are as follows:

- a. operator endorsement (firm; individual);
- b. third-party inspector endorsement (firm; individual);
- c. limited third-party specialty inspector endorsement (firm; individual);
- d. set-up inspector endorsement (firm; individual).

G. Any firm and/or person described in this Section, which or who has not applied for and received a current and valid license, shall immediately cease and desist such activities. The Office of State Fire Marshal shall take all steps necessary to enforce an order to cease and desist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2517. Application for Certificates of Licensure

A. Applications for a certificate of licensure for firms, employees of firms, and individuals who operate, and/or inspect inflatable amusement devices, amusement attractions, or amusement rides shall be submitted and processed electronically utilizing the Office of State Fire Marshal information management system (OSFM-IMS), or in writing on the forms provided by the State Fire Marshal and accompanied by the required fee as specified in these rules.

B. The application for certificates of licensure shall:

- 1. be executed by the sole proprietor, each partner of a partnership, member or manager, if a limited liability company, or by the authorized officer of the firm;
- 2. identify the type of license and endorsement applied for;
- 3. identify the physical and mailing address, if different, from the firm's operating location;
- 4. identify any and all names by which the firm may conduct activity regulated by R.S. 40:1484.1 et seq., and these rules. Only one trade or "doing business as" name shall be permitted per each certificate of licensure;
- 5. identify each principal, officer, and member of the firm;
- 6. identify the contact person and email address of such, as defined by these rules;
- 7. identify any and all past violations or pending administrative or legal action(s) against the firm in other state or local jurisdictions;
- 8. include a separate employee application for each person along with the requisite training and/or certification(s), as established by these rules, an originally signed and notarized affidavit detailing the training and/or certification(s), and digital photographs of each applicant's unobscured face/head;
- 9. be accompanied by:
 - a. an original certificate of insurance showing the minimum of \$1,000,000 coverage insuring the operator against liability for injury suffered by persons riding the amusement attraction or ride; or
 - b. a bond in a like amount, provided the aggregate liability of the surety under any such bond shall not exceed the face amount thereof; and

c. an original certificate of insurance documenting that the firm has a current and valid worker's compensation insurance policy as required by state law.

C. Errors and Omissions Coverage. In compliance with R.S. 40:1484.16(5), the state fire marshal has suspended the requirement to obtain errors and omissions coverage by those firms and individuals who engage in the inspections of inflatable amusement devices, amusement attractions, or amusement rides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2519. Fees—General Information

A. Every fee required in accordance with the provisions of R.S. 40:1484.18 et seq., and these rules shall be paid in the following manners:

1. by firm check or certified funds made payable to the "Office of State Fire Marshal." Fees shall be paid at or mailed to the Office of State Fire Marshal, Attention Licensing Section, at 8181 Independence Blvd., Baton Rouge, LA 70806; or

2. by credit card when submitting an application(s) electronically using the Office of State Fire Marshal information management system (OSFM-IMS).

B. Late fees are required on all licenses which are not timely renewed as outlined in R.S. 40:1484.18 et seq.

C. A renewal application accompanied by the required renewal fee and deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a legible postmark date which is on or before the expiration date of the certificate or license being renewed.

D. Licenses which have been expired for more than 60 days will be suspended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2521. Alteration of Certificates and Licenses

A. Any alteration of a certificate of licensure or individual license renders it invalid and such alteration shall be the basis for administrative action in accordance with penalties set forth in R.S. 40:1484.1 et seq., and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2523. Event Tags; Required; Design and Color Significance; Impairment Notification Requirement and Procedure

A. Required

1. Every inflatable amusement device, amusement attraction, or amusement ride in operation in this state shall have an event tag placed thereon after it has been inspected by a licensed set-up inspector.

2. Event tags shall be valid only for the dates of the event's duration and shall be removed at the end of each event. The dates of the event shall be clearly indicated and written in indelible ink, or with a permanent marker.

3. In the event of an annual inspection, the licensed third party inspector shall only affix a red event (impairment) tag when the inflatable amusement device, amusement attraction, or amusement ride has been found to be not in compliance with all applicable adopted laws, rules, standards, and corresponding manufacturer's installation manuals, maintenance and service repair bulletins, or notices. The inspector shall detail on the reverse of the tag the deficiencies.

4. A red event tag shall have the same effect as a cease and desist order issued by the Office of State Fire Marshal.

B. Design and Color Significance

1. Event tags shall be constructed of a material able to withstand inclement weather or placed in a clear plastic sleeve that is able to withstand inclement weather.

2. The dimensions of the tag shall be 3 inches by 5 inches and shall contain the following information printed thereon:

a. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all letters capitalized and in bold face type);

b. the operating firm's name, physical address, and telephone number;

c. the firm's Office of State Fire Marshal license number;

d. the printed name of the licensed inspector and his Office of State Fire Marshal license number;

e. the signature of the licensed inspector. (Pre-printed or stamped signatures are not permitted);

f. the name of the inflatable amusement device, amusement attraction, and/or amusement ride and its serial number; and

e. the dates of the event during which the inflatable amusement device, amusement attraction, or amusement ride will be in operation or not in operation if not approved for use.

3. For inflatable amusement devices, amusement attractions, and amusement rides that are approved for operation by a licensed inspector, the event tags shall be green in color.

4. For inflatable amusement devices, amusement attractions, and amusement rides that are not approved for operation by a licensed inspector, the event tags shall be red in color. A red event tag shall have the same effect as a cease and desist order issued by the Office of State Fire Marshal.

5. Where only individual units of a ride, such as cars, seats, or other carriers are defective and not in compliance with R.S. 40:1484.1 et seq., and/or these rules, such units shall be taken out of service and clearly marked with a yellow impairment tag reading "Out of Service;" provided, however, such defects do not jeopardize the safety of the entire ride.

6. The tags shall be conspicuously placed on or as close as possible to the operator controls of the amusement ride in a location that limits access to the tag by patrons. For inflatable devices, the tag shall be conspicuously placed at or near the inflating mechanism. For amusement attractions, the tag shall be conspicuously placed at or near the entrance to the attraction in a location that limits access to the tag by patrons.

C. Impairment Notification Requirement and Procedure

1. When a red event (impairment) tag is affixed to an inflatable amusement device, amusement attraction, or amusement ride, or to an individual unit of an inflatable amusement device, amusement attraction, or amusement ride after a set-up inspection has been conducted, the licensed inspector shall notify the Office of State Fire Marshal within two hours of affixation of the tag.

2. If, during an annual inspection, a licensed third party inspector finds that the inflatable amusement device, amusement attraction, or amusement ride does not comply with all applicable adopted laws, rules, standards, and its corresponding manufacturer's installation manuals, maintenance and service bulletins, and notices, the licensed third-party inspector shall notify the Office of State Fire Marshal within two hours of his findings. The third party inspector shall include in the notification a copy of his inspection report detailing his findings.

3. Notification of findings as listed in Paragraphs 1 and 2 of this Subsection shall be made by calling the Office of State Fire Marshal at 1-800-256-5452.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2525. Certificate of Inspection Form

A. Certificate of Inspection Form

1. A certificate of inspection form shall be provided by the Office of State Fire Marshal for use by licensed third-party and/or set-up inspectors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2527. Prohibited Acts

A. The following acts are prohibited and shall be considered grounds for administrative and/or legal action to be taken against firms, persons and/or employees committing such:

1. charging a customer for an inspection that was not performed;

2. misrepresenting oneself and/or one's firm to a patron, the Office of State Fire Marshal or designated representative, or other public official;

3. impersonating the state fire marshal, his designated representative, or any other public official;

4. operating, certifying, testing, or inspecting an inflatable amusement device, amusement attraction, or amusement ride without a valid license obtained from the Office of State Fire Marshal;

5. certifying, testing, or inspecting an inflatable amusement device, amusement attraction, or amusement ride contrary to applicable manufacturer standards and/or specifications, or NAARSO, ASTM, or other standards adopted by the Office of State Fire Marshal;

6. falsifying an application or any other document submitted to obtain a license, or other documentation requested by or submitted to the Office of State Fire Marshal;

7. falsifying tags; inspection reports; device, attraction, or ride reports; or other relative documents;

8. operating an inflatable amusement device, amusement attraction, and/or amusement ride without it first being inspected and approved for use by a licensed inspector;

9. operating an inflatable amusement device, amusement attraction, and/or amusement ride prior to or without a set-up inspection being conducted by a licensed inspector;

10. operating an inflatable amusement device, amusement attraction, and/or amusement ride without it being registered with the Office of State Fire Marshal;

11. operating an inflatable amusement device, amusement attraction, and/or amusement ride with an expired license;

12. failing to notify the Office of State Fire Marshal of any changes that affect licensure;

13. failure to notify the Office of State Fire Marshal of an inflatable amusement device, amusement attraction, or amusement ride accident, or an accident resulting in an injury or fatality;

14. failing to abide by the tagging requirements of the Office of State Fire Marshal;

15. engaging in false, misleading, or deceptive practices;

16. aiding and abetting an unlicensed firm or individual in the operation, certifying, testing, or inspecting of an inflatable amusement device, amusement attraction, or amusement ride;

17. failure to adhere to all applicable laws and rules governing the owning, licensing, registering, inspection, and operation of inflatable amusement devices, amusement attractions, or amusement rides;

18. working an employee without the appropriate license endorsement; and

19. working without the proper license endorsement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2529. Enforcement; Investigations

A. The state fire marshal or his designated representative shall make, or cause to be made, from time to time, inspections of a firm's physical locations or operational sites to verify required certificates, employee lists, employee

licenses, business records and insurances, equipment, tools, compliance with applicable NFPA codes, standards, and manufacturer's manuals, and as circumstances dictate, to determine that firms and their employees are engaging in activity in accordance with the requirements of R.S. 40:1484.1 et seq., and these rules.

B. The state fire marshal shall investigate all complaints of alleged violations of R.S. 40:1484.1 et seq., and these rules. Complaints of alleged violations shall be made in writing to the Office of State Fire Marshal. The office shall make available a complaint form to be used as needed. Penalties shall be administered to those firms and/or employees found to have violated these laws and/or rules. Proposed administrative penalty letters shall act as official notification of alleged violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2531. Administrative Actions; Enhanced Fine Amounts; Fine Schedule

A. The Office of State Fire Marshal may refuse the issuance or renewal of, suspend, or revoke a license and impose administrative penalties, if, after notice, as required by the Administrative Procedures Act, it is found that a person, licensed firm, or licensee, or an applicant for licensure, failed to comply with the provisions of R.S. 40:1484.1, et seq., or these rules. The State Fire Marshal may consider violations in other states or failing to pay outstanding fine amounts as grounds for refusing the issuance of or the renewing of a license. Additionally, where it is brought to the attention of the Office of State Fire Marshal, violations in other states or failing to pay outstanding fine amounts may result in the suspension of or revocation of a license.

B. In the event that a firm or individual is found to be in violation of R.S. 40:1484.1 et seq., and these rules, the Office of State Fire Marshal reserves the right to assess enhanced administrative fines for repeated substantiated violations over a period of the preceding 36 months.

C. The following fine schedule shall be used to assess fines to persons, firms, and/or employees who violate the laws and rules governing the amusement industry. Penalties will be imposed to persons, firms and/or employees based on the classification of the offense. Other administrative penalty(ies) may also be imposed.

Violation		Fine Amount		
		1st Offense	2nd Offense	3rd Offense
(1)	Failure to register an inflatable amusement device, amusement attraction, or amusement ride.	\$100.00	\$200.00	\$300.00
(2)	Operation of inflatable amusement device, amusement attraction, or amusement ride without a certificate of inspection issued by a licensed third-party inspector.	\$250.00	\$500.00	\$750.00
(3)	Notifying the Office of State Fire Marshal of the intent to operate an amusement attraction, or amusement ride less than five days of the operation of the attraction or ride.	\$250.00 (Per device)	\$500.00 (Per device)	\$1,500.00 (Per device)
(4)	Failure to immediately notify the Office of State Fire Marshal of any change in schedule of location or date that occurs less than five days prior to the commencement of operation of the attraction or ride.	\$250.00 (Per device)	\$500.00 (Per device)	\$1,500.00 (Per device)
(5)	Failure to submit to the State Fire Marshal or his designee the set-up and annual reports and any other documentation relating to the set-up inspection or annual inspection of an amusement attraction, amusement ride, or amusement inflatable device during an Office of State Fire Marshal event inspection or audit.	WARNING	\$150.00 and 30 DAY DEVICE SUSPENSION	\$350.00 and 90 DAY DEVICE SUSPENSION

Violation		Fine Amount		
		1st Offense	2nd Offense	3rd Offense
(6)	Denying access to the State Fire Marshal or his designee to any premises in the state where an inflatable amusement device, amusement attraction, or amusement ride is being installed, built, repaired, or operated for the purpose of ascertaining whether such inflatable amusement device, amusement attraction, or amusement ride is being installed, built, repaired, or operated in accordance with the provisions of this Part and adopted standards, rules, regulations, and applicable manuals, service bulletins, and notices.	\$500.00	\$1000.00	\$2500.00
(7)	Notifying the Office of State Fire Marshal of the intent to operate an inflatable amusement device less than five days of the operation of the device.	\$200.00 (Per device)	\$400.00 (Per device)	\$1,200.00 (Per device)
(8)	Failure to immediately notify the Office of State Fire Marshal of any change in schedule of location or date that occurs less than five days prior to the commencement of operation of the inflatable amusement device.	\$200.00 (Per device)	\$400.00 (Per device)	\$1,200.00 (Per device)
(9)	Failure to submit to the State Fire Marshal or his designee the set-up report and any other documentation relating to the set-up inspection or an annual inspection of an inflatable amusement device during an Office of State Fire Marshal event inspection or audit.	WARNING	\$150.00 and 30 DAY DEVICE SUSPENSION	\$350.00 and 90 DAY DEVICE SUSPENSION
(10)	Denying access to the State Fire Marshal or his designee to any premises in the state where an inflatable amusement device is being installed, built, repaired, or operated for the purpose of ascertaining whether such inflatable amusement device is being installed, built, repaired, or operated in accordance with the provisions of this Part and adopted standards, rules, regulations, and applicable manuals, service bulletins, and notices.	\$500.00	\$1000.00	\$2500.00
(11)	Failure to conduct a set-up inspection of an inflatable amusement device, amusement attraction, or amusement ride prior to operating the device, attraction, or ride at each event in the state.	\$500.00 (Per device)	\$750.00 (Per device)	\$750.00 (Per device)
(12)	Failure to affix a green event tag on an inflatable amusement device, amusement attraction, or amusement ride that has been inspected and found to be in compliance pursuant to the findings of a set-up inspection and corresponding adopted rules and regulations.	\$50.00	\$100.00	\$200.00
(13)	Failure to notify the Office of State Fire Marshal within two hours after finding that an inflatable amusement device, amusement attraction, or amusement ride is not in compliance pursuant to the findings of a set-up inspection and corresponding adopted rules and regulations; or affixing an impairment tag on the device, attraction, or ride.	\$100.00	\$250.00	\$500.00
(14)	Failure to properly affix an impairment tag on an inflatable amusement device, amusement attraction, or amusement ride that is not in compliance pursuant to the findings of a set-up inspection and corresponding adopted rules and regulations.	\$100.00	\$250.00	\$500.00
(15)	Inspecting or testing of an inflatable amusement device, amusement attraction, or amusement ride by the owner or operator of the same.	\$500.00	\$750.00	\$1000.00
(16)	Failure to notify the Office of State Fire Marshal of a change in the business address of the firm within 10 days of the change.	WARNING	\$100.00	\$250.00
(17)	Failure to notify the Office of State Fire Marshal of a change in the ownership of or interest in the firm within 10 days of the change.	\$250.00	\$250.00	\$250.00
(18)	Failure to notify the Office of State Fire Marshal of a change in home address within 10 days of the change (Individual).	WARNING	\$25.00	\$50.00
(19)	Failure to notify the Office of State Fire Marshal of a separation from an employer or change in employer within 10 days of the change (Individual).	WARNING	\$25.00	\$50.00
(20)	Licensed individual contracting his services as an independent contractor or agent with any other firm, whether such firm is engaged in testing, inspection, or operation.	\$750.00	\$1000.00	\$1250.00
(21)	Engaging in the operation of an inflatable amusement device, amusement attraction, or amusement ride without a valid license issued by the Office of State Fire Marshal (Operator).	\$1000.00	\$1250.00	\$1500.00
(22)	Aiding and abetting an unlicensed individual, employee, or firm in the testing, inspection, or operation of an inflatable amusement device, amusement attraction, or amusement ride (Operator).	\$500.00	\$750.00	\$1000.00
(23)	Operating an inflatable amusement device, amusement attraction, or amusement ride contrary to applicable codes, standards, or manufacturer's specifications without specific written authorization from the Office of State Fire Marshal (Operator).	\$500.00	\$750.00	\$1000.00
(24)	Submitting an application or any other document to the Office of State Fire Marshal when the person reasonably should have known the document contained false or misleading information (Operator).	\$500.00	\$750.00	\$1000.00
(25)	Engaging in false, misleading, or deceptive acts or practices (Operator).	\$500.00 (can include suspension or revocation of license)	\$750.00 (can include suspension or revocation of license)	\$1000.00 (can include suspension or revocation of license)
(26)	Failure to maintain a valid license (Operator).	\$500.00	\$1000.00	\$2500.00
(27)	Failure to maintain valid insurance coverage as required (Operator).	\$500.00	\$750.00	\$1000.00
(28)	Refusal to admit the state fire marshal or his designated representative to any operating location or to cooperate in the purposes of such admittance (Operator).	\$500.00	\$750.00	\$1000.00
(29)	Failure to maintain his license on his person and present it for inspection (Operator).	WARNING	\$100.00	\$250.00
(30)	Refusal to cooperate with any lawful investigation by the Office of State Fire Marshal (Operator).	\$500.00 (can include suspension or revocation of license)	\$1000.00 (can include suspension or revocation of license)	\$2500.00 (can include suspension or revocation of license)
(31)	Failure to abide by the administrative rules (Operator).	\$500.00	\$750.00	\$1000.00
(32)	Engaging in the inspection or testing of an inflatable amusement device, amusement ride, or amusement attraction without a valid license issued by the Office of State Fire Marshal (Third-Party Inspector).	\$750.00	\$1000.00	\$1250.00

