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# Executive Orders

## EXECUTIVE ORDER BJ 14-06

Board of Elementary and Secondary Education  
Suspension of Statewide Assessment Standards  
and Practices Rule Revisions

WHEREAS, pursuant to the provisions of Article IV, Section 5 of the Louisiana Constitution of 1974, as amended, and R.S. 49:970, the Governor may issue an executive order which suspends any rule or regulation adopted by a state department, agency, board or commission within thirty days of adoption; and

WHEREAS, on February 20, 2014, the Board of Elementary and Secondary Education published a notice of intent in the Louisiana Register of proposed revisions to Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.113); and

WHEREAS, on May 20, 2014, the Board of Elementary and Secondary Education published a final notice in the Louisiana Register to adopt revisions to Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.113); and

WHEREAS, the revisions to Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.113), broadly construed, inappropriately instructs the Louisiana Department of Education to purchase assessments in a method that may not be compliant with Louisiana law, while also appropriately allowing the Board of Elementary and Secondary Education to authorize paper assessments in the 2014-2015 school year.

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

SECTION 1: The revisions to Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.113), published as a final notice on May 20, 2014, are hereby suspended.

SECTION 2: The Board of Elementary and Secondary Education is authorized and directed to implement a process to authorize paper assessments in the 2014-2015 school year.

SECTION 3: The Louisiana Department of Education, the Board of Elementary and Secondary Education and any other departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to comply with the suspension of the revisions to LAC 28:CXI.113 of this Order.

SECTION 4: This Order is effective upon signature and shall remain in effect unless amended, modified, terminated, or rescinded.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 18th day of June, 2014.

Bobby Jindal  
Governor  
ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1407#079

## EXECUTIVE ORDER BJ 14-07

State Procurement of Academic Assessments

WHEREAS, Article VII, Section 14 of the Louisiana Constitution of 1974 expresses the prohibition that “the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”;

WHEREAS, elements of this constitutional prohibition reveal themselves in statutory mandates that public bodies conduct competitive procurement processes designed to promote public confidence in the cost and quality of goods, ensure transparency by requiring public notice, and safeguard the important public policy that public funds – always derived from taxpayers – be spent wisely;

WHEREAS, the Department of Education and the Board of Elementary and Secondary Education are each subject to the Louisiana Procurement Code (R.S. 39:1551, et seq.), the laws on Professional, Personal, Consulting, and Social Services Contracts (R.S. 39:1481, et seq.), and other laws applicable to procurement by public bodies;

WHEREAS, the Department of Education and the Board of Elementary and Secondary Education joined the Partnership for Assessment of Readiness for College and Careers (“PARCC”) and committed to purchase PARCC’s assessment product before the product was even developed and to utilize its Common Core aligned assessment product and adopt them into its accountability and teacher evaluation systems, without giving due consideration to the development of other comparable assessment products and thereby failing to undertake a transparent, competitive process;

WHEREAS, pursuant to R.S. 39:1708, the Department of Education and the Board of Elementary and Secondary Education are prohibited from entering into a cooperative purchasing agreement for the purpose of circumventing the laws governing procurement;

WHEREAS, participation in PARCC does not exempt the Department of Education or the Board of Elementary and Secondary Education from following other Louisiana laws, promulgated rules, or Executive Orders applicable to the procurement of goods and services by purchase, contract, or by cooperative endeavor;

WHEREAS, the chief procurement officer of the state has authority, pursuant to R.S. 39:1597, to determine that only one source is available to provide a required item. However, the determination that PARCC is the sole source of assessment products appears to be precluded in this case, as there are a number of potential competitors with assessment products available for review and comparison, making the use of a transparent, competitive process possible;

WHEREAS, Louisiana Revised Statute 39:1497 requires that the director of the office of contractual review determine that all professional, personal, consulting, or social services have complied with the procedures set forth in La. R.S. 39:1481, et seq.;

WHEREAS, in accordance with R.S. 39:1596, Executive Order BJ 2010-16 establishes procedures for the procurement of small purchases not exceeding twenty-five thousand dollars (\$25,000) as exempt from the competitive sealed bidding requirements of the Louisiana Procurement Code, with purchases exceeding that amount requiring competitive sealed bidding and adequate prior notice;

WHEREAS, the Legislature, during the 2014 Regular Session, has appropriated approximately \$20,000,000 for the Department of Education to purchase these assessments for the 2014-2015 fiscal year commencing on July 1, 2014, and the expenditure of such a large amount of taxpayer-funded public funds clearly carries with it the responsibility that a transparent and competitive process be utilized.

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

SECTION 1: The Department of Education and Board of Elementary and Secondary Education are directed to undertake a transparent, competitive procurement process in accordance with Louisiana law to obtain academic assessments for Louisiana's schoolchildren.

SECTION 2: The Division of Administration is directed to conduct a comprehensive accounting of all Louisiana expenditures and resources related to PARCC, what services and products have been received in return for such expenditures, and copies of all contracts or other agreements in place or in negotiation for the purchase of an assessment. The Division of Administration is further directed to ensure the Department of Education and Board of Elementary and Secondary Education's compliance with Louisiana law in the procurement of academic assessments for the 2014-2015 school year and subsequent years.

SECTION 3: All departments, commissions, boards, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in implementing the provisions of this Order.

SECTION 4: 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 18th day of June, 2014.

Bobby Jindal  
Governor  
ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1406#080

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Children and Family Services Economic Stability Section

#### Use of TANF Benefits (LAC 67:III.1259 and 5351)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953 (B), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:III, Subpart 2 Family Independence Temporary Assistance Program (FITAP), Chapter 12, Subchapter B, Section 1259 and Subpart 13 Kinship Care Subsidy Program (KCSP), Chapter 53, Subchapter B, Section 5351. This declaration is necessary to extend the original Emergency Rule since it is effective for a maximum of 120 days and will expire before the Final Rule takes effect. This Emergency Rule extension is effective on August 18, 2014 and will remain in effect until the Final Rule becomes effective.

Sections 1259 and 5351 are being amended to prevent the use of cash assistance provided under the FITAP and KCSP programs from being used in any electronic benefit transfer (EBT) transaction at certain types of retailers and establishments or at any retailer for the purchase of jewelry.

The department considers emergency action necessary to facilitate the expenditure of TANF funds. This action is aimed at preventing TANF transactions at certain types of retailers or establishments determined to be inconsistent with the purpose of TANF, which is to provide cash assistance to eligible families to help pay for ongoing basic needs, such as food, shelter, and clothing. The authorization to promulgate emergency rules to facilitate the expenditure of TANF funds is contained in Act 14 of the 2013 Regular Session of the Louisiana Legislature.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Economic Stability

#### Subpart 2. Family Independence Temporary Assistance Program

#### Chapter 12. Application, Eligibility, and Furnishing Assistance

#### Subchapter B. Conditions of Eligibility

#### §1259. Use of FITAP Benefits

A. FITAP benefits shall not be used in any electronic benefit transfer transaction in:

1. any liquor store;
2. any gambling casino or gaming establishment;
3. any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes, any adult bookstores, any adult paraphernalia store, or any sexually oriented business;
4. any tattoo, piercing, or commercial body art facility;
5. any nail salon;
6. any jewelry store;

7. any amusement ride, amusement attraction, or video arcade;
8. any bail bonds company;
9. any night club, bar, tavern, or saloon;
10. any cruise ship;
11. any psychic business; or
12. any establishment where persons under age 18 are not permitted.

B. FITAP benefits shall not be used in any electronic benefit transfer transaction at any retailer for the purchase of:

1. an alcoholic beverage as defined in R.S. 14:93.10(3);
  2. a tobacco product as defined in R.S. 14:91.6(B);
  3. a lottery ticket as defined in R.S. 47:9002(2);
- or
4. jewelry.

C. For purposes of this Section, the following definitions and provisions apply.

1. The term liquor store is defined as any retail establishment that sells exclusively or primarily intoxicating liquor. It does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods.

2. The terms gambling casino and "gaming establishment" do not include a grocery store that sells groceries, including staple foods, and that also offers, or is located within the same building or complex as casino, gambling, or gaming activities, or any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

3. The term electronic benefit transfer transaction means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

4. The term commercial body art facility is defined as any location, place, area, or business whether permanent or temporary, which provides consumers access to personal services workers who for remuneration perform any of the following procedures:

a. tattooing or the insertion of pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, to produce an indelible mark or figure visible under the skin;

b. body piercing or the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration; but does not for the purposes of this Part, include piercing an ear with a disposable, single use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear; or

c. the application of permanent cosmetics or pigments under the skin of a human being for the purpose of permanently changing the color or other appearance of the skin, including but not limited to permanent eyeliner, eye shadow, or lip color.

5. Adult paraphernalia store is defined as an establishment having a substantial or significant portion of its stock, including but not limited to, clothing, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement.

6. Nail salon is defined as a commercial establishment that provides nail services of any kind including, but not limited to trimming, filing, decorating, shaping, sculpting, or in any way caring for the nails and skin of another person's hands or feet together with massaging the hands, arms, legs, and feet.

7. Jewelry is defined as consisting of precious stones and/or precious metals worn as adornment or apparel. This includes costume jewelry.

8. Amusement attraction is defined as any building or structure which provides amusement, pleasure, thrills, or excitement. This includes movie theaters and video arcades. "Amusement attraction" does not include any enterprise principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

9. Amusement ride is defined as any mechanized device or combination of devices which carries passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. This includes inflatables.

10. Bail is defined as security given by a person to assure his appearance, or a third-party's, before the proper court whenever required.

11. Bar is defined as business that holds a Class A-General retail permit and the primary purpose of such business is to serve alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets. As further defined by R.S. 1300:253.

12. Cruise ship is defined as any commercial ship used for the domestic or international carriage of passengers.

13. Psychic is defined as any person or establishment engaged in the occupation of occult science including a fortune-teller, palmist, astrologist, numerologist, clairvoyant, craniologist, phrenologist, card reader, spiritual reader, tea leaf reader, prophet, psychic or advisor or who in any other manner claims or pretends to tell fortunes or claims or pretends to disclose mental faculties of individuals for any form of compensation.

D. The FITAP case of a FITAP recipient who is determined to have violated the provisions of this Section shall be closed for the following time periods:

1. 12 months for the first offense;
2. 24 months for the second offense; and
3. permanently for the third offense.

AUTHORITY NOTE: Promulgated in accordance with P.L. 112-96.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 39:3061 (November 2013), amended LR 40:

### **Subpart 13. Kinship Care Subsidy Program (KCSP) Chapter 53. Application, Eligibility, and Furnishing Assistance**

#### **Subchapter B. Conditions of Eligibility**

##### **§5351. Use of KCSP Benefits**

A. KCSP benefits shall not be used in any electronic benefit transfer transaction in:

1. any liquor store;
2. any gambling casino or gaming establishment;
3. any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment purposes, any adult bookstores, any adult paraphernalia store, or any sexually oriented business;
4. any tattoo, piercing, or commercial body art facility;
5. any nail salon;
6. any jewelry store;
7. any amusement ride, amusement attraction, or video arcade;
8. any bail bonds company;
9. any night club, bar, tavern, or saloon;
10. any cruise ship;
11. any psychic business; or
12. any establishment where persons under age 18 are not permitted.

B. KCSP benefits shall not be used in any electronic benefit transfer transaction at any retailer for the purchase of:

1. an alcoholic beverage as defined in R.S. 14.93.10(3);
2. a tobacco product as defined in R.S. 14.91.6(B);
3. a lottery ticket as defined in R.S. 47:9002(2); or
4. jewelry;

C. For purposes of this Section, the following definitions and provisions apply.

1. The term *liquor store* is defined as any retail establishment that sells exclusively or primarily intoxicating liquor. It does not include a grocery store that sells both intoxicating liquor and groceries, including staple foods.

2. The terms *gambling casino* and *gaming establishment* do not include a grocery store that sells groceries, including staple foods, and that also offers, or is located within the same building or complex as casino, gambling, or gaming activities, or any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

3. The term *electronic benefit transfer transaction* means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

4. The term *commercial body art facility* means any location, place, area, or business whether permanent or temporary, which provides consumers access to personal services workers who for remuneration perform any of the following procedures:

a. tattooing or the insertion of pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, to produce an indelible mark or figure visible under the skin;

b. body piercing or the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration; but does not for the purposes of this Part, include piercing an ear with a disposable, single use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear; or

c. the application of permanent cosmetics or pigments under the skin of a human being for the purpose of permanently changing the color or other appearance of the skin, including but not limited to permanent eyeliner, eye shadow, or lip color.

5. *Adult paraphernalia store* is defined as an establishment having a substantial or significant portion of its stock, including, but not limited to, clothing, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement.

6. *Nail salon* is defined as a commercial establishment that provides nail services of any kind including, but not limited to trimming, filing, decorating, shaping, sculpting, or in any way caring for the nails and skin of another person's hands or feet together with massaging the hands, arms, legs, and feet.

7. *Jewelry* is defined as consisting of precious stones and/or precious metals worn as adornment or apparel. This includes costume jewelry.

8. *Amusement attraction* is defined as any building or structure which provides amusement, pleasure, thrills, or excitement. This includes movie theaters and video arcades. *Amusement attraction* does not include any enterprise principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts.

9. *Amusement ride* is defined as any mechanized device or combination of devices which carries passengers along, around, or over a fixed or restricted course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. This includes inflatables.

10. *Bail* is defined as security given by a person to assure his appearance, or a third-party's, before the proper court whenever required.

11. *Bar* is defined as business that holds a Class A-General retail permit and the primary purpose of such business is to serve alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets. As further defined by R.S. 1300:253.

12. *Cruise ship* is defined as any commercial ship used for the domestic or international carriage of passengers.

13. *Psychic* is defined as any person or establishment engaged in the occupation of occult science including a fortune-teller, palmist, astrologist, numerologist, clairvoyant, craniologist, phrenologist, card reader, spiritual reader, tea leaf reader, prophet, psychic or advisor or who in any other manner claims or pretends to tell fortunes or claims or pretends to disclose mental faculties of individuals for any form of compensation.

D. The KCSP case of a KCSP recipient who is determined to have violated the provisions of this Section shall be closed for the following time periods:

1. 12 months for the first offense;
2. 24 months for the second offense; and
3. permanently for the third offense.

AUTHORITY NOTE: Promulgated in accordance with P.L. 112-96.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 39:3061 (November 2013), amended LR 40:

Suzy Sonnier  
Secretary

1407#040

## DECLARATION OF EMERGENCY

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

Behavioral Health Services  
Physician Payment Methodology  
(LAC 50:XXXIII.Chapter 17)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health adopt LAC 50:XXXIII.Chapter 17 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to implement a coordinated behavioral health services system under the Medicaid Program, called the Louisiana Behavioral Health Partnership (LBHP), to provide adequate coordination and delivery of behavioral health services through the utilization of a statewide management organization (*Louisiana Register*, Volume 38, Number 2).

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health promulgated an Emergency Rule which amended the provisions governing the reimbursement of physician services rendered in the LBHP in order to establish a distinct payment methodology that is independent of the payment methodology established for physicians in the Professional Services Program (*Louisiana Register*, Volume 39, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2013 Emergency Rule.

This action is being taken to protect the public health and welfare of Medicaid recipients who rely on behavioral health services by ensuring continued provider participation in the Medicaid Program.

Effective August 17, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend the provisions governing behavioral health services rendered in the Medicaid Program.



**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XXXIII. Behavioral Health Services**  
**Subpart 2. General Provisions**  
**Chapter 17. Behavioral Health Services**  
**Reimbursements**

**§1701. Physician Payment Methodology**

A. The reimbursement rates for physician services rendered under the Louisiana Behavioral Health Partnership (LBHP) shall be a flat fee for each covered service as specified on the established Medicaid fee schedule. The reimbursement rates shall be based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

B. Effective for dates of service on or after April 20, 2013, the reimbursement for behavioral health services rendered by a physician under the LBHP shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable for services rendered to Medicaid recipients.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 40:

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

Kathy H. Kliebert  
Secretary

1407#058

**DECLARATION OF EMERGENCY**

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

Coordinated Care Network  
Recipient Participation  
(LAC 50:I.3103)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I.3103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended provisions governing coordinated care networks (CCNs) to permit certain individuals who receive waiver services authorized under the provisions of 1915(b) and 1915(c) of the Social Security Act, and Medicaid eligible children identified in the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation (hereafter referred to as Chisholm class members) to have the option of voluntarily enrolling into a participating health

plan under the BAYOU HEALTH Program (*Louisiana Register*, Volume 40, Number 6).

The department now proposes to amend the provisions governing the June 20, 2014 Rule to exclude Chisholm class member participation in CCNs to allow sufficient time for CCNs to amend the current contracts to meet the requirements of the Chisholm judgment. This action is being taken to promote the health and welfare of recipients participating in the BAYOU HEALTH program. It is estimated that the implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program for state fiscal year 2014-15.

Effective July 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing CCNs to clarify recipient participation.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part I. Administration**  
**Subpart 3. Medicaid Coordinated Care**  
**Chapter 31. Coordinated Care Network**  
**§3103. Recipient Participation**

- A. - A.3. ...
- B. Voluntary Participants
  - 1. Participation in a CCN is voluntary for:
    - a. - b.iv. ...
    - v. enrolled in the Family Opportunity Act Medicaid Buy-In Program; and
    - c. individuals who receive home and community-based waiver services.
    - d. - 2. Repealed.
  - C. ...
  - D. Participation Exclusion
    - 1. The following Medicaid and/or CHIP recipients are excluded from participation in a CCN and cannot voluntarily enroll in a CCN. Individuals who:
      - a. - e. ...
      - f. are eligible through the Tuberculosis Infected Individual Program;
      - g. are enrolled in the Louisiana Health Insurance Premium Payment (LaHIPP) Program; or
      - h. are under 21 years of age and are listed on the new opportunities waiver request for services registry (Chisholm class members).
      - i. For purposes of these provisions, Chisholm class members shall be defined as those children identified in the *Melanie Chisholm, et al vs. Kathy Kliebert* (or her successor) class action litigation.
    - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1573 (June 2011), amended LR 40:310 (February 2014), LR 40:1096 (June 2014), LR 40:

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

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

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

Kathy H. Kliebert  
Secretary

1407#052

## DECLARATION OF EMERGENCY

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

Crisis Receiving Centers  
Licensing Standards  
(LAC 48:I.Chapters 53 and 54)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 48:I.Chapters 53 and 54 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:2180.13. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to adopt provisions to establish licensing standards for level III crisis receiving centers (CRCs) in order to provide intervention and crisis stabilization services for individuals who are experiencing a behavioral health crisis (*Louisiana Register*, Volume 39, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2013 Emergency Rule. This action is being taken to prevent imminent peril to the public health, safety or welfare of behavioral health clients who are in need of crisis stabilization services.

Effective August 17, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions governing licensing standards for level III crisis receiving centers.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part 1. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 53. Level III Crisis Receiving Centers

#### Subchapter A. General Provisions

#### §5301. Introduction

A. The purpose of this Chapter is to:

1. provide for the development, establishment, and enforcement of statewide licensing standards for the care of patients and clients in Level III crisis receiving centers (CRCs);

2. ensure the maintenance of these standards; and

3. regulate conditions in these facilities through a program of licensure which shall promote safe and adequate treatment of clients of behavioral health facilities.

B. The purpose of a CRC is to provide intervention and stabilization services in order for the client to achieve stabilization and be discharged and referred to the lowest appropriate level of care that meets the client's needs. The estimated length of stay in a CRC is 3-7 days.

C. In addition to the requirements stated herein, all licensed CRCs shall comply with applicable local, state, and federal laws and regulations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

#### §5303. Definitions

*Active Client*—a client of the CRC who is currently receiving services from the CRC.

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

*Administrative Review*—Health Standards Section's review of documentation submitted by the center in lieu of an on-site survey.

*Adult*—a person that is at least 18 years of age.

*Authorized Licensed Prescriber*—a physician or nurse practitioner licensed in the state of Louisiana and with full prescriptive authority authorized by the CRC to prescribe treatment to clients of the specific CRC at which he/she practices.

*Building and Construction Guidelines*—structural and design requirements applicable to a CRC; does not include occupancy requirements.

*Coroner's Emergency Certificate (CEC)*—a certificate issued by the coroner pursuant to R.S. 28:53.3.

*Change of Ownership (CHOW)*—the sale or transfer, whether by purchase, lease, gift or otherwise, of a CRC by a person/corporation of controlling interest that results in a change of ownership or control of 30 percent or greater of either the voting rights or assets of a CRC or that results in the acquiring person/corporation holding a 50 percent or greater interest in the ownership or control of the CRC.

*CLIA*—clinical laboratory improvement amendment.

*Client Record*—a single complete record kept by the CRC which documents all treatment provided to the client. The record may be electronic, paper, magnetic material, film or other media.

*Construction Documents*—building plans and specifications.

*Contraband*—any object or property that is against the CRC's policies and procedures to possess.

*Crisis Receiving Services*—services related to the treatment of people in behavioral crisis, including crisis identification, intervention and stabilization.

*Department*—the Louisiana Department of Health and Hospitals.

*Direct Care Staff*—any member of the staff, including an employee or contractor, that provides the services delineated in the comprehensive treatment plan. Food services, maintenance and clerical staff and volunteers are not considered as *direct care staff*.

*Disaster or Emergency*—a local, community-wide, regional or statewide event that may include, but is not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;

8. train wrecks; or
9. declared health crisis.

*Division of Administrative Law (DAL)*—the Louisiana Department of State Civil Service, Division of Administrative Law or its successor entity.

*Grievance*—a formal or informal written or verbal complaint that is made to the CRC by a client or the client’s family or representative regarding the client’s care, abuse or neglect when the complaint is not resolved at the time of the complaint by staff present.

*HSS*—the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Care Integrity, Health Standards Section.

*Human Services Field*—an academic program with a curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines.

*Level III Crisis Receiving Center (or Center or CRC)*—an agency, business, institution, society, corporation, person or persons, or any other group, licensed by the Department of Health and Hospitals to provide crisis identification, intervention and stabilization services for people in behavioral crisis. A CRC shall be no more than 16 beds.

*Licensed Mental Health Professional (LMHP)*—an individual who is licensed in the state of Louisiana to diagnose and treat mental illness or substance abuse, acting within the scope of all applicable state laws and their professional license. A LMHP must be one of the following individuals licensed to practice independently:

1. a physician/psychiatrist;
2. a medical psychologist;
3. a licensed psychologist;
4. a licensed clinical social worker (LCSW);
5. a licensed professional counselor (LPC);
6. a licensed marriage and family therapist (LMFT);
7. a licensed addiction counselor (LAC); or
8. an advanced practice registered nurse or APRN

(must be a nurse practitioner specialist in adult psychiatric and mental health and family psychiatric and mental health, or a certified nurse specialist in psychosocial, gerontological psychiatric mental health, adult psychiatric and mental health and child-adolescent mental health and may practice to the extent that services are within the APRN’s scope of practice).

*LSBME*—Louisiana State Board of Medical Examiners.

*MHERE*—mental health emergency room extension operating as a unit of a currently-licensed hospital.

*Minor*—a person under the age of 18.

*OBH*—the Department of Health and Hospitals, Office of Behavioral Health.

*On Duty*—scheduled, present, and awake at the site to perform job duties.

*On Call*—immediately available for telephone consultation and less than one hour from ability to be on duty.

*OHSEP*—Office of Homeland Security and Emergency Preparedness.

*OPC*—order for protective custody issued pursuant to R.S. 28:53.2.

*OSFM*—the Louisiana Department of Public Safety and Corrections, Office of State Fire Marshal.

*PEC*—an emergency certificate executed by a physician, psychiatric mental health nurse practitioner, or psychologist pursuant to R.S. 28:53.

*Physician*—an individual who holds a medical doctorate or a doctor of osteopathy from a medical college in good standing with the LSBME and a license, permit, certification, or registration issued by the LSBME to engage in the practice of medicine in the state of Louisiana.

*Qualifying Experience*—experience used to qualify for any position that is counted by using one year equals 12 months of full-time work.

*Seclusion Room*—a room that may be secured in which one client may be placed for a short period of time due to the client’s increased need for security and protection.

*Shelter in Place*—when a center elects to stay in place rather than evacuate when located in the projected path of an approaching storm of tropical storm strength or a stronger storm.

*Sleeping Area*—a single constructed room or area that contains a minimum of three beds.

*Tropical Storm Strength*—a tropical cyclone in which the maximum sustained surface wind speed (using the U.S. 1 minute average standard) ranges from 34 kt (39 mph 17.5 m/s) to 63 kt (73 mph 32.5 mps).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Subchapter B. Licensing**

**§5309. General Licensing Provisions**

A. All entities providing crisis receiving services shall be licensed by the Department of Health and Hospitals (DHH). It shall be unlawful to operate as a CRC without a license issued by the department. DHH is the only licensing authority for CRCs in Louisiana.

B. A CRC license authorizes the center to provide crisis receiving services.

C. The following entities are exempt from licensure under this Chapter:

1. community mental health centers;
2. hospitals;
3. nursing homes;
4. psychiatric rehabilitative treatment facilities;
5. school-based health centers;
6. therapeutic group homes;
7. HCBS agencies;
8. substance abuse/addictive disorder facilities;
9. mental health clinics;
10. center-based respites;
11. MHEREs;
12. individuals certified by OBH to provide crisis intervention services; and
13. federally-owned facilities.

D. A CRC license is not required for individual or group practice of LMHPs providing services under the auspices of their individual license(s).

E. A CRC license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the CRC to which it is issued and only for the geographic address of that CRC approved by DHH;

3. be valid for up to one year from the date of issuance, unless revoked, suspended, or modified prior to that date, or unless a provisional license is issued;

4. expire on the expiration date listed on the license, unless timely renewed by the CRC;

5. be invalid if sold, assigned, donated or transferred, whether voluntary or involuntary; and

6. be posted in a conspicuous place on the licensed premises at all times.

F. In order for the CRC to be considered operational and retain licensed status, the following applicable operational requirements shall be met. The CRC shall:

1. be open and operating 24 hours per day, 7 days per week;

2. have the required staff on duty at all times to meet the needs of the clients; and

3. be able to screen and either admit or refer all potential clients at all times.

G. The licensed CRC shall abide by any state and federal law, rule, policy, procedure, manual or memorandum pertaining to crisis receiving centers.

H. The CRC shall permit designated representatives of the department, in the performance of their duties, to:

1. inspect all areas of the center's operations; and

2. conduct interviews with any staff member, client, or other person as necessary.

I. CRC Names

1. A CRC is prohibited from using:

a. the same name as another CRC;

b. a name that resembles the name of another center;

c. a name that may mislead the client or public into believing it is owned, endorsed, or operated by the state of Louisiana when it is not owned, endorsed, or operated by the state of Louisiana.

J. Plan Review

1. Any entity that intends to operate as a CRC, except one that is converting from a MHERE or an existing CRC, shall complete the plan review process and obtain approval for its construction documents for the following types of projects:

a. new construction;

b. any entity that intends to operate and be licensed as a CRC in a physical environment that is not currently licensed as a CRC; or

c. major alterations.

2. The CRC shall submit one complete set of construction documents with an application and review fee to the OSFM for review. Plan review submittal to the OSFM shall be in accordance with R.S. 40:1574, and the current *Louisiana Administrative Code (LAC)* provisions governing fire protection for buildings (LAC 55:V.Chapter 3 as of this promulgation), and the following criteria:

a. any change in the type of license shall require review for requirements applicable at the time of licensing change;

b. requirements applicable to occupancies, as defined by the most recently state-adopted edition of *National Fire Protection Association (NFPA) 101*, where services or treatment for four or more patients are provided;

c. requirements applicable to construction of business occupancies, as defined by the most recently state-adopted edition of NFPA 101; and

d. the specific requirements outlined in the physical environment requirements of this Chapter.

3. Construction Document Preparation

a. The CRC's construction documents shall be prepared by a Louisiana licensed architect or licensed engineer as governed by the licensing laws of the state for the type of work to be performed.

b. The CRC's construction documents shall be of an architectural or engineering nature and thoroughly illustrate an accurately drawn and dimensioned project that contains noted plans, details, schedules and specifications.

c. The CRC shall submit at least the following in the plan review process:

i. site plans;

ii. floor plan(s). These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler and fire alarm plans;

iii. building elevations;

iv. room finish, door, and window schedules;

v. details pertaining to Americans with Disabilities Act (ADA) requirements; and

vi. specifications for materials.

4. Upon OSFM approval, the CRC shall submit the following to DHH:

a. the final construction documents approved by OSFM; and

b. OSFM's approval letter.

K. Waivers

1. The secretary of DHH 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.

2. In order to request a waiver, the CRC shall submit a written request to HSS that demonstrates:

a. how patient safety and quality of care offered is not comprised by the waiver;

b. the undue hardship imposed on the center if the waiver is not granted; and

c. the center's ability to completely fulfill all other requirements of service.

3. DHH will make a written determination of each waiver request.

4. Waivers are not transferable in an ownership change or geographic change of location, and are subject to review or revocation upon any change in circumstances related to the waiver.

5. DHH prohibits waivers for new construction.

L. A person or entity convicted of a felony or that has entered a guilty plea or a plea of nolo contendere to a felony is prohibited from being the CRC or owner, clinical supervisor or any managing employee of a CRC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§5311. Initial Licensure Application Process**

A. Any entity, organization or person interested in operating a crisis receiving center must submit a completed

initial license application packet to the department for approval. Initial CRC licensure application packets are available from HSS.

B. A person/entity/organization applying for an initial license must submit a completed initial licensing application packet which shall include:

1. a completed CRC licensure application;
2. the non-refundable licensing fee as established by statute;
3. the approval letter of the architectural center plans for the CRC from OSFM, if the center must go through plan review;
4. the on-site inspection report with approval for occupancy by the OSFM, if applicable;
5. the health inspection report with approval of occupancy from the Office of Public Health (OPH);
6. a statewide criminal background check, including sex offender registry status, on all owners and managing employees;
7. except for governmental entities or organizations, proof of financial viability, comprised of the following:
  - a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;
  - b. general and professional liability insurance of at least \$500,000; and
  - c. worker's compensation insurance;
8. an organizational chart and names, including position titles, of key administrative personnel and the governing body;
9. a legible floor sketch or drawing of the premises to be licensed;
10. a letter of intent indicating whether the center will serve minors or adults and the center's maximum number of beds;
11. if operated by a corporate entity, such as a corporation or an limited liability corporation (LLC), current proof of registration and status with the Louisiana Secretary of State's Office;
12. a letter of recommendation from the OBH regional office or its designee; and
13. any other documentation or information required by the department for licensure.

C. If the initial licensing packet is incomplete, the applicant shall:

1. be notified of the missing information; and
2. be given 90 days from receipt of the notification to submit the additional requested information or the application will be closed.

D. Once the initial licensing application is approved by DHH, notification of such approval shall be forwarded to the applicant.

E. The applicant shall notify DHH of initial licensing survey readiness within the required 90 days of receipt of application approval. If an applicant fails to notify DHH of initial licensing survey readiness within 90 days, the application will be closed.

F. If an initial licensing application is closed, an applicant who is still interested in operating a CRC must submit a:

1. new initial licensing packet; and
2. non-refundable licensing fee.

G. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the CRC will be issued an initial license to operate.

H. An entity that intends to become a CRC is prohibited from providing crisis receiving services to clients during the initial application process and prior to obtaining a license, unless it qualifies as one of the following facilities:

1. a hospital-based CRC;
2. an MHERE;
3. an MHERE that has communicated its intent to become licensed as a CRC in collaboration with the department prior to February 28, 2013; or
4. a center-based respite.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40: **§5313. Initial Licensing Surveys**

A. Prior to the initial license being issued, an initial licensing survey shall be conducted on-site to ensure compliance with the licensing laws and standards.

B. If the initial licensing survey finds that the center is compliant with all licensing laws, regulations and other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the center.

C. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, that present a potential threat to the health, safety, or welfare of the clients, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, and the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients, the department:

1. may issue a provisional initial license for a period not to exceed six months; and
2. shall require the center to submit an acceptable plan of correction.

a. The department may conduct a follow-up survey following the initial licensing survey after receipt of an acceptable plan of correction to ensure correction of the deficiencies. If all deficiencies are corrected on the follow-up survey, a full license will be issued.

b. If the center fails to correct the deficiencies, the initial license may be denied.

E. The initial licensing survey of a CRC shall be an announced survey. Follow-up surveys to the initial licensing surveys are unannounced surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40: **§5315. Types of Licenses**

A. The department has the authority to issue the following types of licenses:

1. Initial License
  - a. The department shall issue a full license to the CRC when the initial licensing survey indicates the center is compliant with:

- i. all licensing laws and regulations;
- ii. all other required statutes, laws, ordinances, rules, regulations; and
- iii. fees.

b. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, or suspended.

## 2. Provisional Initial License

a. The department may issue a provisional initial license to the CRC when the initial licensing survey finds that the CRC is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients.

i. The center shall submit a plan of correction to the department for approval, and the center shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

ii. If all such noncompliance or deficiencies are corrected on the follow-up survey, a full license will be issued.

iii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, or new deficiencies affecting the health, safety or welfare of a client are cited, the provisional license will expire and the center shall be required to begin the initial licensing process again by submitting a new initial license application packet and the appropriate licensing fee.