Violation		Fine Amount		
		1st Offense	2nd Offense	3rd Offense
(33)	Aiding and abetting an unlicensed operator in the operation of an inflatable amusement device, amusement attraction, or amusement ride (Third-Party Inspector).	\$250.00	\$500.00	\$750.00
(34)	Aiding and abetting an unlicensed individual or firm in the inspection or testing of an inflatable amusement device, amusement ride, or amusement attraction (Third-Party Inspector).	\$250.00	\$500.00	\$750.00
(35)	Certifying, testing, or inspecting an inflatable amusement device, amusement attraction, or amusement ride contrary to the provisions of this Part and adopted standards, regulations, and applicable manuals, service bulletins, and notices (Third-Party Inspector).	\$1000.00	\$2500.00	\$3500.00
(36)	Submitting an application or any other document to the Office of State Fire Marshal when the third-party inspector reasonably should have known the document contained false or misleading information (Third-Party Inspector).	\$500.00	\$1000.00	\$2500.00
(37)	Engaging in false, misleading, or deceptive acts or practices (Third-Party Inspector).	\$1000.00 (can include suspension or revocation of license)	\$2500.00 (can include suspension or revocation of license)	\$5000.00 (can include suspension or revocation of license)
(38)	Failure to maintain valid license (Third-Party Inspector).	\$500.00	\$1000.00	\$2500.00
(39)	Failure to maintain valid insurance coverage as required (Third-Party Inspector).	\$500.00	\$1000.00	\$2500.00
(40)	Refusal to admit the state fire marshal or his designated representative to any operating location or to cooperate in the purposes of such admittance (Third-Party Inspector).	\$250.00	\$500.00	\$100.00
(41)	Failure to maintain his license on his person and present it for inspection (Third-Party Inspector).	WARNING	\$100.00	\$250.00
(42)	Refusal to cooperate with any lawful investigation by the Office of State Fire Marshal (Third-Party Inspector).	\$ (can include suspension or revocation of license)	\$ (can include suspension or revocation of license)	\$ (can include suspension or revocation of license)
(43)	Failure to abide by the administrative rules (Third-Party Inspector).	\$500.00	\$750.00	\$1000.00
(44)	Engaging in the set-up inspection of an inflatable amusement device, amusement ride, or amusement attraction without a valid license issued by the Office of State Fire Marshal (Set-Up Inspector).	\$500.00	\$750.00	\$1000.00
(45)	Aiding and abetting an unlicensed operator in the operation of an inflatable amusement device, amusement attraction, or amusement ride (Set-Up Inspector).	\$150.00	\$250.00	\$350.00
(46)	Certifying or inspecting an inflatable amusement device, amusement attraction, or amusement ride contrary to the provisions of this Part and adopted standards, regulations, and applicable manuals, service bulletins, and notices (Set-Up Inspector).	\$1000.00	\$2500.00	\$5000.00
(47)	Submitting an application or any other document to the Office of State Fire Marshal when the set-up inspector reasonably should have known the document contained false or misleading information (Set-Up Inspector).	\$500.00	\$1000.00	\$2500.00
(48)	Engaging in false, misleading, or deceptive acts or practices (Set-Up Inspector).	\$1000.00 (can include suspension or revocation of license)	\$2500.00 (can include suspension or revocation of license)	\$5000.00 (can include suspension or revocation of license)
(49)	Failure to maintain a valid license (Set-Up Inspector).	\$250.00	\$500.00	\$750.00
(50)	Refusal to admit the state fire marshal or his designated representative to any operating location or to cooperate in the purposes of such admittance (Set-Up Inspector).	\$150.00	\$250.00	\$350.00
(51)	Failure to maintain his license on his person and present it for inspection (Set-Up Inspector).	WARNING	\$100.00	\$250.00
(52)	Refusal to cooperate with any lawful investigation by the Office of State Fire Marshal (Set-Up Inspector).	\$500.00 (can include suspension or revocation of license)	\$1000.00 (can include suspension or revocation of license)	\$2500.00 (can include suspension or revocation of license)
(53)	Altering a license, certificate, or other document received from the Office of State Fire Marshal.	\$1000.00 (can include suspension or revocation of license)	\$2500.00 (can include suspension or revocation of license)	\$5000.00 (can include suspension or revocation of license)
(54)	Failure to abide by the administrative rules (Set-Up Inspector).	\$500.00	\$750.00	\$1000.00
(55)	Violation of a cease and desist order by operating an inflatable amusement device, amusement attraction, or amusement ride that was the subject of a red tag affixation or the removal of a red tag by person(s) other than the state fire marshal or his designee.	\$1000.00	\$2500.00	\$5000.00
(56)	Failure to notify the Office of State Fire Marshal after affixing a red event (impairment) tag on an inflatable amusement device, amusement attraction, or amusement ride.	\$500.00	\$1000.00	\$2500.00
(57)	Modification of the passenger restraints, cushioning, or containing devices of an inflatable amusement device, amusement attraction, or amusement ride without prior approval of the manufacturer and the Office of State Fire Marshal.	\$500.00	\$1000.00	\$2500.00
(58)	Failure to maintain an inflatable amusement device, amusement attraction, or amusement ride in accordance with the manufacturers' designs and recommendations.	\$500.00	\$1000.00	\$2500.00
(59)	Failure to immediately notify the Office of State Fire Marshal in the event of an inflatable amusement device, amusement attraction, or amusement ride accident that resulted in serious injury or death.	\$1000.00	\$2000.00	\$3000.00

Violation		Fine Amount		
		1st Offense	2nd Offense	3rd Offense
(60)	Failure to notify the Office of State Fire Marshal in the event of an inflatable amusement device, amusement attraction, or amusement ride accident.	\$500.00	\$1000.00	\$2000.00
(61)	Altering a certificate of licensure or individual license.	\$100.00	\$250.00	\$500.00

D. The state fire marshal may deviate from this fine schedule where circumstances and/or evidence warrant a more stringent or more lenient penalty.

E. In lieu of fine payments, the state fire marshal may require remedial or additional training be obtained by those found in violation.

F. Those offenses not enumerated in this list shall receive penalties for violations of similar nature.

G. The Office of State Fire Marshal may also pursue injunctive relief for any of the above enumerated offenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2533. Severability

A. If any provision of these rules or the application thereof to any firm, person, employee or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules which can be given effect without the invalid provisions or application. To this end, all provisions of these rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2535. Third-Party Inspectors; Required Certification; Equivalent Certification; Licensed Engineers; Continuing Education Requirements

A. Required Certification

1. Applicants for third-party inspectors' licenses are required to meet the certification requirements pursuant to R.S. 40:1484.10 et seq., and these rules.

B. Equivalent Certification

1. The Office of State Fire Marshal establishes AIMS associate ride inspector certification, level 1 as an equivalent certification, which satisfies the requirements established in R.S. 40:1487.10 et seq.

C. Licensed Engineers

1. Education and Experience Requirements

a. Applicants shall provide documented evidence that the license field and experience in materials testing are relevant to the materials and structural components inherent in the inflatable amusement device, amusement attraction, and amusement ride industry.

D. Continuing Education Requirements

1. The Office of State Fire Marshal reserves the right to establish continuing education requirements for licensees in accordance with R.S. 40:1484.14 et seq., and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2537. Limited Third-Party Specialty Inspector Endorsement

A. In order to conduct material and/or structural testing and perform inspections of inflatable amusement devices within this limited endorsement, a firm and individual must obtain a license from the Office of State Fire Marshal in accordance with R.S. 40:1484.1 et seq., and these rules.

B. Required Certification

1. Applicants for limited third-party specialty inspector are required to have a NAARSO limited specialty certification.

C. Continuing Education Requirements

1. The Office of State Fire Marshal reserves the right to establish continuing education requirements for licensees in accordance with R.S. 40:1484.14 et seq., and these rules.

D. Insurance requirements:

1. to engage in the material and/or structural testing and inspection of inflatable amusement devices, firms and individuals are required to obtain a minimum of general liability insurance in the amount of \$300,000 coverage insuring the operator against liability for injury suffered by persons occupying, traversing, or otherwise utilizing inflatable amusement devices; or

2. a bond in a like amount; provided, the aggregate liability of the surety under any such bond shall not exceed the face amount thereof; and

3. an original certificate of insurance documenting that the firm has a current and valid worker's compensation insurance policy as required by state law.

E. Errors and Omissions Coverage

1. Pursuant to R.S. 40:1484.16(5), the state fire marshal has suspended the requirement to obtain errors and omissions coverage by those firms and individuals who engage in the material and/or structural testing and inspection of amusement rides, amusement attractions, and inflatable amusement devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2539. Set-Up Inspectors; Minimum Qualification Requirements

A. In order to obtain a license from the Office of State Fire Marshal to conduct set-up inspections of inflatable amusement devices, amusement attractions, and amusement rides, individuals are required to provide the following documented evidence of education or experience that is relevant to the amusement ride industry.

1. Education Requirements:

a. shall provide a certified transcript detailing specialized schooling or training (i.e. trade, vocational, armed forces, or business). The name and location of school and/or training courses including dates attended, subjects studied, numbers of classroom hours, certificate(s), and any

other pertinent information demonstrating the qualifications of the individual to be licensed as a set-up inspector shall be included in the transcript; or

b. shall provide documentation that the individual holds a current level 1 certification by the National Association of Amusement Ride Safety Officials (NAARSO); or

c. shall provide documentation that the individual holds a current AIMS associate ride inspector, level 1 certification.

2. Experience requirements:

a. two years of experience with an insurance company as an inspector of inflatable amusement devices, amusement attractions, and amusement rides;

b. two years of experience inspecting inflatable amusement devices, amusement attractions, and amusement rides and enforcing applicable codes while employed by a state or other governmental body regulating inflatable amusement devices, amusement attractions, and amusement rides;

c. a minimum of three years of experience in the design, repair, operation, or inspection of inflatable amusement devices, amusement attractions, and amusement rides; or

d. a minimum of five years documented field operation and maintenance experience in inflatable amusement devices, amusement attractions, and amusement rides, including responsibility for erection, assembly, and disassembly.

B. In addition to education or experience, the candidate must attest to meeting the following basic requirements:

1. shall be at least 21 years of age and provide date of birth;

2. shall possess a high school diploma or equivalent general education development (GED) diploma;

3. shall possess basic knowledge of ASTM requirements for amusement rides and devices; and

4. the candidate will identify the following supplemental requirements which apply to him or her:

a. possess knowledge of nondestructive testing methods and procedures;

b. possess knowledge of the requirements of the American Welding Society pertaining to the welding of parts;

c. possess basic knowledge of requirements of NFPA 70 (2014 edition), *National Electrical Code*, article 525, carnivals, circuses, fairs and similar events; and/or

d. possess basic principles of mechanical and structural engineering.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2541. Set-Up Inspections; Individual Ride Units

A. At each event, prior to the operation of an inflatable amusement device, amusement attraction, or amusement ride, licensed set-up inspectors shall utilize the set-up inspection form provided by the Office of State Fire Marshal when conducting inspections. One form shall be completed by each licensed inspector listing the device(s) inspected. Inspection forms shall be maintained for a minimum period of 24 months and be available upon request.

B. Inspections shall include, but are not limited to, a review of necessary documents, observation of and/or examination of the inflatable amusement device, amusement attraction, or amusement ride.

C. Inspections of inflatable amusement devices, amusement attractions, and amusement rides shall include, at a minimum, the foundation, blocking, fuel containers, mechanical and electrical condition and visual operation of the inflatable amusement device, amusement attraction, and amusement ride.

D. Where only individual units of a ride, such as cars, seats, or other carriers are defective and not in compliance with R.S. 40:1484.1 et seq., and/or these rules, such units shall be taken out of service and clearly marked with a yellow event (impairment) tag, provided, however, such defects do not jeopardize the safety of the entire ride.

1. When a red event (impairment) tag is affixed to an individual unit(s) of a ride, the licensed inspector shall notify the Office of State Fire Marshal within two hours of affixation of the tag. Notification shall be made by calling the Office of State Fire Marshal emergency contact number, 1-866-946-1097.

E. The state fire marshal or his designee, upon presenting credentials to the owner and/or operator of the inflatable amusement device, amusement attraction, or amusement ride, is authorized without prior notice to inspect and investigate at reasonable times, and within reasonable limits and manner, any area where inflatable amusement devices, amusement rides or amusement attractions are assembled or are in use.

F. Inflatable amusement devices, amusement attractions, and amusement rides shall be operated in accordance with the manufacturer recommended restrictions and limitations, such as, but not limited to height, weight, age, or passenger placement. In the event the manufacturer has not provided such recommended restrictions, such restrictions and limitations must be established by the operator and shall be submitted to the Office of State Fire Marshal for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2543. Prohibited Use

A. If the state fire marshal, his designee, or a licensed inspector finds that an inflatable amusement device, amusement attraction, or amusement ride, presents an imminent danger to life, of injury, or of mechanical/electrical failure, he will attach to such device, attraction, or ride a red event (impairment) tag/cease and desist order. The device, attraction, or ride shall not be used until it is made safe to the satisfaction of a licensed third-party inspector, the state fire marshal, or his designee, and the tag has been removed by the licensed third-party inspector, the state fire marshal, or his designee and replaced with a green event tag with the requisite information thereon.

B. No person shall use or permit to be used, an inflatable amusement device, amusement attraction, or amusement ride which is not properly assembled or which is defective or unsafe in any of its parts, components, controls, or safety equipment.

C. During a lightning storm, a period of tornado alert or warning, or fire, or when violence, riot, or other civil disturbance occurs or threatens an inflatable amusement device, amusement attraction, or amusement ride, or in an area adjacent thereto, passengers shall be unloaded or evacuated from the device, attraction, or ride and the device, attraction, or ride shall be shut down and secured immediately. Operation shall not resume until the situation has returned to a normal, safe operating condition.

D. An inflatable amusement device, amusement attraction, or amusement ride which is exposed to wind or storm with lightning or wind gust above that recommended by the manufacturer, shall not be operated except to release or discharge occupants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2545. Medical and First Aid

A. The owner and/or operator of an inflatable amusement device, amusement attraction, or amusement ride shall ensure the availability of medical aid. In the absence of an infirmary, clinic, or hospital used for the treatment of an injured person, within a 10-mile radius of the device, attraction, or ride, the owner and/or operator shall ensure that a person(s) shall be trained to render first aid. First aid supplies, recommended by the American Red Cross are obtainable from the local Red Cross office, shall be readily available.

1. The operator shall have conspicuously posted at the park, carnival, fair or festival office, the telephone numbers and locations for local physicians, hospitals, ambulance services, and fire departments to be called in the event of an emergency.

2. In the event of a reportable accident involving an inflatable amusement device, amusement attraction, or amusement ride incident resulting in serious injury, the operator or event foreman shall immediately notify the Office of State Fire Marshal by calling the Office of State Fire Marshal emergency contact number, 1-866-946-1097.

3. A *reportable accident* is defined as:

a. any fatality resulting from the victim's inclusion or participation on, or proximity to an inflatable amusement device, amusement attraction, or amusement ride;

b. bodily injuries resulting from the victim's proximity to the structural collapse or mechanical failure (e.g., flying parts, fragments, etc.) of an inflatable amusement device, amusement attraction, or amusement ride;

c. an injury resulting from the boarding or off-boarding from a stationary amusement attraction or ride; or

d. an injury resulting from the traversing of patrons utilizing stairs, ramps, etc., onto and from an inflatable amusement device, amusement attraction, or amusement ride.

4. After determination and consultation with the owner and/or operator, the Office of State Fire Marshal may require the scene of such incident to be secured and not disturbed to any greater extent than necessary for the removal of the deceased or injured person or persons. If the ride is removed from service by the state fire marshal or his designee, an immediate investigation shall be completed and

the ride shall not be released for repair and operation until after a complete investigation has been made by the Office of State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2547. Operation of Amusement Rides or Attractions

A. The ride operator shall be at least 18 years of age.

B. A ride operator may, however, be between the ages of 15 and 17 only if the subject ride's manual allows a person of that age to perform operations and only if documents are presented to the Office of State Fire Marshal evidencing that the person has received training as to the operation of that ride.

C. The operator of an inflatable amusement device, amusement attraction, or amusement ride shall operate the inflatable amusement device, amusement attraction, or amusement ride in compliance with adopted, applicable standards and these rules, or the equivalence thereof as submitted to and approved by the Office of State Fire Marshal.

D. The operator shall refuse a passenger seeking admission to an inflatable amusement device, amusement attraction, or amusement ride if the passenger cannot meet a guardian or height restriction if the ride is subject to such a restriction. Legible signs to this effect shall be posted in full view of the public seeking admission to inflatable amusement devices, amusement attractions, or amusement rides.

E. The operator of an inflatable amusement device, amusement attraction, or amusement ride shall deny entry to any person, if in the opinion of the operator, the entry may cause above normal exposure to risk of discomfort or injury to the person who desires to enter, or if in the opinion of the operator, the entry may jeopardize the safety of other patrons or employees.

F. All parts of inflatable amusement devices, amusement attractions, or amusement rides, and temporary structures used by passengers or customers shall be maintained in a clean condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2549. Maintenance and Inspection Records

A. The operator shall retain, for a period of 24 calendar months, maintenance and inspection records for each inflatable amusement device, amusement attraction, and amusement ride.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2551. Notification Requirement Regarding Modification of Inflatable Amusement Devices, Amusement Attractions, Amusement Rides; Reidentification

A. If an inflatable amusement device, amusement attraction, or amusement ride is subjected to a minor modification, the owner or operator shall notify the Office of

State Fire Marshal prior to the operation of the inflatable amusement device, amusement attraction, or amusement ride and submit an application for a revision of the device, attraction, or ride.

B. In the event of a major modification of an inflatable amusement device, amusement attraction, or amusement ride, the owner or operator shall notify the Office of State Fire Marshal and submit the appropriate registration application in which the owner shall reidentify the inflatable amusement device, amusement attraction, or amusement ride by a different name or identification number, or both. In addition, the owner shall submit for approval documentation equivalent to that required in ASTM standard F1159-15b, detailing the modification(s). The inflatable amusement device, amusement attraction, or amusement ride shall also be subject to all other provisions of all applicable rules, regulations and statutes as if it were a new ride not previously used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2553. Assembly and Disassembly

A. The operator of an inflatable amusement device, amusement attraction, or amusement ride shall comply with the construction manual or the equivalency thereof as determined by the Office of State Fire Marshal, for the assembly and disassembly of the inflatable amusement device, amusement attraction, or amusement ride. The construction manual or the equivalency thereof as determined by the Office of State Fire Marshal, shall be kept with the inflatable amusement device, amusement attraction, or amusement ride and shall be available by request of a licensed inspector, the state fire marshal, or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2555. Brakes and Stops

A. On an amusement attraction or amusement ride where coasting renders the operation dangerous, either during the period while the ride or attraction is being loaded or unloaded, or in the case of power failure or other unforeseeable situation a method of braking shall be provided.

B. If cars or other components of an amusement attraction or amusement ride may collide in such a way as to cause injuries upon failure of normal controls, emergency brakes sufficient to prevent these collisions shall be provided in accordance with the manufacturer's design, or the equivalency thereof as determined by the Office of State Fire Marshal.

C. On amusement attractions or amusement rides that make use of inclined tracks, automatic anti-rollback devices shall be installed to prevent backward movement of the passenger carrying units in case of failure of the propelling mechanism.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2557. Internal Combustion Engines

A. Internal combustion engines for amusement attractions or amusement rides shall be capable of handling the assigned load.

B. Where fuel tanks of internal combustion engines for amusement rides are not of adequate capacity to permit uninterrupted operation during normal operating hours, the amusement ride shall be closed down and unloaded or evacuated during the refueling procedure. The fuel supply shall not be replenished while the engine is running.

C. Where an internal combustion engine for an amusement attraction or amusement ride is operated in an enclosed area, the exhaust fumes shall be discharged to outside the enclosed area, as required by NFPA 70 (2014 edition), *National Electrical Code*.

D. Internal combustion engines for amusement attractions or amusement rides shall be located to permit proper maintenance and shall be protected by guards, fencing or enclosure in accordance with NFPA 70 (2014 edition), *National Electrical Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2559. Wire Rope

A. Wire rope on amusement attractions or amusement rides shall be thoroughly examined weekly. Wire rope found to be damaged shall be replaced with new rope of proper design and capacity as per the manufacturer's data tag or as approved by the Office of State Fire Marshal. Any of the following conditions shall be cause for rope replacement:

1. in running ropes, six randomly-distributed broken wires in one rope lay or three broken wires in one strand of one rope lay;

2. in pendants or standing ropes, evidence of more than one rope lay or three broken wires in one strand of one rope lay;

3. abrasion, scrubbing or peening causing loss of more than 1/3 of the original diameter of the outside diameter of the outside individual wires;

4. corrosion;

5. kinking, crushing, birdcaging, or other damage resulting in distortion of the rope structure;

6. heat damage;

7. reduction from normal diameter of more than 3/64 inch for diameters up to and including 3/4 inch, 1/16 inch for diameters 7/8 inch to 1 1/8 inches, 3/32 inch for diameters 1-1/4 inch to 1 1/2 inches;

8. birdcaging or other distortion resulting in some members of the rope structure carrying more load than others; or

9. noticeable rusting or development of broken wires in the vicinity of attachments. When this condition is localized in an operational rope, it may be eliminated by making a new attachment.

B. Wire ropes used to support, suspend, bear or control forces and weights involved in the movement and utilization

of tubs, cars, chairs, seats, gondolas, other carriers, the sweeps, or other supporting members of an amusement ride or attraction shall not be lengthened or repaired by splicing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2561. Hydraulic Systems

A. Hydraulic systems and other related equipment used in connection with amusement attractions or amusement rides shall be free of leaks and maintained to ensure safe operation at all times.

B. An amusement attraction or amusement ride that depends upon hydraulic pressure to maintain safe operation shall be provided with a positive means of preventing loss in hydraulic pressure that could result in injury to passengers.

C. Hydraulic lines shall be guarded so that sudden leaks or breakage will not endanger the passengers or the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2563. Protection against Moving Parts

A. The interior and exterior parts of all amusement attractions or amusement rides with which a passenger may come in contact shall be smooth and rounded, free from sharp, rough or splintered edges and corners, with no protruding studs, bolts, screws, or other projections which might cause injury.

B. Interior parts of passenger carrying apparatus upon which a passenger may be forcibly thrown by the action of the ride or attraction shall be adequately padded.

C. Amusement attractions or amusement rides which are self-powered and which are operated by a passenger shall have the driving mechanism guarded and the guard secured in place as to prevent passengers from gaining access to the driving mechanism.

D. Handholds, bars, footrests, and other equipment, as may be necessary for safe entrance and exit to and from amusement attractions or amusement rides, shall be provided and maintained in a safe condition. Such equipment shall be of sufficient strength to support the passengers.

E. Restraining, containing, or cushioning devices, or a combination of these, shall comply with this Subsection and be provided and used on all amusement attractions or amusement rides where:

1. centrifugal and other forces mechanical malfunction could unseat or dislodge a passenger;

2. inadvertent movement of a passenger could cause injury to the passenger or any other passenger; or

3. the speed of the ride presents a hazard to a passenger.

F. Restraining, containing or cushioning devices shall be designed, constructed, installed and maintained so as to provide safe support for passengers.

G. Anchorage for the restraining, containing, or cushioning devices shall have a strength at least equal to the strength of such devices.

H. All passenger restraints, cushioning, or containing devices shall be provided and maintained in accordance with the manufacturers' designs and recommendations and shall

not be modified without the approval of the manufacturer and the Office of State Fire Marshal.

I. All exposed mechanical parts shall have guards installed to prevent possible personal contact while in operation. Any means of safeguarding, which may cause injury, shall not be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2565. Electrical Equipment

A. The National Electrical Code, NFPA 70 (2014 edition), shall be considered as the standard for application in the enforcement of the provisions of R.S. 40:1484.1, et seq. This document may be purchased from the:

National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02169-7471

B. All electrical wiring and equipment used for amusement rides or attractions or for lighting shall be installed and maintained in accordance with the *National Electrical Code*, NFPA 70 (2014 edition).

1. The outlets of electrical power lines carrying more than 120 volts shall be clearly marked to show their voltage.

2. All electrical transformer substations shall be properly enclosed and proper warning signs shall be posted.

3. Electrical wiring and equipment located outdoors shall be of such quality and construction or protection that exposure to weather will not interfere with its normal operation.

4. Elevated power lines crossing access or other roads within the proximity of an amusement ride or attraction shall be so suspended as to provide a vertical clearance of at least 15 feet from the road surface or 3 above any vehicle used within the grounds of a carnival or amusement park, whichever is greater. A horizontal clearance of at least three feet shall be provided on each side of the normal passage space of vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2567. Temporary Wiring

A. If temporary wiring is used it shall be in compliance with the applicable section of the National Electrical Code, NFPA 70 (2014 edition).

B. Temporary electrical power and lighting installations shall be permitted during the period of construction and remodeling of buildings, structures, equipment or similar activities.

C. Temporary electrical power and lighting installations shall be permitted for a period not to exceed 90 days.

D. All lamps for general illumination shall be protected from accidental contact or breakage. Protection shall be provided by elevation of at least 7 feet from normal working surface or by a suitable fixture or lamp holder with a guard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2569. Grounding

A. All grounding shall comply with article 525 of the *National Electrical Code*, NFPA 70 (2014 edition).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2571. Construction

A. All amusement attractions or amusement rides shall meet the requirements of the *ASTM Standard for the Design and Manufacture of Amusement Rides and Devices* and the *NFPA 101 Life Safety Code* (2015 edition).

B. Water ride data plates shall contain a location number of the ride or flume and the maximum dispatch time interval.

C. The ride operator shall maintain all of the information as required by *ASTM F770-15 Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices*, and make it available to the state fire marshal, or his designee, upon request. If this information is not available, it shall be developed by the owner/operator and submitted to the Office of State Fire Marshal for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2573. Means of Access and Egress

A. Safe and adequate means of access and egress from amusement attractions or amusement rides shall be provided as required by the *NFPA Life Safety Code 101* (2015 edition), and the *ASTM standard F1159-15b Standard Practice for Design of Amusement Rides and Devices that are Outside the Purview of Other F24 Design Standards*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2575. Walkways and Ramps

A. Walkways and ramps shall be erected with a slope not greater than 1 in 10 except that when nonslip surfaces are provided, the grade may be increased to a maximum of 1 in 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2577. Fire Prevention

A. All buildings over one story in height shall be constructed or protected in accordance with *NFPA 101* (2015 edition), chapter 8.

B. All buildings located within 20 feet of lot lines or other buildings on the same lot, shall be of protected noncombustible or protected masonry enclosed construction or better.

C. Fabrics constituting part of an amusement ride or attraction shall be flame resistant to meet the provisions of *NFPA 101* (2015 edition), chapter 8.

D. Approved fire extinguishers in accordance with *NFPA 10* (2013 edition) and certified by a Louisiana contractor

licensed through the Office of State Fire Marshal to inspect and service portable fire extinguishers, shall be provided at the following locations to secure reasonable and adequate protection from fire hazards:

1. at or near all operating gasoline or diesel engines;
2. at or near all amusement attraction or amusement ride stands, excluding water flumes; and
3. at each food handling booth where cooking is done.

E. Flammable waste such as oily rags and other flammable materials shall be placed in covered metal containers which shall be kept in easily accessible locations. Such containers shall not be kept at or near exits.

F. Gasoline and other flammable liquids and flammable gases when stored shall be kept in reasonably cool and ventilated places. Such liquids shall be in containers as prescribed by *NFPA 30* (2015 edition), chapter 4, smoking and the carrying of lighted cigars, cigarettes, or pipes is prohibited within 50 feet of any area where such liquids or gases are stored, or are transferred from one container to another. Signage shall be posted stating "No Smoking".

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2579. Water Flumes, Structural Design

A. Structural Design. The flumes' structural design and materials shall be in accordance with *ASTM standard F1159-15b Standard Practice for Design of Amusement Rides and Devices that are Outside the Purview of Other F24 Design Standards*. The flumes and pools shall be watertight and their surfaces shall be smooth and easy to clean.

B. All stairways used as part of an amusement attraction or amusement ride shall be constructed to meet the requirements of *NFPA 101* (2015 edition).

C. Visitor and Spectator Areas. The space used by visitors and spectators shall be distinctly and absolutely separated from those spaces used by sliders. Visitors and spectators in street clothes may be allowed within the perimeter enclosure if they are confined to an area separated from the space the sliders use.

D. Typical posted user safety warnings for slide operational use:

- i. no running, standing, kneeling, rotating, tumbling, or stopping in flumes or tunnels;
- ii. no diving from flume at any time;
- iii. never use this slide when under the influence of alcohol or drugs;
- iv. only one person at a time. Obey instructions of top pool supervisor and lifeguard at all times;
- v. never form chains unless authorized by slide manager or by posted instructions;
- vi. keep hands inside the flume;
- vii. leave the landing pool promptly after exiting from slide; and
- viii. keep all glasses, bottles and food away from pools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2581. Pumps

A. Pumps and motors shall be provided to circulate the water in the splash pool and slide.

B. Pump units shall be accessible for inspection and service in accordance with NFPA 70 (2014 edition).

C. All motors shall have thermal overload protection in accordance with NFPA 70 (2014 edition).

D. The motor frame shall be properly grounded, in accordance with NFPA 70 (2014 edition).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2583. Water Quality

A. Water quality shall be maintained to meet the requirements established by the Louisiana Department of Health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2585. Electrical Safety and Lighting

A. The 2011 edition of the National Electrical Code, as published by the National Fire Protection Association, shall be used for the wiring and grounding of all electrical equipment associated with a flume and for the grounding of all metallic appurtenances.

B. Whenever flumes are operated after dark, artificial lighting shall be provided in upper and lower pool and deck areas, walkways, stairways, and flumes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2587. Operation, Water Flumes

A. The manufacturer or the general contractor of the flume shall provide the operator with a detailed written operational manual, or guide, for all phases of operations and normal maintenance of each component of the system as per ASTM standard F770-15 *Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices*.

B. The guide shall be kept in a secure area and made available to each employee or inspector as needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2589. Responsibility of Flume Operators

A. Flume operators shall meet the requirements of ASTM standard F770-15 *Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2591. Fixed Operation Location Emergency Procedures

A. For fixed operation locations, a written plan for emergencies shall be carefully devised, kept current, and a copy of which shall be readily available upon demand. All employees shall be trained and drilled periodically in the execution of the plan.