3. Renewal License. The department may issue a renewal license to a licensed CRC that is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. Provisional License. The department may issue a provisional license to a licensed CRC for a period not to exceed six months.

a. A provisional license may be issued for the following reasons:

- i. more than five deficiencies cited during any one survey;
- ii. four or more validated complaints in a consecutive 12-month period;
- iii. a deficiency resulting from placing a client at risk for serious harm or death;
- iv. failure to correct deficiencies within 60 days of notification of such deficiencies, or at the time of a follow-up survey; or
- v. failure to be in substantial compliance with all applicable federal, state, departmental and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

b. The department may extend the provisional license for an additional period not to exceed 90 days in order for the center to correct the deficiencies.

c. The center shall submit an acceptable plan of correction to DHH and correct all noncompliance or deficiencies prior to the expiration of the provisional license.

d. The department shall conduct a follow-up survey of the CRC, either on-site or by administrative review, prior to the expiration of the provisional license.

e. If the follow-up survey determines that the CRC has corrected the deficiencies and has maintained compliance during the period of the provisional license, the department may issue a license that will expire on the expiration date of the most recent renewal or initial license.

f. The provisional license shall expire if:

i. the center fails to correct the deficiencies by the follow-up survey; or

ii. the center is cited with new deficiencies at the follow-up survey indicating a risk to the health, safety, or welfare of a client.

g. If the provisional license expires, the center shall be required to begin the initial licensing process by submitting a:

- i. new initial license application packet; and
- ii. non-refundable fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### **§5317. Changes in Licensee Information or Personnel**

A. Within five days of the occurrence, the CRC shall report in writing to HSS the following changes to the:

- 1. CRC's entity name;
- 2. business name;
- 3. mailing address; or
- 4. telephone number;

B. Any change to the CRC's name or "doing business as" name requires a \$25 nonrefundable fee for the issuance of an amended license with the new name.

C. A CRC shall report any change in the CRC's key administrative personnel within five days of the change.

- 1. Key administrative personnel include the:
  - a. CRC manager;
  - b. clinical director; and
  - c. nurse manager.

2. The CRC's notice to the department shall include the incoming individual's:

- a. name;
- b. date of appointment to the position; and
- c. qualifications.

#### D. Change of Ownership (CHOW)

1. A CRC shall report a CHOW in writing to the department at least five days prior to the change. Within five days following the change, the new owner shall submit;

- a. the legal CHOW document;
- b. all documents required for a new license; and
- c. the applicable nonrefundable licensing fee.

2. A CRC that is under license revocation or denial or license renewal may not undergo a CHOW.

3. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

#### E. Change in Physical Address

1. A CRC that intends to change the physical address of its geographic location shall submit:

- a. a written notice to HSS of its intent to relocate;
- b. a plan review request;

- c. a new license application;
- d. a nonrefundable license fee; and
- e. any other information satisfying applicable licensing requirements.

2. In order to receive approval for the change of physical address, the CRC must:

- a. have a plan review approval;
- b. have approval from OSFM and OPH;
- c. have an approved license application packet;
- d. be in compliance with other applicable licensing requirements; and
- e. have an on-site licensing survey prior to relocation of the center.

3. Upon approval of the requirements for a change in physical address, the department shall issue a new license to the CRC.

F. Any request for a duplicate license shall be accompanied by a \$25 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40: **§5319. Renewal of License**

A. A CRC license expires on the expiration date listed on the license, unless timely renewed by the CRC.

B. To renew a license, the CRC shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet includes:

- 1. the license renewal application;
- 2. a current State Fire Marshal report;
- 3. a current OPH inspection report;
- 4. the non-refundable license renewal fee;
- 5. any other documentation required by the department; and
- 6. except for governmental entities or organizations, proof of financial viability, comprised of the following:
  - a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;
  - b. general and professional liability insurance of at least \$500,000; and
  - c. worker's compensation insurance.

C. The department may perform an on-site survey and inspection of the center upon renewal.

D. Failure to submit a completed license renewal application packet prior to the expiration of the current license will result in the voluntary non-renewal of the CRC license upon the license's expiration.

E. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the center.

F. If a licensed CRC has been issued a notice of license revocation or suspension, and the center's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

G. Voluntary Non-Renewal of a License

- 1. If a center fails to timely renew its license, the license:
  - a. expires on the license's expiration date; and
  - b. is considered a non-renewal and voluntarily surrendered.

2. There is no right to an administrative reconsideration or appeal from a voluntary surrender or non-renewal of the license.

3. If a center fails to timely renew its license, the center shall immediately cease providing services, unless the center is actively treating clients, in which case the center shall:

- a. within two days of the untimely renewal, provide written notice to HSS of the number of clients receiving treatment at the center;
- b. within two days of the untimely renewal, provide written notice to each active client's prescribing physician and to every client, or, if applicable, the client's parent or legal guardian, of the following:
  - i. voluntary non-renewal of license;
  - ii. date of closure; and
  - iii. plans for the transition of the client;
- c. discharge and transition each client in accordance with this Chapter within 15 days of the license's expiration date; and
- d. notify HSS of the location where records will be stored and the name, address, and phone number of the person responsible for the records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40: **§5321. Licensing Surveys**

A. The department may conduct periodic licensing surveys and other surveys as deemed necessary to ensure compliance with all laws, rules and regulations governing crisis receiving centers and to ensure client health, safety and welfare. These surveys may be conducted on-site or by administrative review and shall be unannounced.

B. If deficiencies are cited, the department may require the center to submit an acceptable plan of correction.

C. The department may conduct a follow-up survey following any survey in which deficiencies were cited to ensure correction of the deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40: **§5323. Complaint Surveys**

A. Pursuant to R.S. 40:2009.13 et seq., the department has the authority to conduct unannounced complaint surveys on crisis receiving centers.

B. The department shall issue a statement of deficiency to the center if it finds a deficiency during the complaint survey.

C. Plan of Correction

1. Once the department issues a statement of deficiencies, the department may require the center to submit an acceptable plan of correction.

2. If the department determines that other action, such as license revocation, is appropriate, the center:

- a. may not be required to submit a plan of correction; and
- b. will be notified of such action.

D. Follow up Surveys

1. The department may conduct a follow-up survey following a complaint survey in which deficiencies were cited to ensure correction of the deficient practices.

2. If the department determines that other action, such as license revocation, is appropriate:

- a. a follow-up survey is not necessary; and
- b. the center will be notified of such action.

E. Informal Reconsiderations of Complaint Surveys

1. A center that is cited with deficiencies found during a complaint survey has the right to request an informal reconsideration of the deficiencies. The center's written request for an informal reconsideration must be received by HSS within 10 calendar days of the center's receipt of the statement of deficiencies.

2. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as a desk review.

3. Correction of the violation or deficiency shall not be the basis for the reconsideration.

4. The center shall be notified in writing of the results of the informal reconsideration.

5. Except for the right to an administrative appeal provided in R.S. 40:2009.16, the informal reconsideration shall constitute final action by the department regarding the complaint survey, and there shall be no further right to an administrative appeal.

F. Administrative Appeals

1. To request an administrative appeal, the Division of Administrative Law must receive the center's written request for an appeal within 30 calendar days of the receipt of the results of the administrative reconsideration.

2. The administrative law judge is:

- a. limited to determining whether the survey was conducted properly or improperly; and
- b. precluded from overturning, deleting, amending or adding deficiencies or violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§5325. Statement of Deficiencies**

A. The CRC shall make any statement of deficiencies available to the public upon request after the center submits a plan of correction that is accepted by the department or 90 days after the statement of deficiencies is issued to the center, whichever occurs first.

B. Informal Reconsiderations.

1. Unless otherwise provided in statute or in this Chapter, a CRC has the right to an informal reconsideration of any deficiencies cited as a result of a survey.

2. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

3. The center's written request for informal reconsideration must be received by HSS within 10 days of the center's receipt of the statement of deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the administrative reconsideration.

5. HSS shall notify the center in writing of the results of the informal reconsideration.

6. Except as provided pursuant to R.S. 40:2009.13 et seq., and as provided in this Chapter:

- a. the informal reconsideration decision is the final administrative decision regarding the deficiencies; and
- b. there is no right to an administrative appeal of such deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:  
**§5327. Cessation of Business**

A. A CRC that intends to cease operations shall:

1. provide 30 days advance written notice to

HSS and the active client, or if applicable, the client's parent(s), legal guardian, or designated representative;

2. discharge and transition all clients in accordance with this Chapter; and

3. provide 30 days advance written notice to DHH and the clients of the location where the records will be stored, including the name, address and phone number of the person responsible for the records.

B. A CRC that ceases operations as a result of a final revocation, denial or suspension shall notify HSS within 10 days of closure of the location where the records will be stored and the name, address and phone number of the person responsible for the records;

C. If a CRC fails to follow these procedures, the department may prohibit the owners, managers, officers, directors, and/or administrators from opening, managing, directing, operating, or owning a CRC for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:  
**§5329. Sanctions**

A. The department may issue sanctions for deficiencies and violations of law, rules and regulations that include:

1. civil fines;
2. directed plans of correction; and
3. license revocation or denial of license renewal.

B. The department may deny an application for an initial license or a license renewal, or may revoke a license in accordance with the Administrative Procedure Act.

C. The Department may deny an initial license, revoke a license or deny a license renewal for any of the following reasons, including but not limited to:

1. failure to be in compliance with the CRC licensing laws, rules and regulations;
2. failure to be in compliance with other required statutes, laws, ordinances, rules or regulations;
3. failure to comply with the terms and provisions of a settlement agreement or education letter;
4. cruelty or indifference to the welfare of the clients;
5. misappropriation or conversion of the property of the clients;
6. permitting, aiding or abetting the unlawful, illicit or unauthorized use of drugs or alcohol within the center of a program;
7. documented information of past or present conduct or practices of an employee or other staff which are detrimental to the welfare of the clients, including but not limited to:
  - a. illegal activities; or
  - b. coercion or falsification of records;
8. failure to protect a client from a harmful act of an employee or other client including, but not limited to:
  - a. mental or physical abuse, neglect, exploitation or extortion;



- b. any action posing a threat to a client's health and safety;
- c. coercion;
- d. threat or intimidation;
- e. harassment; or
- f. criminal activity;

9. failure to notify the proper authorities, as required by federal or state law or regulations, of all suspected cases of the acts outlined in subsection D.8 above;

10. knowingly making a false statement in any of the following areas, including but not limited to:

- a. application for initial license or renewal of license;
- b. data forms;
- c. clinical records, client records or center records;
- d. matters under investigation by the department or the Office of the Attorney General; or
- e. information submitted for reimbursement from any payment source;

11. knowingly making a false statement or providing false, forged or altered information or documentation to DHH employees or to law enforcement agencies;

12. the use of false, fraudulent or misleading advertising; or

13. the CRC, an owner, officer, member, manager, administrator, Medical Director, managing employee, or clinical supervisor has pled guilty or nolo contendere to a felony, or is convicted of a felony, as documented by a certified copy of the record of the court;

14. failure to comply with all reporting requirements in a timely manner, as required by the department;

15. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview center staff or clients;

16. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;

17. failure to allow or refusal to allow access to center or client records by authorized departmental personnel;

18. bribery, harassment, intimidation or solicitation of any client designed to cause that client to use or retain the services of any particular CRC;

19. cessation of business or non-operational status;

20. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment;

21. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department; or

22. failure to uphold client rights that may have resulted or may result in harm, injury or death of a client.

D. If the department determines that the health and safety of a client or the community may be at risk, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. The department will provide written notification to the center if the imposition of the action will be immediate.

E. Any owner, officer, member, manager, director or administrator of such CRC is prohibited from owning, managing, directing or operating another CRC for a period of two years from the date of the final disposition of any of the following:

- 1. license revocation;
- 2. denial of license renewal, except when due to cessation of business; or
- 3. the license is surrendered in lieu of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§5331. Notice and Appeal of License Denial, License Revocation and Denial of License Renewal**

A. The department shall provide written notice to the CRC of the following:

- 1. license denial;
- 2. license revocation; or
- 3. license non-renewal or denial of license renewal.

B. The CRC has the right to an administrative reconsideration of the license denial, license revocation or license non-renewal.

1. If the CRC chooses to request an administrative reconsideration, the request must:

- a. be in writing addressed to HSS;
- b. be received by HSS within 10 days of the center's receipt of the notice of the license denial, license revocation or license non-renewal; and
- c. include any documentation that demonstrates that the determination was made in error.

2. If a timely request for an administrative reconsideration is received, HSS shall provide the center with written notification of the date of the administrative reconsideration.

3. The center may appear in person at the administrative reconsideration and may be represented by counsel.

4. HSS shall not consider correction of a deficiency or violation as a basis for the reconsideration.

5. The center will be notified in writing of the results of the administrative reconsideration.

C. The administrative reconsideration process is not in lieu of the administrative appeals process.

D. The CRC has a right to an administrative appeal of the license denial, license revocation or license non-renewal.

1. If the CRC chooses to request an administrative appeal, the request must:

- a. be received by the DAL within 30 days of:
  - i. the receipt of the results of the administrative reconsideration, or
  - ii. the receipt of the notice of the license denial, revocation or non-renewal, if the CRC chose to forego its rights to an administrative reconsideration;
- b. be in writing;
- c. include any documentation that demonstrates that the determination was made in error; and
- d. include the basis and specific reasons for the appeal.

2. The DAL shall not consider correction of a violation or a deficiency as a basis for the administrative appeal.

E. Administrative Appeals of License Revocations and License Non-renewals

1. If a timely request for an administrative appeal is received by the DAL, the center will be allowed to continue to operate and provide services until the DAL issues a final administrative decision.

F. Administrative Appeals of Immediate License Revocations or License Non-renewals

1. If DHH imposes an immediate license revocation or license non-renewal, DHH may enforce the revocation or non-renewal during the appeal process.

2. If DHH chooses to enforce the revocation or non-renewal during the appeal process, the center will not be allowed to operate and/or provide services during the appeal process.

G. If a licensed CRC has a pending license revocation, and the center's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect, in any manner, the license revocation.

H. Administrative Hearings of License Denials, Non-renewals and Revocations

1. If a timely administrative appeal is submitted by the center, the DAL shall conduct the hearing within 90 days of the docketing of the administrative appeal. The DAL may grant one extension, not to exceed 90 days, if good cause is shown.

2. If the final DAL decision is to reverse the license denial, license non-renewal or license revocation, the center's license will be re-instated upon the payment of any outstanding fees or sanctions fees due to the department.

3. If the final DAL decision is to affirm the license non-renewal or license revocation, the center shall:

a. discharge and transition any and all clients receiving services according to the provisions of this Chapter; and

b. comply with the requirements governing cessation of business in this Chapter.

I. There is no right to an administrative reconsideration or an administrative appeal of the issuance of a provisional initial license to a new CRC, or the issuance of a provisional license to a licensed CRC.

J. Administrative Reconsiderations and Administrative Appeals of the Expiration of a Provisional Initial License or Provisional License

1. A CRC with a provisional initial license, or a provisional license that expires due to deficiencies cited at the follow-up survey, has the right to request an administrative reconsideration and/or an administrative appeal.

2. The center's request for an administrative reconsideration must:

a. be in writing;

b. be received by the HSS within five days of receipt of the notice of the results of the follow-up survey from the department; and

c. include the basis and specific reasons for the administrative reconsideration.

3. Correction of a violation or deficiency after the follow-up survey will not be considered as the basis for the administrative reconsideration or for the administrative appeal.

4. The issue to be decided in the administrative reconsideration and the administrative appeal is whether the deficiencies were properly cited at the follow-up survey.

5. The CRC's request for an administrative appeal must:

a. be in writing;

b. be submitted to the DAL within 15 days of receipt of the notice of the results of the follow-up survey from the department; and

c. include the basis and specific reasons for the appeal.

6. A center with a provisional initial license or a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge or transition clients unless the DAL or successor entity issues a stay of the expiration.

a. To request a stay, the center must submit its written application to the DAL at the time the administrative appeal is filed.

b. The DAL shall hold a contradictory hearing on the stay application. If the center shows that there is no potential harm to the center's clients, then the DAL shall grant the stay.

7. Administrative Hearing

a. If the CRC submits a timely request for an administrative hearing, the DAL shall conduct the hearing within 90 days of docketing the administrative appeal. The DAL may grant one extension, not to exceed 90 days, if good cause is shown.

b. If the final DAL decision is to remove all deficiencies, the department will reinstate the center's license upon the payment of any outstanding fees and settlement of any outstanding sanctions due to the department.

c. If the final DAL decision is to uphold the deficiencies and affirm the expiration of the provisional license, the center shall discharge any and all clients receiving services in accordance with the provisions of this chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Subchapter C. Organization and Administration**

**§5337. General Provisions**

A. Purpose and Organizational Structure. The CRC shall develop and implement a statement maintained by the center that clearly defines the purpose of the CRC. The statement shall include:

1. the program philosophy;

2. the program goals and objectives;

3. the ages, sex and characteristics of clients accepted for care;

4. the geographical area served;

5. the types of services provided;

6. the admission criteria;

7. the needs, problems, situations or patterns addressed by the provider's program; and

8. an organizational chart of the provider which clearly delineates the lines of authority.

B. The CRC shall provide supervision and services that:

1. conform to the department's rules and regulations;

2. meet the needs of the client as identified and addressed in the client's treatment plan;

3. protect each client's rights; and

4. promote the social, physical and mental well-being of clients.

C. The CRC shall maintain any information or documentation related to compliance with this Chapter and shall make such information or documentation available to the department.

D. Required Reporting. The center shall report the following incidents in writing to HSS within 24 hours of discovery:

1. any disaster or emergency or other unexpected event that causes significant disruption to program operations;
2. any death or serious injury of a client:
  - a. that may potentially be related to program activities; or
  - b. who at the time of his/her death or serious injury was an active client of the center; and
3. allegations of client abuse, neglect and exploitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### **§5339. Governing Body**

A. A crisis receiving center shall have the following:

1. an identifiable governing body with responsibility for and authority over the policies and operations of the center;
2. documents identifying the governing body's:
  - a. members;
  - b. contact information for each member;
  - c. terms of membership;
  - d. officers; and
  - e. terms of office for each officer.

B. The governing body of a CRC shall:

1. be comprised of one or more persons;
2. hold formal meetings at least twice a year;
3. maintain written minutes of all formal meetings of the governing body; and
4. maintain by-laws specifying frequency of meetings and quorum requirements.

C. The responsibilities of a CRC's governing body include, but are not limited to:

1. ensuring the center's compliance with all federal, state, local and municipal laws and regulations as applicable;
2. maintaining funding and fiscal resources to ensure the provision of services and compliance with this Chapter;
3. reviewing and approving the center's annual budget;
4. designating qualified persons to act as CRC manager, clinical director and nurse manager, and delegating these persons the authority to manage the center;
5. at least once a year, formulating and reviewing, in consultation with the CRC manager, clinical director and nurse manager, written policies concerning:
  - a. the provider's philosophy and goals;
  - b. current services;
  - c. personnel practices and job descriptions; and
  - d. fiscal management;
6. evaluating the performances of the CRC manager, clinical director and nurse manager at least once a year;
7. meeting with designated representatives of the department whenever required to do so;
8. informing the department, or its designee, prior to initiating any substantial changes in the services provided by the center; and

9. ensuring statewide criminal background checks are conducted as required in this Chapter and state law.

D. A governing body shall ensure that the CRC maintains the following documents:

1. minutes of formal meetings and by-laws of the governing body;
2. documentation of the center's authority to operate under state law;
3. all leases, contracts and purchases-of-service agreements to which the center is a party;
4. insurance policies;
5. annual operating budgets;
6. a master list of all the community resources used by the center;
7. documentation of ownership of the center;
8. documentation of all accidents, incidents, abuse/neglect allegations; and
9. a daily census log of clients receiving services.

E. The governing body of a CRC shall ensure the following with regards to contract agreements to provide services for the center.

1. The agreement for services is in writing.
2. Every written agreement is reviewed at least once a year.
3. The deliverables are being provided as per the agreement.
4. The center retains full responsibility for all services provided by the agreement.
5. All services provided by the agreement shall:
  - a. meet the requirements of all laws, rules and regulations applicable to a CRC; and
  - b. be provided only by qualified providers and personnel in accordance with this Chapter.

6. If the agreement is for the provision of direct care services, the written agreement specifies the party responsible for screening, orientation, ongoing training and development of and supervision of the personnel providing services pursuant to the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### **§5341. Policies and Procedures**

A. Each CRC shall develop, implement and comply with center-specific written policies and procedures governing all requirements of this chapter, including the following areas:

1. protection of the health, safety, and wellbeing of each client;
2. providing treatment in order for clients to achieve optimal stabilization;
3. access to care that is medically necessary;
4. uniform screening for patient placement and quality assessment, diagnosis, evaluation, and referral to appropriate level of care;
5. operational capability and compliance;
6. delivery of services that are cost-effective and in conformity with current standards of practice;
7. confidentiality and security of client records and files;
8. prohibition of illegal or coercive inducement, solicitation and kickbacks;
9. client rights;
10. grievance process;

11. emergency preparedness;
12. abuse and neglect;
13. incidents and accidents, including medical emergencies;
14. universal precautions;
15. documentation of services;
16. admission, including descriptions of screening and assessment procedures;
17. transfer and discharge procedures;
18. behavior management;
19. infection control;
20. transportation;
21. quality assurance;
22. medical and nursing services;
23. emergency care;
24. photography and video of clients; and
25. contraband.

B. A center shall develop, implement and comply with written personnel policies in the following areas:

1. recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff including volunteers;
2. written job descriptions for each staff position, including volunteers;
3. conducting staff health assessments that are consistent with OPH guidelines and indicate whether, when and how staff have a health assessment;
4. an employee grievance procedure;
5. abuse reporting procedures that require:
  - a. staff to report any allegations of abuse or mistreatment of clients pursuant to state and federal law; and
  - b. staff to report any allegations of abuse, neglect, exploitation or misappropriation of a client to DHH;
6. a non-discrimination policy;
7. a policy that requires all employees to report any signs or symptoms of a communicable disease or personal illness to their supervisor, CRC manager or clinical director as soon as possible to prevent the spread of disease or illness to other individuals;
8. procedures to ensure that only qualified personnel are providing care within the scope of the center's services;
9. policies governing staff conduct and procedures for reporting violations of laws, rules, and professional and ethical codes of conduct;
10. policies governing staff organization that pertain to the center's purpose, setting and location;
11. procedures to ensure that the staff's credentials are verified, legal and from accredited institutions; and
12. obtaining criminal background checks.

C. A CRC shall comply with all federal and state laws, rules and regulations in the implementation of its policies and procedures.

D. Center Rules

1. A CRC shall:
  - a. have a clearly written list of rules governing client conduct in the center;
  - b. provide a copy of the center's rules to all clients and, where appropriate, the client's parent(s) or legal guardian(s) upon admission; and
  - c. post the rules in an accessible location in the center.

E. The facility shall develop, implement and comply with policies and procedures that:

1. give consideration to the client's chronological and developmental age, diagnosis, and severity of illness when assigning a sleeping area or bedroom;
2. ensure that each client has his/her own bed; and
3. prohibit mobile homes from being used as client sleeping areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Subchapter D. Provider Operations**

**§5347. Client Records**

A. The CRC shall ensure:

1. a single client record is maintained for each client according to current professional standards;
2. policies and procedures regarding confidentiality of records, maintenance, safeguarding and storage of records are developed, implemented and followed;
3. safeguards are in place to prevent unauthorized access, loss, and destruction of client records;
4. when electronic health records are used, the most up to date technologies and practices are used to prevent unauthorized access;
5. records are kept confidential according to federal and state laws and regulations;
6. records are maintained at the center where the client is currently active and for six months after discharge;
7. six months post-discharge, records may be transferred to a centralized location for maintenance;
8. client records are directly and readily accessible to the clinical staff caring for the client;
9. a system of identification and filing is maintained to facilitate the prompt location of the client's record;
10. all record entries are dated, legible and authenticated by the staff person providing the treatment, as appropriate to the media;
11. records are disposed of in a manner that protects client confidentiality;
12. a procedure for modifying a client record in accordance with accepted standards of practice is developed, implemented and followed;
13. an employee is designated as responsible for the client records;
14. disclosures are made in accordance with applicable state and federal laws and regulations; and
15. client records are maintained at least 6 years from discharge.

B. Record Contents. The center shall ensure that client records, at a minimum, contain the following:

1. the treatment provided to the client;
2. the client's response to the treatment;
3. other information, including:
  - a. all screenings and assessments;
  - b. provisional diagnoses;
  - c. referral information;
  - d. client information/data such as name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;
  - e. documentation of incidents that occurred;

- f. attendance/participation in services/activities;
- g. treatment plan that includes the initial treatment plan plus any updates or revisions;
- h. lab work (diagnostic laboratory and other pertinent information, when indicated);
- i. documentation of the services received prior to admission to the CRC as available;
- j. consent forms;
- k. physicians' orders;
- l. records of all medicines administered, including medication types, dosages, frequency of administration, the individual who administered each dose and response to medication given on an as needed basis;
- m. discharge summary;
- n. other pertinent information related to client as appropriate; and

4. legible progress notes that are documented in accordance with professional standards of practice and:

- a. document implementation of the treatment plan and results;
- b. document the client's level of participation; and
- c. are completed upon delivery of services by the direct care staff to document progress toward stated treatment plan goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§5349. Client Funds and Possessions**

A. The CRC shall:

- 1. maintain and safeguard all possessions, including money, brought to the center by clients;
- 2. maintain an inventory of each client's possessions from the date of admission; and
- 3. return all possessions to the client upon the client's discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§5351. Quality Improvement Plan**

A. A CRC shall have a quality improvement (QI) plan that:

- 1. assures that the overall function of the center is in compliance with federal, state, and local laws;
- 2. is meeting the needs of the citizens of the area;
- 3. is attaining the goals and objectives established in the center's mission statement;
- 4. maintains systems to effectively identify issues that require quality monitoring, remediation and improvement activities;
- 5. improves individual outcomes and individual satisfaction;
- 6. includes plans of action to correct identified issues that:
  - a. monitor the effects of implemented changes; and
  - b. result in revisions to the action plan.
- 7. is updated on an ongoing basis to reflect changes, corrections and other modifications.

B. The QI plan shall include:

- 1. a sample review of client case records on a quarterly basis to ensure that:
  - a. individual treatment plans are up to date;

- b. records are accurate, complete and current; and
- c. the treatment plans have been developed and implemented as ordered.

2. a process for identifying on a quarterly basis the risk factors that affect or may affect the health, safety and/or welfare of the clients that includes, but is not limited to:

- a. review and resolution of grievances;
- b. incidents resulting in harm to client or elopement;
- c. allegations of abuse, neglect and exploitation; and
- d. seclusion and restraint.

3. a process to correct problems identified and track improvements; and

4. a process of improvement to identify or trigger further opportunities for improvement.

C. The QI plan shall establish and implement an internal evaluation procedure to:

- 1. collect necessary data to formulate a plan; and
- 2. hold quarterly staff committee meetings comprised of at least three staff members, one of whom is the CRC manager, nurse manager or clinical director, who evaluate the QI process and activities on an ongoing basis.

D. The CRC shall maintain documentation of the most recent 12 months of the QI activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Subchapter E. Personnel**

**§5357. General Requirements**

A. The CRC shall maintain an organized professional staff who is accountable to the governing body for the overall responsibility of:

- 1. the quality of all clinical care provided to clients;
- 2. the ethical conduct and professional practices of its members;
- 3. compliance with policies and procedures approved by the governing body; and
- 4. the documented staff organization that pertains to the center's setting and location.

B. The direct care staff of a CRC shall:

- 1. have the appropriate qualifications to provide the services required by its clients' treatment plans; and
- 2. not practice beyond the scope of his/her license, certification or training.

C. The CRC shall ensure that:

- 1. qualified direct care staff members are present with the clients as necessary to ensure the health, safety and well-being of clients;
- 2. staff coverage is maintained in consideration of:
  - a. acuity of the clients being serviced;
  - b. the time of day;
  - c. the size, location, physical environment and nature of the center;
  - d. the ages and needs of the clients; and
  - e. ensuring the continual safety, protection, direct care and supervision of clients;
- 3. all direct care staff have current certification in cardiopulmonary resuscitation; and
- 4. applicable staffing requirements in this Chapter are maintained.

#### D. Criminal Background Checks

1. For any CRC that is treating minors, the center shall obtain a criminal background check on all staff. The background check must be conducted within 90 days prior to hire or employment in the manner required by RS 15:587.1.

2. For any CRC that is treating adults, the center shall obtain a statewide criminal background check on all unlicensed direct care staff by an agency authorized by the Office of State Police to conduct criminal background checks. The background check must be conducted within 90 days prior to hire or employment.

3. A CRC that hires a contractor to perform work which does not involve any contact with clients is not required to conduct a criminal background check on the contractor if accompanied at all times by a staff person when clients are present in the center.

E. The CRC shall review the Louisiana State Nurse Aide Registry and the Louisiana Direct Service Worker Registry to ensure that each unlicensed direct care staff member does not have a negative finding on either registry.

#### F. Prohibitions

1. The center providing services to minors is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a person who supervises minors or provides direct care to minors who:

- a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:
  - i. violence, abuse or neglect against a person;
  - ii. possession, sale, or distribution of illegal drugs;
  - iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;
  - iv. misappropriation of property belonging to another person; or
  - v. a crime of violence.
- b. has a finding placed on the Louisiana State Nurse Aide Registry or the Louisiana Direct Service Worker Registry.

2. The center providing services to adults is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a member of the direct care staff who:

- a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:
  - i. abuse or neglect of a person;
  - ii. possession, sale, or distribution of a controlled dangerous substance
    - (a). within the last five years, or
    - (b). when the employee/contractor is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice;
  - iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;
  - iv. misappropriation of property belonging to another person;
    - (a). within the last five years; or

(b). when the employee is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice; or

v. a crime of violence.

b. has a finding placed on the Louisiana State Nurse Aide Registry or the Louisiana Direct Service Worker Registry.

#### G. Orientation and In-Service Training

1. All staff shall receive orientation prior to providing services and/or working in the center.

2. All direct care staff shall receive orientation, at least 40 hours of which is in crisis services and intervention training.

3. All direct care staff and other appropriate personnel shall receive in-service training at least once a year, at least twelve hours of which is in crisis services and intervention training.

4. All staff shall receive in-service training according to center policy at least once a year and as deemed necessary depending on the needs of the clients.

5. The content of the orientation and in-service training shall include the following:

- a. confidentiality;
- b. grievance process;
- c. fire and disaster plans;
- d. emergency medical procedures;
- e. organizational structure and reporting relationships;
- f. program philosophy;
- g. personnel policies and procedures;
- h. detecting and mandatory reporting of client abuse, neglect or misappropriation;
- i. an overview of mental health and substance abuse, including an overview of behavioral health settings and levels of care;
- j. detecting signs of illness or dysfunction that warrant medical or nursing intervention;
- k. side effects and adverse reactions commonly caused by psychotropic medications;
  - l. basic skills required to meet the health needs and challenges of the client;
  - m. components of a crisis cycle;
  - n. recognizing the signs of anxiety and escalating behavior;
  - o. crisis intervention and the use of non-physical intervention skills, such as de-escalation, mediation conflict resolution, active listening and verbal and observational methods to prevent emergency safety situations;
  - p. therapeutic communication;
  - q. client's rights;
  - r. duties and responsibilities of each employee;
  - s. standards of conduct required by the center including professional boundaries;
  - t. information on the disease process and expected behaviors of clients;
  - u. levels of observation;
  - v. maintaining a clean, healthy and safe environment and a safe and therapeutic milieu;
  - w. infectious diseases and universal precautions;

x. overview of the Louisiana licensing standards for crisis receiving centers;

y. basic emergency care for accidents and emergencies until emergency medical personnel can arrive at center; and

z. regulations, standards and policies related to seclusion and restraint, including the safe application of physical and mechanical restraints and physical assessment of the restrained client.

6. The in-services shall serve as a refresher for subjects covered in orientation.

7. The orientation and in-service training shall:

a. be provided only by staff who are qualified by education, training, and experience;

b. include training exercises in which direct care staff members successfully demonstrate in practice the techniques they have learned for managing the delivery of patient care services; and

c. require the direct care staff member to demonstrate competency before providing services to clients.

#### I. Staff Evaluation

1. The center shall complete an annual performance evaluation of all employees.

2. The center's performance evaluation procedures for employees who provide direct care to clients shall address the quality and nature of the employee's relationships with clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### §5359. Personnel Qualifications and Responsibilities

A. A CRC shall have the following minimum staff:

1. a CRC manager who:

a. has a minimum of a master's degree in a human services field or is a licensed registered nurse;

b. has at least one year of qualifying experience in the field of behavioral health;

c. is a full time employee; and

d. has the following assigned responsibilities:

i. supervise and manage the day to day operation of the CRC;

ii. review reports of all accidents/incidents occurring on the premises and identify hazards to the clinical director;

iii. participate in the development of new programs and modifications;

iv. perform programmatic duties and/or make clinical decisions only within the scope of his/her licensure; and

v. shall not have other job responsibilities that impede the ability to maintain the administration and operation of the CRC.

2. a clinical director who is:

a. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or

b. a psychiatric and mental health nurse practitioner who has an unrestricted license and prescriptive authority and a licensed physician on call at all times to be available for consultation;

c. responsible for developing and implementing policies and procedures and oversees clinical services and treatment;

d. on duty as needed and on call and available at all times;

3. a nurse manager who:

a. holds a current unrestricted license as a registered nurse (RN) in the state of Louisiana;

b. shall be a full time employee;

c. has been a RN for a minimum of five years;

d. has three years of qualifying experience providing direct care to patients with behavioral health diagnoses and at least one year qualifying experience providing direct care to medical/surgical inpatients;

e. has the following responsibilities:

i. develop and ensure implementation of nursing policies and procedures;

ii. provide oversight of nursing staff and the services they provide;

iii. ensure that any other job responsibilities will not impede the ability to provide oversight of nursing services.

4. authorized licensed prescriber who:

a. shall be either:

i. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or

ii. a psychiatric and mental health nurse practitioner who has an unrestricted license and prescriptive authority and a licensed physician on call at all times to be available for consultation;

b. is on call at all times;

c. is responsible for managing the psychiatric and medical care of the clients;

5. licensed mental health professionals (LMHPs):

a. the center shall maintain a sufficient number of LMHPs to meet the needs of its clients.

b. there shall be at least one LMHP on duty during hours of operation.

c. the LMHP shall have one year of qualifying experience in direct care to clients with behavioral health diagnoses and shall have the following responsibilities:

i. provide direct care to clients and may serve as primary counselor to specified caseload;

ii. serve as a resource person for other professionals and unlicensed personnel in their specific area of expertise;

iii. attend and participate in individual care conferences, treatment planning activities, and discharge planning; and

iv. function as the client's advocate in all treatment decisions.