B. The emergency plan shall encompass crowd control and safe evacuation, drownings, electrical shock, heat prostration, fractures, poisonings, cuts and burns, neck and back or spinal injuries, and exposure to chlorine gas.

C. All water flume locations shall have posted by the phones a list of current emergency numbers, to include the nearest available ambulance service, hospital, rescue squad, police assistant secretaries, and fire department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

§2593. Go-Kart Rules and Regulations

A. Kart Design

1. The speed of each kart shall be limited or governed to not exceed the following: The maximum adult track speed shall not exceed 25 mph and kiddie track speed shall not exceed 10 mph. Speeds other than defined will require approval from the Office of State Fire Marshal.

2. Whenever the design of a kart enables the readjustment of the governing speed, the means of adjustment shall not be accessible to the patron of the kart.

3. The seat, backrest, seat belts, and leg area of every kart shall be designed to retain the patron inside the kart in the event of a collision or overturn.

4. Karts shall be fitted with a shoulder harness and/or belt restraint system as required by the kart manufacturer and acceptable to the Office of State Fire Marshal.

5. Karts shall be provided with sufficient guards to prevent anyone from coming in contact with the drive chains, belts, hot mufflers, engines or rotating parts.

6. Karts shall have bumpers, wheels, and body parts that are comparable to that installed by the original manufacturer.

7. Kart wheels shall be enclosed, guarded, or operated so the wheels of a kart cannot interlock with or ride over the wheels of another kart.

8. The kart steering wheel, hub, and all exposed components shall be padded or helmets and face shields worn to minimize the risk of injury to any patron in the event of a collision or overturn.

9. The kart fuel tank shall be designed and mounted to prevent it from damage or leaking in the event of a collision or overturn.

10. Headrests or roll bars on a kart shall extend above the patron's head and be capable of supporting the weight of the kart and patron as required by the manufacturer. In the event the manufacturer fails to recommend or address this area, the karts shall be equipped with roll bars acceptable to the Office of State Fire Marshal. Any deviations from this requirement shall be submitted to and approved by the Office of State Fire Marshal.

11. Karts shall be provided with impact absorbing bumpers, or energy absorption body parts.

12. Karts shall have sufficient muffler systems installed to prevent any noise levels which will interfere with the track operations, adjacent businesses, residential areas, or damage the hearing of employees or patrons.

13. The brake and throttle controls on a kart shall be clearly identified. The brake and throttle controls shall be foot operated and return automatically to a non-operational position when released.

14. Karts shall be individually identified either by numbers, alpha characters, or other markings acceptable to the Office of State Fire Marshal.

15. Karts shall be inspected and maintained in accordance to manufacturer standards to include, but not limited to, the frame, engine, body, safety restraints, tires, etc.

16. Records of kart inspections and maintenance shall be retained by the operator for a period of 24 calendar months.

B. Track Design

1. The design of the kart track shall be consistent with the kart manufacturers' recommendations. In the absence of any manufacturers' recommendations, the track design shall comply with the current industry standards acceptable to the Office of State Fire Marshal.

2. Cones may be used on tracks as a warning device and to notify the patron of upcoming changes in the track conditions and are used for the following specific reasons:

a. to notify drivers of impending course changes;

b. to outline the track and mark key points such as the apex of the turns; and

c. as a warning device to notify the drivers of the severity of upcoming turns by the location and number of cones prior to the turn;

d. cone placement:

i. on the inside corners; one cone to alert the driver and locate the apex;

ii. on the outside corner; two cones to identify minor course changes;

iii. three cones to identify course changes which requires a slower speed to safely negotiate the turn; and

iv. four and five cones to identify areas where both slower speed and applied braking will be necessary to safely complete the course;

e. once the proper cone locations have been located for the track, these locations shall be marked with high visibility paint under the proper location of the cone. This will alert racing attendants to the correct location of the cones when they are displaced.

3. The track shall have a hard, smooth surface.

4. The track shall provide road grip sufficient to enable the kart to be driven safely at maximum speed and shall be free of ruts, holes, bumps, water, oil, dirt, or other debris.

5. Track surface and design not covered by manufacturers' recommendations or in the absence of such recommendations must be approved by the Office of State Fire Marshal.

6. The width of the track must be a minimum of 16 feet and maximum of 25 feet. The turns on an oval track

must be a minimum of 5 feet wider than the straight away. The minimum radius of the turns is 15 feet. Any deviations from these requirements shall be submitted to and approved by the Office of State Fire Marshal.

7. The track shall have signs that indicate one direction of travel and no U-turns permitted. These signs shall be posted at various locations around the track perimeter. Signs, signal lights and other safety equipment shall be maintained in operational condition at all times when open to the public.

8. The track shall have no intersecting course configurations. Pit entrances and exits are allowed but appropriate clearly posted signage indicating the entry and exit locations are required to prevent collisions.

9. The shoulder shall be level with the track and marked with cones. White or yellow lines at least 4 inches in width shall be used to mark all inside and outside edges of the kart track except where barriers are provided along the inside and outside edges of the kart track.

10. Barriers shall be designed to prevent a kart from overturning or running over or under the barrier and designed to bring a kart safely to a full stop or guide the kart safely back onto the track.

a. Barriers shall be placed:

i. between tracks or sections of tracks within 30 feet of each other and constructed of materials that will not readily ignite;

ii. between the track and obstructions or hazards located with 30 feet from the track;

iii. along all non-access and non-egress edges of the pit area; and

iv. between the track and any area accessible to spectators.

11. Fencing shall be at least 48 inches in height. The fence and gates shall be designed so a 4-inch sphere cannot pass through any opening. Fencing shall be located around every kart track.

12. Pit area for loading and unloading must be separated from the track by a fence or barrier. The pit area must be the same surface as the track and have separate, clearly marked entrance and exit lanes.

13. Electrical installations must comply with the *National Electrical Code*, NFPA 70 (2014 edition), and include lighting for night operation, if operations are conducted after dark.

14. Proposals for construction of new kart tracks and proposals for the renovation, alteration, or modification of existing tracks in the state of Louisiana shall be submitted to the Office of State Fire Marshal and other appropriate agencies before beginning construction. The following information shall accompany any application or proposal and shall include but not be limited to:

a. one copy of site plans and all accompanying documentation;

b. a copy of all required local, parish or state permits such as (but not limited to) business licenses, and/or electrical, building, or plumbing permits. When all inspections are completed by local, parish or state agencies one copy of the completed inspection report shall be sent to the Office of State Fire Marshal for enclosure in the facility's permanent file.

15. Fire Protection

a. Kart tracks shall be equipped with ABC dry chemical fire extinguishers with a 4A 80BC rating with a travel distance not to exceed 50 feet as provided for in NFPA 10 (2013 edition), *Standard for Portable Fire Extinguishers*.

b. The required fire extinguisher shall be readily accessible from all areas of the track and one fire extinguisher shall be kept in the pit and refueling area(s). The fire extinguisher location shall be prominently marked, easily accessible and approximately 36 inches above the ground.

16. Refueling Area

a. Karts shall be refueled in a designated location remote from any area accessible to the public. Fuel storage and transfer cans must meet the requirements of NFPA 30 (2015 edition). Any fuel spillage must be promptly cleaned and prevented from running onto the track or any area accessible to the public. Warning signs must be prominently displayed stating that smoking is prohibited in the refueling area.

b. All kart motors shall be turned off during refueling.

17. Track Operation

a. Karts may only be operated by patrons within height limits set by the manufacturer. If no height limit is set by the manufacturer, patrons shall be at least 52 inches tall and have a leg length that can reach the brake and throttle controls from the patron's seat in order to drive an adult kart.

b. Only patrons less than 52 inches in height with a leg length sufficient to reach the brake and throttle controls from the patron's seat shall be permitted to operate a kiddie kart.

c. Adult karts and kiddie karts shall not be operated on the same track at the same time.

d. No kart shall be operated during a lightning storm, a period of tornado warning, fire, riot, or other civil disturbance in the area of the track or in an adjacent area. If any of these events occur while the track is in operation, patrons shall be unloaded and evacuated from the ride and the ride shut down until normal, safe operational conditions are established.

e. Kart tracks shall be monitored during operation either directly by attendants, or indirectly by electronic visual and audio means acceptable to the Office of State Fire Marshal.

f. A kart losing oil or fuel shall immediately be removed from the kart track. All karts must be stopped immediately and the track cleaned prior to restarting.

g. When the kart manufacturer recommends, or they are deemed necessary by the Office of State Fire Marshal, the use of helmets must be provided for all patrons to use. Helmets, if used, must fit the patron's head correctly. All helmets must be cleaned with disinfectant twice daily.

h. Karts designed for single or multiple riders shall use a shoulder harness and/or belt restraint system as required by the kart manufacturer. When deemed necessary for additional protection of kart patrons, the Office of State Fire Marshal may require the addition and use of a shoulder harness or belt restraint system on all karts.

i. Patron's loose clothing and hair longer than shoulder length must be secured prior to operating any kart.

Fully enclosed shoes must be worn by kart patrons at all times during operation of a kart.

j. Patrons are prohibited from smoking during kart operation.

k. Track attendants shall not allow patrons to leave their karts either in the pit or on the track unless assisted by track or pit attendants.

l. The kart track operator shall post a conspicuous warning sign at the entrance to the kart track. The sign shall be at least 2 feet by 2 feet in sharply contrasting colors and shall contain manufacturer warnings regarding medical restrictions, if any, for ride patrons.

m. The kart track operator must have a sign posted at the ticket window or track entrance and in the pit area that conveys, at a minimum, the following rules and regulations.

i. The patron height limit specified by the manufacturer, or no less than 52 inches for adult karts and no more than 52 inches for kiddie karts.

ii. Keep both hands on the wheel and both feet in the kart at all times. Do not get out of the kart unless track attendant is present.

iii. All loose clothing and hair longer than shoulder length must be secured. Fully enclosed shoes must be worn by kart patrons at all times during operation of kart.

iv. No smoking in kart or pit area.

v. Persons under the influence of intoxicants will not be allowed to operate karts.

vi. The use of private karts or vehicles will be prohibited on kart track when they are open to the public.

C. All plans and accompanying documents and any requests for deviations from the requirements herein can be submitted online to the Office of State Fire Marshal by utilizing the agency's information management system (OSFM-IMS), which is accessible via the agency's website (www.lasfm.org).

D. Record Retention and Inspection

1. Daily inspections must be made on all karts prior to operation. Inspections shall include but not be limited to: tires, padding, steering wheel, frame welds, spindles, axles, seat or shoulder belts, roll bars, gasoline tank condition, brake and gas pedal operation, and other parts as recommended by the kart manufacturer or the Office of State Fire Marshal.

2. Weekly, monthly and annual inspections shall be performed as recommended by the kart manufacturer or the Office of State Fire Marshal.

3. A track operation manual shall be written in the English language and available for review by the Office of State Fire Marshal.

4. The kart track shall have and demonstrate an emergency plan for evacuation of patrons and employees in the event of an emergency. This shall include, but not be limited to, fires, kart collisions, dangerous weather, obstructions on the track, handling intoxicated patrons, and emergency first aid.

5. The kart track shall maintain records of all required inspections for a period of 24 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1484.2(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 44:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed rules.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on taxes and tax credits;

4. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

However, the proposed rule may have an effect on employment and workforce development as there is an increased need of third-party inspections and the creation of the set-up inspector.

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 to Erin St. Pierre, Attorney, Louisiana State Police, 7979 Independence Blvd., Suite 307, Baton Rouge, LA 70806. She is responsible for responding to inquiries regarding this proposed Rule. Comments are due by May 10, 2018.

Public Hearing

Requests for a public hearing must be submitted in writing either via email or written correspondence. Requests for a

public hearing shall be sent to Erin St. Pierre, Attorney, Louisiana State Police, 7979 Independence Blvd., Suite 307, Baton Rouge, LA 70806. The deadline for submitting a request for public hearing is May 10, 2018. All requests for a public hearing sent via written correspondence must be received by May 10, 2018.

Jason Starnes
Chief Administrative Officer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Amusement Attractions and Ride Safety

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

The proposed rule changes create implementation costs for DPS, Office of State Fire Marshal. The proposed rule changes codify Act 462 of the 2016 Regular Legislative Session.

Act 462 resulted in an increase in expenditures for the Office of the State Fire Marshal (OSFM) for programing updates to the Information Management System (IMS) to incorporate the requirements related to the registration, testing, inspection and operation of inflatable amusement devices, amusement attractions, and amusement rides. However, programming costs are anticipated to be incremental in nature and can be accomplished utilizing existing resources and budget authority.

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

Act 462 provided a fee schedule related to the licensing of operators, owners, and inspectors and the registration of inflatable amusement devices, amusement attractions, and amusement rides. For those licenses for which a fee existed and the devices and rides registered prior to the enactment of Act 462, OSFM will collect approximately \$379,918 in additional revenues as a result of increased license fees and new registration fees. For those new licenses established by the enactment of Act 462, OSFM will collect additional revenue. However, because the number of applicants for new licenses is unknown, the revenue increase is indeterminable.

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

Act 462 resulted in indeterminable increased costs for firms and individuals that own, operate, test, or inspect inflatable amusement devices, amusement attractions and amusement rides. Individuals and firms will pay the registration and licensing fees outlined in the fee schedule in present law. The total cost to individuals and firms is indeterminable as the number of applications for licensure and devices requiring registration is unknown.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Act 462 may create new employment or business opportunities related to third-party inspector licensing for the inspection of inflatable amusement devices, amusement attractions, and amusement rides.

Jason Starnes
Chief Administrative Officer
1804#042

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of State Police

Breath and Blood Alcohol Analysis Methods and Techniques (LAC 55:I.583)

In accordance with the provisions of R.S. 32:663 relative to the authority of the Department of Public Safety and Corrections to promulgate and enforce rules pursuant to approval of testing methods, the Department of Public Safety and Corrections, Office of State Police hereby proposes to amend rules under LAC 55:I.583, in relation to breath and blood alcohol analysis to provide for LCMSMS testing for drugs of impairment found in urine and blood by permitted laboratories. Modification is needed to allow for permitted laboratories to have standardized criteria.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 5. Breath and Blood Alcohol Analysis Methods and Techniques

Subchapter C. Analysis of Blood and Urine for Controlled Dangerous Substances

§583. Analytical Procedures

A. ...

B. Positive identification of an analyte shall at a minimum be based on the possible presence of the analyte or the analyte class in the screening test and its presence in the confirmatory test. Confirmation shall be based on the identification of at least three major ions with that of a reference analyte. Correlation between ion ratios of the base peak and another major peak shall be within 20 percent for gas chromatography/mass spectrometry procedures and within 30 percent for liquid chromatography/mass spectrometry procedures. Retention times between the analyte in question and the reference analyte shall be "within + or - 2 percent" for gas chromatography/mass spectrometry procedures and "within + or - 6 seconds or + or - 10 percent" for liquid chromatography/mass spectrometry procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 26:2625 (November 2000), amended LR 37:1417 (May 2011), LR 44:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no

effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed rules.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

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 to Paeton L. Burkett, Attorney, Louisiana State Police, 7979 Independence Blvd., Suite 307, Baton Rouge, LA 70806 by May 10, 2018. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

Requests for a public hearing must be submitted in writing either via email or written correspondence. Requests for a public hearing shall be sent to Paeton.burkett@la.gov or to Paeton L. Burkett, Attorney, Louisiana State Police, 7979 Independence Blvd., Suite 307, Baton Rouge, LA 70806. The deadline for submitting a request for public hearing is May 10, 2018. All requests for a public hearing sent via written correspondence must be received by May 10, 2018.

Jason Starnes

Chief Administrative Officer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Breath and Blood Alcohol Analysis Methods and Techniques

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

The proposed rule changes will not result in implementation costs or savings to state or local governmental units. The proposed rule in relation to Breath and Blood Alcohol Analysis provides for Liquid Chromatography-Mass Spectrometry/Mass Spectrometry (LCMSMS) testing for drugs

of impairment found in urine and blood by permitted laboratories. Modification is necessary to allow for permitted laboratories to have standardized and consistent criteria.

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

The proposed rule changes will have no effect on revenue collections of the state or local governmental units.

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

The proposed rule changes will not result in any costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition and employment.

Jason Starnes
Chief Administrative Officer
1804#036

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

**Mandatory Electronic Filing of Telecommunication
Tax for the Deaf Tax Returns (LAC 61:III.1529)**

Under the authority of Act 150 of the 2017 Regular Session of the Louisiana Legislature which authorizes the secretary the discretion to require electronic filing of tax returns or reports by administrative rule promulgated with legislative oversight in accordance with the Administrative Act, R.S. 47:1511, 1519, 1520, and, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, gives notice that rulemaking procedures have been initiated to adopt LAC 61:III.1529 to provide for mandatory electronic filing requirements for the Telecommunication Tax for the Deaf tax returns.

Title 61

REVENUE AND TAXATION

Part III. Administrative and Miscellaneous Provisions

**Chapter 15. Mandatory Electronic Filing of Tax
Returns and Payment**

**§1529. Telecommunication Tax for the Deaf—Electronic
Filing Requirements**

A. R.S. 47:1520(A)(2) allows the secretary to require electronic filing of any return or report required by the Department of Revenue for the administration of the telecommunications for the deaf fund filed by a local or wireless telecommunication service company operating in Louisiana.

B. Effective for the third quarter of the 2018 taxable calendar and all other taxable calendar quarters thereafter, all reports and returns filed by a local or wireless telecommunication service company operating in Louisiana shall be filed electronically with the Department of Revenue on or before the thirtieth day following the close of the reporting period using the electronic format provided by the department.

C.1. Failure to comply with the electronic filing requirement of this Section in the absence of an undue

hardship exemption will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in Paragraph 1 of this Subsection shall only be allowed as provided for in R.S. 47:1520(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1061, and 1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:

Family Impact Statement

The proposed adoption of this Rule should have no known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule has no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

The proposed Rule has no known measurable impact on small businesses as described in R.S. 49:965.6.

Provider Impact Statement

The proposed Rule has no known or foreseeable effect on:

1. the staffing levels requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the provider to provide the same level of service;
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

All interested persons may submit written data, views, arguments or comments regarding this proposed Rule to 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., May 28, 2018.

Public Hearing

A public hearing will be held on May 29, 2018 at 9:30 a.m. in the LaBelle Room, located on the 1st floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

Kimberly Lewis Robinson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Mandatory Electronic Filing of
Telecommunication Tax for the Deaf Tax Returns**

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

This proposal adopts a rule that requires electronic filing of Telecommunication Tax for the Deaf Tax returns. This

proposal also provides for the assessment and waiver of penalties for non-compliance.

Implementation of this proposal will not result in material additional costs or cost savings to governmental units. Computer system acceptance of the required electronic returns is already in place. Electronic filing of this tax return will be available directly through LDR's LaTap portal that will allow taxpayers to file these returns for free. Accounting for non-compliance penalties will not result in material additional costs.

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

This proposal may increase revenues from penalties by an indeterminable amount. A modest and temporary increase in revenue from penalties is possible as the proposed rule is implemented, although LDR cannot predict non-compliant behavior. For information, on returns that are currently required to be filed electronically, LDR collected approximately \$16,000 in FY15, \$20,000 in FY16, and \$7,000 in FY17.

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

LDR does not have the information necessary to determine the additional costs to comply with this change, but these costs are expected to be minimal, as online access and activity has largely become a business standard. To the extent non-compliance penalties are collected, affected taxpayers will incur penalty costs. LDR cannot estimate the additional penalty amount.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposal is not expected to have any significant effect on competition or employment.

Kimberly Robinson
Secretary
1804#053

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of State Business Services Division

Corporations Secure Business Filings Service
(LAC 19:V.100, 500, 700, 900, 1100, and 1300)

Pursuant to the provisions of the Administrative Procedures Act (R.S.49:950 et seq.) and under the authority of R.S. 49:222 and R.S. 36:742, the Secretary of State proposes to eliminate the fee for the secure business filings (SBF) service. With the development of the secure business filings (SBF) service, the department charged a one-time optional \$35 fee for the service; however, it was determined that this security service should be made available free of charge to all Louisiana business filings in the *geauxBIZ* system to insure the integrity of our *geauxBIZ* system.

Title 19

CORPORATIONS AND BUSINESS

Part V. Secretary of State

Chapter 1. Domestic Corporations

§100. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a corporation via email whenever amendments are submitted on the corporation through *geauxBIZ*. The corporation will have the opportunity to

review the filing and approve or reject further processing by the Department of State.

B. Any person who has a *geauxBIZ* account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the corporation must provide the PIN assigned to the corporation within five days of receiving notification of a pending file. If the corporation rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The corporation is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the corporation's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different *geauxBIZ* user. Once the enrollment application is approved by the department, the department will provide the corporation with a personal identification number (PIN) that will be unique to the corporation. The corporation can give the PIN to any person filing amendments on the corporation's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:905 (June 2016), amended LR 44:

Chapter 5. Nonprofit Corporations §500. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a corporation via email whenever amendments are submitted on the corporation through *geauxBIZ*. The corporation will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a *geauxBIZ* account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of

the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the corporation must provide the PIN assigned to the corporation within five days of receiving notification of a pending file. If the corporation rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The corporation is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the corporation's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different *geauxBIZ* user. Once the enrollment application is approved by the department, the department will provide the corporation with a personal identification number (PIN) that will be unique to the corporation. The corporation can give the PIN to any person filing amendments on the corporation's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:906 (June 2016), amended LR 44:

Chapter 7. Foreign Corporations

§700. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a corporation via email whenever amendments are submitted on the corporation through *geauxBIZ*. The corporation will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a *geauxBIZ* account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the corporation must provide the PIN assigned to the corporation within five days of receiving notification of a pending file. If the corporation rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The corporation is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the corporation's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different *geauxBIZ* user. Once the enrollment application is approved by the department, the department will provide the corporation with a personal identification number (PIN) that will be unique to the corporation. The corporation can give the PIN to any person filing amendments on the corporation's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:906 (June 2016), amended LR 44:

Chapter 9. Special Corporations

§900. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a corporation via email whenever amendments are submitted on the corporation through *geauxBIZ*. The corporation will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a *geauxBIZ* account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the corporation must provide the PIN assigned to the corporation within five days of receiving notification of a pending file. If the corporation rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The corporation is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the corporation's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different *geauxBIZ* user. Once the enrollment application is approved by the department, the department will provide the corporation with a personal identification number (PIN) that will be unique to the corporation. The corporation can give the PIN to any person filing amendments on the corporation's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:907 (June 2016), amended LR 44:

Chapter 11. Limited Liability Companies

§1100. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a limited liability company via email whenever amendments are submitted on the limited liability company through *geauxBIZ*. The limited liability company will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a *geauxBIZ* account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the limited liability company must provide the PIN assigned to the limited liability company within five days of receiving notification of a pending file. If the limited liability company rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The limited liability company is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the limited liability company's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF

service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different *geauxBIZ* user. Once the enrollment application is approved by the department, the department will provide the limited liability company with a personal identification number (PIN) that will be unique to the limited liability company. The limited liability company can give the PIN to any person filing amendments on the limited liability company's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:907 (June 2016), amended LR 44:

Chapter 13. Partnerships

§1300. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a partnership via email whenever amendments are submitted on the partnership through *geauxBIZ*. The partnership will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a *geauxBIZ* account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the partnership must provide the PIN assigned to the partnership within five days of receiving notification of a pending file. If the partnership rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The partnership is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the partnership's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be

completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different *geauxBIZ* user. Once the enrollment application is approved by the department, the department will provide the partnership with a personal identification number (PIN) that will be unique to the partnership. The partnership can give the PIN to any person filing amendments on the partnership's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:907 (June 2016), amended LR 44:

Family Impact Statement

The proposed Rule regarding the secure business filing service should not have any known or foreseeable impact on any family as defined by R.S. 49:927 or on family formation, stability and autonomy. Specifically, there should be no 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; and
6. the ability of the family or a local government to perform the function as contained in the proposed amendments to the Rule.

Poverty Impact Statement

The proposed Rule regarding the Secure Business Filing Service should not have any known or foreseeable impact on poverty as defined by R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

Provider Impact Statement

The proposed Rule does not have any known or unforeseeable 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 to Steve Hawkland, Deputy General Counsel, Legal Division, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. He will be responsible for responding to inquiries regarding the proposed Rule. The deadline for the Department of State to receive written comments is 4:30 p.m. on Thursday, May 31, 2018 after the public hearing.

Public Hearing

A public hearing on the proposed Rule is scheduled for Wednesday, May 30, 2018 at 10 a.m. in the auditorium at the State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time, all interested persons will be afforded the opportunity to submit data, views, or arguments, either orally or in writing.

Tom Schedler
Secretary of State

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Corporations Secure Business Filings Service

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

There are no anticipated implementation costs as a result of the proposed rule change.

The proposed rule change relating to the Secured Business Filings Service administered by the Department of State eliminates a one-time enrollment fee of \$35, which will allow corporations and businesses to take part in this service for no charge. The Secured Business Filings service is designed to discourage fraudulent business filings in Louisiana.

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

There will be a decrease in revenues to the Department of State; however, the decrease is anticipated to be minimal. The department will no longer collect the \$35 enrollment fee for businesses and corporations participating in the secure business filings service. In FY 17, the department collected \$5,365 and as of March 2018, the department has collected \$4,375 in FY 18.

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

Businesses and corporations will benefit from the proposed rule change. Entities will now be able to participate in the secure business filings service without having to pay an associated enrollment fee.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Joe R. Salter
Undersecretary
1804#038

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Domesticated Aquatic Organisms—Shovelnose Sturgeon (LAC 76:VII.905 and 911)

The Wildlife and Fisheries Commission hereby advertises its intent to modify rules and regulations in the Experimental Fisheries Program (R.S. 56:571). The proposed changes add a native species of sturgeon to domesticated aquatic organisms that are approved for use in aquaculture. This will allow the development of additional aquaculture business in Louisiana while providing safeguards to assist in protecting native fish species.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic life

Chapter 9. Aquaculture

§905. Domesticated Aquatic Organisms

A. Procedures for Approving a New Species of Domesticated Aquatic Organism

1. - 6. ...

B. The following is a list of "domesticated aquatic organisms" approved for use in aquaculture:

1. - 21. ...

22. shovelnose sturgeon (*Scaphirhynchus platyrhynchus*), see LAC 76:VII.911.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:327(A)(2) and R.S. 56:411.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 34:2679 (December 2008), amended LR 35:1139 (June 2009), repromulgated LR 35:1263 (July 2009), amended LR 44:

§911. Shovelnose Sturgeon

A. Rules and Regulations on Importation, Culture, Disposal and Sale of Shovelnose Sturgeon in Louisiana. The following terms shall have the following meanings in this Section.

Culture—all activities associated with the rearing and nurturing of shovelnose sturgeon.

Culture System—shall be an approved recirculating indoor system designed such that all water containing, or that at any time might contain, shovelnose sturgeon (adult fish, juvenile fish, fingerlings, fry and eggs) is filtered, screened and/or sterilized in such a manner as the department deems adequate to prevent any possibility of escape from the system.

Department—the Louisiana Department of Wildlife and Fisheries or an authorized employee of the department.

Disposal—the business of processing, selling, or purposely removing shovelnose sturgeon from the culture system.

Permittee—the individual or organization that possesses a valid Louisiana shovelnose sturgeon permit.

Process—the act of killing shovelnose sturgeon, and proper disposal of shovelnose sturgeon in such manner as the department deems necessary to prevent any possibility of accidental release of live fish.

Secretary—the secretary of the Department of Wildlife and Fisheries.

Shovelnose Sturgeon—pure strain of genetically unaltered fish (adult fish, juvenile fish, fingerlings, fry and eggs), belonging to the species *Scaphirhynchus platyrhynchus*.

Shovelnose Sturgeon Permit—official document pertaining to culture of shovelnose sturgeon, and allows for the importation, exportation, transport, culture, possession, disposal, transfer and sale of shovelnose sturgeon in Louisiana as approved by the secretary or his designee.

B. Shovelnose Sturgeon Permit Request Procedures

1. Individuals or organizations wishing to import, export, transport, culture, dispose, or transfer live shovelnose sturgeon in Louisiana must first request a shovelnose sturgeon permit from the secretary or his designee of the Department of Wildlife and Fisheries. A separate permit will be required for each facility or location. The following procedures will be necessary.

a. Applications for permits can be obtained by contacting the:

Louisiana Department of Wildlife and Fisheries
Fisheries Permit Manager
P.O. Box 98000
Baton Rouge, LA 70898-9000.

b. The completed applications should be returned to the same address whereby Fisheries Division personnel will review the application. Department personnel or a department approved contractor, at the applicant's expense, will then make an on-site inspection of the property and culture system.

c. After the on-site inspection has been completed, department personnel will make a final determination as to whether the applicant is in full compliance with all rules for a shovelnose sturgeon permit. Department personnel will then recommend to the secretary or his designee if the applicant's request should be approved or disapproved.

d. The secretary or his designee will notify the applicant, in writing, as to whether or not the permit has been granted and if not, why. In the event of disapproval, applicants may reapply after correcting specified deficiencies noted in the secretary's or his designee's letter of denial.

C. Rules on Transport of Live Shovelnose Sturgeon

1. Export of live shovelnose sturgeon will not be allowed for Louisiana shovelnose sturgeon permit.

2. For each occurrence of live shovelnose sturgeon being imported into Louisiana from out of state, or live transfer within the state, the permittee must obtain, in writing, approval from the department. These importations will only be allowed from fish that are acquired outside of the Red River drainage, and limited only to those populations occurring outside of the range for the similarity of appearance listing for the species. These requests shall be made no less than three business days before the expected date of shipment. Procedures and necessary information for obtaining approval are:

a. requests shall be made via email to the designated Departmental contact or via mail to:

Louisiana Department of Wildlife and Fisheries
Fisheries Permit Manager
P.O. Box 98000
Baton Rouge, LA 70898-9000;

b. requests shall include:

i. Louisiana shovelnose sturgeon permit number;

- ii. route of transport;
- iii. date of transport;
- iv. time(s) of transport;
- v. destination;
- vi. owner of transport vehicle;
- vii. species certification made within the past 30 days identifying shipped stock to species;
- viii. total number of shovelnose sturgeon;
- ix. identification of seller and buyer and any permit numbers from the jurisdiction of origin to the jurisdiction of destination in which they are coming from.

3. A bill of lading must accompany the live shovelnose sturgeon during import, transport, transfer or sale and shall include:

- a. copy of the permittee's written approval as described in Paragraph C.2 above;
- b. date and approximate time of shipment;
- c. route of shipment;
- d. source of shovelnose sturgeon;
- e. name, address and phone number of seller,
- f. name, address and phone number of buyer;
- g. identification and certification as to species;
- h. total number of shovelnose sturgeon;
- i. destination;
- j. if imported, the source must provide certificate of health from a veterinarian or other certified expert stating that Shovelnose are not showing signs of diseases;
- k. display the words "SHOVELNOSE" prominently on at least two sides of the vehicle or hauling tank with letters that are no less than 6 inches high.

D. Rules for Security of Shovelnose Sturgeon Culture Facility

1. Shovelnose sturgeon live holding facilities will only be permitted in the following parishes: Acadia, Allen, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, De Soto, Evangeline, Franklin, Grant, Jackson, Jefferson Davis, LaSalle, Lafayette, Lincoln, Morehouse, Natchitoches, Ouachita, Rapides, Sabine, Union, Vermilion, Vernon, Webster, West Carroll and Winn.

2. Applicant must demonstrate to the satisfaction of department officials that adequate security measures are in place at the live holding facility that will guard against vandalism and theft of shovelnose sturgeon.

3. Any changes or modification of a permitted security system must first have the approval of department officials.

4. The department will have just cause to revoke a shovelnose sturgeon permit for lapses in security if:

- a. the permittee is found to be in noncompliance with Paragraphs 2 and 3 above;
- b. the permittee is determined to be derelict in maintaining the security measures that were approved for the permit;
- c. failure to take appropriate measures when vandalism, theft, or accidental release of fish occurs.

5. It shall be the responsibility of the permittee to immediately notify the secretary or his designee of any shovelnose sturgeon that leave the facility for any reason other than those specifically identified and allowed for under their current permit, including but not limited to accidental releases due to weather related events, vandalism and theft.