6. nurses:

a. the center shall maintain licensed nursing staff to meet the needs of its clients.

b. all nurses shall have:

i. a current nursing license from the state of Louisiana;

ii. at least one year qualifying experience in providing direct care to clients with a behavioral health diagnosis; and

iii. at least one year qualifying experience providing direct care to medical/surgical inpatients.

c. the nursing staff has the following responsibilities:

i. provide nursing services in accordance with accepted standards of practice, the CRC policies and the individual treatment plans of the clients;

ii. supervise non-licensed clinical personnel;

iii. each CRC shall have at least one RN on duty at the CRC during hours of operation; and

iv. as part of orientation, all nurses shall receive 24 hours of education focusing on psychotropic medications, their side effects and possible adverse reactions. All nurses shall receive training in psychopharmacology for at least four hours per year.

**B. Optional Staff**

1. The CRC shall maintain non-licensed clinical staff as needed who shall:

a. be at least 18 years of age;

b. have a high school diploma or GED;

c. provide services in accordance with CRC policies, documented education, training and experience, and the individual treatment plans of the clients; and

d. be supervised by the nursing staff.

**2. Volunteers**

a. The CRC that utilizes volunteers shall ensure that each volunteer:

i. meets the requirements of non-licensed clinical staff;

ii. is screened and supervised to protect clients and staff;

iii. is oriented to facility, job duties, and other pertinent information;

iv. is trained to meet requirements of duties assigned;

v. is given a written job description or written agreement;

vi. is identified as a volunteer;

vii. is trained in privacy measures; and

viii. is required to sign a written confidentiality agreement.

b. The facility shall designate a volunteer coordinator who:

i. has the experience and training to supervise the volunteers and their activities; and

ii. is responsible for selecting, evaluating and supervising the volunteers and their activities.

3. If a CRC utilizes student interns, it shall ensure that each student intern:

a. has current registration with the appropriate Louisiana board when required or educational institution, and is in good standing at all times;

b. provides direct client care utilizing the standards developed by the professional board;

c. provides care only under the direct supervision of an individual authorized in accordance with acceptable standards of practice; and

d. provides only those services for which the student has been properly trained and deemed competent to perform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§5361. Personnel Records**

A. A CRC shall maintain a personnel file for each employee and direct care staff member in the center. Each record shall contain:

1. the application for employment and/or resume, including contact information and employment history for the preceding five years, if applicable;

2. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;

3. any required medical examinations or health screens;

4. evidence of current applicable professional credentials/certifications according to state law or regulations;

5. annual performance evaluations to include evidence of competency in performing assigned tasks;

6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment;

7. the staff member's starting and termination dates;

8. proof of orientation, training and in-services;

9. results of criminal background checks, if required;

10. job descriptions and performance expectations;

11. a signed attestation annually by each member of the direct care staff indicating that he/she has not been convicted of or pled guilty or nolo contendere to a crime, other than traffic violations; and

12. written confidentiality agreement signed by the personnel every twelve months.

B. A CRC shall retain personnel files for at least three years following termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Subchapter F. Admission, Transfer and Discharge**

**§5367. Admission Requirements**

A. A CRC shall not refuse admission to any individual on the grounds of race, national origin, ethnicity or disability.

B. A CRC shall admit only those individuals whose needs, pursuant to the screening, can be fully met by the center.

C. A CRC shall expect to receive individuals who present voluntarily to the unit and/or individuals who are brought to the unit under an OPC, CEC, or PEC.

D. The CRC shall develop and implement policies and procedures for diverting individuals when the CRC is at capacity, that shall include:

1. notifying emergency medical services (EMS), police and the OBH or its designee in the service area;

2. conducting a screening on each individual that presents to the center; and

3. safely transferring the presenting individual to an appropriate provider;

**E. Pre-Admission Requirements**

1. Prior to admission, the center shall attempt to obtain documentation from the referring emergency room, agency, facility or other source, if available, that reflects the client's condition.



2. The CRC shall conduct a screening on each individual that presents for treatment that:

- a. is performed by a RN who may be assisted by other personnel;
- b. is conducted within 15 minutes of entering the center;
- c. determines eligibility and appropriateness for admission;
- d. assesses whether the client is an imminent danger to self or others; and
- e. includes the following:
  - i. taking vital signs;
  - ii. breath analysis and urine drug screen
  - iii. brief medical history including assessment of risk for imminent withdrawal; and
  - iv. clinical assessment of current condition to determine primary medical problem(s) and appropriateness of admission to CRC or transfer to other medical provider;

#### F. Admission Requirements

1. The CRC shall establish the CRC's admission requirements that include:

- a. availability of appropriate physical accommodations;
- b. legal authority or voluntary admission; and
- c. written documentation that client and/or family if applicable, consents to treatment.

2. The CRC shall develop, implement and comply with admission criteria that, at a minimum, include the following inclusionary and exclusionary requirements:

a. Inclusionary: the client is experiencing a seriously acute psychological/emotional change which results in a marked increase in personal distress and exceeds the abilities and resources of those involved to effectively resolve it;

b. Exclusionary: the client is experiencing an exacerbation of a chronic condition that does not meet the inclusionary criteria listed in §5367.F.2.a.

3. If the client qualifies for admission into the CRC, the center shall ensure that a behavioral health assessment is conducted:

- a. by a LMHP;
- b. within 4 hours of being received in the unit unless extenuating or emergency circumstances preclude the delivery of this service within this time frame; and
- c. includes the following:
  - i. a history of previous emotional, behavioral and substance use problems and treatment;
  - ii. a social assessment to include a determination of the need for participation of family members or significant others in the individual's treatment; the social, peer-group, and environmental setting from which the person comes; family circumstances; current living situation; employment history; social, ethnic, cultural factors; and childhood history; current or pending legal issues including charges, pending trial, etc.;
  - iii. an assessment of the individual's ability and willingness to cooperate with treatment;
  - iv. an assessment for any possible abuse or neglect; and
  - v. review of any laboratory results, results of breath analysis and urine drug screens on patients and the need for further medical testing.

4. The CRC shall ensure that a nursing assessment is conducted that is:

- a. begun at time of admission and completed within 24 hours; and
- b. conducted by a RN with the assistance of other personnel.

5. The center shall ensure that a physical assessment is conducted by an authorized licensed prescriber within 12 hours of admission that includes:

- a. a complete medical history;
- b. direct physical examination; and
- c. documentation of medical problems.

6. The authorized license prescriber, LMHP and/or RN shall conduct a review of the medical and psychiatric records of current and past diagnoses, laboratory results, treatments, medications and dose response, side-effects and compliance with:

- a. the review of data reported to clinical director;
- b. synthesis of data received is incorporated into treatment plan by clinical director;

G. Client/Family Orientation. Upon admission or as soon as possible, each facility shall ensure that a confidential and efficient orientation is provided to the client and the client's designated representative, if applicable, concerning:

1. visitation;
2. physical layout of the center;
3. safety;
4. center rules; and
5. all other pertinent information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

#### **§5369. Discharge, Transfer and Referral Requirements**

A. The CRC shall develop, implement and comply with policies and procedures that address when and how clients will be discharged and referred or transferred to other providers in accordance with applicable state and federal laws and regulations.

B. Discharge planning shall begin upon admission.

C. The CRC shall ensure that a client is discharged:

1. when the client's treatment goals are achieved, as documented in the client's treatment plan;
2. when the client's issues or treatment needs are not consistent with the services the center is authorized or able to provide; or
3. according to the center's established written discharge criteria.

D. Discharge Plan. Each CRC client shall have a written discharge plan to provide continuity of services that includes:

1. the client's transfer or referral to outside resources, continuing care appointments, and crisis intervention assistance;
2. documented attempts to involve the client and the family or an alternate support system in the discharge planning process;
3. the client's goals or activities to sustain recovery;
4. signature of the client or, if applicable, the client's parent or guardian, with a copy provided to the individual who signed the plan;
5. name, dosage and frequency of client's medications ordered at the time of discharge;

6. prescriptions for medications ordered at time of discharge; and

7. the disposition of the client's possessions, funds and/or medications, if applicable.

E. The discharge summary shall be completed within 30 days and include:

1. the client's presenting needs and issues identified at the time of admission;
2. the services provided to the client;
3. the center's assessment of the client's progress towards goals;
4. the circumstances of discharge; and
5. the continuity of care recommended following discharge, supporting documentation and referral information.

F. Transfer Process. The CRC responsible for the discharge and transfer of the client shall:

1. request and receive approval from the receiving facility prior to transfer;
2. notify the receiving facility prior to the arrival of the client of any significant medical/psychiatric conditions/complications or any other pertinent information that will be needed to care for the client prior to arrival; and
3. transfer all requested client information and documents upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### **Subchapter G. Program Operations**

#### **§5375. Treatment Services**

- A. A CRC shall:
1. operate 24 hours per day seven days a week;
  2. operate up to 16 licensed beds;
  3. provide services to either adults or minors but not both;
  4. provide services that include, but are not limited to:
    - a. emergency screening;
    - b. assessment;
    - c. crisis intervention and stabilization;
    - d. 24 hour observation;
    - e. medication administration; and
    - f. referral to the most appropriate and least restrictive setting available consistent with the client's needs.

B. A CRC shall admit clients for an estimated length of stay of 3-7 days. If a greater length of stay is needed, the CRC shall maintain documentation of clinical justification for the extended stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

#### **§5377. Laboratory Services**

A. The CRC shall have laboratory services available to meet the needs of its clients, including the ability to:

1. obtain STAT laboratory results as needed at all times;
2. conduct a dipstick urine drug screen; and
3. conduct a breath analysis for immediate determination of blood alcohol level.

B. The CRC shall maintain a CLIA certificate for the laboratory services provided on-site.

C. The CRC shall ensure that all contracted laboratory services are provided by a CLIA clinical laboratory improvement amendment (CLIA) certified laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### **§5379. Pharmaceutical Services and Medication**

#### **Administration**

A. The CRC may provide pharmaceutical services on-site at the center or off-site pursuant to a written agreement with a pharmaceutical provider.

B. All compounding, packaging, and dispensing of medications shall be accomplished in accordance with Louisiana law and Board of Pharmacy regulations and be performed by or under the direct supervision of a registered pharmacist currently licensed to practice in Louisiana.

C. The CRC shall ensure that a mechanism exists to:

1. provide pharmaceutical services 24 hours per day; and
2. obtain STAT medications, as needed, within an acceptable time frame, at all times.

D. CRCs that utilize off-site pharmaceutical providers pursuant to a written agreement shall have:

1. a physician who assumes the responsibility of procurement and possession of medications; and
2. an area for the secure storage of medication and medication preparation in accordance with Louisiana Board of Pharmacy rules and regulations.

E. A CRC shall maintain:

1. a site-specific Louisiana controlled substance license in accordance with the Louisiana Uniform Controlled Dangerous Substance Act; and
2. a United States Drug Enforcement Administration controlled substance registration for the facility in accordance with Title 21 of the United States Code.

F. The CRC shall develop, implement and comply with written policies and procedures that govern:

1. the safe administration and handling of all prescription and non-prescription medications;
2. the storage, recording and control of all medications;
3. the disposal of all discontinued and/or expired medications and containers with worn, illegible or missing labels;
4. the use of prescription medications including:
  - a. when medication is administered, medical monitoring occurs to identify specific target symptoms;

- b. a procedure to inform clients, staff, and where appropriate, client's parent(s), legal guardian(s) or designated representatives, of each medication's anticipated results, the potential benefits and side-effects as well as the potential adverse reaction that could result from not taking the medication as prescribed;

- c. involving clients and, where appropriate, their parent(s) or legal guardian(s), and designated representatives in decisions concerning medication; and

- d. staff training to ensure the recognition of the potential side effects of the medication.

5. the list of abbreviations and symbols approved for use in the facility;

6. recording of medication errors and adverse drug reactions and reporting them to the client's physician or authorized prescriber, and the nurse manager;

7. the reporting of and steps to be taken to resolve discrepancies in inventory, misuse and abuse of controlled substances in accordance with federal and state law;

8. provision for emergency pharmaceutical services;

9. a unit dose system; and

10. procuring and the acceptable timeframes for procuring STAT medications when the medication needed is not available on-site.

G. The CRC shall ensure that:

1. medications are administered by licensed health care personnel whose scope of practice includes administration of medications;

2. any medication is administered according to the order of an authorized licensed prescriber;

3. it maintains a list of authorized licensed prescribers that is accessible to staff at all times.

4. all medications are kept in a locked illuminated clean cabinet, closet or room at temperature controls according to the manufacturer's recommendations, accessible only to individuals authorized to administer medications;

5. medications are administered only upon receipt of written orders, electromechanical facsimile, or verbal orders from an authorized licensed prescriber;

6. all verbal orders are signed by the licensed prescriber within 72 hours;

7. medications that require refrigeration are stored in a refrigerator or refrigeration unit separate from the refrigerators or refrigeration units that store food, beverages, or laboratory specimens;

8. all prescription medication containers are labeled to identify:

- a. the client's full name;
- b. the name of the medication;
- c. dosage;
- d. quantity and date dispensed;
- e. directions for taking the medication;
- f. required accessory and cautionary statements;
- g. prescriber's name; and
- h. the expiration date.

9. Medication errors, adverse drug reactions, and interactions with other medications, food or beverages taken by the client are immediately reported to the client's physician or authorized licensed prescriber, supervising pharmacist and nurse manager with an entry in the client's record.

10. All controlled substances shall be kept in a locked cabinet or compartment separate from other medications;

11. Current and accurate records are maintained on the receipt and disposition of controlled substances;

12. Controlled substances are reconciled:

a. at least twice a day by staff authorized to administer controlled substances; or

b. by an automated system that provides reconciliation;

13. Discrepancies in inventory of controlled substances are reported to the nurse manager and the supervising pharmacist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### §5381. Transportation

A. The CRC shall establish, implement and comply with policies and procedures to:

1. secure emergency transportation in the event of a client's medical emergency; and

2. provide non-emergent medical transportation to the clients as needed.

B. The facility shall have a written agreement with a transportation service in order to provide non-emergent transport services needed by its clients that shall require all vehicles used to transport CRC clients are:

1. maintained in a safe condition;

2. properly licensed and inspected in accordance with state law;

3. operated at a temperature that does not compromise the health, safety and needs of the client;

4. operated in conformity with all applicable motor vehicle laws

5. current liability coverage for all vehicles used to transport clients;

6. all drivers of vehicles that transport CRC clients are properly licensed to operate the class of vehicle in accordance with state law; and

7. the ability to transport non-ambulatory clients in appropriate vehicles if needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### §5383. Food and Diet

A. The CRC shall ensure that:

1. all dietary services are provided under the direction of a Louisiana licensed and registered dietician either directly or by written agreement;

2. menus are approved by the registered dietician;

3. meals are of sufficient quantity and quality to meet the nutritional needs of clients, including religious and dietary restrictions;

4. meals are in accordance with Federal Drug Administration (FDA) dietary guidelines and the orders of the authorized licensed prescriber;

5. at least three meals plus an evening snack are provided daily with no more than 14 hours between any two meals;

6. meals are served in a manner that maintains the safety and security of the client and are free of identified contraband;

7. all food is stored, prepared, distributed, and served under safe and sanitary conditions;

8. all equipment and utensils used in the preparation and serving of food are properly cleaned, sanitized and stored; and

9. if meals are prepared on-site, they are prepared in an OPH approved kitchen.

B. The CRC may provide meal service and preparation pursuant to a written agreement with an outside food management company. If provided pursuant to a written agreement, the CRC shall:

1. maintain responsibility for ensuring compliance with this Chapter;

2. provide written notice to HSS and OPH within 10 calendar days of the effective date of the contract;

3. ensure that the outside food management company possesses a valid OPH retail food permit and meets all requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the special requirements for highly susceptible populations as promulgated in the Louisiana Sanitary Code provisions governing food display and service for retail food establishments (specifically LAC 51:XXIII.1911 as amended May 2007); and

4. ensure that the food management company employs or contracts with a licensed and registered dietician who serves the center as needed to ensure that the nutritional needs of the clients are met in accordance with the authorized licensed prescriber's orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

#### **Subchapter H. Client Rights**

##### **§5389. General Provisions**

A. The CRC shall develop, implement and comply with policies and procedures that:

1. protect its clients' rights;
2. respond to questions and grievances pertaining to these rights;
3. ensure compliance with clients' rights enumerated in R.S. 28:171; and
4. ensure compliance with minors' rights enumerated in the Louisiana Children's Code.

B. A CRC's client and, if applicable, the client's parent(s) or legal guardian or chosen designated representative, have the following rights:

1. to be informed of the client's rights and responsibilities at the time of or shortly after admission;
2. to have a family member, chosen representative and/or his or her own physician notified of admission at the client's request to the CRC;
3. to receive treatment and medical services without discrimination based on race, age, religion, national origin, gender, sexual orientation, disability, marital status, diagnosis, ability to pay or source of payment;
4. to be free from abuse, neglect, exploitation and harassment;
5. to receive care in a safe setting;
6. to receive the services of a translator or interpreter, if applicable, to facilitate communication between the client and the staff;
7. to be informed of the client's own health status and to participate in the development, implementation and updating of the client's treatment plan;
8. to make informed decisions regarding the client's care in accordance with federal and state laws and regulations;
9. to consult freely and privately with the client's legal counsel or to contact an attorney at any reasonable time;
10. to be informed, in writing, of the policies and procedures for initiation, review and resolution of grievances or client complaints;
11. to submit complaints or grievances without fear of reprisal;

12. to have the client's information and medical records, including all computerized medical information, kept confidential in accordance with federal and state statutes and rules/regulations;

13. to be provided indoor and/or outdoor recreational and leisure opportunities;

14. to be given a copy of the center's rules and regulations upon admission or shortly thereafter;

15. to receive treatment in the least restrictive environment that meets the client's needs;

16. to be subject to the use of restraint and/or seclusion only in accordance with federal and state law, rules and regulations;

17. to be informed of all estimated charges and any limitations on the length of services at the time of admission or shortly thereafter;

18. to contact DHH at any reasonable time;

19. to obtain a copy of these rights as well as the address and phone number of DHH and the Mental Health Advocacy Service at any time; and

20. to be provided with personal hygiene products, including but not limited to, shampoo, deodorant, toothbrush, toothpaste, and soap, if needed.

C. A copy of the clients' right shall be posted in the facility and accessible to all clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

##### **§5391. Grievances**

A. The facility shall develop, implement and comply with a written grievance procedure for clients designed to allow clients to submit a grievance without fear of retaliation. The procedure shall include, but not be limited to:

1. process for filing a grievance;
2. a time line for responding to the grievance;
3. a method for responding to a grievance; and
4. the staff responsibilities for addressing and resolving grievances.

B. The facility shall ensure that:

1. the client and, if applicable, the client's parent(s) or legal guardian(s), is aware of and understands the grievance procedure; and
2. all grievances are addressed and resolved to the best of the center's ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

#### **Subchapter I. Physical Environment**

##### **§5397. Interior Space**

A. The CRC shall:

1. have a physical environment that protects the health, safety and security of the clients;
2. have routine maintenance and cleaning programs in all areas of the center;
3. be well-lit, clean, and ventilated;
4. conduct a risk assessment of each client and the physical environment of the facility in order to ensure the safety and well-being of all clients admitted to the facility;
5. maintain its physical environment, including, but not limited to, all equipment, fixtures, plumbing, electrical,

and furnishings, in good order and safe condition in accordance with manufacturer's recommendations;

6. maintain heating, ventilation and cooling systems in good order and safe condition to ensure a comfortable environment; and

7. ensure that electric receptacles in client care areas are tamper-resistant or equipped with ground fault circuit interrupters.

B. Common Area. The CRC shall have designated space:

1. to be used for group meetings, dining, visitation, leisure and recreational activities;

2. that is at least 25 square feet per client and no less than 150 square feet exclusive of sleeping areas, bathrooms, areas restricted to staff and office areas; and

3. that contains tables for eating meals.

C. Bathrooms

1. Each bathroom to be used by clients shall contain:

a. a lavatory with:

- i. paper towels or an automatic dryer;
- ii. a soap dispenser with soap for individual use;

and

iii. a wash basin with hot and cold running water;

b. tubs and/or showers that:

- i. have hot and cold water;
- ii. have slip proof surfaces; and
- iii. allow for individual privacy

c. toilets:

- i. an adequate supply of toilet paper;
- ii. with seats; and
- iii. that allow for individual privacy;

d. at least one sink, one tub or shower and one toilet for every eight clients.

e. shatterproof mirrors secured to the walls at convenient heights;

f. plumbing, piping, ductwork, and that are recessed or enclosed in order to be inaccessible to clients; and

g. other furnishings necessary to meet the clients' basic hygienic needs.

2. A CRC shall have at least one separate toilet and lavatory facility for the staff.

D. Sleeping Areas and Bedrooms

1. A CRC that utilizes a sleeping area for multiple clients shall ensure that its sleeping area:

a. is at least 60 square feet per bed of clear floor area; and

b. does not contain bunk beds.

2. Bedrooms. A CRC shall ensure that each bedroom:

a. accommodates no more than one client; and

b. is at least 80 square feet of clear floor area.

3. The CRC that utilizes a sleeping area for multiple clients shall maintain at least one bedroom.

4. The CRC shall ensure that each client:

a. has sufficient separate storage space for clothing, toilet articles and other personal belongings of clients;

b. has sheets, pillow, bedspread, towels, washcloths and blankets that are:

- i. intact and in good repair,
- ii. systematically removed from use when no longer usable;
- iii. clean;

iv. provided as needed or when requested unless the request is unreasonable;

c. is given a bed for individual use that:

i. is no less than 30 inches wide,

ii. is of solid construction,

iii. has a clean, comfortable, impermeable, nontoxic and fire retardant mattress, and

iv. is appropriate to the size and age of the client.

E. Administrative and Staff Areas

1. The CRC shall maintain a space that is distinct from the client common areas that serves as an office for administrative functions.

2. The CRC shall have a designated space for nurses and other staff to complete tasks, be accessible to clients and to observe and monitor client activity within the unit.

F. Counseling and Treatment Area

1. The CRC shall have a designated space to allow for private physical examination that is exclusive of sleeping area and common space.

2. The CRC shall have a designated space to allow for private and small group discussions and counseling sessions between individual clients and staff that is exclusive of sleeping areas and common space.

3. The CRC may utilize the same space for the counseling area and examination area.

G. Seclusion Room

1. The CRC shall have at least one seclusion room that:

a. is for no more than one client; and

b. allows for continual visual observation and monitoring of the client either:

i. directly; or

ii. by a combination of video and audio;

c. has a monolithic ceiling;

d. is a minimum of 80 square feet; and

e. contains a stationary restraint bed that is secure to the floor;

f. flat walls that are free of any protrusions with angles;

g. does not contain electrical receptacles;

H. Kitchen

1. If a CRC prepares meals on-site, the CRC shall have a full service kitchen that:

a. includes a cooktop, oven, refrigerator, freezer, hand washing station, storage and space for meal preparation;

b. complies with OPH regulations;

c. has the equipment necessary for the preparation, serving, storage and clean-up of all meals regularly served to all of the clients and staff;

d. contains trash containers covered and made of metal or United Laboratories-approved plastic; and

e. maintains the sanitation of dishes.

2. A CRC that does not provide a full service kitchen accessible to staff 24 hours per day shall have a nourishment station or a kitchenette, restricted to staff only, in which staff may prepare nourishments for clients, that includes:

a. a sink;

b. a work counter;

c. a refrigerator;

- d. storage cabinets;
- e. equipment for preparing hot and cold nourishments between scheduled meals; and
- f. space for trays and dishes used for non-scheduled meal service.

3. A CRC may utilize ice making equipment if the ice maker:

- a. is self-dispensing; or
- b. is in an area restricted to staff only;

I. Laundry

1. The CRC shall have an automatic washer and dryer for use by staff when laundering clients' clothing.

2. The CRC shall have:

- a. provisions to clean and launder soiled linen, other than client clothing, either on-site or off-site by written agreement;
- b. a separate area for holding soiled linen until it is laundered; and
- c. a clean linen storage area.

J. Storage

1. The CRC shall have separate and secure storage areas that are inaccessible to clients for the following:

- a. client possessions that may not be accessed during their stay;
- b. hazardous, flammable and/or combustible materials; and
- 2. records and other confidential information.

K. Furnishings

1. The CRC shall ensure that its furnishings are:

- a. designed to suit the size, age and functional status of the clients;
- b. in good repair;
- c. clean;
- d. promptly repaired or replaced if defective, run-down or broken.

L. Hardware, fixtures and other protrusions

1. If grab bars are used, the CRC shall ensure that the space between the bar and the wall shall be filled to prevent a cord from being tied around it.

2. All hardware as well as sprinkler heads, lighting fixtures and other protrusions shall be:

- a. recessed or of a design to prohibit client access; and
- b. tamper-resistant.

3. Towel bars, shower curtain rods, clothing rods and hooks are prohibited.

M. Ceilings

1. The CRC shall ensure that the ceiling is:

- a. no less than 7.5 feet high and secured from access; or
- b. at least 9 feet in height; and
- c. all overhead plumbing, piping, duct work or other potentially hazardous elements shall be concealed above the ceiling.

N. Doors and Windows

1. All windows shall be fabricated with laminated safety glass or protected by polycarbonate, laminate or safety screens.

2. Door hinges shall be designed to minimize points for hanging.

3. Except for specifically designed antiligature hardware, door handles shall point downward in the latched or unlatched position.

4. All hardware shall have tamper-resistant fasteners.

5. The center shall ensure that outside doors, windows and other features of the structure necessary for safety and comfort of individuals:

- a. are secured for safety;
- b. prohibit clients from gaining unauthorized egress;
- c. prohibit an outside from gaining unauthorized ingress;
- d. if in disrepair, not accessible to clients until repaired; and
- e. repaired as soon as possible.

6. The facility shall ensure that all closets, bedrooms and bathrooms for clients that are equipped with doors do not have locks and can be readily opened from both sides.

O. Smoking

1. The CRC shall prohibit smoking in the interior of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§5399. Exterior Space Requirements**

A. The CRC shall maintain all exterior areas to prevent elopement, injury, suicide and the introduction of contraband, and shall maintain a perimeter security system designed to monitor and control visitor access and client egress.

B. The facility shall maintain all exterior areas and structures of the facility in good repair and free from any reasonably foreseeable hazard to health or safety.

C. The facility shall ensure the following:

- 1. garbage stored outside is secured in non-combustible, covered containers and are removed on a regular basis;
- 2. trash collection receptacles and incinerators are separate from any area accessible to clients and located as to avoid being a nuisance;
- 3. unsafe areas, including steep grades, open pits, swimming pools, high voltage boosters or high speed roads are fenced or have natural barriers to protect clients;
- 4. fences that are in place are in good repair;
- 5. exterior areas are well lit; and
- 6. the facility has appropriate signage that:
  - a. is visible to the public;
  - b. indicates the facility's legal or trade name;
  - c. clearly states that the CRC provides behavioral health services only; and
  - d. indicates the center is not hospital or emergency room.

D. A CRC with an outdoor area to be utilized by its clients shall ensure that the area is safe and secure from access and egress.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Chapter 54. Crisis Receiving Centers**  
**Subchapter J. Safety and Emergency Preparedness**

**§5401. General Safety Provisions**

A. The CRC shall provide additional supervision when necessary to provide for the safety of all clients.

B. The CRC shall:

1. prohibit weapons of any kind on-site;
2. prohibit glass, hand sanitizer, plastic bags in client-care areas;
3. ensure that all poisonous, toxic and flammable materials are:
  - a. maintained in appropriate containers and labeled as to the contents;
  - b. securely stored in a locked cabinet or closet;
  - c. are used in such a manner as to ensure the safety of clients, staff and visitors; and
  - d. maintained only as necessary;
4. ensure that all equipment, furnishing and any other items that are in a state of disrepair are removed and inaccessible to clients until replaced or repaired; and
5. ensure that when potentially harmful materials such as cleaning solvents and/or detergents are used, training is provided to the staff and they are used by staff members only.

C. The CRC shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

D. The CRC shall simulate fire drills and other emergency drills at least once a quarter while maintaining client safety and security during the drills.

E. Required Inspections. The CRC shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations.

F. The CRC shall have an on-going safety program to include:

1. continuous inspection of the facility for possible hazards;
2. continuous monitoring of safety equipment and maintenance or repair when needed;
3. investigation and documentation of all accidents or emergencies; and
4. fire control, evacuation planning and other emergency drills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§5403. Infection Control**

A. The CRC shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases.

B. The CRC shall have an active Infection Control Program that requires:

1. reporting of infectious disease in accordance with OPH guidelines;
2. monitoring of:
  - a. the spread of infectious disease;
  - b. hand washing;
  - c. staff and client education; and
  - d. incidents of specific infections in accordance with OPH guidelines.
3. corrective actions;
4. a designated Infection Control coordinator who:

a. has education and/or experience in infection control;

b. develops and implements policies and procedures governing the infection control program;

c. takes universal precautions; and

d. strictly adheres to all sanitation requirements.

5. The CRC shall maintain a clean and sanitary environment and shall ensure that:

a. supplies and equipment are available to staff;

b. there is consistent and constant monitoring and cleaning of all areas of the facility;

c. the methods used for cleaning, sanitizing, handling and storing of all supplies and equipment prevent the transmission of infection;

d. directions are posted for sanitizing both kitchen and bathroom and laundry areas;

e. showers and bathtubs are to be sanitized by staff between client usage;

f. clothing belonging to clients must be washed and dried separately from the clothing belonging to other clients; and

g. laundry facilities are used by staff only;

h. food and waste are stored, handled, and removed in a way that will not spread disease, cause odor, or provide a breeding place for pests;

C. The CRC may enter into a written contract for housekeeping services necessary to maintain a clean and neat environment.

D. Each CRC shall have an effective pest control plan.

E. After discharge of a client, the CRC shall:

1. clean the bed, mattress, cover, bedside furniture and equipment;

2. ensure that mattresses, blankets and pillows assigned to clients are intact and in a sanitary condition; and

3. ensure that the mattress, blankets and pillows used for a client are properly sanitized before assigned to another client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§5405. Emergency Preparedness**

A. The CRC shall have a written emergency preparedness plan to:

1. maintain continuity of the center's operations in preparation for, during and after an emergency or disaster; and

2. manage the consequences of all disasters or emergencies that disrupt the center's ability to render care and treatment, or threaten the lives or safety of the clients.

B. The CRC shall:

1. post exit diagrams describing how to clear the building safely and in a timely manner;

2. have a clearly labeled and legible master floor plan(s) that indicates:

a. the areas in the facility that are to be used by clients as shelter or safe zones during emergencies;

b. the location of emergency power outlets and whether they are powered;

c. the locations of posted, accessible, emergency information; and

d. what will be powered by emergency generator(s), if applicable;

3. train its employees in emergency or disaster preparedness. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

C. The CRC's emergency preparedness plan shall include the following information, at a minimum.

1. If the center evacuates, the plan shall include:

a. provisions for the evacuation of each client and delivery of essential services to each client;

b. the center's method of notifying the client's family or caregiver, if applicable, including:

i. the date and approximate time that the facility or client is evacuating;

ii. the place or location to which the client(s) is evacuating which includes the name, address and telephone number; and

iii. a telephone number that the family or responsible representative may call for information regarding the client's evacuation;

c. provisions for ensuring that supplies, medications, clothing and a copy of the treatment plan are sent with the client, if the client is evacuated;

d. the procedure or methods that will be used to ensure that identification accompanies the client including:

i. current and active diagnosis;

ii. medication, including dosage and times administered;

iii. allergies;

iv. special dietary needs or restrictions; and

v. next of kin, including contact information if applicable.

e. transportation or arrangements for transportation for an evacuation;

2. provisions for staff to maintain continuity of care during an emergency as well as for distribution and assignment of responsibilities and functions;

3. the delivery of essential care and services to clients who are housed in the facility or by the facility at another location, during an emergency or disaster;

4. the determination as to when the facility will shelter in place and when the facility will evacuate for a disaster or emergency and the conditions that guide these determinations in accordance with local or parish OSHEP.

5. If the center shelters in place, provisions for seven days of necessary supplies to be provided by the center prior to the emergency, including drinking water or fluids and non-perishable food.

D. The center shall:

1. follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency;

2. if the state, parish or local OHSEP orders a mandatory evacuation of the parish or the area in which the agency is serving, shall ensure that all clients are evacuated according to the facility's emergency preparedness plan;

3. not abandon a client during a disaster or emergency;

4. review and update its emergency preparedness plan at least once a year;

5. cooperate with the department and with the local or parish OHSEP in the event of an emergency or disaster and shall provide information as requested;

6. monitor weather warnings and watches as well as evacuation order from local and state emergency preparedness officials;

7. upon request by the department, submit a copy of its emergency preparedness plan for review;

8. upon request by the department, submit a written summary attesting to how the plan was followed and executed to include, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

d. contingency arrangements made for those plan provisions not followed; and

e. a list of all injuries and deaths of clients that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

#### **§5407. Inactivation of License due to a Declared Disaster or Emergency**

A. A CRC located in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766, may seek to inactivate its license for a period not to exceed one year, provided that the center:

1. submits written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the CRC has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the CRC intends to resume operation as a CRC in the same service area;

c. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;

d. includes an attestation that all clients have been properly discharged or transferred to another facility; and

e. lists the clients and the location of the discharged or transferred clients;

2. resumes operating as a CRC in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil fines; and

4. continues to submit required documentation and information to the department.

B. Upon receiving a completed request to inactivate a CRC license, the department shall issue a notice of inactivation of license to the CRC.



C. In order to obtain license reinstatement, a CRC with a department-issued notice of inactivation of license shall:

1. submit a written license reinstatement request to HSS 60 days prior to the anticipated date of reopening that includes:

a. the anticipated date of opening, and a request to schedule a licensing survey;

b. a completed licensing application and other required documents with licensing fees, if applicable; and

c. written approvals for occupancy from OSFM and OPH.

D. Upon receiving a completed written request to reinstate a CRC license and other required documentation, the department shall conduct a licensing survey.

E. If the CRC meets the requirements for licensure and the requirements under this subsection, the department shall issue a notice of reinstatement of the center's license.

F. During the period of inactivation, the department prohibits:

1. a change of ownership (CHOW) in the CRC; and

2. an increase in the licensed capacity from the CRC's licensed capacity at the time of the request to inactivate the license.

G. The provisions of this Section shall not apply to a CRC which has voluntarily surrendered its license.

H. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the CRC license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1407#059

## DECLARATION OF EMERGENCY

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

#### Disproportionate Share Hospital Payments Non-Rural Community Hospitals (LAC 50:V.2701)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.2701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Due to a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing disproportionate share hospital (DSH) payments to non-rural community hospitals to eliminate the community hospital psychiatric DSH pool (*Louisiana Register*, Volume 30, Number 1). These provisions were promulgated in a final Rule published in the April 20, 2014 edition of the *Louisiana Register* along with other provisions governing DSH payments (*Louisiana Register*, Volume 40, Number 4).

The department determined that the February 1, 2013 Emergency Rule and subsequent April 20, 2014 final Rule inadvertently repealed the provisions governing DSH payments to public, non-rural community hospitals and promulgated an Emergency Rule which amended the provisions governing DSH payments in order to re-establish the provisions governing payments to public, non-rural community hospitals (*Louisiana Register*, Volume 40, Number 4). This Emergency Rule is being promulgated to continue the provisions of the March 30, 2014 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective July 29, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments in order to adopt provisions for payments to public, non-rural community hospitals.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Medical Assistance Program—Hospital Services

#### Subpart 3. Disproportionate Share Hospital Payments

#### Chapter 27. Qualifying Hospitals

#### §2701. Non-Rural Community Hospitals

##### A. Definitions

*Non-Rural Community Hospital*—a non-state, non-rural hospital that may be either publicly or privately owned. Psychiatric, rehabilitation and long term hospitals may also qualify for this category.

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1 of each fiscal year. The department will claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 18 and may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1 may not receive title XIX claim payments or any disproportionate share payments until the department receives the required certifications.

C. Hospitals shall submit supporting patient specific data in a format specified by the department, reports on their efforts to collect reimbursement for medical services from patients to reduce gross uninsured costs, and their most current year-end financial statements. Those hospitals that fail to provide such statements shall receive no payments and any payment previously made shall be refunded to the department. Submitted hospital charge data must agree with the hospital's monthly revenue and usage reports which reconcile to the monthly and annual financial statements. The submitted data shall be subject to verification by the department before DSH payments are made.

D. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose.

E. The DSH payment shall be made as an annual lump sum payment.

F. Hospitals qualifying as non-rural community hospitals in state fiscal year 2013-14 may also qualify in the federally mandated statutory hospital category.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

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

Kathy H. Kliebert  
Secretary

1407#060

## DECLARATION OF EMERGENCY

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

#### Disproportionate Share Hospital Payments Public-Private Partnerships (LAC 50:V.Chapter 29)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 29 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing disproportionate share hospital (DSH) payments for non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services (*Louisiana Register*, Volume

38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative.

The department now proposes to amend the November 1, 2012 Emergency Rule to revise the provisions governing DSH payments to hospitals participating in public-private partnerships to incorporate language approved in the corresponding state plan amendment in order to ensure compliance with federal regulations. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services, and to avoid sanctions from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for noncompliance with the approved state plan.

Effective July 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the November 1, 2012 Emergency Rule governing DSH payments to non-state owned hospitals participating in public-private partnerships.

### Title 50

## PUBLIC HEALTH—MEDICAL ASSISTANCE

### Part V. Hospital Services

#### Subpart 3. Disproportionate Share Hospital Payments Chapter 29. Public-Private Partnerships

##### §2901. Qualifying Criteria

A. Free-Standing Psychiatric Hospitals. Effective for dates of service on or after January 1, 2013, a free-standing psychiatric hospital may qualify for this category by being:

1. a Medicaid enrolled non-state privately owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility; or

2. a Medicaid enrolled non-state publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

##### §2903. Reimbursement Methodology

A. Qualifying hospitals shall be paid a per diem rate of \$581.11 per day for each uninsured patient. Qualifying hospitals must submit costs and patient specific data in a format specified by the department.

B. Cost and lengths of stay will be reviewed for reasonableness before payments are made. Payments shall be made on a monthly basis.

C. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

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

Kathy H. Kliebert  
Secretary

1407#053

## DECLARATION OF EMERGENCY

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

Inpatient Hospital Services  
Out-of-State Hospitals—Reimbursement Methodology

The Department of Health and Hospitals, Bureau of Health Services Financing repeals the December 20, 2000 Rule governing the reimbursement methodology for inpatient hospital services provided by out-of-state hospitals covered under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254, and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule governing the reimbursement of inpatient hospital services provided by out-of-state border hospitals (*Louisiana Register*, Volume 26, Number 12).

Pursuant to a settlement agreement, the Department of Health and Hospitals, Bureau of Health Services Financing now proposes to repeal the provisions of the December 20, 2000 Rule governing the reimbursement methodology for inpatient hospital services provided by out-of-state border hospitals.

This action is being taken to avoid federal sanctions from CMS. It is estimated that the implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program for state fiscal year 2014-15.

Effective July 1, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the provisions of the December 20, 2000 Rule governing the

reimbursement of inpatient hospital services provided by out-of-state border hospitals.

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

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

Kathy H. Kliebert  
Secretary

1407#013

## DECLARATION OF EMERGENCY

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

Inpatient Hospital Services  
Reimbursement Methodology  
(LAC 50:V.551 and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.551 and §967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services in order to continue medical education payments to state hospitals, children's specialty hospitals and acute care hospitals classified as teaching hospitals when the hospitals are reimbursed by prepaid risk-bearing MCOs for inpatient hospital services (*Louisiana Register*, Volume 38, Number 11). Due to a budgetary shortfall in state fiscal year 2013, the department amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 40, Number 2). However, the provisions in Sections 551 and 967 governing medical education payments were inadvertently omitted from the Rule.

To ensure that the provisions governing inpatient hospital services are promulgated in a clear and concise manner, the department has determined that it is necessary to amend the Rule governing inpatient hospital services in order to incorporate the provisions governing medical education payments which were inadvertently omitted from the February 20, 2014 Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services. It is estimated that the implementation of

this Emergency Rule will have no fiscal impact to the Medicaid Program for state fiscal year 2014-2015.

Effective July 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services.

#### **Title 50**

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

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospital Services**

#### **Chapter 5. State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

#### **§551. Acute Care Hospitals**

A. - D. ...

E. Effective for dates of service on or after February 1, 2012, medical education payments for inpatient services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be paid monthly by Medicaid as interim lump sum payments.

1. Hospitals with qualifying medical education programs shall submit a listing of inpatient claims paid each month by each MCO.

a. *Qualifying Medical Education Programs*—graduate medical education, paramedical education, and nursing schools.

2. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days times the medical education costs included in each state hospital's interim per diem rate as calculated per the latest filed Medicaid cost report.

3. Final payment shall be determined based on the actual MCO covered days and allowable inpatient Medicaid medical education costs for the cost reporting period per the Medicaid cost report.

F. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to state-owned acute care hospitals, excluding Villa Feliciana and inpatient psychiatric services, shall be reduced by 10 percent of the per diem rate on file as of July 31, 2012.

1. The Medicaid payments to state-owned hospitals that qualify for the supplemental payments, excluding Villa Feliciana and inpatient psychiatric services, shall be reimbursed at 90 percent of allowable costs and shall not be subject to per discharge or per diem limits.

2. The Medicaid payments to state-owned hospitals that do not qualify for the supplemental payments shall be reimbursed at 54 percent of allowable costs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1241 (May 2012), amended LR 38:2772 (November 2012), LR 40:312 (February 2014), LR 40:

#### **Chapter 9. Non-Rural, Non-State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

#### **§967. Children's Specialty Hospitals**

A. - H. ...

1. Effective for dates of service on or after February 1, 2012, medical education payments for inpatient services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be paid by Medicaid monthly as interim lump sum payments.

1. Hospitals with qualifying medical education programs shall submit a listing of inpatient claims paid each month by each MCO.

a. *Qualifying Medical Education Programs*—graduate medical education, paramedical education, and nursing schools.

2. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days times the medical education costs included in each children's specialty hospital's interim per diem rate as calculated per the latest filed Medicaid cost report.

3. Final payment shall be determined based on the actual MCO covered days and medical education costs for the cost reporting period per the Medicaid cost report. Reimbursement shall be at the same percentage that is reimbursed for fee-for-service covered Medicaid costs after application of reimbursement caps as specified in §967.A.-C and reductions specified in §967.F-H.

J. - K. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), LR 40:

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

Kathy H. Kliebert  
Secretary

1407#055

### **DECLARATION OF EMERGENCY**

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

Intermediate Care Facilities for Persons  
with Intellectual Disabilities  
Provider Fee Increase  
(LAC 50:VII.32903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Due to a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities (ICFs/DD), hereafter referred to as intermediate care

facilities for persons with intellectual disabilities (ICFs/ID), to reduce the per diem rates (*Louisiana Register*, Volume 39, Number 10).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/ID to increase the add-on amount to the per diem rate for the provider fee (*Louisiana Register*, Volume 40, Number 3). This Emergency Rule is being promulgated in order to continue the provisions of the April 1, 2014 Emergency Rule. This action is being taken to secure new and enhanced funding by increasing revenue collections to the state.

Effective July 31, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for intermediate care facilities for persons with intellectual disabilities to increase the provider fee.

#### **Title 50**

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

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

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

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

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

#### **§32903. Rate Determination**

A. - D.4.d. ...

i. Effective for dates of service on or after April 1, 2014, the add-on amount to each ICF/ID's per diem rate for the provider fee shall be increased to \$16.15 per day.

E. - M. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), LR 37:3028 (October 2011), LR 39:1780 (July 2013), LR 39:2766 (October 2013), LR 40:

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

Kathy H. Kliebert  
Secretary

1407#061

### **DECLARATION OF EMERGENCY**

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

Medicaid Eligibility  
Modified Adjusted Gross Income  
(LAC 50:III.2327, 2529, 10307, and 10705)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:III.10705 and adopts §2327, §2529 and §10307 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title

XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 1004(a)(2) of the Patient Protection and Affordable Care Act (ACA) of 2010 and Section 36B (d)(2)(B) of the *Internal Revenue Code* mandate that Medicaid eligibility use the Modified Adjusted Gross Income (MAGI) methodology for eligibility determinations for certain eligibility groups. In compliance with the ACA and *Internal Revenue Code*, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing Medicaid eligibility to adopt the MAGI eligibility methodology (*Louisiana Register*, Volume 40, Number 1). The department also adopted provisions which allow qualified hospitals to make determinations of presumptive eligibility for individuals who are not currently enrolled in Medicaid.

The department promulgated an Emergency Rule which amended the provisions of the December 31, 2013 Emergency Rule in order to make technical revisions to ensure that these provisions are appropriately promulgated in a clear and concise manner (*Louisiana Register*, Volume 40, Number 4). The provisions governing the MAGI eligibility changes for the State Children's Health Insurance Program were removed from this Emergency Rule and repromulgated independently. This Emergency Rule is being promulgated in order to continue the provisions of the April 20, 2014 Emergency Rule. This action is being taken to avoid federal sanctions.

Effective August 19, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing Medicaid eligibility.

#### **Title 50**

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

#### **Part III. Eligibility**

#### **Subpart 3. Eligibility Groups and Factors**

#### **Chapter 23. Eligibility Groups and Medicaid Programs**

#### **§2327. Modified Adjusted Gross Income (MAGI) Groups**

A. For eligibility determinations effective December 31, 2013 eligibility shall be determined by modified adjusted gross income (MAGI) methodology in accordance with section 1004(a)(2) of the Patient Protection and Affordable Care Act (ACA) of 2010 and Section 36B (d)(2)(B) of the *Internal Revenue Code*, for the following groups:

1. parents and caretakers relatives group which includes adult individuals formerly considered for Low Income Families with Children as parents or caretaker relatives;
2. pregnant women;
3. child related groups; and
4. other adult related groups including breast and cervical cancer, tuberculosis (TB) and family planning.

B. A MAGI determination will be necessary for each individual in the home for whom coverage is being requested. The MAGI household resembles the tax household.

1. MAGI Household. The individual's relationship to the tax filer and every other household member must be established for budgeting purposes. The MAGI household is constructed based on whether an individual is a:

- a. tax filer;
- b. tax dependent; or
- c. non-filer (neither tax filer or tax dependent).

2. For the tax filer the MAGI household includes the tax filer and all claimed tax dependents.

a. Whether claimed or not, the tax filer's spouse, who lives in the home, must be included.

b. If a child files taxes and is counted as a tax dependent on his/her parent's tax return, the child is classified as a tax dependent not a tax filer.

3. When taxes are filed for the tax dependent the MAGI household consists of the tax filer and all other tax dependents unless one of the following exceptions is met:

a. being claimed as a tax dependent by a tax filer other than a parent or spouse (for example, a grandchild, niece, or tax filer's parent);

b. children living with two parents who do not expect to file a joint tax return (including step-parents); or

c. children claimed as a tax dependent by a non-custodial parent.

4. For individuals who do not file taxes nor expect to be claimed as a tax dependent (non-filer), the MAGI household consists of the following when they all live together:

a. for an adult:

i. the individual's spouse; and

ii. the individual's natural, adopted, and step-children under age 19; and

b. for a minor:

i. the individual's natural, adoptive, or step-parents; and

ii. the individual's natural, adopted, and step-siblings under age 19.

#### C. Parents and Caretaker Group.\

1. A caretaker relative is a relative of a dependent child by blood, adoption, or marriage with whom the child is living, and who assumes primary responsibility for the child's care. A caretaker relative must be one of the following:

- a. parent;
- b. grandparent;
- c. sibling;
- d. brother-in-law;
- e. sister-in-law;
- f. step-parent;
- g. step-sibling;
- h. aunt;
- i. uncle;
- j. first cousin;
- k. niece; or
- l. nephew.

2. The spouse of such parents or caretaker relatives may be considered a caretaker relative even after the marriage is terminated by death or divorce.

3. The assistance/benefit unit consists of the parent and/or caretaker relative and the spouse of the parent and/or caretaker relative, if living together, of child(ren) under age 18, or is age 18 and a full-time student in high school or

vocational/technical training. Children are considered deprived if income eligibility is met for the parents and caretaker relatives group. Children shall be certified in the appropriate children's category.

#### D. Pregnant Women Group

1. Eligibility for the pregnant women group may begin:

a. at any time during a pregnancy; and

b. as early as three months prior to the month of application.

2. Eligibility cannot begin before the first month of pregnancy. The pregnant women group certification may extend through the calendar month in which the 60-day postpartum period ends.

3. An applicant/enrollee whose pregnancy terminated in the month of application or in one of the three months prior without a surviving child shall be considered a pregnant woman for the purpose of determining eligibility in the pregnant women group.

4. Certification shall be from the earliest possible month of eligibility (up to three months prior to application) through the month in which the 60-day postpartum period ends.

5. Retroactive eligibility shall be explored regardless of current eligibility status.

a. If the applicant/enrollee is eligible for any of the three prior months, she remains eligible throughout the pregnancy and 60-day postpartum period. When determining retroactive eligibility actual income received in the month of determination shall be used.

b. If application is made after the month the postpartum period ends, the period of eligibility will be retroactive but shall not start more than three months prior to the month of application. The start date of retroactive eligibility is determined by counting back three months prior to the date of application. The start date will be the first day of that month.

6. Eligibility may not extend past the month in which the postpartum period ends.

7. The applicant/enrollee must be income eligible during the initial month of eligibility only. Changes in income after the initial month will not affect eligibility.

#### E. Child Related Groups

1. Children Under Age 19-CHAMP. CHAMP children are under age 19 and meet income and non-financial eligibility criteria. ACA expands mandatory coverage to all children under age 19 with household income at or below 133 percent federal poverty level (FPL). Such children are considered CHAMP Children.

2. Children Under Age 19-LaCHIP. A child covered under the Louisiana State Children's Health Insurance Program (LaCHIP) shall:

a. be under age 19;

b. not be eligible for Medicaid under any other optional or mandatory eligibility group or eligible as medically needy (without spend-down liability);

c. not be eligible for Medicaid under the policies in the State's Medicaid plan in effect on April 15, 1997;

d. not have health insurance; and

e. have MAGI-based income at or below 212 percent (217 percent FPL with 5 percent disregard) of the federal poverty level.

3. Children Under Age 19-LaCHIP Affordable Plan. A child covered under the Louisiana State Children's Health Insurance Program (LaCHIP) Affordable Plan shall:

- a. be under age 19;
- b. not be income eligible for regular LaCHIP;
- c. have MAGI-based income that does not exceed 250 percent FPL;
- d. not have other insurance or access to the state employees health plan;
- e. have been determined eligible for child health assistance under the state Child Health Insurance Plan; and
- f. be a child whose custodial parent has not voluntarily dropped the child(ren) from employer sponsored insurance within last three months without good cause. Good cause exceptions to the three month period for dropping employer sponsored insurance are:
  - i. lost insurance due to divorce or death of parent;
  - ii. lifetime maximum reached;
  - iii. COBRA coverage ends (up to 18 months);
  - iv. insurance ended due to lay-off or business closure;
  - v. changed jobs and new employer does not offer dependent coverage;
  - vi. employer no longer provides dependent coverage;
  - vii. monthly family premium exceeds 9.5 percent of household income; or
  - viii. monthly premium for coverage of the child exceeds 5 percent of household income.

4. Children Under Age 19-Phase IV LaCHIP (SCHIP). The state Child Health Insurance Program (SCHIP) provides prenatal care services, from conception to birth, for low income uninsured mothers who are not otherwise eligible for other Medicaid programs, including CHAMP pregnant women benefits. This program, Phase IV LaCHIP, also covers non-citizen women who are not qualified for other Medicaid programs due to citizenship status only.

F. Regular and Spend Down Medically Needy MAGI. Regular and spend down medically needy shall use the MAGI determination methodology.

G. Foster Care Children. Foster care children are applicants/enrollees under 26 years of age, who were in foster care under the responsibility of the state at the time of their eighteenth birthday, and are not eligible or enrolled in another mandatory coverage category.

1. Foster care children may also be applicants/enrollees who:
  - a. have lost eligibility due to moving out of state, but re-established Louisiana residency prior to reaching age 26; or
  - b. currently reside in Louisiana, but were in foster care in another state's custody upon reaching age 18.
2. Foster care children must:
  - a. be at least age 18, but under age 26;
  - b. currently lives in Louisiana;
  - c. have been a child in foster care in any state's custody upon reaching age 18; and
  - d. not be eligible for coverage in another mandatory group.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

## **Chapter 25. Eligibility Factors**

### **§2529. Hospital Presumptive Eligibility**

A. Effective December 31, 2013 any hospital designated by Louisiana Medicaid as a hospital presumptive eligibility qualified provider (HPEQP) may obtain information and determine hospital presumptive eligibility (HPE) for individuals who are not currently enrolled in Medicaid and who are in need of medical services covered under the state plan.

1. Coverage groups eligible to be considered for hospital presumptive eligibility include:

- a. parents and other caretaker relatives;
- b. pregnant women;
- c. children under age 19;
- d. former foster care children;
- e. family planning; and
- f. certain individuals needing treatment for breast or cervical cancer.

B. Qualified Hospitals. Qualified hospitals shall be designated by the department as entities qualified to make presumptive Medicaid eligibility determinations based on preliminary, self-attested information obtained from individuals seeking medical assistance.

1. A qualified hospital shall:

- a. be enrolled as a Louisiana Medicaid provider under the Medicaid state plan or a Medicaid 1115 demonstration;
- b. not be suspended or excluded from participating in the Medicaid Program;
- c. have submitted a statement of interest in making presumptive eligibility determinations to the department; and
- d. agree to make presumptive eligibility determinations consistent with the state policies and procedures.

C. The qualified hospital shall educate the individuals on the need to complete an application for full Medicaid and shall assist individuals with:

1. completing and submitting the full Medicaid application; and
2. understanding any document requirements as part of the full Medicaid application process.

D. Eligibility Determinations

1. Household composition and countable income for HPE coverage groups are based on modified adjusted gross income (MAGI) methodology.

2. The presumptive eligibility period shall begin on the date the presumptive eligibility determination is made by the qualified provider.

3. The end of the presumptive eligibility period is the earlier of:

- a. the date the eligibility determination for regular Medicaid is made, if an application for regular Medicaid is filed by the last day of the month following the month in which the determination for presumptive eligibility is made; or

b. the last day of the month following the month in which the determination of presumptive eligibility is made, if no application for regular Medicaid is filed by that date.

4. Those determined eligible for presumptive eligibility shall be limited to no more than one period of eligibility in a 12-month period, starting with the effective date of the initial presumptive eligibility period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

### **Subpart 5. Financial Eligibility**

#### **Chapter 103. Income**

#### **§10307. Modified Adjusted Gross Income—(MAGI)**

##### **Groups**

##### **A. MAGI Related Types of Income**

1. Alimony shall be counted as unearned income payments made directly to the household from non-household members.

2. Alien sponsor's income shall be counted against the flat grant needs of the alien's household. If the income of the sponsor is equal to or greater than the flat grant amount for the number of people in the alien parent's family, the alien parent(s) is not eligible for inclusion in his children's Medicaid certification.

3. Business income or loss shall be countable net profit or loss from partnerships, corporations, etc.

4. Capital gain or loss shall be countable income.

5. A child's earned income is counted, except for the tax filer's budget when earnings are below the tax filing threshold.

6. Annual income received under an implied, verbal, or written contract in less than 12 months shall be averaged over the 12-month period it is intended to cover unless the income is received on an hourly or piecework basis.

7. Disability insurance benefits shall count as unearned income. If federal and/or state taxes are deducted, disability insurance benefits shall count as earned income.

8. Dividends shall count as unearned income. Dividends shall be averaged for the period they are intended to cover.

9. Interest, including tax-exempt interest, shall count as unearned income. Interest shall be averaged for the period it is intended to cover.

10. Irregular and unpredictable income shall count as income in the month of receipt. Annual income received under an implied, verbal, or written contract in less than 12 months shall be averaged over the 12 month period it is intended to cover unless the income is received on an hourly or piecework basis.

11. Income received from employment through the Job Training Partnership Act of 1982 (JTPA) program shall be counted as earned income. JTPA income received for training through JTPA program shall be counted as unearned income.

12. A non-recurring cash payment (lump sum) shall count as income only in the calendar month of receipt. This includes insurance settlements, back pay, state tax refunds, inheritance, IRA or other retirement distributions, and retroactive benefit payments.

13. Regular recurring income from oil and land leases shall be counted over the period it is intended to cover and

counted as unearned income. Payments received in the first year of an oil lease, which are above the regular recurring rental and payments received when an oil lease is written for only one year, are treated as non-recurring lump sum payments.

14. Pensions and annuities shall count as unearned income.

15. Income is potentially available when the applicant/enrollee has a legal interest in a liquidated sum and has the legal ability to make this sum available for the support and maintenance of the assistance unit. Potential income shall be counted when it is actually available as well as when it is potentially available but the applicant/enrollee chooses not to receive the income. If the agency representative is unable to determine the amount of benefits available, the application shall be rejected for failure to establish need.

16. Railroad retirement shall count as unearned income the amount of the entitlement including the amount deducted from the check for the Medicare premiums, less any amount that is being recouped for a prior overpayment.

17. Ownership of rental property is considered a self-employment enterprise. Income received from rental property may be earned or unearned. To be counted as earned income, the applicant/enrollee must perform some work related activity. If the applicant/enrollee does not perform work related activity, the money received shall be counted as unearned income. Only allowable expenses associated with producing the income may be deducted. If the income is earned, any other earned income deductions are allowed.

18. The gross amount of retirement benefits, including military retirement benefits, counts as unearned income.

19. Royalties shall count as unearned income. Royalties shall be prorated for the period they are intended to cover.

20. Scholarships, awards, or fellowship grants shall count as unearned income if used for living expenses such as room and board.

21. Seasonal earnings shall count as earned income in the month received. If contractual, such as a bus driver or teacher, the income shall be prorated over the period it is intended to cover. If earnings are self-employment seasonal income, they shall be treated as self-employment income as below in Paragraph 22.

22. Self-employment income is counted as earned income. Self-employment income is income received from an applicant/enrollee's own business, trade, or profession if no federal or state withholding tax or Social Security tax is deducted from his job payment. This may include earnings as a result of participation in Delta Service Corps and farm income.

a. Allowable expenses are those allowed when filing taxes on a schedule C or farm income schedule F.

23. Social Security retirement, survivors and disability insurance benefits (RSDI) shall count as unearned income. The amount counted shall be that of the entitlement including the amount deducted from the check for the Medicare premium, less any amount that is being recouped for a prior overpayment.

24. Income from taxable refunds, credits, or offsets of state and local income taxes if claimed on Form 1040 shall count as unearned income.



25. Income from income trust withdrawals, dividends, or interest which are or could be received by the applicant/enrollee shall count as unearned income.

26. Tutorship funds are any money released by the court to the applicant/enrollee and shall be counted as unearned income.

27. Unemployment compensation benefits (UCB) shall be counted as unearned income in the month of receipt.

28. Taxable gross wages, salaries, tips, and commissions, including paid sick and vacation leave, shall count as earned income. Included as earned income are:

- a. vendor payments made by the employer instead of all or part of the salary;
- b. the cash value of an in-kind item received from an employer instead of all or part of the salary; and
- c. foreign earnings.

29. The following types of income shall not be counted for MAGI budgeting:

- a. adoption assistance;
- b. agent orange settlement payments;
- c. American Indian and Native American claims and lands and income distributed from such ownership;
- d. Census Bureau earnings;
- e. child support payments received for anyone in the home;
- f. contributions from tax-exempt organizations;
- g. disaster payments;
- h. Domestic Volunteer Service Act;
- i. earned income credits;
- j. educational loans;
- k. energy assistance;
- l. foster care payments;
- m. Housing and Urban Development (HUD) block grant funds, payments, or subsidies;
- n. in-kind support and maintenance;
- o. loans;
- p. income from nutritional programs;
- q. income from radiation exposure;
- r. relocation assistance;
- s. scholarships, awards or fellowship grants used for education purposes and not for living expenses;
- t. Supplemental Security income (SSI);
- u. vendor payments;
- v. veterans' benefits;
- w. Women, Infants and Children Program (WIC) benefits;
- x. work-study program income;
- y. worker's compensation benefits; and
- z. cash contributions. Money which is contributed by the absent parent of a child in the assistance unit is considered child support and not counted. Small, non-recurring monetary gifts (e.g., Christmas, birthday, or graduation gifts) are not counted. Cash contributions include any money other than loans received by or for a member of the income unit if:

i. the use is left to the discretion of the member of the income unit; or

ii. the contribution is provided for the specific purpose of meeting the maintenance needs of a member of the assistance unit.

B. Financial eligibility for the MAGI groups shall be made using income received in the calendar month prior to

the month of application or renewal as an indicator of anticipated income. The taxable gross income of each member of the MAGI household shall be used. Income eligibility of the household shall be based on anticipated income and circumstances unless it is discovered that there are factors that will affect income currently or in future months.

1. Income eligibility is determined by prospective income budgeting or actual income budgeting.

a. Prospective income budgeting involves looking at past income to determine anticipated future income. Income earned in the calendar month prior to the month of application or renewal which the applicant/enrollee earned shall be used to determine expected income in the current and future months.

b. Actual income budgeting involves looking at income actually received within a specific month to determine income eligibility for that month. Actual income shall be used for all retroactive coverage. Actual income or the best estimate of anticipated actual income shall be used if:

- i. the income terminates during the month;
- ii. the income begins during the month; or
- iii. the income is interrupted during the month.

2. Income of a Tax Dependent. The earned income of a tax dependent including a child shall be counted when calculating the financial eligibility of a tax filer when the earned income meets the tax filing threshold. The unearned income of a tax dependent, including a child, shall be used when calculating MAGI based financial eligibility regardless of tax filing status (e.g., RSDI).

a. Cash contributions to a dependent shall be counted towards the dependent.

3. Allowable Tax Deductions for MAGI. The following deductions from an individual's income shall be used to determine the individual's adjusted gross income:

- a. educator expenses;
- b. certain business expenses of reservists, performing artists and fee basis government offices;
- c. health savings account deductions;
- d. moving expenses;
- e. the deductible part of self-employment tax;
- f. self-employed SEP, SIMPLE and qualified plans;
- g. self-employed health insurance deduction;
- h. the penalty on early withdrawal of savings;
- i. alimony paid outside the home;
- j. IRA deductions;
- k. student loan interest deduction;
- l. tuition and fees; and
- m. domestic production activities deductions.

4. A 5 percent disregard shall be allowed on MAGI budgets when it is the difference between eligibility or ineligibility for the individual in a child related program.

5. The net countable income for the individual's household shall be compared to the applicable income standard for the household size to determine eligibility.

a. If the countable income is below the income standard for the applicable MAGI group, the individual is income eligible.

b. If the countable income is above the income standard for the applicable MAGI group, the individual is income ineligible.

C. Federal Poverty Income Guidelines (FPIG). Eligibility shall be based upon the following guidelines using the Federal Poverty Income Guidelines and adjusted to account for the 5 percent disregard:

1. parents/caretakers, income is less or equal to 24 percent FPIG;
2. pregnant Women, income is less or equal to 138 percent FPIG;
3. CHAMP (children 0-18), income is less or equal to 147 percent FPIG;
4. LaChip, income is less or equal to 217 percent FPIG;
5. LaChip IV (unborn option), income is less or equal to 214 percent FPIG; and
6. LaCHIP Affordable Plan, income does not exceed 255 percent FPIG.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Chapter 107. Resources**  
**§10705. Resource Disregards**

A. - C.2. ...

D. Modified Adjusted Gross Income (MAGI) Groups. Resources will be disregarded for those groups using the MAGI determinations methodology.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1899 (September 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2867 (December 2010), LR 40:

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

Kathy H. Kliebert  
Secretary

1407#062

**DECLARATION OF EMERGENCY**

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

Nursing Facilities—Standards for Payment  
Level of Care Determinations  
(LAC 50:II.10156)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:II.10156 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in

effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the standards for payment for nursing facilities to clarify level of care determinations (*Louisiana Register*, Volume 39, Number 6). This Emergency Rule is being promulgated to amend the provisions governing level of care pathways in order to clarify the provisions of the June 20, 2013 Rule.

This action is being taken to promote the well-being of Louisiana citizens by clarifying the criteria for the level of care determination for nursing facility admission and continued stay. It is anticipated that the implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2014-2015.

Effective July 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services amend the provisions governing the level of care pathways for nursing facilities.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part II. Medical Assistance Program**

**Subpart 3. Standards for Payment**

**Chapter 101. Standards for Payment for Nursing Facilities**

**Subchapter G. Levels of Care**

**§10156. Level of Care Pathways**

A. - B. ...

C. The level of care pathways elicit specific information, within a specified look-back period, regarding the individual's:

1. ...
2. receipt of assistance with activities of daily living (ADL);

C.3. - E.2.m. ...

**F. Physician Involvement Pathway**

1. - 2. ...
3. In order for an individual to be approved under the Physician Involvement Pathway, the individual must have one day of doctor visits and at least four new order changes within the last 14 days or:

a. at least two days of doctor visits and at least two new order changes within the last 14 days; and

F.3.b. - I.1.d. ...

2. In order for an individual to be approved under the behavior pathway, the individual must have:

a. exhibited any one of the following behaviors four to six days of the screening tool's seven-day look-back period, but less than daily:

i. - ii. ...

iii. physically abusive;

iv. socially inappropriate or disruptive; or

b. exhibited any one of the following behaviors daily during the screening tool's seven-day look-back period:

i. - iii. ...

iv. socially inappropriate or disruptive; or

c. experienced delusions or hallucinations within the screening tool's seven-day look-back period that impacted his/her ability to live independently in the community; or

- d. exhibited any one of the following behaviors during the assessment tool's three-day look-back period and behavior(s) were not easily altered:
  - i. wandering;
  - ii. verbally abusive;
  - iii. physically abusive;
  - iv. socially inappropriate or disruptive; or
- e. experienced delusions or hallucinations within the assessment tool's three-day look-back period that impacted his/her ability to live independently in the community.

J. - J.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:342 (January 2011), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:1471 (June 2013), LR 40:

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

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

Kathy H. Kliebert  
Secretary

1407#056

## DECLARATION OF EMERGENCY

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

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

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

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state

owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative. The department promulgated an Emergency Rule which amended the provisions of the November 1, 2012 Emergency Rule to revise the reimbursement methodology in order to correct the federal citation (*Louisiana Register*, Volume 39, Number 3).

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

Effective August 12, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing Medicaid payments for outpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 5. Outpatient Hospital Services

#### Chapter 67. Public-Private Partnerships

#### §6703. Reimbursement Methodology

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

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

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

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

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

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

5. Other Outpatient Hospital Services. The reimbursement amount for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital

facility fees shall be an interim payment equal to 95 percent of allowable Medicaid cost.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

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

Kathy H. Kliebert  
Secretary

1407#063

## DECLARATION OF EMERGENCY

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

Pediatric Day Health Care Program  
(LAC 48:I.Chapters 52 and 125 and LAC 50:XV.27503)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.5237, §5247, §5257, §12501-12503, adopts §12508, and amends LAC 50:XV.27503 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 432 of the 2004 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing the licensing standards for pediatric day health care facilities (*Louisiana Register*, Volume 35, Number 12). The department subsequently adopted provisions to implement pediatric day health care (PDHC) services as an optional covered service under the Medicaid state plan (*Louisiana Register*, Volume 36, Number 7).