6. It shall be the responsibility of the permittee to have at least one individual who is familiar with the live holder system readily available for emergencies and inspections, both announced and unannounced.

E. Rules of Shovelnose Sturgeon Culture Site

1. A legal description of the shovelnose sturgeon live holding facility site that shows ownership must be submitted along with the permit request.

2. The applicant must agree to allow department officials or a department approved contractor, at the applicant's expense, to conduct unannounced random inspections of the transport vehicle, property culture system, and fish. Department officials may request other officials to accompany them during these inspections. Additionally, those individuals performing these inspections may remove or take fish samples for analysis and/or inspection.

3. All aspects of the shovelnose sturgeon culture facility must be at least 1 foot above the 100-year flood elevation. Additionally, the department may require a surface hydrological assessment of the proposed site at permittee's expense.

4. The department will require a live holding contingency plan for disposal of live shovelnose sturgeon in the event of impending flooding or other natural disasters.

5. All shovelnose sturgeon shall be tagged with a departmental approved non-removable tag.

F. Rules for the Shovelnose Sturgeon Culture System

1. Applicant must provide a detailed narrative description, including scale drawings, of the shovelnose sturgeon culture system.

2. The shovelnose sturgeon culture system shall be an approved indoor recirculating system designed such that shovelnose sturgeon eggs, larvae, fingerlings, juveniles or adults cannot escape.

3. All water utilized in the culture of shovelnose sturgeon shall be accounted for and shall be filtered, screened, and/or sterilized prior to leaving the live holding system and the permittee's property in such a manner as the department deems adequate to prevent any possibility of escape from the system.

4. All aspects of the shovelnose sturgeon culture system and processing shall be completely enclosed so that predation from birds, mammals, amphibians, and reptiles is precluded.

5. A means to dispose of shovelnose sturgeon through chlorination, desiccation, or other appropriate methods, in the event of an emergency must be included as a component of any department-approved live-holding system.

6. One or more persons responsible for the operation of the live holding system must demonstrate to the department's satisfaction a basic knowledge and understanding of the culture, rearing (care and feeding), biology, and potential local ecological impacts of shovelnose sturgeon.

G. Rules for the Processing of Shovelnose Sturgeon

1. All shovelnose sturgeon and shovelnose sturgeon parts other than live shovelnose sturgeon specifically permitted by the department must be properly processed and killed prior to leaving the shovelnose sturgeon culture facility. At no time will live shovelnose be allowed to be moved within Louisiana without expressed approval of the department. No live shovelnose shall be sold or transferred

to any parties outside of Louisiana. Transfer between Louisiana shovelnose sturgeon permittees within the state of Louisiana must be approved prior to shipment as described in Paragraph C.2 above.

2. Records for the previous five years shall be kept at the facility of all shovelnose sturgeon processed at a culture facility and shall include the following information:

- a. source of fish;
- b. processed pounds of both meat and caviar; and
- c. date processed.

3. A copy of this information shall be sent to the department's Baton Rouge office at the end of each year, or at any time upon the request of department officials.

H. General Rules for Shovelnose Sturgeon

1. The cost of a shovelnose sturgeon live holding permit shall be \$50, plus the actual cost of the on-site inspection. Qualified universities and other facilities conducting research approved by the department shall be exempt from the fee charge.

2. In order for the permit to be valid, the following licenses are required as a prerequisite:

- a. domesticated aquatic organism license;
- b. wholesale/retail dealers license or a retail dealer's license.

3. Permits are valid for 12 months and expire December 31 every year.

4. Permits are not transferable from person to person, or property to property.

5. Live shovelnose sturgeon shall not be sold within Louisiana except to a permitted culture facility.

6. No person may release live shovelnose sturgeon, fish or eggs, into the waters of Louisiana (whether public or private).

7. Permittee must agree to collect and provide an adequate number of shovelnose sturgeon to the department or a department-approved contractor upon request for identification and analysis, at the permittee's expense.

8. The only sturgeon allowed in commercial aquaculture under the Louisiana shovelnose sturgeon permit is *Scaphirhynchus platyrhynchus*. No genetically altered shovelnose sturgeon or their hybrids are allowed.

9. Shovelnose sturgeon permittees shall be required to submit an annual report to the secretary or his designee on a form provided by the department.

10. The department may employ whatever means it deems necessary to prevent the release or escapement of shovelnose sturgeon or their eggs into the environment. The permittee shall agree to reimburse the department for all costs including, but not limited to, man hours and materials utilized during corrective actions.

11. The department shall be overseer of all escape incidents and may implement or require to be implemented whatever measures deemed necessary to contain, kill or recapture fish. The permittee shall agree to reimburse the Department of Wildlife and Fisheries for all department costs including, but not limited to, man hours and materials utilized during these corrective actions. In order to assure the secretary that the permittee will fulfill their financial obligations, the shovelnose sturgeon permittee shall post a \$50,000 performance bond, or present a letter of credit from a financial institution stating that the \$50,000 is available to the department on a certificate of deposit.

12. If a permittee terminates shovelnose sturgeon culture, the permittee shall notify the secretary or his designee immediately and dispose of the shovelnose sturgeon according to methods approved by the department.

13. In addition to all other legal remedies, including provisions of R.S. 56:319(E), failure to comply with any of the provisions herein shall be just cause to immediately suspend and/or revoke the permittee's permit. All shovelnose sturgeon shall be destroyed at permittee's expense under the department's supervision within 30 days of permit revocation.

14. Any permittee allegedly in violation of the above rules has a right to make a written response of the alleged violation(s) to the secretary requesting a hearing to review the alleged violation(s) within five days.

I. Collection of Shovelnose Sturgeon Broodstock from Louisiana Waters

1. The Department of Wildlife and Fisheries will allow legally permitted shovelnose sturgeon permit holders to collect local broodstock from approved locations on the Red River while under the supervision of departmental personnel or other approved third parties. The permittee may be charged for man-power and equipment.

2. This collection of broodstock will be limited to 3 years. The permittee may be granted additional years upon approval by the secretary. The collection must be approved and coordinated with the LDWF fisheries permit manager and the director of Inland Fisheries and would require a special broodstock collection permit from the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:318 and R.S. 56:319.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 44:

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 Mr. Robert Bourgeois, Office of Fisheries, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to 4:30 p.m., Friday, June 1, 2018.

Robert J. Samanie, III
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Domesticated Aquatic Organisms
Shovelnose Sturgeon**

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

The proposed rule change is expected to result in a minimal increase in expenditures by the Louisiana Department of Wildlife and Fisheries (L.D.W.F.). Under the proposed rule LDWF is expected to incur minimal expenses related to inspecting shovelnose sturgeon facilities.

The proposed rule change adds the shovelnose sturgeon to the list of domestic aquatic organisms approved for aquaculture in Louisiana. The rule defines shovelnose sturgeon as the pure strain of genetically unaltered fish (adult and juvenile fish, fingerlings, fry, and eggs) belonging to the species *Scaphirhynchus platyrhynchus*. The proposed rule prohibits genetically altered shovelnose sturgeon or hybrids.

It establishes the procedures for issuing permits for individuals or organizations wishing to import, export, transport, culture, dispose, or transfer live shovelnose sturgeon in Louisiana. It mandates the use of recirculating indoor culture systems that are adequate to prevent the escape of fish.

It sets the cost of a shovelnose sturgeon live holding permit at \$50. Permittees are also liable for the cost of the on-site inspection. Qualified research institutions may be exempt from the fee. Permits are valid for 12 months and expire on December 31 of each year. Permits are not transferable.

It requires applicants for the shovelnose sturgeon live holding permit to hold a domestic aquatic organism license and a wholesale/retail dealer's license or retail dealer's license.

It defines the procedure for obtaining a permit to import live shovelnose sturgeon into Louisiana or to transfer live shovelnose sturgeon within the state. Importation will be allowed only for fish outside the Red River drainage and limited only to those populations outside the range for the Federal similarity of appearance listing for the species. It requires the source of the shovelnose sturgeon to provide a certificate of health from a veterinarian or other certified expert that the fish are not showing signs of disease. It prohibits the export of live shovelnose sturgeon from Louisiana.

It establishes rules for the security of shovelnose sturgeon culture facilities. The applicant must demonstrate appropriate measures to prevent vandalism, theft, or accidental release of fish.

It permits shovelnose sturgeon facilities only in Acadia, Allen, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, De Soto, Evangeline, Franklin, Grant, Jackson, Jefferson Davis, La Salle, Lafayette, Lincoln, Morehouse, Natchitoches, Ouachita, Rapides, Richland, Sabine, Union, Vermilion, Vernon, Webster, West Carroll, and Winn parishes.

It establishes rules for the shovelnose sturgeon culture site. The culture site must be situated at least one foot above the 100-year flood plain. The facility must produce a contingency plan to dispose of live shovelnose sturgeon in the event of impending floods or other natural disasters.

It requires the insertion of an approved non-removable tag on each shovelnose sturgeon in a facility.

It requires the use of indoor recirculating systems for the culture of shovelnose sturgeon to prevent the possible escape of fish. The culture and processing systems must be enclosed to preclude predation from birds, mammals, amphibians, and reptiles. The operators of the facility must identify means to dispose of shovelnose sturgeon through chlorination, desiccation, or other appropriate methods in the event of an emergency.

It requires the shovelnose sturgeon permittee to post a \$50,000 bond or present a letter of credit from a financial institution for \$50,000 to cover containment or eradication expenses in the event of an escape of shovelnose sturgeon from the facility.

It establishes regulations to allow Shovelnose Sturgeon Permit-holders to collect shovelnose brood stock from approved locations on the Red River under supervision of L.D.W.F. personnel with the approval of the L.D.W.F. Fisheries Permit Manager and the Director of Inland Fisheries and a special permit issued by the Secretary of Wildlife and Fisheries. Collection of brood stock will be allowed for three years. The brood stock permit would be issued with no fee but the permittee may be charged a fee to cover labor and equipment expenses.

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

The proposed rule change is expected to result in a minimal increase in the revenue collections of the L.D.W.F.

A permittee is required to hold a domestic aquatic organism license (\$15 annually), a wholesale/retail seafood dealers license (\$250 annually), a shovelnose sturgeon live holding permit (\$50 annually), and costs relating to the on-site inspection. At the time of promulgation, one individual/organization expressed an interest to establish a sturgeon facility in Louisiana. To the extent, one individual is issued these permits; LDWF expects to collect \$315 per year.

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

The proposed rule change is expected to benefit individuals and agencies who wish to produce shovelnose sturgeon for roe and meat in Louisiana by allowing the operation of live sturgeon facilities in the state. However, Individuals will be responsible for paying the associate fees and either posting a \$50,000 bond or presenting a \$50,000 letter of credit, which will impose a financing cost on the permittee.

It includes several regulatory requirements intended to prevent the escape or release of shovelnose sturgeon into Louisiana waters that may increase the cost of building and operating a live shovelnose sturgeon facility. Because the costs of compliance will vary with the size and nature of the facility, the increased costs are difficult to assess with the available information.

The proposed rule change prohibiting the sale or shipment of live shovelnose sturgeon from Louisiana may potentially reduce revenue for Louisiana producers who would be unable to participate in a market for live sturgeon. The potential lost sales, being contingent upon fluctuations in the market price for live sturgeon and on the productive capacity of the applicant's facility, cannot be assessed with the available information.

The proposed rule change requiring a certificate of health from a veterinarian or other certified source will impose a cost on the live shovelnose sturgeon facility and the source from which it obtains the fish who must pay a fee to acquire the certification.

The proposed rule change prohibiting live shovelnose sturgeon facilities outside the 32-parishes specified in the proposed rule may potentially impose a future opportunity cost on firms that may wish to establish facilities in that area.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is expected to have no effect on competition or employment.

Bryan McClinton
Undersecretary
1804#034

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Reef Fish—Harvest Regulations
(LAC 76:VII.335)**

The Wildlife and Fisheries Commission does hereby give notice of intent to amend a Rule (LAC 76:VII.335) modifying existing reef fish harvest regulations. Proposed changes modify the season for the recreational harvest of gray triggerfish to be closed from January 1 through the end of February annually in addition to the currently closed season of June 1 through July 31 of each year, reduce the recreational bag limit to 1 fish per day from 2, increase the recreational minimum size limit of gray triggerfish from 12 to 15 inches fork length, and increase the commercial trip limit from 12 to 16 gray triggerfish per trip. Further changes modify the closed season for the recreational harvest of greater amberjack to include January through April 30 and November through December of each year, change the gag minimum total size limit from 22 to 24 inches for commercially harvested fish, decrease the daily limit of red grouper to 2 within the grouper aggregate, decrease the daily limit of mutton snapper to 5 within the 10 reef fish aggregate limit, increase the mutton snapper minimum total size limit from 16 to 18 inches, and raise the hogfish size limit from 12 to 14 inches fork length. Modifications are a result of changes in federal regulations. Authority for amendment of this Rule is included in the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:6(25)(a), 56:320.2, 56:326.1, and 56:326.3 to the Wildlife and Fisheries Commission.

**Title 76
WILDLIFE AND FISHERIES**

Part VII. Fish and Other Aquatic Life

**Chapter 3. Saltwater Sport and Commercial Fishery
§335. Reef Fish—Harvest Regulations**

A. Recreational bag limits regarding the harvest of reef fish: triggerfishes, amberjacks, grunts, wrasses, snappers, groupers, sea basses, tilefishes, and porgies, within and without Louisiana's territorial waters.

Species	Recreational Bag Limits
1. Red Snapper	2 fish per person per day
2. Queen, mutton, blackfin, cubera, gray, silk, yellowtail snappers, and wenchman	10 fish per person per day (in aggregate) with not more than 5 mutton snapper per person in the bag limit.
3. Vermilion snapper, lane snapper, gray triggerfish, almaco jack, goldface tilefish, tilefish, and blue-line tilefish	20 per person per day (in aggregate) with not more than 1 gray triggerfish and not more than 10 vermilion snapper per person included in the bag limit.
4. Speckled hind, black grouper, red grouper, snowy grouper, yellowedge grouper, yellowfin grouper, yellowmouth grouper, warsaw grouper, gag grouper, scamp	4 fish per person per day (in aggregate) with not more than 1 speckled hind and 1 warsaw grouper per vessel and with not more than 2 red grouper per person and not more than 2 gag grouper per person included in the bag limit
5. Greater amberjack	1 fish per person per day

Species	Recreational Bag Limits
6. Banded rudderfish and lesser amberjack	5 fish per person per day (in aggregate)
7. Hogfish	5 fish per person per day
8. No person shall possess goliath grouper or Nassau grouper whether taken from within or without Louisiana territorial waters per LAC 76:VII.337.	

B. - D.7. ...

8. Commercial trip limits shall include those limits listed below. For the purposes of this rule, a *trip* is defined as a fishing trip, regardless of the number of days duration, that begins with departure from a dock, berth, beach, seawall or ramp and that terminates with return to a dock, berth, beach, seawall or ramp.

Species or Group	Trip Limit
a. Gray Triggerfish	16 fish
b. Greater Amberjack	1,500 pounds

E. Recreational and commercial minimum and maximum size limits, unless otherwise noted.

Species	Minimum Size Limits
1. Red snapper	16 inches total length (Recreational) 13 inches total length (Commercial)
2. Gray, yellowtail, and cubera snapper	12 inches total length
3. Lane snapper	8 inches total length
4. Mutton snapper	18 inches total length
5. Vermilion snapper	10 inches total length
6. Red grouper	20 inches total length (Recreational) 18 inches total length (Commercial)
7. Yellowfin grouper	20 inches total length
8. Gag	24 inches total length
9. Black grouper	24 inches total length
10. Scamp	16 inches total length
11. Greater amberjack	34 inches fork length (Recreational) 36 inches fork length (Commercial)
12. Hogfish	14 inches fork length
13. Banded rudderfish and lesser amberjack	14 inches fork length (minimum size) 22 inches fork length (maximum size)
14. Gray triggerfish	15 inches fork length

F. - G.1. ...

2. Seasons for the recreational harvest of reef fish species or groups listed below shall be closed during the periods listed below.