The department promulgated an Emergency Rule which amended the licensing standards for PDHC facilities to revise the provisions governing provider participation, development and educational services and transportation requirements, and to adopt provisions for the inclusion of PDHC facilities in the facility need review (FNR) Program. This Emergency Rule also amended the provisions governing pediatric day health care services in order to revise the recipient criteria which will better align the program's operational procedures with the approved Medicaid state plan provisions governing these services (*Louisiana Register*, Volume 40, Number 3.)

The department promulgated an Emergency Rule which amended the March 1, 2014 Emergency Rule in order to revise the additional grandfather provisions for the facility need review process for the Pediatric Day Health Care Program (*Louisiana Register*, Volume 40, Number 4). This Emergency Rule is being promulgated to continue the

provisions of the April 20, 2014 Emergency Rule. This action is being taken to avoid sanctions or federal penalties from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as the administrative rule is not consistent with the approved Medicaid state plan for PDHC services, and to ensure that these optional services are more cost effective and appropriate.

Effective August 19, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Facility Need Review Program for Pediatric Day Health Care Program.

## Title 48

### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 52. Pediatric Day Health Care Facilities

#### Subchapter D. Participation Requirements

#### §5237. Acceptance Criteria

A. - D.1. ...

2. The medical director of the PDHC facility may provide the referral to the facility only if he/she is the child's prescribing physician, and only if the medical director has no ownership interest in the PDHC facility.

3. No member of the board of directors of the PDHC facility may provide a referral to the PDHC. No member of the board of directors of the PDHC facility may sign a prescription as the prescribing physician for a child to participate in the PDHC facility services.

4. No physician with ownership interest in the PDHC may provide a referral to the PDHC. No physician with ownership interest in the PDHC may sign a prescription as the prescribing physician for a child to participate in the PDHC facility services.

5. Notwithstanding anything to the contrary, providers are expected to comply with all applicable federal and state rules and regulations including those regarding anti-referral and the stark law.

E. - G.2. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2193 – 40:2193.4.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2769 (December 2009), amended LR 40:

#### Subchapter E. Pediatric Day Health Care Services

#### §5247. Developmental and Educational Services

A. ...

B. For any child enrolled in the early intervention program (EarlySteps) or the local school district's program under the Individuals with Disabilities Act, the PDHC facility shall adhere to the following.

1. ...

2. The PDHC facility shall not duplicate services already provided through the early intervention program or the local school district. EarlySteps services cannot be provided in the PDHC unless specifically approved in writing by the DHH EarlySteps Program. Medicaid waiver services cannot be provided in the PDHC unless specifically approved in writing by the Medicaid waiver program. The PDHC shall maintain a copy of such written approval in the child's medical record.

B.3. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193 - 40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2770 (December 2009), amended LR 40:

**§5257. Transportation**

A. The PDHC facility shall provide or arrange transportation of children to and from the facility; however, no child, regardless of his/her region of origin, may be in transport for more than one hour on any single trip. The PDHC facility is responsible for the safety of the children during transport. The family may choose to provide their own transportation.

1. - 1.b. Repealed.

B. Whether transportation is provided by the facility on a daily basis or as needed, the general regulations under this Section shall apply.

C. If the PDHC facility provides transportation for children, the PDHC facility shall maintain in force at all times current commercial liability insurance for the operation of PDHC facility vehicles, including medical coverage for children in the event of accident or injury.

1. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment.

2. The PDHC facility shall maintain documentation that consists of the insurance policy or current binder that includes the name of the PDHC facility, the name of the insurance company, policy number, and period of coverage and explanation of coverage.

3. DHH Health Standards shall specifically be identified as the certificate holder on the policy and any certificate of insurance issued as proof of insurance by the insurer or producer (agent). The policy must have a cancellation/change statement requiring notification of the certificate holder 30 days prior to any cancellation or change of coverage.

D. If the PDHC facility arranges transportation for children through a transportation agency, the facility shall maintain a written contract which is signed by a facility representation and a representative of the transportation agency. The contract shall outline the circumstances under which transportation will be provided.

1. The written contract shall be dated and time limited and shall conform to these licensing regulations.

2. The transportation agency shall maintain in force at all times current commercial liability insurance for the operation of transportation vehicles, including medical coverage for children in the event of accident or injury. Documentation of the insurance shall consist of the:

- a. insurance policy or current binder that includes the name of the transportation agency;
- b. name of the insurance agency;
- c. policy number;
- d. period of coverage; and
- e. explanation of coverage.

3. DHH Health Standards shall specifically be identified as the certificate holder on the policy and any certificate of insurance issued as proof of insurance by the insurer or producer (agent). The policy must have a cancellation/change statement requiring notification of the certificate holder 30 days prior to any cancellation or change of coverage.

4. - 10. Repealed.

E. Transportation arrangements, whether provided by the PDHC facility directly or arranged by the PDHC facility through a written contract with a transportation agency shall meet the following requirements.

1. Transportation agreements shall conform to state laws, including laws governing the use of seat belts and child restraints. Vehicles shall be accessible for people with disabilities or so equipped to meet the needs of the children served by the PDHC facility.

2. The driver or attendant shall not leave the child unattended in the vehicle at any time.

2.a. - 6. Repealed.

F. Vehicle and Driver Requirements

1. The requirements of Subsection F of this Section shall apply to all transportation arrangements, whether provided by the PDHC facility directly or arranged by the PDHC facility through a written contract with a transportation agency.

2. The vehicle shall be maintained in good repair with evidence of an annual safety inspection.

3. The following actions shall be prohibited in any vehicle while transporting children:

- a. the use of tobacco in any form;
- b. the use of alcohol;
- c. the possession of illegal substances; and
- d. the possession of firearms, pellet guns, or BB guns (whether loaded or unloaded).

4. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

5. The facility shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles used to transport children on behalf of the PDHC facility. At a minimum, a class "D" chauffeur's license is required for all drivers who transport children on behalf of the PDHC facility.

6. Each transportation vehicle shall have evidence of a current safety inspection.

7. There shall be first aid supplies in each facility or contracted vehicle. This shall include oxygen, pulse oximeter, and suction equipment. Additionally, this shall include airway management equipment and supplies required to meet the needs of the children being transported.

8. Each driver or attendant shall be provided with a current master transportation list including:

- a. each child's name;
- b. pick up and drop off locations; and
- c. authorized persons to whom the child may be released.

i. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

9. The driver or attendant shall maintain an attendance record for each trip. The record shall include:

- a. the driver's name;
- b. the date of the trip;
- c. names of all passengers (children and adults) in the vehicle; and
- d. the name of the person to whom the child was released and the time of release.

10. There shall be information in each vehicle identifying the name of the administrator and the name, telephone number, and address of the facility for emergency situations.

**G. Child Safety Provisions**

1. The requirements of Subsection G of this Section shall apply to all transportation arrangements, whether provided by the PDHC facility directly or arranged by the PDHC facility through a written contract with a transportation agency.

2. The driver and one appropriately trained staff member shall be required at all times in each vehicle when transporting any child. Staff shall be appropriately trained on the needs of each child, and shall be capable and responsible for administering interventions when appropriate.

3. Each child shall be safely and properly:

- a. assisted into the vehicle;
- b. restrained in the vehicle;
- c. transported in the vehicle; and
- d. assisted out of the vehicle.

4. Only one child shall be restrained in a single safety belt or secured in any American Academy of Pediatrics recommended age appropriate safety seat.

5. The driver or appropriate staff person shall check the vehicle at the completion of each trip to ensure that no child is left in the vehicle.

a. The PDHC facility shall maintain documentation that includes the signature of the person conducting the check and the time the vehicle is checked. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

6. During field trips, the driver or staff member shall check the vehicle and account for each child upon arrival at, and departure from, each destination to ensure that no child is left in the vehicle or at any destination.

a. The PDHC facility shall maintain documentation that includes the signature of the person conducting the check and the time the vehicle was checked for each loading and unloading of children during the field trip. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

7. Appropriate staff person(s) shall be present when each child is delivered to the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193 – 40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2771 (December 2009), amended LR 40:

**Subpart 5. Health Planning**

**Chapter 125. Facility Need Review**

**Subchapter A. General Provisions**

**§12501. Definitions**

A. Definitions. When used in this Chapter the following terms and phrases shall have the following meanings unless the context requires otherwise.

\* \* \*

*Pediatric Day Health Care (PDHC) Providers*—a facility that may operate seven days a week, not to exceed 12 hours a day, to provide care for medically fragile children under the age of 21, including technology dependent children who require close supervision. Care and services to

be provided by the pediatric day health care facility shall include, but not be limited to:

- a. nursing care, including, but not limited to:
  - i. tracheotomy and suctioning care;
  - ii. medication management; and
  - iii. intravenous (IV) therapy;
- b. respiratory care;
- c. physical, speech, and occupational therapies;
- d. assistance with activities of daily living;
- e. transportation services; and
- f. education and training.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2437 (November 2009), amended LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 40:

**§12503. General Information**

A. - B. ...

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

- 1. - 3. ...
- 4. hospice providers or inpatient hospice facilities;
- 5. outpatient abortion facilities; and
- 6. pediatric day health care facilities.

D. - F.4. ...

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers, ICFs-DD, ADHC providers, hospice providers, outpatient abortion facilities, and pediatric day health care centers that meet one of the following conditions:

- 1. - 3. ...
- 4. hospice providers that were licensed, or had a completed initial licensing application submitted to the department, by March 20, 2012;
- 5. outpatient abortion facilities which were licensed by the department on or before May 20, 2012; or
- 6. pediatric day health care providers that were licensed by the department before March 1, 2014, or an entity that meets all of the following requirements:

a. has a building site or plan review approval for a PDHC facility from the Office of State Fire Marshal by March 1, 2014;

b. has begun construction on the PDHC facility by April 30, 2014, as verified by a notarized affidavit from a licensed architect submitted to the department, or the entity had a fully executed and recorded lease for a facility for the specific use as a PDHC facility by April 30, 2014, as verified by a copy of a lease agreement submitted to the department;

c. submits a letter of intent to the department's Health Standards Section by April 30, 2014, informing the department of its intent to operate a PDHC facility; and

d. becomes licensed as a PDHC by the department no later than December 31, 2014.

H. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1593 (July 2012), LR 38:1961 (August 2012), LR 40:

**Subchapter B. Determination of Bed, Unit, Facility or Agency Need**

**§12508. Pediatric Day Health Care Providers**

A. No PDHC provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of a PDHC provider license. Once the FNR Program approval is granted, a PDHC provider is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

B. For purposes of facility need review, the service area for a proposed PDHC shall be within a 30 mile radius of the proposed physical address where the provider will be licensed.

C. Determination of Need/Approval

1. The department will review the application to determine if there is a need for an additional PDHC provider in the geographic location and service area for which the application is submitted.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application, and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed.

3. In reviewing the application, the department may consider, but is not limited to, evidence showing:

a. the number of other PDHC providers in the same geographic location, region, and service area servicing the same population; and

b. allegations involving issues of access to health care and services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

D. Applications for approvals of licensed providers submitted under these provisions are bound to the description in the application with regard to the type of services proposed as well as to the site and location as defined in the application. FNR approval of licensed providers shall expire if these aspects of the application are altered or changed.

E. FNR approvals for licensed providers are non-transferable and are limited to the location and the name of the original licensee.

1. A PDHC provider undergoing a change of location in the same licensed service area shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with the name and new location. A PDHC provider undergoing a change of location outside of the licensed service area shall submit a new FNR

application and appropriate fee and undergo the FNR approval process.

2. A PDHC provider undergoing a change of ownership shall submit a new application to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which must show the seller's or transferor's intent to relinquish the FNR approval.

3. FNR Approval of a licensed provider shall automatically expire if the provider is moved or transferred to another party, entity or location without application to and approval by the FNR program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 19. Pediatric Day Health Care Program**

**Chapter 275. General Provisions**

**§27503. Recipient Criteria**

A. In order to qualify for PDHC services, a Medicaid recipient must meet the following criteria. The recipient must:

1. be from birth up to 21 years of age;

2. require ongoing skilled medical care or skilled nursing care by a knowledgeable and experienced licensed professional registered nurse (RN) or licensed practical nurse (LPN);

3. have a medically complex condition(s) which require frequent, specialized therapeutic interventions and close nursing supervision. Interventions are those medically necessary procedures provided to sustain and maintain health and life. Interventions required and performed by individuals other than the recipient's personal care giver would require the skilled care provided by professionals at PDHC centers. Examples of medically necessary interventions include, but are not limited to:

a. suctioning using sterile technique;

b. provision of care to a ventilator dependent and/or oxygen dependent recipients to maintain patent airway and adequate oxygen saturation, inclusive of physician consultation as needed;

c. monitoring of blood pressure and/or pulse oximetry level in order to maintain stable health condition and provide medical provisions through physician consultation;

d. maintenance and interventions for technology dependent recipients who require life-sustaining equipment; or

e. complex medication regimen involving, and not limited to, frequent change in dose, route, and frequency of multiple medications, to maintain or improve the recipient's health status, prevent serious deterioration of health status and/or prevent medical complications that may jeopardize life, health or development;

4. have a medically fragile condition, defined as a medically complex condition characterized by multiple, significant medical problems that require extended care. Medically fragile individuals are medically complex and

potentially dependent upon medical devices, experienced medical supervision, and/or medical interventions to sustain life;

a. medically complex may be considered as chronic, debilitating diseases or conditions, involving one or more physiological or organ systems, requiring skilled medical care, professional observation or medical intervention;

b. examples of medically fragile conditions include, but are not limited to:

i. severe lung disease requiring oxygen;

ii. severe lung disease requiring ventilator or tracheotomy care;

iii. complicated heart disease;

iv. complicated neuromuscular disease; and

v. unstable central nervous system disease;

5. have a signed physician's order, not to exceed 180 days, for pediatric day health care by the recipient's physician specifying the frequency and duration of services; and

6. be stable for outpatient medical services.

B. If the medical director of the PDHC facility is also the child's prescribing physician, the department reserves the right to review the prescription for the recommendation of the child's participation in the PDHC Program.

1. - 1.j. Repealed.

C. Re-evaluation of PDHC services must be performed, at a minimum, every 120 days. This evaluation must include a review of the recipient's current medical plan of care and provider agency documented current assessment and progress toward goals.

D. A face-to-face evaluation shall be held every four months by the child's prescribing physician. Services shall be revised during evaluation periods to reflect accurate and appropriate provision of services for current medical status.

E. Physician's orders for services are required to individually meet the needs of each recipient and shall not be in excess of the recipient's needs. Physician orders prescribing or recommending PDHC services do not, in themselves, indicate services are medically necessary or indicate a necessity for a covered service. Eligibility for participation in the PDHC Program must also include meeting the medically complex provisions of this Section.

F. When determining the necessity for PDHC services, consideration shall be given to all of the services the recipient may be receiving, including waiver services and other community supports and services. This consideration must be reflected and documented in the recipient's treatment plan.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1557 (July 2010), amended LR 40:

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

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

Kathy H. Kliebert  
Secretary

1407#064

## DECLARATION OF EMERGENCY

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

State Children's Health Insurance Program  
Coverage of Prenatal Care Services  
(LAC 50:III.20301 and 20303)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:III.20301 and 20303 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule which adopted provisions to expand coverage to children under Title XXI of the Social Security Act by implementing a stand-alone state Children's Health Insurance Program (SCHIP) to provide coverage of prenatal care services to low-income, non-citizen women and to clarify the service limits and prior authorization criteria for SCHIP prenatal care services (*Louisiana Register*, Volume 35, Number 1).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the January 20, 2009 Rule in order to include Medicaid coverage for the unborn child(ren) of any pregnant woman with income between 138 percent and 214 percent of the federal poverty level (FPL) (*Louisiana Register*, Volume 40, Number 1). The department promulgated an Emergency Rule which amended the December 31, 2013 Emergency Rule in order to clarify these provisions (*Louisiana Register*, Volume 40, Number 4). This Emergency Rule is being promulgated to continue the provision of the April 20, 2014 Emergency Rule. This action is being taken to promote the health and welfare of pregnant women by increasing access to prenatal care services that will support better health outcomes for babies.

Effective August 19, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the State Children's Health Insurance Program coverage of prenatal care services.



**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part III. Eligibility**

**Subpart 11. State Children's Health Insurance Program**

**Chapter 203. Prenatal Care Services**

**§20301. General Provisions**

A. ...

B. Effective December 31, 2013, coverage of SCHIP prenatal care services shall be expanded to include any pregnant woman with income between 138 percent and 214 percent of the FPL.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:72 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

**§20303. Eligibility Criteria**

A. - B. ...

C. Recipients must have family income at or below 214 percent of the FPL.

D. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:72 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

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

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

Kathy H. Kliebert  
Secretary

1407#065

**DECLARATION OF EMERGENCY**

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

State Children's Health Insurance Program  
Modified Adjusted Gross Income  
(LAC 50:III.20103)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:III.20103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum

period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 1004(a)(2) of the Patient Protection and Affordable Care Act (ACA) of 2010 and Section 36B (d)(2)(B) of the *Internal Revenue Code* mandate that Medicaid eligibility use the Modified Adjusted Gross Income (MAGI) methodology for eligibility determinations for certain eligibility groups. In compliance with the ACA and *Internal Revenue Code*, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing Medicaid eligibility to adopt the MAGI methodology for eligibility groups covered under Title XIX (Medicaid) and Title XXI (Children's Health Insurance Program) of the Social Security Act (*Louisiana Register*, Volume 40, Number 1). The department also adopted provisions which allow qualified hospitals to make determinations of presumptive eligibility for individuals who are not currently enrolled in Medicaid.

The department promulgated an Emergency Rule which amended the provisions of the December 31, 2013 Emergency Rule in order to make technical revisions to ensure that these provisions are appropriately promulgated in a clear and concise manner (*Louisiana Register*, Volume 40, Number 4). The provisions governing the MAGI eligibility changes for the Louisiana Children's Health Insurance Program (LaCHIP) were repromulgated independent of the provisions governing the Title XIX eligibility groups. This action is being taken to avoid federal sanctions. It is expected that implementation of this Emergency Rule will not have programmatic costs for state fiscal year 2013-2014.

Effective August 19, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing Medicaid eligibility.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part III. Eligibility**

**Subpart 11. State Children's Health Insurance Program**  
**Chapter 201. Louisiana Children's Health Insurance**  
**Program (LaCHIP) - Phases 1-3**

**§20103. Eligibility Criteria**

A. - A.1. ...

2. are from families with income at or below 217 percent of the federal poverty level; and

A.3. - D.1.f. ...

E. Effective December 31, 2013 eligibility for LaCHIP shall be determined by modified adjusted gross income (MAGI) methodology in accordance with section 1004(a)(2) of the Patient Protection and Affordable Care Act (ACA) of 2010 and section 36B (d)(2)(B) of the *Internal Revenue Code*.

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

HISTORICAL NOTE: Repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:659 (April 2008), amended by the Department of Health and Hospitals, LR 40:

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

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

Kathy H. Kliebert  
Secretary

1407#066

## DECLARATION OF EMERGENCY

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

Behavioral Health Services  
Statewide Management Organization  
LaCHIP Affordable Plan Benefits Administration  
(LAC 50:XXXIII.103)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend LAC 50:XXXIII.103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide services through the utilization of a statewide management organization that is responsible for the necessary administrative and operational functions to ensure adequate coordination and delivery of behavioral health services (*Louisiana Register*, Volume 38, Number 2).

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health promulgated an Emergency Rule which amended the February 2012 Rule in order to include the administration of behavioral health services covered under the LaCHIP Affordable Plan (Phase 5) (*Louisiana Register*, Volume 38, Number 12). LaCHIP Affordable Plan benefits, including behavioral health services, were administered by the Office of Group Benefits. The administration of these services was transferred to the statewide management organization under the Louisiana Behavioral Health Partnership. The department now amends the provisions of the January 1, 2013 Emergency Rule in order to revise recipient coverage under the LaCHIP Affordable Plan. This action is being taken to avoid a budget deficit in the medical assistance programs, and to promote the health and welfare of LaCHIP Affordable Plan recipients.

Effective August 1, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the January 1, 2013 Emergency Rule governing behavioral health services coordinated by the statewide management organization.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXXIII. Behavioral Health Services

##### Subpart 1. Statewide Management Organization

##### Chapter 1. General Provisions

##### §103. Recipient Participation

A. The following Medicaid recipients shall be mandatory participants in the coordinated behavioral health system of care:

1. - 6. ...
7. title XXI SCHIP populations, including:
  - a. LaCHIP phases 1 - 4; and
  - b. LaCHIP Affordable Plan (phase 5);
8. recipients who receive both Medicare and Medicaid benefits; and
9. recipients enrolled in the LAMOMS program.

B. ...

C. Notwithstanding the provisions of §103.A above, the following Medicaid recipients are excluded from enrollment in the PIHP/SMO:

1. recipients enrolled in the Medicare beneficiary programs (QMB, SLMB, QDWI and QI-1);
2. adults who reside in an intermediate care facility for persons with developmental disabilities (ICF/DD);
3. recipients of refugee cash assistance;
4. recipients enrolled in the Regular Medically Needy Program;
5. recipients enrolled in the Tuberculosis Infected Individual Program;
6. recipients who receive Emergency Services Only coverage;
7. recipients who receive services through the Program of All-Inclusive Care for the Elderly (PACE);
8. recipients enrolled in the Low Income Subsidy Program;
9. participants in the TAKE CHARGE family planning waiver; and
10. recipients enrolled in the LaMOMS Program.
11. - 12. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:361 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 40:

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

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

Kathy H. Kliebert  
Secretary

1407#051

# DECLARATION OF EMERGENCY

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

Therapeutic Group Homes  
Licensing Standards  
(LAC 48:I.Chapter 62)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.Chapter 62 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2009. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with the directives of R.S. 40:2009, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing the minimum licensing standards for therapeutic group homes(TGH)in order to prepare for the transition to a comprehensive system of delivery for behavioral health services in the state (*Louisiana Register*, Volume 38, Number 2).

The department has now determined that it is necessary to amend the provisions governing TGH licensing standards to revise the current TGH licensing regulations. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services. It is estimated that the implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program for state fiscal year 2014-2015.

Effective July 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the licensing standards for TGH providers.

### Title 48

### PUBLIC HEALTH-GENERAL

### Part I. General Administration

### Subpart 3. Licensing

### Chapter 62. Therapeutic Group Homes

### Subchapter A. General Provisions

### §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 must 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.

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*Therapeutic Group Home (TGH)*—a facility that provides community-based residential services to clients under the age of 21 in a home-like setting of no greater than 10 beds

under the supervision and oversight of a psychiatrist or psychologist.

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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 40:

### Subchapter B. Licensing

### §6213. Changes in Licensee Information or Personnel

A. - C.1. ...

2. A TGH that is under provisional licensure, license revocation, or denial of license renewal may not undergo a CHOW.

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 38:405 (February 2012), amended LR 40:

### §6219. Licensing Surveys

A. - D. ...

E. If deficiencies have been cited during a licensing survey, regardless of whether an acceptable plan of correction is required, the department may issue appropriate sanctions, including, but not limited to:

1. ...
2. directed plans of correction;
3. provisional licensure;
4. denial of renewal; and/or
5. license revocations.

F. - F.2 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:406 (February 2012), amended LR 40:

### §6221. Complaint Surveys

A. - J.1. ...

a. The offer of the administrative appeal, if appropriate, as determined by the Health Standards Section, shall be included in the notification letter of the results of the informal reconsideration results. The right to administrative appeal shall only be deemed appropriate and thereby afforded upon completion of the informal reconsideration.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:407 (February 2012), amended LR 40:

### §6223. Statement of Deficiencies

A. - C.1. ...

2. The written request for informal reconsideration of the deficiencies shall be submitted to the Health Standards Section and will be considered timely if received by HSS within 10 calendar days of the provider's receipt of the statement of deficiencies.

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:407 (February 2012), amended LR 40:

**§6225. Cessation of Business**

A. Except as provided in §6295 of this Chapter, a license shall be immediately null and void if a TGH ceases to operate.

1. - 3. Repealed.

B. A cessation of business is deemed to be effective the date on which the TGH stopped offering or providing services to the community.

C. Upon the cessation of business, the provider shall immediately return the original license to the department.

D. Cessation of business is deemed to be a voluntary action on the part of the provider. The provider does not have a right to appeal a cessation of business.

E. Prior to the effective date of the closure or cessation of business, the TGH shall:

- 1. give 30 days' advance written notice to:
  - a. HSS;
  - b. the prescribing physician; and
  - c. the parent(s) or legal guardian or legal representative of each client; and
- 2. provide for an orderly discharge and transition of all of the clients in the facility.

F. In addition to the advance notice of voluntary closure, the TGH shall submit a written plan for the disposition of client medical records for approval by the department. The plan shall include the following:

- 1. the effective date of the voluntary closure;
- 2. provisions that comply with federal and state laws on storage, maintenance, access, and confidentiality of the closed provider's clients' medical records;
- 3. an appointed custodian(s) who shall provide the following:
  - a. access to records and copies of records to the client or authorized representative, upon presentation of proper authorization(s); and
  - b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction; and
- 4. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing provider, at least 15 days prior to the effective date of closure.

G. If a 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.

H. Once the TGH has ceased doing business, the TGH shall not provide services until the provider has obtained a new initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:407 (February 2012), amended LR 40:

**§6227. Denial of License, Revocation of License, or Denial of License Renewal**

A. - C.3. ...

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. - 15. ...

16. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment;

17. failure to timely pay outstanding fees, fines, sanctions, or other debts owed to the department; or

18. failure to maintain accreditation, or for a new TGH that has applied for accreditation, the failure to obtain accreditation.

19. Repealed.

E. If a TGH license is revoked or renewal is denied or the license is surrendered in lieu of an adverse action, any owner, officer, member, director, manager, or administrator of such TGH may be prohibited from opening, managing, directing, operating, or owning another TGH for a period of two years from the date of the final disposition of the revocation, denial action, or surrender.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:408 (February 2012), amended LR 40:

**§6229. Notice and Appeal of License Denial, License Revocation, License Non-Renewal, and Appeal of Provisional License**

A. - B. ...

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 license non-renewal. The request for informal reconsideration must be in writing and shall be forwarded to the Health Standards Section.

B.2. - D. ...

E. If a timely administrative appeal has been filed by the provider on a license denial, license non-renewal, or license revocation, the DAL or its successor shall conduct the hearing pursuant to the Louisiana Administrative Procedure Act.

E.1. - G.2. ...

3. The provider shall request the informal reconsideration in writing, which shall be received by the HSS within five days of receipt of the notice of the results of the follow-up survey from the department.

a. Repealed.

4. The provider shall request the administrative appeal within 15 days of receipt of the notice of the results of the follow-up survey from the department. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law, or its successor.

a. Repealed.

H. - H.1. ...

I. If a timely administrative appeal has been filed by a 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 Louisiana Administrative Procedure Act.

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:409 (February 2012), amended LR 40:

#### **Subchapter D. Provider Responsibilities**

##### **§6247. Staffing Requirements**

A. - C.2. ...

3. A ratio of not less than one staff to five clients is maintained at all times; however, two staff must be on duty at all times with at least one being direct care staff when there is a client present.

D. - D.3. ...

4. Therapist. Each therapist shall be available at least three hours per week for individual and group therapy and two hours per month for family therapy.

5. Direct Care Staff. The ratio of direct care staff to clients served shall be 1:5 with a minimum of two staff on duty per shift for a 10 bed capacity. This ratio may need to be increased based on the assessed level of acuity of the youth or if treatment interventions are delivered in the community and offsite.

E. - 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 40:

##### **§6249. Personnel Qualifications and Responsibilities**

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

b. A supervising practitioner's responsibilities shall include, but are not limited to:

i. reviewing the referral PTA and completing an initial diagnostic assessment at admission or within 72 hours of admission and prior to service delivery;

ii. - iv. ...

v. at least every 28 days or more often as necessary, providing:

1.b.v.(a). - 6.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 40:

#### **Subchapter F. Services**

##### **§6267. Comprehensive Treatment Plan**

A. Within 7 days of admission, a comprehensive treatment plan shall be developed by the established multidisciplinary team of staff providing services for the client. Each treatment team member shall sign and indicate their attendance and involvement in the treatment team meeting. The treatment team review shall be directed and supervised by the supervising practitioner at a minimum of every 28 days.

B. - 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 40:

##### **§6269. Client Services**

A. - A.4. ...

B. The TGH is required to provide at least 16 hours of active treatment per week to each client. This treatment shall be provided and/or monitored by qualified staff.

C. The TGH shall have a written plan for insuring that a range of daily indoor and outdoor recreational and leisure opportunities are provided for clients. Such opportunities shall be based on both the individual interests and needs of the client and the composition of the living group.

C.1. - G.4. ...

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 LR 40:

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

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

1407#057

#### **DECLARATION OF EMERGENCY**

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

Added Controlled Dangerous Substances  
(LAC 46:LIII.2704)

The Department of Health and Hospitals, Office of Public Health (DHH/OPH), pursuant to the rulemaking authority granted to the secretary of DHH by R.S. 40:962(C) and (H), hereby adopts the following Emergency Rule for the protection of public health. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.).

Based on the criteria, factors, and guidance set forth in R.S. 40:962(C) and 40:963, the secretary, under this rulemaking, has determined that the below listed substances have a high potential for abuse and should be scheduled as controlled dangerous substances to avoid an imminent peril to the public health, safety, or welfare. In reaching the decision to designate the below listed substances as controlled dangerous substances under schedule I, the secretary has considered the criteria provided under R.S. 40:963 and the specific factors listed under R.S. 40:962(C). The secretary has determined that schedule I is the most appropriate due to her findings that the substances added herein have a high potential for abuse, the substances have no currently accepted medical use for treatment in the United States, and there is a lack of accepted safety for use of the substances under medical supervision. Effective on the 3rd day of July 2014.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 27. Controlled Dangerous Substances**

**Subchapter A. General Provisions**

**§2704. Added Controlled Dangerous Substances**

A. The following drugs or substances are added to schedule I of the Louisiana Uniform Controlled Dangerous Substances Law, R.S. 40:961 et seq.:

1. methyl (1-(4-fluorobenzyl)-1 H-indazole-3-carbonyl)valinate; and
2. methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:962, R.S. 40:963, and R.S. 49:953(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 40:

Kathy H. Kliebert  
Secretary

1407#025

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of Public Health**

Minimum Disinfectant Residual Levels  
in Public Water Systems

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

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

The state health officer, through DHH, OPH, finds it necessary to promulgate an Emergency Rule effective July 5, 2014. This Emergency Rule increases the minimum disinfection residual levels that are required for public water systems. Among other items addressed as well, the Rule increases the number of residual measurements taken monthly by 25 percent. The Rule clarifies that daily residual measurements are required at the point of maximum residence time in the distribution system and records of chlorine residual measurements taken in the distribution system, besides from the treatment plant(s) itself, shall be recorded and retained by the public water system as required by the National Primary Drinking Water Regulations (as this term is defined in Part XII). This Rule is based upon scientific data and recommendations from the federal Centers for Disease Control and Prevention (CDC) relative to the control of the *Naegleria fowleri* (brain-eating amoeba) parasite, which has recently been found in two public water systems in Louisiana. Unless rescinded or terminated earlier, this Emergency Rule shall remain in effect for the maximum period authorized under state law. This Emergency Rule may

be amended as additional research and science data becomes available.

**Title 51  
PUBLIC HEALTH—SANITARY CODE**

**Part XII. Water Supplies**

**Chapter 3. Water Quality Standards**

**§311. Records**

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1321 (June 2002), amended LR 30:1195 (June 2004), LR 40:

**§355. Mandatory Disinfection**

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

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

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

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

Table 355.A.2	
pH Value	Free Chlorine Residual
up to 7.0	0.5 mg/l
7.0 to 8.0	0.6 mg/l
8.0 to 9.0	0.8 mg/l
over 9.0	1.0 mg/l

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

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

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1326 (June 2002), amended LR 28:2514 (December 2002), LR 35:1240 (July 2009), LR 38:2376 (September 2012), LR 40:

**§357. Minimum Disinfection Residuals**

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

A. Disinfection equipment shall be operated to maintain disinfectant residuals in each finished water storage tank and

at all points throughout the distribution system at all times in accordance with the following minimum levels:

1. a free chlorine residual of 0.5 mg/l; or
2. a chloramine residual (measured as total chlorine)

of 0.5 mg/l for those systems that feed ammonia.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), amended LR 40:

### **§361. Implementation of Disinfection Requirements**

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

1. February 1, 2014; or
2. the expiration date of any additional time for compliance beyond February 1, 2014 granted by the state health officer.