Species or Group	Closed Season
a. Gag	January 1-June 30 of each year
b. Black, red, yellowfin, and yellowmouth groupers, and scamp	February 1-March 31 of each year in waters seaward of the 20 fathom boundary
c. Red Snapper	October 1 through the Friday before Palm Sunday of the following year. The open season shall be for weekends only. A <i>weekend</i> is defined as Friday, Saturday and Sunday, with the exception of Memorial Day and Labor Day, when Monday would be classified as a weekend as well.
d. Greater Amberjack	January 1-April 30, June 1-July 31, and November 1-December 31 of each year.
e. Gray Triggerfish	January 1-end of February of each year and June 1-July 31 of each year.

G.3. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.56:6(25)(a), R.S. 56:320.2(C), R.S. 56:326.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:1138 (June 1998), LR 24:1139 (June 1998), LR 24:1972 (October 1998), LR 26:793 (April 2000), LR 26:1505 (July 2000), LR 26:2833 (December 2000), LR 31:3166 (December 2005), LR 33:1156 (June 2007), repromulgated LR 33:1397 (July 2007), amended LR 34:2209 (October 2008), LR 34:2682 (December 2008), LR 36:1791 (August 2010), LR 38:2383 (September 2012), LR 39:330 (February 2013), LR 40:95 (January 2014), repromulgated LR 40:1116 (June 2014), LR 40:2281 (November 2014), amended by the Department of Wildlife and Fisheries, Office of Fisheries, LR 42:908 (June 2016), repromulgated LR 43:89 (January 2017), LR 44:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issue 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 comments relative to the proposed Rule to Jason Adriance, Fisheries Division, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, or via e-mail to jadriance@wlf.la.gov prior to Thursday, June 7, 2018.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Reef Fish—Harvest Regulations

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

The proposed rule change will have no expenditure impact on state or local governmental units.

The proposed rule changes revise harvest regulations for commercial and recreational fishermen, including the following: alters possession limits for certain reef fish; alters size limits; and further alters the seasons for the recreational harvest of certain reef fish.

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

The proposed rule change is anticipated to have no effect on revenue collections of state or local governmental units.

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

Commercial and recreational fishermen harvesting reef fish may be impacted by the proposed rule changes.

The proposed rule change which increases the minimum commercial size limits for mutton snapper, hogfish, gag, and gray triggerfish is expected to have a minor negative effect on receipts or income for commercial fishermen who harvest reef fish. The increase in the commercial trip limit for gray triggerfish may have a minor positive effect on commercial fishermen who harvest reef fish.

The proposed change decreasing the creel limits for mutton and increasing the size limit for hogfish are expected to have little impact on anglers. The proposed decrease in the creel limit for triggerfish may reduce the maximum potential harvest per trip but increase opportunities to harvest the fish later in the year. The proposed changes in the recreational season for greater amberjack, taken in conjunction with recent regulatory changes adopted by the Gulf of Mexico Fishery Management Council, may increase harvesting opportunities within existing recreational quotas.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is anticipated to have no effect on competition and employment.

Bryan McClinton
Undersecretary
1804#035

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Annual Quarantine Listing—2018
Plant Protection and Quarantine

In accordance with LAC 7:XV.107 and 109, we are hereby publishing the annual quarantine.

1.0 Sweetpotato Weevil (*Cylas formicarius elegantulus* Sum)

(a) In the United States: the states of Alabama, California, Florida, Georgia, Mississippi, North Carolina, South Carolina, Texas and any other state found to have the sweetpotato weevil

(b) In the state of Louisiana:

1) the entire parishes of: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, DeSoto, East Baton Rouge, East Feliciana, Evangeline, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, Red River, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, Webster, West Baton Rouge, and West Feliciana

2.0 Pink Bollworm (*Pectinophora gossypiella* Saunders)

Pink bollworm quarantined areas are divided into generally infested and/or suppressive areas as described by USDA-PPQ.

Arizona

(1) Generally infested area: the entire state

California

(1) Generally infested area: the entire counties of: Imperial, Inyo, Los Angeles, Orange, Riverside, San Bernardino, and San Diego

(2) Suppressive area: the entire counties of: Fresno, Kern, Kings, Madera, Merced, San Benito, and Tulare

New Mexico

(1) Generally infested area: the entire state

Texas

(1) Generally infested area: the entire state

3.0 Phytophagous Snails

The states of Arizona and California

4.0 Sugarcane Pests and Diseases

All states outside of Louisiana

5.0 Lethal Yellowing

The state of Florida

6.0 Texas Phoenix Decline

The states of Texas and Florida

7.0 Tristeza, Xyloporosis, Psorosis, Exocortis

All citrus growing areas of the United States.

8.0 Burrowing Nematode (*Radopholus similis*)

The states of Florida and Hawaii and the Commonwealth of Puerto Rico

9.0 Oak Wilt (*Ceratocystis fagacearum*)

Arkansas

Infected counties: Baxter, Benton, Boone, Carroll, Clay, Craighead, Crawford, Franklin, Fulton, Independence, Izard, Johnson, Lawrence, Logan, Madison, Marion, Mississippi, Nevada, Newton, Poinsett, Pope, Randolph, Scott, Searcy, Sharp, Stone, Washington, and Yell

Illinois

Entire state

Indiana

Entire state

Iowa

Entire state

Kansas

Infected counties: Anderson, Atchison, Cherokee, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Linn, Miami, Neosho, Pottawatomie, Shawnee, and Wyandotte

Kentucky

Infected counties: Adair, Allen, Ballard, Bath, Bell, Boyd, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carter, Casey, Christian, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fleming, Floyd, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harlan, Hart, Henderson, Hopkins, Jefferson, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Logan, McCracken, McLean, Magoffin, Marshall, Martin, Menifee, Metcalfe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Oldham, Owsley, Perry, Pike, Powell, Pulaski, Rowan, Russell, Taylor, Todd, Trigg, Union, Warren, Wayne, and Webster

Maryland

Infected counties: Allegany, Frederick, Garrett, and Washington

Michigan

Infected counties: Barry, Barrien, Calhoun, Cass, Clare, Clinton, Grand Traverse, Kalamazoo, Kent, Lake, Livingston, Manistee, Missaukee, Muskegon, Oakland, Roscommon, St. Joseph, Van Buren, Washtenaw, Wyne, and Menominee

Minnesota

Infected counties: Anoka, Aitkin, Blue Earth, Carver, Cass, Chicago, Crow Wing, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Le Sueur, McLeod, Mille Lacs, Morrison, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Steele, Wabasha, Waseca, Washington, Winona, and Wright

Missouri

Entire state

Nebraska

Infected counties: Cass, Douglas, Nemaha, Otoe, Richardson, and Sarpy

North Carolina

Infected counties: Buncombe, Burke, Haywood, Jackson, Lenoir, Macon, Madison, and Swain

Ohio

Entire state

Oklahoma

Infected counties: Adair, Cherokee, Craig, Delaware, Haskell, Latimer, LeFlore, Mayes, McCurtain, McIntosh, Ottawa, Pittsburg, Rogers, Sequoyah, and Wagoner

Pennsylvania

Infected counties: Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Centre, Clarion, Clinton, Cumberland, Erie, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mifflin, Perry, Somerset, Venango, Washington, and Westmoreland

South Carolina

Infected counties: Chesterfield, Kershaw, Lancaster, Lee, and Richland

Tennessee

Infected counties: Blount, Carter, Cocke, Cumberland, Grainger, Greene, Hamblen, Hancock, Hardeman, Hawkins, Jefferson, Knox, Lincoln, Loudon, Montgomery, Rhea, Roane, Robertson, Sevier, Sullivan, Union, Washington, and White

Texas

Infected counties: Bandera, Bastrop, Bexar, Blanco, Basque, Burnett, Dallas, Erath, Fayette, Gillespie, Hamilton, Kendall, Kerr, Lampasas, Lavaca, McLennan, Midland, Tarrant, Travis, Williamson

Virginia

Infected counties: Aleghany, Augusta, Bath, Botetoust, Clarke, Frederick, Giles, Highland, Lee, Loudoun, Montgomery, Page, Rockbridge, Rockingham, Scott, Shenandoah, Smyth, Warren, Washington, Wise, and Wythe

West Virginia

Infected counties: all counties except Tucker and Webster

Wisconsin

Infected counties: Adams, Brown, Buffalo, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Lincoln, Marquette, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Pepin, Pierce, Polk, Portage, Racine, Richland, Rock, St. Croix, Sauk, Shawano, Trempealeau, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood

10.0 Phony Peach

Alabama

Entire state

Arkansas

Counties of Arkansas, Ashley, Bradley, Chicot, Columbia, Crittendon, Cross, Desha, Drew, Hempstead, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River, Miller, Monroe, Nevada, Phillips, Pike, Poinsett, St. Francis, Sevier, Union, and Woodruff

Florida

Entire state

Georgia

Entire state

Kentucky

County of McCracken

Louisiana

Parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Jackson, Lincoln, Morehouse, Natchitoches, Ouachita, Red River and Union

Mississippi

Entire state

Missouri

County of Dunklin

North Carolina

Counties of Anson, Cumberland, Gaston, Hoke, Polk and Rutherford

South Carolina

Counties of Aiken, Allendale, Bamberg, Barnwell, Cherokee, Chesterfield, Edgefield, Greenville, Lancaster, Laurens, Lexington, Marlboro, Orangeburg, Richland, Saluda, Spartanburg, Sumter, and York

Tennessee

Counties of Chester, Crockett, Dyer, Fayette, Hardman, Hardin, Lake, Lauderdale, McNairy, Madison, and Weakley

Texas

Counties of Anderson, Bexar, Brazos, Cherokee, Freestone, Limestone, McLennan, Milan, Rusk, San Augustine, Smith, and Upshur

11.0 Citrus Canker (*Xanthomonas citri* subsp. *citri*)

Louisiana

Infested parishes: Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, and St. John

Any areas designated as quarantined under the federal citrus canker quarantine 7 CFR 301.75 et seq.

12.0 Pine Shoot Beetle (*Tomicus piniperda* [L.])

Any areas designated as quarantined under the federal pine shoot beetle quarantine 7 CFR 301.50 et seq.

13.0 Citrus Greening (*Candidatus Liberibacter asiaticus*)

Louisiana

Infested parishes: Jefferson, Orleans and Washington

Any other areas or states designated as infested under the federal citrus greening and Asian citrus psyllid quarantine 7 CFR 301.76 et seq.

14.0 Asian Citrus Psyllid (*Diaphorina citri* Kuwayama)

Louisiana

Infested parishes: Jefferson, Orleans, Lafourche, Plaquemines, St. Bernard, St. Charles, St. James, St. Tammany, Tangipahoa and Terrebonne

Any other areas or states designated as infested under the federal citrus greening and Asian citrus psyllid quarantine 7 CFR 301.76 et seq.

15.0 Emerald Ash Borer (*Agrilus planipennis*)

Louisiana

Infested parishes: Bienville, Bossier, Claiborne, Jackson, Lincoln, Morehouse, Ouachita, Union and Webster

Any other areas or states designated as infested under the federal emerald ash borer quarantine 7 CFR 301.53-3 et seq.

16.0 Roseau Cane Scale (*Nipponaclerda biwakoensis*)

Louisiana

Infested parishes: Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Vernon, Washington, and West Feliciana

Mike Strain, DVM
Commissioner

1804#052

POTPOURRI

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

Louisiana's 2018 Annual Progress and Services Report

The Department of Children and Family Services (DCFS) announces opportunities for public review of the state's 2018 Annual Progress and Services Report (APSR). The APSR is a report on the achievement of goals and objectives and/or outcomes for year three of the 2015-2019 Child and Family Services Plan (CFSP). This plan addresses the use of Title IV-B, Subpart 1 and Subpart 2, Title IV-E Chafee Foster Care Independence Program (CFCIP), Educational and Training Vouchers (ETV), and Child Abuse Prevention and Treatment Act (CAPTA) funds and serves as the applications for additional funds from these federal sources.

Louisiana, through the DCFS, provides services that include child abuse prevention, child protective services, family services-prevention and intervention services, foster care, adoption and the youth transition services. The department will use its allotted funds provided under the Social Security Act, Title IV-B, Subpart 1, entitled the Stephanie Tubbs Jones Child Welfare Services Program, to provide child welfare services to prevent child abuse and neglect, to prevent foster care placement, to reunite families, to arrange adoptions, and to ensure adequate foster care. Title IV-B, Subpart 2, entitled Promoting Safe and Stable Families, funds services to support families and prevent the need for foster care. The CFCIP funds services to assist foster children 15 years of age and older who are likely to remain in foster care until 18 years of age. Former foster care recipients who are 18 years of age who have aged out of foster care, and those who were adopted or entered guardianship at age 16 years of age or older, are also eligible for services. The services include basic living skills training and education and employment opportunities. The CAPTA funding is used to complement and support the overall mission of child welfare with emphasis on developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs and to support Citizen Review Panels statewide.

The DCFS is encouraging public participation in the planning of services and the writing of this document. The

report can be found for review on the internet under <http://www.dss.state.la.us/index.cfm?md=pagebuilder&tmp=home&pid=132>, then select the 2017 APSR link. Inquiries and comments on the plan may be submitted in writing to the DCFS, Attention: Child Welfare Administrator, P.O. Box 3318, Baton Rouge, LA 70821. The deadline for receipt of written comments is May 3, 2018 at 4 p.m.

All interested persons will have the opportunity to provide comments and/or recommendations on the plan, orally or in writing, at a public hearing scheduled for May 3, 2018 at 10 a.m. in Room 1-125 of the Iberville Building located at 627 North Fourth Street, Baton Rouge. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Marketa Garner Walters
Secretary

1804#039

POTPOURRI

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

Social Services Block Grant Intended Use Report

The Department of Children and Family Services (DCFS) announces opportunities for public review of the state's pre-expenditure report on intended uses of Social Services Block Grant (SSBG) funds for the state fiscal year (SFY) beginning July 1, 2018, and ending June 30, 2019. The proposed SFY 2017-2018 SSBG intended use report has been developed in compliance with the requirements of section 2004 of the Social Security Act (SSA), as amended and includes information on the types of activities to be supported and the categories or characteristics of individuals to be served through use of the state's allocation of SSBG funds. Section 2004 of the SSA further requires that the SSBG pre-expenditure report shall be "made public within the state in such manner as to facilitate comment by any person." The DCFS, as the designated state department, will continue to administer programs funded under the SSBG in accordance with applicable statutory requirements and federal regulations. The DCFS, Child Welfare Section (CWS) will be responsible for provision of social services, by direct delivery and vendor purchase, through use of SFY 2018-2019 SSBG expenditures for adoption, child protection, family services, and foster care/residential care services.

Louisiana, through DCFS/CWS, will utilize its allotted funds to provide comprehensive social services on behalf of children and families in fulfillment of legislative mandates for child protection and child welfare programs. These mandated services, and certain other essential social services, are provided without regard to income (WRI) to individuals in need. Individuals to be served also include low-income persons as defined in the intended use report who meet eligibility criteria for services provided through SSBG funding.

Services designated for provision through SSBG funding for SFY 2018-2019 are:

A. adoption (pre-placement to termination of parental rights);

B. child protective services including assessment, evaluation, social work intervention, shelter care, counseling and referrals for child abuse/neglect reports;

C. family services (social work intervention subsequent to validation of a report of child abuse/neglect, counseling to high risk groups);

D. foster care/residential care services (foster, residential care, and treatment on a 24-hour basis).

Definitions for the proposed services are set forth in the intended use report.

Persons eligible for SSBG-funded services include:

A. persons WRI, who are in need of adoption services, child protection, family services, and foster care/residential services;

B. individuals WRI who are recipients of Title IV-E adoption assistance;

C. recipients of supplemental security income (SSI) and recipients of Temporary Assistance for Needy Families (TANF) and those persons whose needs were taken into account in determining the needs of TANF recipients;

D. low-income persons (income eligible) whose gross monthly income is not more than 125 percent of the poverty level. A family of four with gross monthly income of not more than \$2050 would qualify as income eligible for services;

E. persons receiving title XIX (Medicaid) benefits and certain Medicaid applicants identified in the proposed plan as eligible groups.

The post expenditure report for the SSBG program for SFY 2017 is included in the SSBG intended use report for SFY 2018-2019. Free copies are available by telephone request to (225) 342-5918 or by writing to the Administrator, Child Welfare Section, P.O. Box 3318, Baton Rouge, LA 70821.