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

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

1. implement continuous disinfection that complies with the requirements of §355.A, §357, §367.C, and §367.G of this Part;

2. request additional time for complying with the requirements of §355.A, §357, §367.C, and §367.G of this Part by submitting a written request, if significant infrastructure improvements are required to achieve compliance therewith or extraordinary circumstances exist with regard to the introduction of disinfection to the system. Such written request shall provide detailed justification and rationale for the additional time requested;

3. (This option shall be available only if the public water system's potable water distribution piping is utilized for onsite industrial processes.) notify the state health officer in writing that in lieu of implementing continuous disinfection, the PWS has provided, and will thereafter provide on a quarterly basis, notification to all system users, in a manner compliant with §1907 of this Part, that the system does not disinfect its water. The notification shall state that because the water is not disinfected, the water quality is unknown in regard to the *Naegleria fowleri* amoeba. A public water system selecting this option must sign an acknowledgement form, to be developed by the state health officer, stating that the public water system understands the risks presented by the lack of disinfection and that the public water system maintains responsibility for ensuring the safety of its water for end users; or

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 40:

### **§363. Revocation of Variances**

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), amended LR 40:

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

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

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

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

1. by sampling at the same points in the distribution system and at the same times that samples for total coliforms are required to be collected by the PWS under this Part;

2. by sampling at an additional number of sites calculated by multiplying 0.25 times the number of total coliform samples the PWS is required under this Part to take on a monthly or quarterly basis, rounding any mixed (fractional) number product up to the next whole number. These additional residual monitoring samples shall be taken from sites in low flow areas and extremities in the distribution system at regular time intervals throughout the applicable monthly or quarterly sampling period; and

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1327 (June 2002), amended LR 30:1195 (June 2004), LR 40:

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

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

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

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

B. - D. ...

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

F. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1333 (June 2002), amended LR 40:

**Chapter 11. Surface Water Treatment Rule  
Subchapter A. General Requirements and Definitions  
§1102. Relationship with this Part**

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 40:

**§1105. Analytical Requirements**

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

B. - B.3. ...

C. Public water systems shall conduct analysis for applicable residual disinfectant concentrations in accordance with one of the analytical methods in Table 1.

<b>Residual</b>	<b>Methodology</b>	<b>Standard Methods<sup>1</sup></b>	<b>ASTM Methods<sup>2</sup></b>	<b>Other Methods</b>
Free Chlorine	Amperometric Titration	4500-CI D, 4500-CI D-00	D 1253-03	
	DPD Ferrous Titrimetric	4500-CI F, 4500-CI F-00		
	DPD Colorimetric	4500-CI G, 4500-CI G-00		
	Syringaldazine (FACTS)	4500-CI H, 4500-CI H-00		
	On-line Chlorine Analyzer			EPA 334.0 <sup>3</sup>
	Amperometric Sensor			ChloroSense <sup>4</sup>
Total Chlorine	Amperometric Titration	4500-CI D, 4500-CI D-00	D 1253-03	
	Amperometric Titration (low level measurement)	4500-CI E, 4500-CI E-00		
	DPD Ferrous Titrimetric	4500-CI F, 4500-CI F-00		
	DPD Colorimetric	4500-CI G, 4500-CI G-00		
	Iodometric Electrode	4500-CI I, 4500-CI I-00		
	On-line Chlorine Analyzer			EPA 334.0 <sup>3</sup>



Table 1				
Residual	Methodology	Standard Methods <sup>1</sup>	ASTM Methods <sup>2</sup>	Other Methods
	Amperometric Sensor			ChloroSense <sup>4</sup>
Chlorine Dioxide	Amperometric Titration	4500-ClO <sub>2</sub> C		
	DPD Method	4500-ClO <sub>2</sub> D		
	Amperometric Titration II	4500-ClO <sub>2</sub> E, 4500-ClO <sub>2</sub> E-00		
	Lissamine Green Spectrophotometric			EPA 327.0 Rev 1.1 <sup>5</sup>
Ozone	Indigo Method	4500-O <sub>3</sub> B, 4500-O <sub>3</sub> B-97		

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

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

3. EPA Method 334.0. "Determination of Residual Chlorine in Drinking Water Using an On-line Chlorine Analyzer," August 2009. EPA 815-B-09-013. Available at [http://epa.gov/safewater/methods/analyticalmethods\\_ogwdw.html](http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html).

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

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

D. - E.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1337 (June 2002), amended LR 28:2516 (December 2002), LR 40:

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

##### §1113. Treatment Technique Requirements

A. - A.3. ...

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

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

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

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1340 (June 2002), amended LR 28:2518 (December 2002), LR 35:1241 (July 2009), LR 40:

##### §1117. Non-Filtering Systems

A. - C.1. ...

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

b. ...

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

3. - 3.a....

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

D. - D.7. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1341 (June 2002), amended LR 28:2520 (December 2002), LR 35:1242 (July 2009), LR 40:

##### §1119. Disinfection Performance Standards

A. ...

B. Except as otherwise specified by this Section and Chapter, disinfection treatment shall comply with the minimum standards and requirements set forth in §355.A and §357 of this Part.

C. - C.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1341 (June 2002), amended LR 28:2522 (December 2002), LR 35:1242 (July 2009), LR 40:

#### Subchapter C. Monitoring Requirements

##### §1125. Disinfection Monitoring

A. ...

B. Disinfectant Residual Monitoring at Plant. To determine compliance with the performance standards specified in §1115 or 1119 of this Chapter, the disinfectant residual concentrations of the water being delivered to the distribution system shall be measured and recorded continuously. The accuracy of disinfectant measurements

obtained from continuous disinfectant monitors shall be validated at least weekly in accord with §1109.B or C, as applicable, of this Chapter. If there is a failure of continuous disinfectant residual monitoring equipment, grab sampling every two hours shall be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment. Failure to have the continuous monitoring equipment replaced or repaired and put back into continuous service following the five working days allowed herein shall be deemed to constitute a violation of this Chapter. Systems shall maintain the results of disinfectant residual monitoring for at least 10 years.

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

Table 4. ...

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1342 (June 2002), amended LR 28:2523 (December 2002), LR 35:1243 (July 2009), LR 40:

#### **Subchapter E. Reporting** **§1133. DHH Notification**

A. - A.4. ...

5. the disinfectant residual measured from any sample collected from water being delivered to the distribution system is found to be less than 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine). The notification shall indicate whether the disinfectant residual was restored to at least 0.5 mg/l free chlorine or 0.5 mg/l chloramine residual (measured as total chlorine) within four hours;

A.6. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2525 (December 2002), amended LR 35:1244 (July 2009), LR 40:

#### **§1135. Monthly Report**

A. - B.5. ...

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

1. The date and duration of each instance when the disinfectant residual in water supplied to the distribution system is less than 0.5 mg/l free chlorine or 0.5 mg/l

chloramine residual (measured as total chlorine) and when the DHH was notified of the occurrence.

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2526 (December 2002), amended LR 35:1244 (July 2009), LR 40:

#### **Subchapter F. Public Notification** **§1139. Consumer Notification**

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

A.1. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:2527 (December 2002), amended LR 35:485 (March 2009), LR 35:1246 (July 2009), LR 40:

#### **Chapter 15. Approved Chemical** **Laboratories/Drinking Water**

#### **Subchapter A. Definitions and General Requirements** **§1503. General Requirements**

A. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:1199 (June 2004), amended LR 40:

Interested persons may submit written comments to Jake Causey, Chief Engineer, Engineering Services Section, Office of Public Health, P.O. Box 4489, Baton Rouge, LA 70821-4489. He is responsible for responding to inquiries regarding this Emergency Rule.

Kathy H. Kliebert  
Secretary

1407#026

#### **DECLARATION OF EMERGENCY**

#### **Department of Natural Resources** **Office of Conservation**

Statewide Orders No. 29-B and 29-B-a  
(LAC 43:XIX.Chapters 2 and 11)

Order extending the deadline of drilling and completion operational and safety requirements for wells drilled in search or for the production of oil or natural gas at water locations

Pursuant to the power delegated under the laws of the state of Louisiana, and particularly title 30 of the Revised Statutes of 1950, as amended, and in conformity with the provisions of the Louisiana Administrative Procedure Act, title 49, sections 953(B)(1) and (2), 954(B)(2), as amended, the following Emergency Rule and reasons therefore are now adopted and promulgated by the commissioner of conservation as being necessary to protect the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally, by extending the effectiveness of the Emergency Rule this Rule supersedes the previous Emergency Rule for drilling and completion operational and safety requirements for wells drilled in search of oil and natural gas at water locations. The following Emergency Rule provides for commissioner of conservation approved exceptions to equipment requirements on workover operations. Furthermore, the extension of the rule allows more time to complete comprehensive rule amendments.

#### **A. Need and Purpose for Emergency Rule**

In light of the Gulf of Mexico Deepwater Horizon oil spill incident in federal waters approximately 50 miles off Louisiana's coast and the threat posed to the natural resources of the state, and the economic livelihood and property of the citizens of the state caused thereby, the Office of Conservation began a review of its current drilling and completion operational and safety requirements for wells drilled in search of oil and natural gas at water locations. While the incidents of blowout of Louisiana wells is minimal, occurring at less than three-tenths of one percent of the wells drilled in Louisiana since 1987, the great risk posed by blowouts at water locations to the public health, safety and welfare of the people of the State, as well as the environment generally, necessitated the rule amendments contained herein.

After implementation of the Emergency Rule, conservation formed an ad hoc committee to further study comprehensive rulemaking in order to promulgate new permanent regulations which ensure increased operational and safety requirements for the drilling or completion of oil and gas wells at water locations within the state. Based upon the work of this ad hoc committee, draft proposed rules that would replace these emergency rules are being created for the consideration and comment by interested parties. This draft proposed Rule was published in the *Potpouri* section of the *Louisiana Register* on July 20, 2012. Rule promulgation is expected to continue with revised draft rules being published as a Notice of Intent within the next 60 days.

#### **B. Synopsis of Emergency Rule**

The Emergency Rule set forth hereinafter is intended to provide greater protection to the public health, safety and welfare of the people of the State, as well as the environment generally by extending the effectiveness of new operational and safety requirements for the drilling and completion of oil and gas wells at water locations. Following the Gulf of Mexico-Deepwater Horizon oil spill, the Office of Conservation ("conservation") investigated the possible expansion of Statewide Orders No. 29-B and 29-B-a requirements relating to well control at water locations. As part of the rule expansion project, Conservation reviewed the well control regulations of the U.S. Department of the

Interior's mineral management service or MMS (now named the Bureau of Safety and Environmental Enforcement). Except in the instances where it was determined that the MMS provisions were repetitive of other provisions already being incorporated, were duplicative of existing conservation regulations or were not applicable to the situations encountered in Louisiana's waters, all provisions of the MMS regulations concerning well control issues at water locations were adopted by the preceding Emergency Rule, which this Rule supersedes, integrated into conservation's Statewide Orders No. 29-B and 29-B-a.

Conservation is currently performing a comprehensive review of its regulations as it considers future amendments to its operational rules and regulations found in Statewide Order No. 29-B and elsewhere. Specifically, the Emergency Rule extends the effectiveness of a new Chapter within Statewide Order No. 29-B (LAC 43:XIX.Chapter 2) to provide additional rules concerning the drilling and completion of oil and gas wells at water locations, specifically providing for the following: rig movement and reporting requirements, additional requirements for applications to drill, casing program requirements, mandatory diverter systems and blowout preventer requirements, oil and gas well-workover operations, diesel engine safety requirements, and drilling fluid regulations. Further, the Emergency Rule amends Statewide Order No. 29-B-a (LAC 43:XIX.Chapter 11) to provide for and expand upon rules concerning the required use of storm chokes in oil and gas wells at water locations.

#### **C. Reasons**

Recognizing the potential advantages of expanding the operational and safety requirements for the drilling and completion of oil and gas wells at water locations within the state, it has been determined that failure to establish such requirements in the form of an administrative rule may lead to the existence of an imminent peril to the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally. By this Rule conservation extends the effectiveness of the following requirements until such time as final comprehensive rules may be promulgated.

Protection of the public and our environment therefore requires the commissioner of conservation to extend the following rules in order to assure that drilling and completion of oil and gas wells at water locations within the state are undertaken in accordance with all reasonable care and protection to the health, safety of the public, oil and gas personnel and the environment generally. The Emergency Rule, amendment to Statewide Order No. 29-B (LAC 43:XIX.Chapter 2) and Statewide Order No. 29-B-a (LAC 43:XIX.Chapter 11) ("Emergency Rule") set forth hereinafter are adopted and extended by the Office of Conservation.

#### **D. Effective Date and Duration**

1. The effective date for this Emergency Rule shall be February 10, 2014. This Emergency Rule is a continuation of the February 10, 2014 Emergency Rule.

2. The Emergency Rule herein adopted as a part thereof, shall remain effective for a period of not less than 120 days hereafter, or until the adoption of the final version of an amendment to Statewide Order No. 29-B and Statewide Order No. 29-B-a as noted herein, whichever occurs first.

The Emergency Rule signed by the commissioner on February 10, 2014 is hereby rescinded and replaced by the following Emergency Rule.

### **Title 43**

## **NATURAL RESOURCES**

### **Part XIX. Office of Conservation—General Operations**

#### **Subpart 1. Statewide Order No. 29-B**

#### **Chapter 2. Additional Requirements for Water**

##### **Locations**

##### **§201. Applicability**

A. In addition to the requirements set forth in Chapter 1 of this Subpart, all oil and gas wells being drilled or completed at a water location within the state and which are spud or on which workover operations commence on or after July 15, 2010 shall comply with this Chapter.

B. Unless otherwise stated herein, nothing within this Chapter shall alter the obligation of oil and gas operators to meet the requirements of Chapter 1 of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

##### **§203. Application to Drill**

In addition to the requirements set forth in §103 of this Subpart, at the time of submittal of an application for permit to drill, the applicant will provide an electronic copy on a disk of the associated drilling rig's spill prevention control (SPC) plan that is required by DEQ pursuant to the provisions of Part IX of Title 33 of the *Louisiana Administrative Code* or any successor rule. Such plan shall become a part of the official well file. If the drilling rig to be used in drilling a permitted well changes between the date of the application and the date of drilling, the applicant shall provide an electronic copy on a disk of the SPC plan for the correct drilling rig within two business days of becoming aware of the change in rigs; but in no case shall the updated SPC plan be submitted after spudding of the well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

##### **§204. Rig Movement and Reporting**

A. The operator must report the movement of all drilling and workover rig units on and off locations to the appropriate district manager with the rig name, well serial number and expected time of arrival and departure.

B. Drilling operations on a platform with producing wells or other hydrocarbon flow must comply with the following.

1. An emergency shutdown station must be installed near the driller's console.

2. All producible wells located in the affected wellbay must be shut in below the surface and at the wellhead when:

a. a rig or related equipment is moved on and off a platform. This includes rigging up and rigging down activities within 500 feet of the affected platform;

b. a drilling unit is moved or skid between wells on a platform;

c. a mobile offshore drilling unit (MODU) moves within 500 feet of a platform.

3. Production may be resumed once the MODU is in place, secured, and ready to begin drilling operations.

C. The movement of rigs and related equipment on and off a platform or from well to well on the same platform, including rigging up and rigging down, shall be conducted in a safe manner. All wells in the same well-bay which are capable of producing hydrocarbons shall be shut in below the surface with a pump-through-type tubing plug and at the surface with a closed master valve prior to moving well-completion rigs and related equipment, unless otherwise approved by the district manager. A closed surface-controlled subsurface safety valve of the pump-through type may be used in lieu of the pump-through-type tubing plug, provided that the surface control has been locked out of operation. The well from which the rig or related equipment is to be moved shall also be equipped with a back-pressure valve prior to removing the blowout preventer (BOP) system and installing the tree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

##### **§205. Casing Program**

###### **A. General Requirements**

1. The operator shall case and cement all wells with a sufficient number of strings of casing and quantity and quality of cement in a manner necessary to prevent fluid migration in the wellbore, protect the underground source of drinking water (USDW) from contamination, support unconsolidated sediments, and otherwise provide a means of control of the formation pressures and fluids.

2. The operator shall install casing necessary to withstand collapse, bursting, tensile, and other stresses that may be encountered and the well shall be cemented in a manner which will anchor and support the casing. Safety factors in casing program design shall be of sufficient magnitude to provide optimum well control while drilling and to assure safe operations for the life of the well.

3. All tubulars and cement shall meet or exceed API standards. Cementing jobs shall be designed so that cement composition, placement techniques, and waiting times ensure that the cement placed behind the bottom 500 feet of casing attains a minimum compressive strength of 500 psi before drilling out of the casing or before commencing completion operations.

###### **4. Centralizers**

a. Surface casing shall be centralized by means of placing centralizers in the following manner.

i. A centralizer shall be placed on every third joint from the shoe to surface, with two centralizers being placed on each of the lowermost three joints of casing.

ii. If conductor pipe is set, three centralizers shall be equally spaced on surface casing to fall within the conductor pipe.

b. Intermediate and production casing, and drilling and production liners shall be centralized by means of a centralizer placed every third joint from the shoe to top of cement. Additionally, two centralizers shall be placed on each of the lowermost three joints of casing.

c. All centralizers shall meet API standards.

5. A copy of the documentation furnished by the manufacturer, if new, or supplier, if reconditioned, which certifies tubular condition, shall be provided with the well history and work resume report (Form WH-1).

B. Conductor Pipe. A conductor pipe is that pipe ordinarily used for the purpose of supporting unconsolidated surface deposits. A conductor pipe shall be used during the drilling of any oil and gas well and shall be set at depth that allows use of a diverter system.

C. Surface Casing

1. Where no danger of pollution of the USDW exists, the minimum amount of surface or first-intermediate casing to be set shall be determined from Table 1 hereof, except that in no case shall less surface casing be set than an amount needed to protect the USDW unless an alternative method of USDW protection is approved by the district manager.

Total Depth of Contact	Casing Required	Surface Casing Test Pressure (lbs. per sq. in.)
0-2500	100	300
2500-3000	150	600
3000-4000	300	600
4000-5000	400	600
5000-6000	500	750
6000-7000	800	1000
7000-8000	1000	1000
8000-9000	1400	1000
9000-Deeper	1800	1000

a. In known low-pressure areas, exceptions to the above may be granted by the commissioner or his agent. If, however, in the opinion of the commissioner, or his agent, the above regulations shall be found inadequate, and additional or lesser amount of surface casing and/or test pressure shall be required for the purpose of safety and the protection of the USDW.

2. Surface casing shall be cemented with a sufficient volume of cement to insure cement returns to the surface.

3. Surface casing shall be tested before drilling the plug by applying a minimum pump pressure as set forth in Table 1 after at least 200 feet of the mud-laden fluid has been displaced with water at the top of the column. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of test pressure as outlined in Table 1, the operator shall be required to take such corrective measures as will insure that such surface casing will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure. The provisions of Paragraph E.7 below, for the producing casing, shall also apply to the surface casing.

4. Cement shall be allowed to stand a minimum of 12 hours under pressure before initiating test or drilling plug. Under pressure is complied with if one float valve is used or if pressure is held otherwise.

D. Intermediate Casing/Drilling Liner

1. Intermediate casing is that casing used as protection against caving of heaving formations or when other means are not adequate for the purpose of segregating upper oil, gas or water-bearing strata. Intermediate casing/drilling liner shall be set when required by abnormal pressure or other well conditions.

2. If an intermediate casing string is deemed necessary by the district manager for the prevention of underground waste, such regulations pertaining to a minimum setting depth, quality of casing, and cementing and testing of sand, shall be determined by the Office of Conservation after due

hearing. The provisions of Paragraph E.7 below, for the producing casing, shall also apply to the intermediate casing.

3. Intermediate casing/drilling liner shall be at minimum, cemented in such a manner, at least 500 feet above all known hydrocarbon bearing formations to insure isolation and, if applicable, all abnormal pressure formations are isolated from normal pressure formations, but in no case shall less cement be used than the amount necessary to fill the casing/liner annulus to a point 500 feet above the shoe or the top of the liner whichever is less. If a liner is used as an intermediate string, the cement shall be tested by a fluid entry test (-0.5 ppg EMW) to determine whether a seal between the liner top and next larger casing string has been achieved, and the liner-lap point must be at least 300 feet above the previous casing shoe. The drilling liner (and liner-lap) shall be tested to a pressure at least equal to the anticipated pressure to which the liner will be subjected to during the formation-integrity test below that liner shoe, or subsequent liner shoes if set. Testing shall be in accordance with Subsection G below.

4. Before drilling the plug in the intermediate string of casing, the casing shall be tested by pump pressure, as determined from Table 2 hereof, after 200 feet of mud-laden fluid in the casing has been displaced by water at the top of the column.

Depth Set	Test Pressure (lbs. per sq. in.)
2000-3000'	800
3000-6000'	1000
6000-9000'	1200
9000-and deeper	1500

a. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of the test pressure or more, the operator shall be required to take such corrective measures as will insure that casing is so set and cemented that it will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure on the gauge.

5. Cement shall be allowed to stand a minimum of 12 hours under pressure and a minimum total of 24 hours before initiating pressure test. Under pressure is complied with if one or more float valves are employed and are shown to be holding the cement in place, or when other means of holding pressure is used. When an operator elects to perforate and squeeze or to cement around the shoe, he may proceed with such work after 12 hours have elapsed after placing the first cement.

6. If the test is unsatisfactory, the operator shall not proceed with the drilling of the well until a satisfactory test has been obtained.

E. Producing String

1. Producing string, production casing or production liner is that casing used for the purpose of segregating the horizon from which production is obtained and affording a means of communication between such horizons and the surface.

2. The producing string of casing shall consist of new or reconditioned casing, tested at mill test pressure or as otherwise designated by the Office of Conservation.

3. Cement shall be by the pump-and-plug method, or another method approved by the Office of Conservation.

Production casing/production liner shall be at minimum, cemented in such a manner, at least 500 feet above all known hydrocarbon bearing formations to insure isolation and, if applicable, all abnormal pressure formations are isolated from normal pressure formations, but in no case shall less cement be used than the amount necessary to fill the casing/liner annulus to a point 500 feet above the shoe or the top of the liner whichever is less. If a liner is used as a producing string, the cement shall be tested by a fluid entry test (-0.5 ppg EMW) to determine whether a seal between the liner top and next larger casing string has been achieved, and the liner-lap point must be at least 300 feet above the previous casing shoe. The production liner (and liner-lap) shall be tested to a pressure at least equal to the anticipated pressure to which the liner will be subjected to during the formation-integrity test below that liner shoe, or subsequent liner shoes if set. Testing shall be in accordance with Subsection G below.

4. The amount of cement to be left remaining in the casing, until the requirements of Paragraph 5 below have been met, shall be not less than 20 feet. This shall be accomplished through the use of a float-collar, or other approved or practicable means, unless a full-hole cementer, or its equivalent, is used.

5. Cement shall be allowed to stand a minimum of 12 hours under pressure and a minimum total of 24 hours before initiating pressure test in the producing or oil string. Under pressure is complied with if one or more float valves are employed and are shown to be holding the cement in place, or when other means of holding pressure is used. When an operator elects to perforate and squeeze or to cement around the shoe, he may proceed with such work after 12 hours have elapsed after placing the first cement.

6. Before drilling the plug in the producing string of casing, the casing shall be tested by pump pressure, as determined from Table 3 hereof, after 200 feet of mud-laden fluid in the casing has been displaced by water at the top of the column.

<b>Depth Set</b>	<b>Test Pressure (lbs. per sq. in.)</b>
2000-3000'	800
3000-6000'	1000
6000-9000'	1200
9000-and deeper	1500

a. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of the test pressure or more, the operator shall be required to take such corrective measures as will insure that the producing string of casing is so set and cemented that it will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure on the gauge.

7. If the commissioner's agent is not present at the time designated by the operator for inspection of the casing tests of the producing string, the operator shall have such tests witnessed, preferably by an offset operator. An affidavit of test, on the form prescribed by the district office, signed by the operator and witness, shall be furnished to the district office showing that the test conformed satisfactorily to the above mentioned regulations before proceeding with the

completion. If test is satisfactory, normal operations may be resumed immediately.

8. If the test is unsatisfactory, the operator shall not proceed with the completion of the well until a satisfactory test has been obtained.

**F. Cement Evaluation**

1. Cement evaluation tests (cement bond or temperature survey) shall be conducted for all casing and liners installed below surface casing to assure compliance with LAC 43:XIX.205.D.3 and E.3.

2. Remedial cementing operations that are required to achieve compliance with LAC 43:XIX.205.D.3 and E.3 shall be conducted following receipt of an approved work permit from the district manager for the proposed operations.

3. Cementing and wireline records demonstrating the presence of the required cement tops shall be retained by the operator for a period of two years.

**G. Leak-off Tests**

1. A pressure integrity test must be conducted below the surface casing or liner and all intermediate casings or liners. The district manager may require a pressure-integrity test at the conductor casing shoe if warranted by local geologic conditions or the planned casing setting depth. Each pressure integrity test must be conducted after drilling at least 10 feet but no more than 50 feet of new hole below the casing shoe and must be tested to either the formation leak-off pressure or to the anticipated equivalent drilling fluid weight at the setting depth of the next casing string.

a. The pressure integrity test and related hole-behavior observations, such as pore-pressure test results, gas-cut drilling fluid, and well kicks must be used to adjust the drilling fluid program and the setting depth of the next casing string. All test results must be recorded and hole-behavior observations made during the course of drilling related to formation integrity and pore pressure in the driller's report.

b. While drilling, a safe drilling margin must be maintained. When this safe margin cannot be maintained, drilling operations must be suspended until the situation is remedied.

**H. Prolonged Drilling Operations**

1. If wellbore operations continue for more than 30 days within a casing string run to the surface:

a. drilling operations must be stopped as soon as practicable, and the effects of the prolonged operations on continued drilling operations and the life of the well evaluated. At a minimum, the operator shall:

i. caliper or pressure test the casing; and  
 ii. report evaluation results to the district manager and obtain approval of those results before resuming operations.

b. If casing integrity as determined by the evaluation has deteriorated to a level below minimum safety factors, the casing must be repaired or another casing string run. Approval from the district manager shall be obtained prior to any casing repair activity.

**I. Tubing and Completion**

1. Well-completion operations means the work conducted to establish the production of a well after the production-casing string has been set, cemented, and pressure-tested.

2. Prior to engaging in well-completion operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for review by the Office of Conservation.

3. When well-completion operations are conducted on a platform where there are other hydrocarbon-producing wells or other hydrocarbon flow, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station.

4. No tubing string shall be placed in service or continue to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

5. A valve, or its equivalent, tested to a pressure of not less than the calculated bottomhole pressure of the well, shall be installed below any and all tubing outlet connections.

6. When a well develops a casing pressure, upon completion, equivalent to more than three-quarters of the internal pressure that will develop the minimum yield point of the casing, such well shall be required by the district manager to be killed, and a tubing packer to be set so as to keep such excessive pressure off of the casing.

7. Wellhead Connections. Wellhead connections shall be tested prior to installation at a pressure indicated by the district manager in conformance with conditions existing in areas in which they are used. Whenever such tests are made in the field, they shall be witnessed by an agent of the Office of Conservation. Tubing and tubingheads shall be free from obstructions in wells used for bottomhole pressure test purposes.

8. When the tree is installed, the wellhead shall be equipped so that all annuli can be monitored for sustained pressure. If sustained casing pressure is observed on a well, the operator shall immediately notify the district manager.

9. Wellhead, tree, and related equipment shall have a pressure rating greater than the shut-in tubing pressure and shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. New wells completed as flowing or gas-lift wells shall be equipped with a minimum of one master valve and one surface safety valve, installed above the master valve, in the vertical run of the tree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

#### **§207. Diverter Systems and Blowout Preventers**

A. Diverter System. A diverter system shall be required when drilling surface hole in areas where drilling hazards are known or anticipated to exist. The district manager may, at his discretion, require the use of a diverter system on any well. In cases where it is required, a diverter system consisting of a diverter sealing element, diverter lines, and control systems must be designed, installed, used, maintained, and tested to ensure proper diversion of gases, water, drilling fluids, and other materials away from facilities and personnel. The diverter system shall be

designed to incorporate the following elements and characteristics:

1. dual diverter lines arranged to provide for maximum diversion capability;

2. at least two diverter control stations. One station shall be on the drilling floor. The other station shall be in a readily accessible location away from the drilling floor;

3. remote-controlled valves in the diverter lines. All valves in the diverter system shall be full-opening. Installation of manual or butterfly valves in any part of the diverter system is prohibited;

4. minimize the number of turns in the diverter lines, maximize the radius of curvature of turns, and minimize or eliminate all right angles and sharp turns;

5. anchor and support systems to prevent whipping and vibration;

6. rigid piping for diverter lines. The use of flexible hoses with integral end couplings in lieu of rigid piping for diverter lines shall be approved by the district manager.

#### **B. Diverter Testing Requirements**

1. When the diverter system is installed, the diverter components including the sealing element, diverter valves, control systems, stations and vent lines shall be function and pressure tested.

2. For drilling operations with a surface wellhead configuration, the system shall be function tested at least once every 24-hour period after the initial test.

3. After nipping-up on conductor casing, the diverter sealing element and diverter valves are to be pressure tested to a minimum of 200 psig. Subsequent pressure tests are to be conducted within seven days after the previous test.

4. Function tests and pressure tests shall be alternated between control stations.

#### **5. Recordkeeping Requirements**

a. Pressure and function tests are to be recorded in the driller's report and certified (signed and dated) by the operator's representative.

b. The control station used during a function or pressure test is to be recorded in the driller's report.

c. Problems or irregularities during the tests are to be recorded along with actions taken to remedy same in the driller's report.

d. All reports pertaining to diverter function and/or pressure tests are to be retained for inspection at the wellsite for the duration of drilling operations.

C. BOP Systems. The operator shall specify and insure that contractors design, install, use, maintain and test the BOP system to ensure well control during drilling, workover and all other appropriate operations. The surface BOP stack shall be installed before drilling below surface casing.

1. BOP system components for drilling activity located over a body of water shall be designed and utilized, as necessary, to control the well under all potential conditions that might occur during the operations being conducted and at minimum, shall include the following components:

a. annular-type well control component;

b. hydraulically-operated blind rams;

c. hydraulically-operated shear rams;

d. two sets of hydraulically-operated pipe rams.

2. Drilling activity with a tapered drill string shall require the installation of two or more sets of conventional

or variable-bore pipe rams in the BOP stack to provide, at minimum, two sets of rams capable of sealing around the larger-size drill string and one set of pipe rams capable of sealing around the smaller-size drill string.

3. A set of hydraulically-operated combination rams may be used for the blind rams and shear rams.

4. All connections used in the surface BOP system must be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and the kill line.

5. The commissioner of conservation, following a public hearing, may grant exceptions to the requirements of LAC 43:XIX.207.C-J.

D. BOP Working Pressure. The working pressure rating of any BOP component, excluding annular-type preventers, shall exceed the maximum anticipated surface pressure (MASP) to which it may be subjected.

E. BOP Auxiliary Equipment. All BOP systems shall be equipped and provided with the following.

1. A hydraulically actuated accumulator system which shall provide 1.5 times volume of fluid capacity to close and hold closed all BOP components, with a minimum pressure of 200 psig above the pre-charge pressure without assistance from a charging system.

2. A backup to the primary accumulator-charging system, supplied by a power source independent from the power source to the primary, which shall be sufficient to close all BOP components and hold them closed.

3. Accumulator regulators supplied by rig air without a secondary source of pneumatic supply shall be equipped with manual overrides or other devices to ensure capability of hydraulic operation if the rig air is lost.

4. At least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor. If a BOP control station does not perform properly, operations shall be suspended until that station is operable.

5. A drilling spool with side outlets, if side outlets are not provided in the body of the BOP stack, to provide for separate kill and choke lines.

6. A kill line and a separate choke line are required. Each line must be equipped with two full-opening valves and at least one of the valves must be remotely controlled. The choke line shall be installed above the bottom ram. A manual valve must be used instead of the remotely controlled valve on the kill line if a check valve is installed between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and must be installed between the well control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. The kill line inlet on the BOP stack must not be used for taking fluid returns from the wellbore.

7. A valve installed below the swivel (upper kelly cock), essentially full-opening, and a similar valve installed at the bottom of the kelly (lower kelly cock). An operator must be able to strip the lower kelly cock through the BOP stack. A wrench to fit each valve shall be stored in a location readily accessible to the drilling crew. If drilling with a mud

motor and utilizing drill pipe in lieu of a kelly, you must install one kelly valve above, and one strippable kelly valve below the joint of pipe used in place of a kelly. On a top-drive system equipped with a remote-controlled valve, you must install a strippable kelly-type valve below the remote-controlled valve.

8. An essentially full-opening drill-string safety valve in the open position on the rig floor shall be available at all times while drilling operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety valve shall be stored in a location readily accessible to the drilling crew.

9. A safety valve shall be available on the rig floor assembled with the proper connection to fit the casing string being run in the hole.

10. Locking devices installed on the ram-type preventers.

F. BOP Maintenance and Testing Requirements

1. The BOP system shall be visually inspected on a daily basis.

2. Pressure tests (low and high pressure) of the BOP system are to be conducted at the following times and intervals:

a. during a shop test prior to transport of the BOPs to the drilling location. Shop tests are not required for equipment that is transported directly from one well location to another;

b. immediately following installation of the BOPs;

c. within 14 days of the previous BOP pressure test, alternating between control stations and at a staggered interval to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional, system is operable. Exceptions may be granted by the district manager in cases where a trip is scheduled to occur within 2 days after the 14-day testing deadline;

d. before drilling out each string of casing or liner (The district manager may require that a conservation enforcement specialist witness the test prior to drilling out each casing string or liner.);

e. Not more than 48 hours before a well is drilled to a depth that is within 1000 feet of a hydrogen sulfide zone (The district manager may require that a conservation enforcement specialist witness the test prior to drilling to a depth that is within 1000 feet of a hydrogen sulfide zone.);

f. when the BOP tests are postponed due to well control problem(s), the BOP test is to be performed on the first trip out of the hole, and reasons for postponing the testing are to be recorded in the driller's report.

3. Low pressure tests (200-300 psig) of the BOP system (choke manifold, kelly valves, drill-string safety valves, etc.) are to be performed at the times and intervals specified in LAC 43:XIX.207.F.2. in accordance with the following provisions.

a. Test pressures are to be held for a minimum of five minutes.

b. Variable bore pipe rams are to be tested against the largest and smallest sizes of pipe in use, excluding drill collars and bottom hole assembly.

c. Bonnet seals are to be tested before running the casing when casing rams are installed in the BOP stack.



4. High pressure tests of the BOP system are to be performed at the times and intervals specified in LAC 43:XIX.207.F.2 in accordance with the following provisions.

a. Test pressures are to be held for a minimum of five minutes.

b. Ram-type BOP's, choke manifolds, and associated equipment are to be tested to the rated working pressure of the equipment or 500 psi greater than the calculated MASP for the applicable section of the hole.

c. Annular-type BOPs are to be tested to 70 percent of the rated working pressure of the equipment.

5. The annular and ram-type BOPs with the exception of the blind-shear rams are to be function tested every seven days between pressure tests. All BOP test records should be certified (signed and dated) by the operator's representative.

a. Blind-shear rams are to be tested at all casing points and at an interval not to exceed 30 days.

6. If the BOP equipment does not hold the required pressure during a test, the problem must be remedied and a retest of the affected component(s) performed. Additional BOP testing requirements:

a. use water to test the surface bop system;

b. if a control station is not functional operations shall be suspended until that station is operable;

c. test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly.

G. BOP Record Keeping. The time, date and results of pressure tests, function tests, and inspections of the BOP system are to be recorded in the driller's report. All pressure tests shall be recorded on an analog chart or digital recorder. All documents are to be retained for inspection at the wellsite for the duration of drilling operations and are to be retained in the operator's files for a period of two years.

H. BOP Well Control Drills. Weekly well control drills with each drilling crew are to be conducted during a period of activity that minimizes the risk to drilling operations. The drills must cover a range of drilling operations, including drilling with a diverter (if applicable), on-bottom drilling, and tripping. Each drill must be recorded in the driller's report and is to include the time required to close the BOP system, as well as, the total time to complete the entire drill.

I. Well Control Safety Training. In order to ensure that all drilling personnel understand and can properly perform their duties prior to drilling wells which are subject to the jurisdiction of the Office of Conservation, the operator shall require that contract drilling companies provide and/or implement the following:

1. periodic training for drilling contractor employees which ensures that employees maintain an understanding of, and competency in, well control practices;

2. procedures to verify adequate retention of the knowledge and skills that the contract drilling employees need to perform their assigned well control duties.

J. Well Control Operations

1. The operator must take necessary precautions to keep wells under control at all times and must:

a. use the best available and safest drilling technology to monitor and evaluate well conditions and to minimize the potential for the well to flow or kick;

b. have a person onsite during drilling operations who represents the operators interests and can fulfill the operators responsibilities;

c. ensure that the tool pusher, operator's representative, or a member of the drilling crew maintains continuous surveillance on the rig floor from the beginning of drilling operations until the well is completed or abandoned, unless you have secured the well with blowout preventers (BOPs), bridge plugs, cement plugs, or packers;

d. use and maintain equipment and materials necessary to ensure the safety and protection of personnel, equipment, natural resources, and the environment.

2. Whenever drilling operations are interrupted, a downhole safety device must be installed, such as a cement plug, bridge plug, or packer. The device must be installed at an appropriate depth within a properly cemented casing string or liner.

a. Among the events that may cause interruption to drilling operations are:

i. evacuation of the drilling crew;

ii. inability to keep the drilling rig on location; or

iii. repair to major drilling or well-control equipment.

3. If the diverter or BOP stack is nipped down while waiting on cement, it must be determined, before nipping down, when it will be safe to do so based on knowledge of formation conditions, cement composition, effects of nipping down, presence of potential drilling hazards, well conditions during drilling, cementing, and post cementing, as well as past experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

#### **§209. Casing-Heads**

A. All wells shall be equipped with casing-heads with a test pressure in conformance with conditions existing in areas in which they are used. Casing-head body, as soon as installed shall be equipped with proper connections and valves accessible to the surface. Reconditioning shall be required on any well showing pressure on the casing-head, or leaking gas or oil between the oil string and next larger size casing string, when, in the opinion of the district managers, such pressure or leakage assume hazardous proportions or indicate the existence of underground waste. Mud-laden fluid may be pumped between any two strings of casing at the top of the hole, but no cement shall be used except by special permission of the commissioner or his agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

#### **§211. Oil and Gas Well-Workover Operations**

A. Definitions. When used in this Section, the following terms shall have the meanings given below.

*Expected Surface Pressure*—the highest pressure predicted to be exerted upon the surface of a well. In calculating expected surface pressure, reservoir pressure as well as applied surface pressure must be considered.

*Routine Operations*—any of the following operations conducted on a well with the tree installed including cutting paraffin, removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves which can be removed by wireline operations, bailing sand, pressure surveys, swabbing, scale or corrosion treatment, caliper and gauge surveys, corrosion inhibitor treatment, removing or replacing subsurface pumps, through-tubing logging, wireline fishing, and setting and retrieving other subsurface flow-control devices.

*Workover Operations*—the work conducted on wells after the initial completion for the purpose of maintaining or restoring the productivity of a well.

B. When well-workover operations are conducted on a well with the tree removed, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station, except when there is no other hydrocarbon-producing well or other hydrocarbon flow on the platform.

C. Prior to engaging in well-workover operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for review.

D. Well-control fluids, equipment, and operations. The following requirements apply during all well-workover operations with the tree removed.

1. The minimum BOP-system components when the expected surface pressure is less than or equal to 5,000 psi shall include one annular-type well control component, one set of pipe rams, and one set of blind-shear rams. The shear ram component of this requirement shall be effective for any workover operations initiated on or after January 1, 2011 and not before.

2. The minimum BOP-system components when the expected surface pressure is greater than 5,000 psi shall include one annular-type well control component, two sets of pipe rams, and one set of blind-shear rams. The shear ram component of this requirement shall be effective for any workover operations initiated on or after January 1, 2011 and not before.

3. BOP auxiliary equipment in accordance with the requirements of LAC 43:XIX.207.E.

4. When coming out of the hole with drill pipe or a workover string, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe or workover string, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hold shall be utilized.

5. The following well-control-fluid equipment shall be installed, maintained, and utilized:

- a. a fill-up line above the uppermost BOP;

- b. a well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and

- c. a recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

E. The minimum BOP-system components for well-workover operations with the tree in place and performed through the wellhead inside of conventional tubing using small-diameter jointed pipe (usually 3/4 inch to 1 1/4 inch) as a work string, i.e., small-tubing operations, shall include two sets of pipe rams, and one set of blind rams.

1. An essentially full-opening work-string safety valve in the open position on the rig floor shall be available at all times while well-workover operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the work string. A wrench to fit the work-string safety valve shall be stored in a location readily accessible to the workover crew.

F. For coiled tubing operations with the production tree in place, you must meet the following minimum requirements for the BOP system:

1. BOP system components must be in the following order from the top down when expected surface pressures are less than or equal to 3,500 psi:

- a. stripper or annular-type well control component;
- b. hydraulically-operated blind rams;
- c. hydraulically-operated shear rams;
- d. kill line inlet;
- e. hydraulically operated two-way slip rams;
- f. hydraulically operated pipe rams.

2. BOP system components must be in the following order from the top down when expected surface pressures are greater than 3,500 psi:

- a. stripper or annular-type well control component;
- b. hydraulically-operated blind rams;
- c. hydraulically-operated shear rams;
- d. kill line inlet;
- e. hydraulically-operated two-way slip rams;
- f. hydraulically-operated pipe rams;
- g. hydraulically-operated blind-shear rams. These rams should be located as close to the tree as practical.

3. BOP system components must be in the following order from the top down for wells with returns taken through an outlet on the BOP stack:

- a. stripper or annular-type well control component;
- b. hydraulically-operated blind rams;
- c. hydraulically-operated shear rams;
- d. kill line inlet;
- e. hydraulically-operated two-way slip rams;
- f. hydraulically-operated pipe rams;
- g. a flow tee or cross;
- h. hydraulically-operated pipe rams;
- i. hydraulically-operated blind-shear rams on wells

with surface pressures less than or equal to 3,500 psi. As an option, the pipe rams can be placed below the blind-shear rams. The blind-shear rams should be placed as close to the tree as practical.

4. A set of hydraulically-operated combination rams may be used for the blind rams and shear rams.

5. A set of hydraulically-operated combination rams may be used for the hydraulic two-way slip rams and the hydraulically-operated pipe rams.

6. A dual check valve assembly must be attached to the coiled tubing connector at the downhole end of the coiled tubing string for all coiled tubing well-workover operations. To conduct operations without a downhole check valve, it must be approved by the district manager.

7. A kill line and a separate choke line are required. Each line must be equipped with two full-opening valves and at least one of the valves must be remotely controlled. A manual valve must be used instead of the remotely controlled valve on the kill line if a check valve is installed between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and must be installed between the well control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. The kill line inlet on the BOP stack must not be used for taking fluid returns from the wellbore.

8. The hydraulic-actuating system must provide sufficient accumulator capacity to close-open-close each component in the BOP stack. This cycle must be completed with at least 200 psi above the pre-charge pressure without assistance from a charging system.

9. All connections used in the surface BOP system from the tree to the uppermost required ram must be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and the kill line.

10. The coiled tubing connector must be tested to a low pressure of 200 to 300 psi, followed by a high pressure test to the rated working pressure of the connector or the expected surface pressure, whichever is less. The dual check valves must be successfully pressure tested to the rated working pressure of the connector, the rated working pressure of the dual check valve, expected surface pressure, or the collapse pressure of the coiled tubing, whichever is less.

G. The minimum BOP-system components for well-workover operations with the tree in place and performed by moving tubing or drill pipe in or out of a well under pressure utilizing equipment specifically designed for that purpose, i.e., snubbing operations, shall include the following:

1. one set of pipe rams hydraulically operated; and
2. two sets of stripper-type pipe rams hydraulically operated with spacer spool.

H. Test pressures must be recorded during BOP and coiled tubing tests on a pressure chart, or with a digital recorder, unless otherwise approved by the district manager. The test interval for each BOP system component must be 5 minutes, except for coiled tubing operations, which must include a 10 minute high-pressure test for the coiled tubing string.

I. Wireline Operations. The operator shall comply with the following requirements during routine, as defined in Subsection A of this Section, and nonroutine wireline workover operations.

1. Wireline operations shall be conducted so as to minimize leakage of well fluids. Any leakage that does occur shall be contained to prevent pollution.

2. All wireline perforating operations and all other wireline operations where communication exists between the completed hydrocarbon-bearing zone(s) and the wellbore shall use a lubricator assembly containing at least one wireline valve.

3. When the lubricator is initially installed on the well, it shall be successfully pressure tested to the expected shut-in surface pressure.

J. Following completion of the well-workover activity, all such records shall be retained by the operator for a period of two years.

K. An essentially full-opening work-string safety valve in the open position on the rig floor shall be available at all times while well-workover operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the work string. A wrench to fit the work-string safety valve shall be stored in a location readily accessible to the workover crew.

L. The commissioner may grant an exception to any provisions of this section that require specific equipment upon proof of good cause. For consideration of an exception, the operator must show proof of the unavailability of properly sized equipment and demonstrate that anticipated surface pressures minimize the potential for a loss of well control during the proposed operations. All exception requests must be made in writing to the commissioner and include documentation of any available evidence supporting the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

### **§213. Diesel Engine Safety Requirements**

A. On or after January 1, 2011, each diesel engine with an air take device must be equipped to shut down the diesel engine in the event of a runaway.

1. A diesel engine that is not continuously manned, must be equipped with an automatic shutdown device.

2. A diesel engine that is continuously manned, may be equipped with either an automatic or remote manual air intake shutdown device.

3. A diesel engine does not have to be equipped with an air intake device if it meets one of the following criteria:

- a. starts a larger engine;
- b. powers a firewater pump;
- c. powers an emergency generator;
- d. powers a bop accumulator system;
- e. provides air supply to divers or confined entry personnel;
- f. powers temporary equipment on a nonproducing platform;
- g. powers an escape capsule; or
- h. powers a portable single-cylinder rig washer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

## §215. Drilling Fluids

A. The inspectors and engineers of the Office of Conservation shall have access to the mud records of any drilling well, except those records which pertain to special muds and special work with respect to patentable rights, and shall be allowed to conduct any essential test or tests on the mud used in the drilling of a well. When the conditions and tests indicate a need for a change in the mud or drilling fluid program in order to insure proper control of the well, the district manager shall require the operator or company to use due diligence in correcting any objectionable conditions.

B. Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances.

C. The well shall be continuously monitored during all operations and shall not be left unattended at any time unless the well is shut in and secured.

D. The following well-control-fluid equipment shall be installed, maintained, and utilized:

1. a fill-up line above the uppermost BOP;
2. a well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and
3. a recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

### E. Safe Practices

1. Before starting out of the hole with drill pipe, the drilling fluid must be properly conditioned. A volume of drilling fluid equal to the annular volume must be circulated with the drill pipe just off-bottom. This practice may be omitted if documentation in the driller's report shows:

- a. no indication of formation fluid influx before starting to pull the drill pipe from the hole;
- b. the weight of returning drilling fluid is within 0.2 pounds per gallon of the drilling fluid entering the hole.

2. Record each time drilling fluid is circulated in the hole in the driller's report.

3. When coming out of the hole with drill pipe, the annulus must be filled with drilling fluid before the hydrostatic pressure decreases by 75 psi, or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled must be calculated before the hole is filled. Both sets of numbers must be posted near the driller's station. A mechanical, volumetric, or electronic device must be used to measure the drilling fluid required to fill the hole.

4. Controlled rates must be used to run and pull drill pipe and downhole tools so as not to swab or surge the well.

5. When there is an indication of swabbing or influx of formation fluids, appropriate measures must be taken to control the well. Circulate and condition the well, on or near-bottom, unless well or drilling-fluid conditions prevent running the drill pipe back to the bottom.

6. The maximum pressures must be calculated and posted near the driller's console that you may safely contain under a shut-in BOP for each casing string. The pressures posted must consider the surface pressure at which the formation at the shoe would break down, the rated working pressure of the BOP stack, and 70 percent of casing burst (or casing test as approved by the district manager). As a minimum, you must post the following two pressures:

a. the surface pressure at which the shoe would break down. This calculation must consider the current drilling fluid weight in the hole; and

b. the lesser of the BOP's rated working pressure or 70 percent of casing-burst pressure (or casing test otherwise approved by the district manager).

7. An operable drilling fluid-gas separator and degasser must be installed before you begin drilling operations. This equipment must be maintained throughout the drilling of the well.

8. The test fluids in the hole must be circulated or reverse circulated before pulling drill-stem test tools from the hole. If circulating out test fluids is not feasible, with an appropriate kill weight fluid test fluids may be bullhead out of the drill-stem test string and tools.

9. When circulating, the drilling fluid must be tested at least once each work shift or more frequently if conditions warrant. The tests must conform to industry-accepted practices and include density, viscosity, and gel strength; hydrogen ion concentration; filtration; and any other tests the district manager requires for monitoring and maintaining drilling fluid quality, prevention of downhole equipment problems and for kick detection. The test results must be recorded in the drilling fluid report.

### F. Monitoring Drilling Fluids

1. Once drilling fluid returns are established, the following drilling fluid-system monitoring equipment must be installed throughout subsequent drilling operations. This equipment must have the following indicators on the rig floor:

a. pit level indicator to determine drilling fluid-pit volume gains and losses. This indicator must include both a visual and an audible warning device;

b. volume measuring device to accurately determine drilling fluid volumes required to fill the hole on trips;

c. return indicator devices that indicate the relationship between drilling fluid-return flow rate and pump discharge rate. This indicator must include both a visual and an audible warning device; and

d. gas-detecting equipment to monitor the drilling fluid returns. The indicator may be located in the drilling fluid-logging compartment or on the rig floor. If the indicators are only in the logging compartment, you must continually man the equipment and have a means of immediate communication with the rig floor. If the indicators are on the rig floor only, an audible alarm must be installed.

### G. Drilling Fluid Quantities

1. Quantities of drilling fluid and drilling fluid materials must be maintained and replenished at the drill site as necessary to ensure well control. These quantities must be determined based on known or anticipated drilling conditions, rig storage capacity, weather conditions, and estimated time for delivery.

2. The daily inventories of drilling fluid and drilling fluid materials must be recorded, including weight materials and additives in the drilling fluid report.

3. If there are not sufficient quantities of drilling fluid and drilling fluid material to maintain well control, the drilling operations must be suspended.

## H. Drilling Fluid-Handling Areas

1. Drilling fluid-handling areas must be classified according to API RP 500, recommended practice for classification of locations for electrical installations at petroleum facilities, classified as class I, division 1 and division 2 or API RP 505, recommended practice for classification of locations for electrical installations at petroleum facilities, classified as class 1, zone 0, zone 1, and zone 2. In areas where dangerous concentrations of combustible gas may accumulate. A ventilation system and gas monitors must be installed and maintained. Drilling fluid-handling areas must have the following safety equipment:

a. a ventilation system capable of replacing the air once every 5 minutes or 1.0 cubic feet of air-volume flow per minute, per square foot of area, whichever is greater. In addition:

i. if natural means provide adequate ventilation, then a mechanical ventilation system is not necessary;

ii. if a mechanical system does not run continuously, then it must activate when gas detectors indicate the presence of 1 percent or more of combustible gas by volume; and

iii. if discharges from a mechanical ventilation system may be hazardous, the drilling fluid-handling area must be maintained at a negative pressure. The negative pressure area must be protected by using at least one of the following: a pressure-sensitive alarm, open-door alarms on each access to the area, automatic door-closing devices, air locks, or other devices approved by the district manager;

b. gas detectors and alarms except in open areas where adequate ventilation is provided by natural means. Gas detectors must be tested and recalibrated quarterly. No more than 90 days may elapse between tests;

c. explosion-proof or pressurized electrical equipment to prevent the ignition of explosive gases. Where air is used for pressuring equipment, the air intake must be located outside of and as far as practicable from hazardous areas; and

d. alarms that activate when the mechanical ventilation system fails.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

### Subpart 4. Statewide Order No. 29-B-a

## Chapter 11. Required Use of Storm Chokes

### §1101. Scope

A. Order establishing rules and regulations concerning the required use of storm chokes to prevent blowouts or uncontrolled flow in the case of damage to surface equipment.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 15, 1946, amended March 1, 1961, amended and promulgated by the Department of Natural Resources, Office of Conservation, LR 20:1127 (October 1994), LR 40:

### §1103. Applicability

A. All wells capable of flow with a surface pressure in excess of 100 pounds, falling within the following categories, shall be equipped with storm chokes:

1. any locations inaccessible during periods of storm and/or floods, including spillways;

2. located in bodies of water being actively navigated;

3. located in wildlife refuges and/or game preserves;

4. located within 660 feet of railroads, ship channels, and other actively navigated bodies of water;

5. located within 660 feet of state and federal highways in southeast Louisiana, in that area east of a north-south line drawn through New Iberia and south of an east-west line through Opelousas;

6. located within 660 feet of state and federal highways in northeast Louisiana, in that area bounded on the west by the Ouachita River, on the north by the Arkansas-Louisiana line, on the east by the Mississippi River, and on the south by the Black and Red Rivers;

7. located within 660 feet of the following highways:

a. U.S. Highway 71 between Alexandria and Krotz Springs;

b. U.S. Highway 190 between Opelousas and Krotz Springs;

c. U.S. Highway 90 between Lake Charles and the Sabine River;

8. located within the corporate limits of any city, town, village, or other municipality.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 15, 1946, amended March 1, 1961, amended and promulgated by Department of Natural Resources, Office of Conservation, LR 20:1128 (October 1994), LR 40:

### §1104. General Requirements for Storm Choke Use at Water Locations

A. This Section only applies to oil and gas wells at water locations.

B. A subsurface safety valve (SSSV) shall be designed, installed, used, maintained, and tested to ensure reliable operation.

1. The device shall be installed at a depth of 100 feet or more below the seafloor within 2 days after production is established.

2. Until a SSSV is installed, the well shall be attended in the immediate vicinity so that emergency actions may be taken while the well is open to flow. During testing and inspection procedures, the well shall not be left unattended while open to production unless a properly operating subsurface-safety device has been installed in the well.

3. The well shall not be open to flow while the SSSV is removed, except when flowing of the well is necessary for a particular operation such as cutting paraffin, bailing sand, or similar operations.

4. All SSSV's must be inspected, installed, used, maintained, and tested in accordance with American Petroleum Institute recommended practice 14B, recommended practice for design, installation, repair, and operation of subsurface safety valve systems.

C. Temporary Removal for Routine Operations

1. Each wireline or pumpdown-retrievable SSSV may be removed, without further authorization or notice, for a routine operation which does not require the approval of Form DM-4R.

2. The well shall be identified by a sign on the wellhead stating that the SSSV has been removed. If the

master valve is open, a trained person shall be in the immediate vicinity of the well to attend the well so that emergency actions may be taken, if necessary.

3. A platform well shall be monitored, but a person need not remain in the well-bay area continuously if the master valve is closed. If the well is on a satellite structure, it must be attended or a pump-through plug installed in the tubing at least 100 feet below the mud line and the master valve closed, unless otherwise approved by the district manager.

4. Each operator shall maintain records indicating the date a SSSV is removed, the reason for its removal, and the date it is reinstalled

D. Emergency Action. In the event of an emergency, such as an impending storm, any well not equipped with a subsurface safety device and which is capable of natural flow shall have the device properly installed as soon as possible with due consideration being given to personnel safety.

#### E. Design and Operation

1. All SSSVs must be inspected, installed, maintained, and tested in accordance with API RP 14B, recommended practice for design, installation, repair, and operation of subsurface safety valve systems.

2. Testing requirements. Each SSSV installed in a well shall be removed, inspected, and repaired or adjusted, as necessary, and reinstalled or replaced at intervals not exceeding 6 months for those valves not installed in a landing nipple and 12 months for those valves installed in a landing nipple.

3. Records must be retained for a period of 2 years for each safety device installed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

### **§1105. Waivers**

A. Onshore Wells. Where the use of storm chokes would unduly interfere with normal operation of a well, the district manager may, upon submission of pertinent data, in writing, waive the requirements of this order.

#### B. Offshore Wells

1. The district manager, upon submission of pertinent data, in writing explaining the efforts made to overcome the particular difficulties encountered, may waive the use of a subsurface safety valve under the following circumstances, and may, in his discretion, require in lieu thereof a surface safety valve:

a. where sand is produced to such an extent or in such a manner as to tend to plug the tubing or make inoperative the subsurface safety valve;

b. when the flowing pressure of the well is in excess of 100 psi but is inadequate to activate the subsurface safety valve;

c. where flow rate fluctuations or water production difficulties are so severe that the subsurface safety valve would prevent the well from producing at its allowable rate;

d. where mechanical well conditions do not permit the installation of a subsurface safety valve;

e. in such other cases as the district manager may deem necessary to grant an exception.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 1, 1961, amended March 15, 1961, amended and promulgated by Department of Natural Resources, Office of Conservation, LR 20:1128 (October 1994), LR 40:

James H. Welsh  
Commissioner

1407#081

## **DECLARATION OF EMERGENCY**

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

2014-15 Early Migratory Bird Season

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.

The hunting seasons for early migratory birds during the 2014-2015 hunting season shall be as follows:

Dove: The term *dove* refers to the following species, and only the following species: mourning doves, white-winged doves, Eurasian collared-doves, and ringed-turtle doves.

Dove South Zone:

September 6 – 14

October 11 – December 3

December 20 – January 15

Dove North Zone:

September 6 – 28

October 11 – November 9

December 10 – January 15

Bag Limit: Mourning and white-winged doves and fully dressed Eurasian collared- and ringed turtle-doves: Daily bag limit 15 in aggregate, Possession 45 in aggregate, but note: there is no bag limit on Eurasian collared-doves or ringed turtle-doves provided that a fully feathered wing and head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed-turtle doves (those without a fully feathered wing and head naturally attached to the carcass) shall be included in the aggregate bag.

Dove Hunting Zones: The state shall be divided into North and South Dove Hunting Zones by the following boundary: Beginning at the Texas-Louisiana border on La. Highway 12; thence east along La. Highway 12 to its intersection with U.S. Highway 190; thence east along U.S. Highway 190 to its intersection with Interstate 12; thence east along Interstate 12 to its intersection with Interstate 10; thence east along Interstate 10 to the Mississippi state line.

Teal: September 13 - September 28

Daily bag limit 6, possession limit 18, blue-winged, green-winged and Cinnamon teal only. Federal and state waterfowl stamps required.

Rails: Split Season, Statewide, 70 days

September 13 - September 28

Remainder of season to be set in August with the duck regulations.

King and Clapper: Daily bag limit 15 in the aggregate and possession 45 in the aggregate.

Sora and Virginia: Daily bag limit 25 in the aggregate and possession 75 in the aggregate.

Gallinules: Split Season, Statewide, 70 days

September 13 - September 28

Remainder of season to be set in August with the duck regulations.

Common and Purple: Daily bag limit 15 in the aggregate, possession of 45 in the aggregate.

Woodcock: December 18 - January 31, Statewide

Daily bag limit 3, possession limit 9.

Snipe: Deferred to be set in August with the duck regulations.

Extended Falconry Season

Mourning Doves: Statewide

September 15 - October 1

Woodcock: Split Season, Statewide

October 28 - December 17

February 1 - February 11

Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 9 birds, respectively, singly or in the aggregate, during the extended falconry seasons and regular hunting seasons. Remainder of extended falconry seasons for ducks, rails, gallinules to be set in August with the duck regulations.

Shooting and Hawking Hours:

Dove: One-half hour before sunrise to sunset. Except opening day on WMA properties only, open at 12:00 noon.

Teal, rails, gallinules, and woodcock: One-half hour before sunrise to sunset.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 100,000 sportsmen, selection of season dates, bag limits, and shooting hours must be established and presented to the U.S. Fish and Wildlife Service Immediately.

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 2014 and extend through sunset on February 28, 2015.

Billy Broussard  
Chairman

1407#044

## DECLARATION OF EMERGENCY

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

Spring Inshore Shrimp Season Closure in the Terrebonne, Barataria and Portions of the Lake Pontchartrain Basin

In accordance with the emergency provisions of R.S. 49:953 of 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 fix no less than two open seasons each year for all or part of inside waters and a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on May 1, 2014 which authorized the secretary of the Department of Wildlife and Fisheries to close the 2014 spring inshore shrimp season in any portion of Louisiana's inside waters to protect small

white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop, the secretary hereby declares:

The 2014 spring inshore shrimp season will close on July 15, 2014 at 6:00 a.m. in that portion of state inside waters from the eastern shore of South Pass of the Mississippi River westward to the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel Buoy Line; and in that portion of state inside waters from the Mississippi/Louisiana state line eastward to the eastern shore of South Pass of the Mississippi River except for the following waters: that portion of Lake Borgne seaward of a line extending one-half mile from the shoreline; and, that portion of Mississippi Sound north of a line beginning at 30 degrees 05 minutes 00.0 seconds north latitude and 89 degrees 30 minutes 00.0 seconds west longitude; thence southeasterly to a point on the western shore of Three-Mile Pass at 30 degrees 03 minutes 00.0 seconds north latitude and 89 degrees 22 minutes 23.0 seconds west longitude; thence northeasterly to a point on Isle Au Pitre at 30 degrees 09 minutes 20.5 seconds north latitude and 89 degrees 11 minutes 15.5 seconds west longitude, which is a point on the double-rig line as described in R.S. 56:495.1(A)2; and, the open waters of Breton and Chandeleur Sounds as described in R.S. 56:495.1(A)2.

The spring inshore shrimp season in the Vermilion/Teche River Basin closed on July 3, 2014 and all remaining state inside waters as well as all state outside waters seaward of the inside/outside shrimp line, as described in R.S. 56:495 will remain open to shrimping until further notice except for those areas closed to recreational and commercial fishing due to the Deepwater Horizon oil spill disaster.

The number, distribution and percentage of small juvenile white shrimp taken in biological samples within these waters has rapidly increased in recent weeks and these waters are being closed to protect these developing shrimp.

Robert J. Barham  
Secretary

1407#045

## DECLARATION OF EMERGENCY

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

Spring Inshore Shrimp Season Closure in  
Vermilion/Teche River Basin

In accordance with the emergency provisions of R.S. 49:953 of 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 fix no less than two open seasons each year for all or part of inside waters and a Declaration of Emergency adopted by the Wildlife and Fisheries Commission on May 1, 2014 which authorized the secretary of the Department of Wildlife and Fisheries to close the 2014 spring inshore shrimp season in any portion of Louisiana's inside waters to protect small white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop, the secretary hereby declares:

The 2014 spring inshore shrimp season will close on July 3, 2014 at one-half hour after sunset in that portion of state inside waters from the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel Buoy Line westward to the western shore of Freshwater Bayou Canal.

All remaining state inside waters as well as all state outside waters seaward of the inside/outside shrimp line, as described in R.S. 56:495 will remain open to shrimping until further notice except for those areas closed to recreational

and commercial fishing due to the Deepwater Horizon oil spill disaster.

The number, distribution and percentage of small juvenile white shrimp taken in biological samples within these waters has rapidly increased in recent weeks and these waters are being closed to protect these developing shrimp.

Robert J. Barham  
Secretary

1407#078



# Rules

## RULE

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

#### Horticulture and Quarantine Programs (LAC 7:XV.127)

Under the enabling authority of R.S. 3:1652 and in accordance with the Administrative Procedure Act R.S. 49:950 et seq., the Department of Agriculture and Forestry has amended the rules and regulations set out below, establishing a quarantine for the following citrus pests: citrus greening disease (CG), also known as Huanglongbing disease of citrus, caused by the bacterial pathogen *Candidatus Liberibacter spp.*; Asian citrus psyllid (ACP), *Diaphorina citri Kuwayama*; and citrus canker disease (CC) caused by the bacterial pathogens *Xanthomonas axonopodis pv. citri* and *Xanthomonas axonopodis pv. aurantifolii*. The state entomologist has determined that CG, ACP and CC have been found in this state and may be prevented, controlled, or eradicated by quarantine.

CG, ACP and CC pose an imminent peril to the health and welfare of the Louisiana commercial citrus industry due to their ability to infest rutaceous plants. This industry has a farm value of \$2.4-\$5 million in southeastern Louisiana in the form of citrus nursery stock, and \$5.1 million in the form of commercial citrus fruit in the state. CG renders the fruit unmarketable and ultimately causes the death of infested plants. The ACP moves CG from one plant to another, thereby infesting new plants and spreading CG. CC causes premature leaf and fruit drop, twig dieback and tree decline in citrus trees and is spread by wind-driven rain or through the movement of infected plants. Failure to prevent, control, or eradicate these pests threatens to destroy Louisiana's commercial citrus industry and the growing and harvesting of citrus by citizens of Louisiana for their own private use.

Louisiana's commercial citrus industry adds \$7.5-\$10 million dollars to the state's agriculture economy each year. Sales of citrus trees and plants by nursery stock dealers to private individuals also are important to the state's economy. The loss of the state's commercial citrus industry and privately owned citrus trees and fruit would be devastating to the state's economy and to its private citizens. The quarantines established by these regulations are necessary to prevent the spread of CG, ACP and CC to citrus production areas in Louisiana that are outside of the current areas where these pests have been found.

For these reasons, the outbreak of CG, ACP and CC in Louisiana present an imminent peril to the health, safety and welfare of Louisiana's citizens and the state's commercial and private citrus industry. 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 regulations.

This Rule shall have the force and effect of law five days after its promulgation in the official journal of the state.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XV. Plant Protection and Quarantine

##### Chapter 1. Crop Pests and Diseases

##### Subchapter B. Nursery Stock Quarantines

##### §127. Citrus Nursery Stock, Scions and Budwood

###### A. - C.6. ...

###### D. Citrus Greening Disease Quarantine

1. The department issues the following quarantine because the state entomologist has determined that citrus greening disease (CG), also known as Huanglongbing disease of citrus, caused by the bacterial pathogen *Candidatus Liberibacter spp.*, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

2. Quarantined Areas. The quarantined areas in this state are the parishes of Orleans and Washington, and any other areas found to be infested with CG. The declaration of any other specific parishes or areas shall be published in the official journal of the state and in the *Louisiana Register*.

3. Regulated Materials. The following materials are hosts of CG and their movement is prohibited from CG-quarantined areas due to the presence of CG:

a. all plants and plant parts, including but not limited to nursery stock, cuttings, budwood, and propagative seed (but excluding fruit), of: *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *Afraegle paniculata*, *Amyris madrensis*, *Atalantia spp.* (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Bergera (=Murraya) koenigii*, *Calodendrum capense*, *Choisya ternata*, *Choisya arizonica*, *X Citroncirus webberi*, *Citropsis articulata*, *Citropsis gillettiana*, *Citrus madurensis (= X Citrofortunella microcarpa)*, *Citrus spp.*, *Clausena anisum-olens*, *Clausena excavata*, *Clausena indica*, *Clausena lansium*, *Eremocitrus glauca*, *Eremocitrus hybrid*, *Esenbeckia berlandieri*, *Fortunella spp.*, *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *Microcitrus australis*, *Microcitrus papuana*, *X Microcitronella spp.*, *Murraya spp.*, *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium ruticarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris (=Toddalia) lanceolata*, and *Zanthoxylum fagara*;

b. any other products, materials, articles, or means of conveyance, if an inspector determines that it presents a risk of spreading CG, and after the inspector provides written notification to the person in possession of the products, materials, articles, or means of conveyance that it is subject to the restrictions of the regulations.

###### E. Asian Citrus Psyllid Quarantine

1. The department issues the following quarantine because the state entomologist has determined that Asian citrus psyllid (ACP), *Diaphorina citri Kuwayama*, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

## 2. Quarantined Areas

a. The United States Department of Agriculture (USDA) has quarantined the entire state of Louisiana for interstate movement of regulated materials.

b. The department has quarantined the following areas within this state for intrastate movement of regulated materials: the parishes of Jefferson, Orleans, Lafourche, Plaquemines, St. Bernard, St. Charles, St. James, St. Tammany, Tangipahoa, Terrebonne, and any other areas found to be infested with ACP. The declaration of any other specific parish or areas shall be published in the official journal of the state and in the *Louisiana Register*.