The report is available for public review online at: <http://www.dss.state.la.us/index.cfm?md=pagebuilder&tmp=home&pid=131>, then select the 2017-2018 SSBG link. Inquiries and comments on the plan may be submitted in writing to the DCFS, Attention Administrator, P.O. Box 3318, Baton Rouge, LA 70821. The deadline for receipt of written comments is May 3, 2018 at 4 p.m.

All interested persons will have the opportunity to provide comments and/or recommendations on the plan, orally or in writing, at a public hearing scheduled for May 3, 2018 at 11 a.m. in Room 1-125 of the Iberville Building located at 627 North Fourth Street, Baton Rouge. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Marketa Garner Walters
Secretary

1804#040

POTPOURRI

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

**Withdrawal of Stage II Vapor Recovery Systems
Requirements for Control of Vehicle Refueling Emissions at
Gasoline Dispensing Facilities (LAC 33:III.2132)**

Pursuant to the authority provided by Section 202(a)(6) of the Clean Air Act (42 USC 7521(a)(6)), the administrator of the United States Environmental Protection Agency (EPA) has determined onboard refueling vapor recovery (ORVR) technology is in widespread use throughout the motor vehicle fleet. The administrator also determined that emission reductions from ORVR are essentially equal to and have surpassed the emission reductions achieved by vapor recovery systems required by section 182(b)(3) and (42 USC 7511a(b)(3)), (i.e. stage II). A final regulation waiving the section 182(b)(3) requirement for stage II gasoline vapor recovery systems at certain gasoline dispensing facilities (40 CFR 51.126) was promulgated at 77 *Fed. Reg.* 28,772 on May 16, 2012. (1804Pot1)

Pursuant to EPA's determination, the Louisiana Department of Environmental Quality (DEQ) is proposing a revision to state regulations and will submit a revision to its state implementation plan (SIP) concerning stage II vapor recovery (LAC 33:III.2132) in the affected parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge. The revisions will:

(1) terminate the requirements to install stage II vapor recovery systems at motor vehicle fuel dispensing facilities (MVDF);

(2) provide standards and requirements to decommission existing stage II equipment at MVDF; and

(3) require the decommissioning of existing stage II equipment within 18 months of final approval of a SIP revision by the EPA to eliminate Stage II requirements.

MVDF may commence decommissioning existing stage II equipment in accordance with the proposed regulations. However, any action taken prior to final promulgation of revisions to LAC 33:III.2132 and approval of a revision to the SIP by the EPA shall be taken at the risk to the facility. Revisions to LAC 33:III.2132 and SIP requirements are subject to change prior to final adoption, promulgation, and approval by the EPA. Please be advised that any discretion exercised by the DEQ is not necessarily representative of any action the EPA or any third parties may initiate. A violation of effective regulations may subject the violator to enforcement.

MVDFs currently equipped with stage II systems must continue to comply with existing stage II requirements in LAC 33:III.2132 until the stage II equipment is properly decommissioned. Also, MVDFs must continue to comply with the stage I requirements in LAC 33:III.2131.

If you have questions, please call Yasoob Zia at (225) 219-3586. He may be reached via email at yasoob.zia@la.gov.

Herman Robinson
General Counsel

1803#xx

POTPOURRI

Office of the Governor Coastal Protection and Restoration Authority

Deepwater Horizon Oil Spill: Louisiana Trustee Implementation Group Draft Restoration Plan and Environmental Assessment #4: Nutrient Reduction (Nonpoint Source) and Recreational Use

Action:

Notice of Availability of Draft Restoration Plan/Environmental Assessment

Summary:

In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) prepared a Draft Restoration Plan and Environmental Assessment #4: Nutrient Reduction (Nonpoint Source) and Recreational Use (Draft RP/EA). The Draft RP/EA describes and proposes restoration project alternatives considered by the Louisiana TIG to improve water quality by reducing nutrients from nonpoint sources and to compensate for recreational use services lost as a result of the *Deepwater Horizon* oil spill. The Louisiana TIG evaluated these alternatives under criteria set forth in the OPA natural resource damage assessment (NRDA) regulations, and also evaluated the environmental consequences of the restoration alternatives in accordance with NEPA. The proposed projects are consistent with the restoration alternatives selected in the *Deepwater Horizon* oil spill Final Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS). The purpose of this notice is to inform the public of the availability of the Draft RP/EA and to seek public comments on the document.

Dates:

Comments Due Date: We will consider public comments received on or before May 21, 2018. Additional details regarding the comment period are available at <http://la-dwh.com>.

Public Meeting: The Trustees will hold a public meeting to facilitate public review and comment on the Draft RP/EA. This meeting will be held at the Tulane River and Coastal Center on April 24, 2018; Open House 5:30 p.m., Meeting 6:00 p.m.; 1370 Port of New Orleans Place, New Orleans, LA 70130.

Addresses:

Obtaining the Document: You will be able to download the Draft RP/EA on April 20, 2018, at <http://la-dwh.com/>. Alternatively, you may request a CD of the Draft RP/EA (see For Further Information Contact). You will also be able to

review copies of the document at the public repositories listed at <http://la-dwh.com/>.

Submission of Comments: You may submit comments on the Draft RP/EA by one of the following methods:

a. Via the web: <http://www.la-dwh.com> or <http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana>.

b. Via U.S. Mail: U.S. Fish & Wildlife Service, P.O. Box 49567, Atlanta, GA 30345.

c. In Person: Verbal comments may be provided at the public meeting on April 24, 2018.

Once submitted, comments cannot be edited or withdrawn. The Louisiana TIG may publish any comment received on the document. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The Louisiana TIG will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). Please be aware that your entire comment, including your personal identifying information, will become part of the public record. Please note that mailed comments must be postmarked on or before the comment deadline of 30 days following publication of this notice to be considered.

For further information contact:

Joann Hicks at 225.342.5477

Supplementary Information:

Background

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 – MC252), 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. 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.

The *Deepwater Horizon* state and Federal natural resource trustees (Trustees) conducted the natural resource damage assessment (NRDA) 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 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.

The DWH 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. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office (LOSCO), Department of Environmental Quality (LDEQ), Department of Wildlife and Fisheries (LDWF), and Department of Natural Resources (LDNR);
- 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.

Upon completion of the NRDA, the Trustees reached and finalized a settlement of their natural resource damage claims with BP in a Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in Louisiana are now chosen and managed by the Louisiana Trustee Implementation Group (TIG). The Louisiana TIG is composed of the following Trustees:

- DOI, as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- NOAA, on behalf of the U.S. Department of Commerce;
- USDA;
- EPA;
- CPRA;
- LDNR;
- LDEQ;
- LOSCO; and
- LDWF.

Overview of the Draft RP/EA

The Draft RP/EA is being released in accordance with the Oil Pollution Act (OPA), the Natural Resources Damage Assessment (NRDA) regulations found in the Code of Federal Regulations at 15 C.F.R. 990, the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Consent Decree, and Final PDARP/PEIS.

The total estimated cost for the proposed Recreational Use restoration projects is \$38,000,000. The total estimated cost for the proposed Nutrient Reduction (Nonpoint Source) restoration projects is \$9,500,000.

Invitation to Comment

The Louisiana TIG will seek public review and comment on the restoration planning process, reasonable range of restoration alternatives, and propose from those alternatives a suite of preferred restoration alternatives presented in this Draft RP/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 made publicly available at any time.

Next Steps

The public is encouraged to review and comment on the Draft RP/EA. A public meeting is scheduled to also help facilitate the public review and comment process. After the public comment period ends, the Louisiana TIG will consider the comments received before issuing a Final RP/EA. A summary of comments received and the Louisiana TIG's responses and any revisions to the document, as appropriate, will be included in the final document.

Administrative Record

When they are completed, the documents comprising the Administrative Record will be available electronically at the following locations:

<http://www.doi.gov/deepwaterhorizon>; or
<http://la-dwh.com/AdminRecord.aspx>.

Authority

The authorities for this action are the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), the National Environmental Policy Act (42 U.S.C. 4321 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 et seq.), and the implementing Natural Resource Damage Assessment Regulations found at La. Admin. Code 43:101 et seq.

Michael Ellis
Executive Director

1804#021

POTPOURRI

Department of Health Bureau of Health Services Financing

2018 Fourth Quarter Hospital Stabilization Assessment

In compliance with House Concurrent Resolution (HCR) 51 of the 2016 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing amended the provisions governing provider fees to establish hospital assessment fees and related matters (*Louisiana Register*, Volume 42, Volume 11).

House Concurrent Resolution 8 of the 2017 Regular Session of the Louisiana Legislature enacted an annual hospital stabilization formula and directed the Department of Health to calculate, levy and collect an assessment for each assessed hospital.

The Department of Health shall calculate, levy and collect a hospital stabilization assessment in accordance with HCR 8. For the quarter beginning April 1, 2018 through June 30, 2018, the quarterly assessment amount to all hospitals will

be \$15,498,217. This amounts to 0.1366558 percent of total inpatient and outpatient hospital net patient revenue of the assessed hospitals.

Rebekah E. Gee MD, MPH
Secretary

1804#028

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
Energy Corp. of America, Inc.	St. Gabriel	L	Natalbany LBR Co. B	002	25875
Evergreen Petroleum L.L.C.	Greensburg, N E	L	Ethyl Travis	001	198991
Linder Oil Co. A Partnership	Lakeside	L	8700 ra sua; Walker A	004	62060
Linder Oil Co. A Partnership	Lakeside	L	Walker A	004-D	63616
Linder Oil Co. A Partnership	Jeanerette	L	Betty D Blanchard et al	10	68858
Linder Oil Co. A Partnership	College Point-St James	L	E H Karstein	001	72247
Linder Oil Co. A Partnership	Bayou Pigeon	L	Kyle/Peterman Management Corp	003	113953
Linder Oil Co. A Partnership	Jeanerette	L	Betty D Blanchard et al	008	133864
Linder Oil Co. A Partnership	Bayou Pigeon, North	L	NBYP Disc 15 ra su; Peterman	001	139123
Linder Oil Co. A Partnership	Bayou Pigeon, North	L	NBYP Disc 15 ra su; Peterman	002	140025
Linder Oil Co. A Partnership	Thornwell, South	L	Walker A	009	174014
Linder Oil Co. A Partnership	Bayou Bouillon	L	CIB H RJ sua; EB Schwing III et al	001	208913
Linder Oil Co. A Partnership	Bayou Long	L	Goodrich Land and Energy et al	001	215607
Linder Oil Co. A Partnership	Bayou Pigeon	L	Kyle/Peterman Management Corp	002	215789
Linder Oil Co. A Partnership	College Point-St James	L	Karstein Rd sua; Bowie LBR	001-ALT	217163

Operator	Field	District	Well Name	Well Number	Serial Number
Linder Oil Co. A Partnership	Lakeside	L	Walker	001	217743
Linder Oil Co. A Partnership	College Point-St James	L	Andries ra sua; Missouri Pac RR	001-ALT	217866
Linder Oil Co. A Partnership	College Point-St James	L	Victorin Zeringue Estate	001-D	218045
Linder Oil Co. A Partnership	Lakeside	L	Walker	001-D	218176
Linder Oil Co. A Partnership	Lakeside	L	Walker	003	219433
Linder Oil Co. A Partnership	College Point-St James	L	Ma 1 RB suc; SL 560	001	219710
Linder Oil Co. A Partnership	College Point-St James	L	Andries ra sua; Zeringue et al	001	220195
Linder Oil Co. A Partnership	Jeanerette	L	Betty D Blanchard et al	003	220284
Linder Oil Co. A Partnership	Bayou Long	L	Williams Inc B	002	220537
Linder Oil Co. A Partnership	Bayou Long	L	Williams Land Co LLC swd	001	220565
Linder Oil Co. A Partnership	Jeanerette	L	Betty D Blanchard et al	004	220665
Linder Oil Co. A Partnership	Bayou Long	L	Williams Inc C	004	221187
Linder Oil Co. A Partnership	Jeanerette	L	Betty D Blanchard et al	005	221991
Linder Oil Co. A Partnership	Jeanerette	L	Betty D Blanchard et al	006	222969
Linder Oil Co. A Partnership	Jeanerette	L	Betty D Blanchard et al	7	223419
Linder Oil Co. A Partnership	Jeanerette	L	Betty D Blanchard et al	009	225310
Linder Oil Co. A Partnership	Lakeside	L	SL 15223	001	225552
Linder Oil Co. A Partnership	Lakeside	L	Walker	007	228434
Linder Oil Co. A Partnership	Lakeside	L	8700 ra sua; Walker	07D-ALT	245211
Linder Oil Co. A Partnership	Bosco, South	L	Olig ra sua; Melba Billeaud	001	249581
Linder Oil Co. A Partnership	Lakeside	L	Walker Swd	001	972556
M & M Production	Arkana	S	CV D Ra Sub; Bank of Benton	001	219969
Perdura Energy L.L.C.	Lake Arthur	L	Maple C Hughes A	001	49942
Perdura Energy L.L.C.	Lake Arthur	L	Hughes B	006	59809
Perdura Energy L.L.C.	Lake Arthur	L	Roche	002	62817

Operator	Field	District	Well Name	Well Number	Serial Number
Perdura Energy L.L.C.	Lake Arthur	L	W E Walker A	004	65128
Perdura Energy L.L.C.	Lake Arthur	L	Roche	003	65863
Perdura Energy L.L.C.	Lake Arthur	L	Louie Broussard	001	66721
Perdura Energy L.L.C.	Lake Arthur	L	Van Geffen	005	75014
Perdura Energy L.L.C.	Lake Arthur	L	MH RC sub; Walker A	006	80629
Perdura Energy L.L.C.	Lake Arthur	L	Van Geffen	005D	132069
Perdura Energy L.L.C.	Lake Arthur	L	Maple C Hughes A	006	141356
Perdura Energy L.L.C.	Lake Arthur	L	Maple C Hughes A	008	160371
Perdura Energy L.L.C.	Lake Arthur	L	Hughes B	010	161383
Perdura Energy L.L.C.	Lake Arthur	L	Hughes B	009	165194
Perdura Energy L.L.C.	Lake Arthur	L	L Cam B R sua; Broussard	005	168598
Perdura Energy L.L.C.	Lake Arthur	L	Van Geffen	008	173279
Perdura Energy L.L.C.	Lake Arthur	L	Hughes B	011	175237
Perdura Energy L.L.C.	Lake Arthur	L	Hughes B	012	183911
Perdura Energy L.L.C.	Lake Arthur, West	L	Cam 4 ra sua; E Broussard	001	194532
Perdura Energy L.L.C.	Lake Arthur	L	Maple C Hughes A	011	230939
Perdura Energy L.L.C.	Lake Arthur	L	Lake Arthur swd	005	970447
T J Johnson	Red River-Bull Bayou	S	International Paper Co	004	80015

Richard P. Ieyoub
Commissioner

1804#020

POTPOURRI

Department of Natural Resources Office of Conservation Environmental Division

Public Hearing—SWD, Inc.

Notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6 p.m., Thursday, May 24, 2018, at the Jefferson Davis Parish Police Jury, Sidney E. Briscoe Building, located at 304 N. State Street, Jennings, Louisiana.

At such hearing, the Commissioner, or his designated representative, will hear testimony relative to the application of SWD, Inc., 233 HWY 397, Lake Charles, Louisiana 70615. The applicant requests approval from the Office of Conservation to expand the permitted boundaries and add an additional commercial class II injection well to their existing commercial deep well injection waste disposal facility for disposal of exploration and production waste (E&P Waste) fluids located in Section 7, Township 09 South, Range 05 West in Jefferson Davis Parish.

The application is available for inspection by contacting Mr. Stephen Olivier, Office of Conservation, Environmental Division, Eighth Floor of the LaSalle Office Building, 617 North Third Street, Baton Rouge, Louisiana. Copies of the application will be available for review at the Jefferson Davis Parish Police Jury building in Jennings, Louisiana or the Jefferson Davis Parish Public Library in Welsh, Louisiana no later than 30 days prior to the hearing date. Verbal information may be received by calling Mr. Olivier at (225) 342-7394.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Thursday, May 31, 2018, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation
Environmental Division
P.O. Box 94275
Baton Rouge, Louisiana 70804
Re: Docket No. ENV 2018-01
Major Modification Commercial Facility Well Application
Jefferson Davis Parish

Richard P. Ieyoub
Commissioner

1804#022

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