3. Regulated Materials. The following materials are hosts of ACP and the interstate and intrastate movement of these materials is prohibited from the ACP-quarantined areas listed in Paragraph E.2 due to the presence of ACP:

a. all plants and plant parts, including but not limited to nursery stock, cuttings, and budwood, except seed and fruit, of *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *Afraegle paniculata*, *Amyris madrensis*, *Atalantia spp.* (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Bergera (=Murraya) koenigii*, *Calodendrum capense*, *Choisya ternata*, *Choisya arizonica*, *X Citroncirus webberi*, *Citropsis articulata*, *Citropsis gilletiana*, *Citrus madurensis* (= *X Citrofortunella microcarpa*), *Citrus spp.*, *Clausena anisum-olens*, *Clausena excavata*, *Clausena indica*, *Clausena lansium*, *Eremocitrus glauca*, *Eremocitrus hybrid*, *Esenbeckia berlandieri*, *Fortunella spp.*, *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *Microcitrus australis*, *Microcitrus papuana*, *X Microcitronella spp.*, *Murraya spp.*, *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium ruticarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris (=Toddalia) lanceolata*, and *Zanthoxylum fagara*;

b. any other products, materials, articles, or means of conveyance, if an inspector determines that it presents a risk of spreading ACP, and after the inspector provides written notification to the person in possession of the products, materials, articles, or means of conveyance that it is subject to the restrictions of the regulations;

c. regulated materials originating from ACP-quarantined areas are prohibited entry into or through free areas of Louisiana, except as provided in Subsection D of this Section;

d. exceptions—to be eligible to move from quarantined areas, regulated materials must meet the following requirements.

i. Fruit may move interstate with no additional requirements. Fruit may move intrastate from areas quarantined for ACP to citrus-producing areas not under quarantine for ACP if cleaned using normal packinghouse procedures.

ii. Regulated culinary and decorative materials such as fresh curry leaves (*Bergera (=Murraya) koenigii*) intended for consumption, (instead of the treatments specified in Subparagraph b of this Paragraph), or mock orange leaves (*Murraya paniculata*) incorporated into leis or floral arrangements, must be treated prior to interstate or intrastate movement in accordance with the Animal and Plant Health Inspection Service's (APHIS) treatment schedule T101-n-2 (methyl bromide fumigation treatment

for external feeding insects on fresh herbs) at the times and rates specified in the treatment manual and must be safeguarded until movement. As an alternative to methyl bromide fumigation, regulated materials originating from an area not quarantined for CG may be irradiated in accordance with 7 CFR 305.

iii. Nursery stock of regulated plants listed in 3.a may be moved in accordance with the following requirements.

(a). Nursery stock of regulated plants may be moved interstate if moved in accordance with all requirements of 7 CFR 301.76 and the citrus nursery stock protocol. Persons wishing to move nursery stock interstate must enter into a compliance agreement with APHIS to move regulated materials. Compliance agreements may be arranged by contacting the Louisiana state plant health director, PPQ-APHIS-USDA, at 4354 South Sherwood Blvd., Suite 150D, Baton Rouge, LA 70816 or telephone (225) 298-5410.

(b). Nursery stock of regulated plants may be moved intrastate from ACP quarantined areas to non-quarantined areas of Louisiana if moved in accordance with conditions set forth in a departmental compliance agreement. Any person engaged in the business of growing or handling regulated materials must enter into a compliance agreement with the department if the regulated materials are to be moved to ACP-free areas of Louisiana.

## F. Citrus Canker Disease Quarantine

1. The department issues the following quarantine because the state entomologist has determined that citrus canker disease (CC), caused by the bacterial pathogen *Xanthomonas axonopodis* pv. *citri* (Xac A, A\* and AW) with synonyms *X. citri* pv. *citri*, or *X. citri* subsp. *citri* or *X. campestris* pv. *citri* or *X. smithii* subsp. *citri*; and *X. axonopodis* pv. *aurantifolii* (Xac B and C) with a synonym *X. fuscans* subsp. *aurantifolii*, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

2. No regulated materials as defined in this Subsection shall be moved out of any area of this state that is listed in this subsection as a quarantined area for CC, except as provided in this Subsection.

3. Any person violating this quarantine shall be subject to imposition of the remedies and penalties provided for in R.S. 3:1653 for any violation of this quarantine.

4. Quarantined areas in this state include:

a. the entire parish of Orleans;

b. the portions of Jefferson, Plaquemines and St. Charles Parishes bounded by a line beginning at the intersection of the Orleans and Plaquemines Parish line located in the center of the Mississippi River near St. Bernard State Park; then moving west, following the Orleans Parish line to the intersection of the Orleans Parish line with River Road; then moving west on River Road and following River Road parallel to the western border of the Mississippi River to the point where River Road becomes Highway 11; then following Highway 11 until it reaches the point immediately east of East Walker Road; then moving west following East Walker Road and crossing Highway 23 to the intersection of Highway 23 and Walker Road; then moving west following Walker Road to the intersection of East Bayou Road; then moving north following East Bayou Road

to the intersection of the service road servicing the intracoastal waterway west closure complex; then moving west-southwest along an imaginary line that intersects with the Jefferson Parish line running through Lake Salvador; then moving northeast, following the Jefferson Parish line to the intersection of the parish line with Highway 18; then moving southwest following Highway 18 (River Road) to the intersection of Interstate Highway 310; then moving north following Interstate Highway 310 across the Mississippi River and continuing on to the Interstate Highway 310/Interstate Highway 10 interchange; then moving east following Interstate Highway 10 to its intersection with the Jefferson Parish line; then moving north following the Jefferson Parish line until reaching the south shoreline of Lake Ponchartrain; then moving east following the south shoreline of Lake Ponchartrain until its intersection with the Orleans Parish line; then moving south following the Orleans Parish line and following said parish line to the point of beginning;

c. a declaration of quarantine for CC covering any other specific parishes or areas of this state shall be published in the official journal of the state and in the *Louisiana Register*.

5. Regulated materials are hosts of CC and their movement is prohibited from quarantined areas due to the presence of CC. Regulated materials include:

a. all plants or plant parts, including fruit and seeds, of any of the following: all species, clones, cultivars, strains, varieties, and hybrids of the genera citrus and fortunella, and all clones, cultivars, strains, varieties, and hybrids of the species *Clausena lansium*, and *Poncirus trifoliata*, and *Swinglea glutinosa*. The most common of these are lemon, pummelo, grapefruit, key lime, Persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, trifoliolate orange, tabog, and wampi;

b. all containerized citrus nursery stock plants of all types listed in Subparagraph 3.a above;

c. grass, plant, and tree clippings;

d. any other product, article, or means of conveyance, of any character whatsoever, not covered by Subparagraph a of this Section, when it is determined by an inspector that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this CC quarantine.

6. To be eligible to move from quarantined areas to non-quarantined areas within or outside of Louisiana, regulated materials must meet the following requirements.

a. Regulated fruit may be moved intrastate from a quarantined area for processing into a product other than fresh fruit if all of the following conditions are met.

i. The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for processing, and the date the intrastate movement began.

ii. The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

iii. The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with federal requirements before leaving the premises where the regulated fruit is unloaded for processing,

iv. All leaves, litter, eliminations, and culls collected from the shipment of regulated fruit at the processing facility are either incinerated at the processing facility or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

b. Regulated fruit may be moved intrastate from a quarantined area for packing, either for subsequent interstate movement with a limited permit or for export from the United States, if all of the following conditions are met.

i. The regulated fruit is accompanied by a document that states the location of the multi-block identification in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for packing, and the date the intrastate movement began.

ii. The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

iii. The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with federal requirements before leaving the premises where the regulated fruit is unloaded for packing.

iv. Any equipment that comes in contact with the regulated fruit at the packing plant is treated in accordance with federal requirements before being used to handle any fruit eligible for interstate movement to commercial citrus-producing areas.

v. All leaves and litter collected from the shipment of regulated fruit at the packing plant are either incinerated at the packing plant or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. All culls collected from the shipment of regulated fruit are either processed into a product other than fresh fruit, incinerated at the packing plant, or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Any culls moved intrastate for processing must be completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement, and the vehicles, covers, and any containers used to carry the regulated fruit must be treated in accordance with federal requirements before leaving the premises where the regulated fruit is unloaded for processing.

c. Regulated fruit produced in a quarantined area or moved into a quarantined area for packing may be moved interstate with a certificate issued and attached in accordance with federal requirements if all of the following conditions are met.

i. The regulated fruit was packed in a commercial packinghouse whose owner or operator has entered into a compliance agreement with USDA-APHIS-PPQ in accordance with federal requirements.

ii. The regulated fruit was treated in accordance with federal requirements.

iii. The regulated fruit is practically free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.

iv. If the fruit is repackaged after being packed in a commercial packinghouse and before it is moved interstate from the quarantined area, the person that repackages the fruit must enter into a compliance agreement with USDA-APHIS-PPQ and must issue and attach a certificate for the interstate movement of the fruit in accordance with federal requirements.

d. Regulated fruit that is not eligible for movement under paragraph iii of this Section may be moved interstate only for immediate export. The regulated fruit must be accompanied by a limited permit issued in accordance with federal requirements and must be moved in a container sealed by USDA-APHIS-PPQ directly to the port of export in accordance with the conditions of the limited permit.

e. Grass, tree, and plant clippings may be moved intrastate from the quarantined area for disposal in a public landfill, for composting in a recycling facility, or treatment at a treatment facility, including livestock feed heat treatment facilities, if all of the following conditions are met.

i. The public landfill, recycling facility, or treatment location is located within the quarantined area.

ii. The grass, tree, or plant clippings are completely covered during the movement from the quarantined area to the public landfill, recycling facility, or treatment facility.

iii. Any public landfill used is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

f. All vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees, or in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees, must be treated in accordance with federal requirements upon leaving the grove or premises. All personnel who enter the grove or premises to provide these services must be treated in accordance with federal requirements upon leaving the grove or premises.

g. Regulated nursery stock may be moved intrastate or interstate from a quarantined area if all of the following conditions are met.

i. The nursery in which the nursery stock is produced has entered into a compliance agreement in which it agrees to meet the relevant construction standards, sourcing and certification requirements, cleaning, disinfecting, and safeguarding requirements, labeling requirements, and recordkeeping and inspection requirements specified in federal regulations. The compliance agreement may also specify additional conditions under which the nursery stock must be grown, maintained, and shipped, as determined by regulatory officials, to prevent the dissemination of citrus canker. The compliance agreement will also specify that regulatory officials may amend the agreement.

ii. An inspector has determined that the nursery has adhered to all terms and conditions of the compliance agreement.

iii. The nursery stock is accompanied by a certificate issued in accordance with federal regulations.

iv. The nursery stock is completely enclosed in a sealed container that is clearly labeled with the certificate and is moved in that container.

v. A copy of the certificate is attached to the consignee's copy of the accompanying waybill.

h. Regulated nursery stock produced in a nursery located in a quarantined area that is not eligible for movement under this Section may be moved intrastate or interstate only for immediate export. The regulated nursery stock must be accompanied by a limited permit issued in accordance with federal regulations and must be moved in a container sealed by USDA-APHIS-PPQ directly to the port of export in accordance with the conditions of the limited permit.

i. Regulated seed may be moved intrastate or interstate from a quarantined area if all of the following conditions are met.

i. The source plants are not from an area quarantined for citrus greening.

ii. During the two years before the movement date, no plants or plant parts infected with or exposed to citrus canker were found in the grove or nursery producing the fruit from which the regulated seed was extracted.

iii. The regulated seed was treated in accordance with federal regulations.

iv. The regulated seed is accompanied by a certificate issued in accordance with federal regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:320 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 40:1308 (July 2014).

Mike Strain DVM  
Commissioner

1407#001

## RULE

### Department of Children and Family Services Economic Stability Section

#### Supplemental Nutritional Assistance Program (SNAP) (LAC 67:III.1907 and 1987)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) has amended LAC 67:III, Subpart 3, Supplemental Nutritional Assistance Program (SNAP), Chapter 19, Certification of Eligible Households, Subchapter B, Application Processing, Section 1907, Expedited Service—Initial and Subsequent Month Benefits, and Subchapter J, Determining Household Eligibility and Benefit Levels, Section 1987, Categorical Eligibility for Certain Recipients.

Section 1907 has been amended to provide clarification regarding expedited processing standards.

Section 1987 has been amended to repeal broad-based categorical eligibility rules for households that receive only non-cash temporary assistance for needy families/maintenance of effort (TANF/MOE) funded benefit or service.

Pursuant to the authority granted to the department by the Food and Nutrition Services (FNS), the department considers these amendments necessary to add clarification and to facilitate the expenditure of SNAP funds.

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part III. Economic Stability**

#### **Subpart 3. Supplemental Nutritional Assistance Program (SNAP)**

#### **Chapter 19. Certification of Eligible Households**

#### **Subchapter B. Application Processing**

#### **§1907. Expedited Service—Initial and Subsequent Month Benefits**

A. Eligible households that apply after the fifteenth of the month under the expedited processing standards shall be certified the initial month with prorated benefits and for the subsequent month with full benefits.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., and 7 CFR 273.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:10 (January 1982), amended by the Department of Children and Family Services, Economic Stability Section, LR 40:1312 (July 2014).

#### **Subchapter J. Determining Household Eligibility and Benefit Levels**

#### **§1987. Categorical Eligibility for Certain Recipients**

##### **A. Households Considered Categorically Eligible**

1. Households in which a member is a recipient of benefits from the FITAP, STEP, and/or Kinship Care Subsidy Program, and households in which all members are recipients of SSI, shall be considered categorically eligible for SNAP.

2. "Recipient" includes an individual determined eligible for TANF or SSI benefits, but the benefits have not yet been paid.

3. "Recipient" shall also include a person determined eligible to receive zero benefits, i.e., a person whose benefits are being recouped or a TANF recipient whose benefits are less than \$10 and therefore does not receive any cash benefits.

4. A household shall not be considered categorically eligible if:

- a. any member of that household is disqualified for an intentional program violation;
- b. the household is disqualified for failure to comply with the work registration requirements;
- c. any member of the household is ineligible because of a drug related felony.

5. The following persons shall not be considered a member of a household when determining categorical eligibility:

- a. an ineligible alien;
- b. an ineligible student;
- c. an institutionalized person;

d. an individual who is disqualified for failure to comply with the work registration requirements;

e. an individual who is disqualified for failure to provide or apply for a social security number;

f. an individual who is on strike.

6. Households which are categorically eligible are considered to have met the following food stamp eligibility factors without additional verification:

- a. resources;
- b. Social Security numbers;
- c. sponsored alien information;
- d. residency.

7. These households also do not have to meet the gross and net income limits, but verification of income not counted for TANF/SSI is required (e.g., educational assistance). If questionable, the factors used to determine categorical eligibility shall be verified.

8. Categorically eligible households must meet all SNAP eligibility factors except as outlined above.

9. Changes reported by categorically-eligible SNAP households shall be handled according to established procedures except in the areas of resources or other categorical eligibility factors.

10. Benefits for categorically-eligible households shall be based on net income as for any other household. One and two person households will receive a minimum benefit of \$10. Households of three or more shall be denied if net income exceeds the level at which benefits are issued.

##### **B. Application Processing**

1. Households in which all members are applying for public assistance shall continue to be processed according to joint processing procedures. Until a determination is made on the public assistance application, the household's SNAP eligibility and benefit level shall be based on SNAP eligibility criteria. However, the local office shall postpone denying a potentially categorically-eligible household until the thirtieth day in case the household is determined eligible to receive public assistance benefits.

2. The household shall be informed on the notice of denial that it is required to notify the local office if its FITAP or SSI benefits are approved.

3. If the household is later determined eligible to receive public assistance benefits after the thirtieth day and is otherwise categorically eligible, benefits shall be provided using the original application along with other pertinent information occurring subsequent to the application.

4. The local office shall not reinterview the household but shall use any available information to update the application and/or make mail or phone contact with the household or authorized representative to determine any changes in circumstances. Any changes shall be initialed and the updated application re-signed by the authorized representative or authorized household member.

5. If eligibility for public assistance is determined within the 30-day SNAP processing time, benefits shall be provided back to the date of application. If eligibility for public assistance is determined after the SNAP application is denied, benefits for the initial month shall be prorated from the effective date of the public assistance certification or the date of the SNAP application, whichever is later.

C. Certified households which become categorically eligible due to receipt of SSI benefits shall be eligible for the medical and uncapped shelter deductions from the beginning of the period for which the SSI benefits are authorized or the date of the SNAP application, whichever is later. These additional benefits shall be provided through restoration.

D. For SNAP purposes, refugee cash assistance (RCA) benefits are not considered public assistance and, therefore, an RCA household is not categorically eligible.

E. - E.5. Repealed.

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274, F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi), Act 58, 2003 Reg. Session, 7 CFR 273.2, (j), and P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:495 (March 2004), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2531 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 40:1312 (July 2014).

Suzy Sonnier  
Secretary

1407#039

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 111—The Louisiana School,  
District and State Accountability System

(LAC 28:LXXXIII.301, 303, 409, 413, 517, 521, 603, 611, 613, 1301, 2301, 3101, 3301, 3303, 4101, 4301, and 4317)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted revisions to *Bulletin 111—The Louisiana School, District and State Accountability System*: §301, School Performance Score Goal; §303, Transition from Fall 2013 to Spring 2015 (2014 and 2015 SPS Release); §409, Calculating a 9-12 Assessment Index; §413, Dropout/Credit Accumulation Index Calculations; §517, Inclusion of Students; §521, Pairing/Sharing of Schools with Insufficient Test Data; §603, Determining a Cohort for a Graduation §611, Documenting a Graduation Index; §613, Calculating a Graduation Index; §1301, Reward Eligibility; §2301, Schools Requiring Reconstitution/Alternate Governance Plans; §3101, Appeals/Waivers and Data Certification Processes; §3301, Inclusion of New Schools; §3303, Reconfigured Schools; §4101, Valid Data Considerations; §4301, Inclusion of All Districts; and §4317, District Accountability Data Corrections. The policy revisions align the accountability program with the new jump start career education programs and ensure fairness and consistency during the transition to new assessments.

**Title 28  
EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School,  
District and State Accountability System  
Chapter 3. School Performance Score Component  
§301. School Performance Score Goal**

A. A school performance score (SPS) shall be calculated for each school. This score shall range from 0.0 to 150.0.

B. Each school shall receive its school performance scores under one site code regardless of its grade structure.

C. Preliminary school performance scores shall be released in the summer for schools that receive a letter grade of F. Final accountability results shall be issued by the fall semester of each year and all accountability reports will reflect the configuration of the school as it existed the prior spring semester.

1. For K-7 schools, the school performance score will consist entirely of one index based on assessments and progress points listed in the table below.

2. For K-8 schools, the school performance score will consist of an assessment index, dropout/credit accumulation index, and progress points.

K-8 School Performance Score Indices and Weights		
LEAP, iLEAP, LAA 1 and LAA 2	Grades K-7	100 percent
	Grades K-8	95 percent
Dropout/Credit Accumulation Index	Grade 8	5 percent
Progress points	Grades 3 to 8	Up to 10 points

3. For schools with a grade 12, the school performance scores will include four indicators weighted equally and progress points as outlined in the table below.

High School Performance Score Indices and Weights		
End of Course Tests, LAA 1	Grades 9-12	25 percent
ACT* (Beginning in 2015-16, the ACT index shall also recognize WorkKeys. A concordance table comparing ACT to WorkKeys will be produced after the Spring 2015 administration.)	Grade 12	25 percent
Graduation Index	Grade 12	25 percent
Graduation Rate	Grade 12	25 percent
Progress points	Grades 10 and 12	Up to 10 points

\*When calculating a school's ACT index score, students participating in the LAA 1 assessment shall not be included in the denominator of such calculation.

4. A combination school (a school with a grade configuration that includes a combination from both categories of schools, K-8 and 9-12), will receive a score from a weighted average of the SPS from the K-8 grades and the SPS from the 9-12 grades.

a. The K-8 SPS will be weighted by the number of students eligible to test during the spring test administration.

b. The 9-12 SPS will be weighted by the sum of:

i. assessment units from students who are initial testers for EOC + the students eligible to test ACT (students with EOC and ACT will count only one time);

ii. cohort graduation units from the number of members of the cohort used as the denominator in the graduation index calculation and the graduation rate (students in cohort will count only one time).

5. For schools with configurations that include grades 9-11, but do not have a grade 12, the school performance score will consist of the indices available.

#### D. Progress Points

1. The school performance score will also be affected by the progress points earned from growth calculated for the non-proficient student subgroup (i.e., super subgroup).

2. To be eligible for K-8 progress points, the school must have:

a. at least 10 students in the non-proficient subgroup, as identified for subgroup membership based on prior year assessment scores only (i.e. students may be proficient or non-proficient in the current year) in ELA or mathematics; and

b. more than 50 percent (i.e. 50.001+) of the students in the non-proficient subgroup exceed their expected score, as determined by the value-added model for students in grades K-8;

c. if Subparagraphs 2.a and 2.b are met, then the number and the percent of students will be multiplied by 0.1, and the higher of the two products will be used to assign progress points. For students who earn an unsatisfactory on LEAP or iLEAP, the multiplier will be 0.1. For students who earn an approaching basic on LEAP or iLEAP in the prior year, the multiplier will be 0.05.

3. To be eligible for high school progress points, the school must have:

a. at least 10 students in the non-proficient subgroup, as identified for subgroup membership based on the most recent of the two previous years' state assessment scores in ELA or mathematics; and

b. a minimum of 30 percent of the students in the non-proficient subgroup score at the top of the expected score range or higher, as determined by the ACT series;

NOTE: EXPLORE predicts PLAN and PLAN predicts ACT. As an example, if EXPLORE predicted a student would score between 17 and 19 on the PLAN, the student must score a 19 or higher in order to potentially earn progress points for the school.

c. if Subparagraphs 3.a and 3.b are met, then the number and the percent of students will be multiplied by 0.1, and the higher of the two products will be used to assign progress points. For students who earned an unsatisfactory on LEAP or iLEAP or needs improvement on end-of-course tests in prior year(s), the multiplier will be 0.2. For students who earned an approaching basic on LEAP or iLEAP or a fair on end-of-course tests in prior year(s), the multiplier will be 0.1.

4. Schools can earn a maximum of 10 progress points to be added to the SPS.

a. For combination schools that include both middle and high school grades (e.g., 6-12), the progress points shall be calculated by adding the points earned from each test group together. For sums that are greater than 10, a maximum of 10 points will be awarded.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006),

LR 32:2034, 2035 (November 2006), LR 33:424 (March 2007), LR 33:2349 (November 2007), LR 33:2593 (December 2007), LR 34:430 (March 2008), LR 35:639 (April 2009), LR 36:1987 (September 2010), LR 38:3105 (December 2012), LR 39:305 (February 2013), LR 39:1421 (June 2013), LR 39:2441 (September 2013), LR 40:1313 (July 2014).

### **§303. Transition from Fall 2013 to Spring 2015 (2014 and 2015 SPS Release)**

A. Schools shall receive an annual 2013 SPS using the 150-point scale, as approved for the 2012-13 school year and as described in Chapters 3-6 of this bulletin.

B.1. The LDE shall ensure that the distribution of school letter grades remains constant throughout this transition by assigning school letter grades for the 2013-2014 and 2014-2015 school years based on the distribution of school letter grades by school type (e.g., K-8 v. combination v. high school) from the 2012-2013 school year.

a. If schools generally decline in performance scores, then the distributions (K-8, combination and high school) shall remain the same as in 2012-13 so as not to punish schools during the transition.

b. Any school or district that maintains or improves its annual performance score as compared to the 2012-13 performance scores shall not experience a decrease in its letter grade. Thus, if schools generally improve in performance scores, then the distributions shall improve as they would in any other year.

2. Prior to the creation of the transitional ninth grade, some schools were categorized as combination schools, rather than high schools, simply because they offered 8th grade courses to a select group of students ineligible for 9th grade. Such schools shall be classified as high schools and the 12-13 distributions shall be adjusted to reflect this shift.

C. By the fall of 2015, BESE shall determine, in consultation with the Accountability Commission, the timeline and benchmarks needed to gradually raise the standard for student proficiency such that the average student in a school or district with a letter grade of "A" achieves at least "mastery" (level 4) on state assessments no later than the 2024-2025 school year.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:2442 (September 2013), amended LR 40:760 (April 2014), LR 40:1314 (July 2014).

### **Chapter 4. Assessment and Dropout/Credit Accumulation Index Calculations**

#### **§409. Calculating a 9-12 Assessment Index**

A. - A.2. ...

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3. EOC proficient test scores of "good" or "excellent" earned by students at a middle school will be included in the SPS calculations of the high school to which the student transfers. The scores will be included in the accountability cycle that corresponds with the students' first year of high school. Middle schools will earn incentive points for all EOC test passing scores the same year in which the test was administered.

a. Incentive points will be awarded as follows:

- i. excellent = 50;
- ii. good = 25.

4. EOC test scores considered "not proficient" (needs improvement, fair) will not be transferred, or banked, to the

high school. Students will retake the test at the high school, and the first administration of the test at the high school will be used in the calculation of the assessment index the same year in which it was earned.

5. ...

B.1. The ACT composite score will be used in the calculation of the ACT assessment index as described in the chart below. To the extent practicable, a student's highest earned score for any ACT administration shall be used in the calculation.

ACT Composite	Index Pts
0-17	0
18	100
19	102.8
20	105.6
21	108.4
22	111.2
23	114
24	116.8
25	119.6
26	122.4
27	125.2
28	128
29	130.8
30	133.6
31	136.4
32	139.2
33	142
34	144.8
35	147.6
36	150.4

2.a. Starting in the 2015-16 school year, student performance on the WorkKeys shall be included within the ACT index, where a student takes both assessments but achieved a higher score on the WorkKeys than on the ACT.

b. The state will produce a concordance table comparing ACT scores with WorkKeys scores at the conclusion of the 2014-15 school year and the table shall be used to award points in the 2015-16 school performance score results.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 33:252 (February 2007), LR 36:1989 (September 2010), LR 37:2118 (July 2011), repromulgated LR 37:2382 (August 2011), amended LR 37:3200 (November 2011), LR 38:1212 (May 2012), LR 38:2357 (September 2012), LR 38:3106 (December 2012), LR 39:305 (February 2013), LR 39:1421 (June 2013), LR 39: 2443 (September 2013), LR 39:1421 (June 2013), LR 40:1314 (July 2014).

**§413. Dropout/Credit Accumulation Index Calculations**

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

b. if earning Carnegie units, have been considered full academic year during the transitional ninth, or traditional ninth grade year for the first ninth grade record.

2. Carnegie units earned in summer school after transitional ninth or traditional ninth grade will not be included.

3. Students who are considered dropouts in transitional ninth or traditional ninth grade based on SIS records shall be included in the calculation and earn zero points.

4. Students who are completing their third year in grade 8 shall be included in the calculation and earn zero points.

Number of Carnegie Units	Index Point Award
6 or more	150
5.5	125
5	100
4.5	75
4	50
3.5	25
3 or less	0
3rd year 8th grade student	0
Dropout	0

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 36:1990 (September 2010), LR 38:3107 (December 2012), LR 39: 2443 (September 2013), LR 40:1315 (July 2014).

**Chapter 5. Inclusion in Accountability §517. Inclusion of Students**

A. The test score of every student who is enrolled in any school in an LEA on October 1 of the academic year and who is eligible to take a test at a given school within the same LEA shall be included in the LEA's district performance score (DPS). The score of every student that will count in the DPS will be counted at the school where the student was enrolled on February 1 for SPS and subgroup AYP.

1. For EOC tests taken in December the scores will count in the SPS at the school where the students is enrolled for the test.

2. For ACT, a grade 12 student will be considered full academic year at the school and district from which the student graduated in December of the current school year if the student was enrolled in the district on October 1.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:1512 (July 2005), LR 31:2422 (October 2005), LR 31:2764 (November 2005), LR 33:2594 (December 2007), LR 38:3107 (December 2012), LR 39:305 (February 2013), LR 40:1315 (July 2014).

**§521. Pairing/Sharing of Schools with Insufficient Test Data**

A. - F. ...

G. Requirements for the number of test/graduation index units shall be the sum of the units used to calculate the school's SPS (see §519).

H. If a school has too few test units to be a "stand-alone" school, it may request to be considered stand-alone.

1. It shall receive an SPS that is calculated solely on that school's data, despite the small number of test units.

2. The request shall be in writing to the LDE from the LEA superintendent.

3. The school forfeits any right to appeal its SPS and status based on minimum test unit counts.

I. Once the identification of "paired" schools has been made, this decision is binding for 10 years. An appeal to the BESE may be made to change this decision prior to the



end of 10 years, when redistricting or other grade configuration and/or membership changes occur.

J. If 10 years has not elapsed, but a paired/shared school acquires a sufficient number of testing units, then the pair/share relationship will be broken, and the school will be treated as a stand-alone school.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 30:1445 (July 2004), LR 32:1023 (June 2006), LR 36:1991 (September 2010), LR 38:3108 (December 2012), LR 39:1422 (June 2013), LR 40:1315 (July 2014).

**Chapter 6. Graduation Cohort, Index, and Rate §603. Determining a Cohort for a Graduation**

A. A cohort of students is all students who entered 9th grade for the first time in the state of Louisiana in a given academic year.

B. Each cohort of students will be tracked for four years, from entry as first-time ninth graders through four academic years. Transitional ninth graders will enter automatically the first-time ninth grade cohort in the year after enrolling in transitional ninth grade.

C. - J. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 33:424 (March 2007), LR 33:2031 (October 2007), LR 35:2312 (November 2009), LR 36:2242 (October 2010), LR 36:2840 (December 2010), LR 38:3108 (December 2012), LR 40:1316 (July 2014).

**§611. Documenting a Graduation Index**

A. Beginning with academic year 2005-2006, all schools are required to maintain the following documentation if the corresponding exit code is used.

Exit Code Documentation		
Code	Descriptions	Required Documentation
01	Expelled	Due process documentation supporting expulsion. Students must be enrolled on October 1 of the following year.
03	Illness	Letter from a physician stating the student's date(s) of care written on the doctor office's letterhead with the doctor's original signature. Students must be enrolled on October 1 of the following year.
04	Graduate with Diploma	Official transcript showing successful completion of requirements along with records supporting any academic or career/technical endorsements.
05	GED only	LDE confirmation document and entry/exit in SIS.
06	Certificate of Achievement (Special Education)	Official transcript showing successful completion of requirements
07	Death (of student) or permanent incapacitation	Letter from parent or obituary.
08	Transferred to another public school within district	SIS (Student Information System) record indicating transfer.
09	Transferred to another public school within Louisiana	SIS record indicating transfer.

Exit Code Documentation		
Code	Descriptions	Required Documentation
10	Transferred out of state or country	Request for records from the receiving school (out of state). Request for records or a statement signed by the parent. Documentation proving a student was a foreign exchange student.
12	Transferred to Correctional Institution	SIS record indicating transfer.
13	Transferred to Vocational Technical School	SIS record indicating transfer.
14	Transferred to non-public school (must award high school diplomas)	Request for records from the receiving school
15	Exit from grade for reassignment to another grade	Test results, summer school grades or similar forms located in the student's cumulative records supporting the grade change
16	Transferred to home study/in-school Private Schooling	LDE Approval letter
19	Exit from non-mandatory program	Documentation of participation in specific program.
20	Transferred to Early College Admissions Program	School withdrawal form and request for records from the College or University and proof of full-time enrollment in an academic program
22	Options Program Completer: GED and Industry Based Certificate	STS and/or CATE (Career and Technical Education) record
24	Options Program Completer: Industry Based Certification	STS and/or CATE record
27	Exit under SBESE Academic School Choice Policy	SIS record indicating transfer.
28	Exit under SBESE Unsafe School Choice Policy	SIS record indicating transfer.
34	Correctional Institution/State Custody (ages 17 and above)*	SIS record indicating transfer.
35	Transferred to LEA monitored Adult Education to pursue GED	SIS record indicating transfer.
36	Completer: Skills Certificate Only	SIS record and documentation of certificate earned
40	Transferred under Student Scholarship for Excellence within student's district of residence	SIS record indicating transfer.
41	Transferred under Student Scholarship for Excellence in a district other than the student's district of residence	SIS record indicating transfer.
42	Transferred under Student Scholarship for Excellence to a non-public school	SIS record indicating transfer.

B. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 35:639 (April 2009), LR 35:2312 (November 2009), LR 36:2242 (October 2010), LR 36:2841 (December 2010), LR 38:3108 (December 2012), LR 40:1316 (July 2014).

**§613. Calculating a Graduation Index**

A. For the 2013-14 school year (2012-13 graduates), points shall be assigned for each member of a cohort during the cohort's fourth year of high school according to the following table.

Student Result	Points
HS Diploma plus AP score of at least 3 OR IB Score of at least 4	150
BESE Approved Industry Based Certification OR Dual Enrollment OR AP score of 1 or 2 OR IB score of 1, 2, or 3 if the corresponding course is passed.	110
Regular HS Diploma	100
GED	25
Non-graduate without GED	0
5th Year Graduate plus AP score of at least 3 OR IB Score of at least 4	140
5th Year Graduates	75

B. For 2014-15 only (2013-14 graduates), points shall be assigned for each member of a cohort according to the following table.

Student Result	Points
HS Diploma plus (a) AP score of 3 or higher, IB Score of 4 or higher, or CLEP score of 50 or higher OR (b) Advanced statewide Jump Start credential *Students achieving both (a) and (b) will generate 160 points.	150
HS Diploma plus (a) At least one passing course grade of the following type: AP, college credit, dual enrollment, or IB OR (b) Basic statewide Jump Start credential *Students achieving both (a) and (b) will generate 115 points, if the passing course grade for (a) is earned in a TOPS core curriculum course.	110
Four-year graduate (includes Career Diploma student with a regional Jump Start credential)	100
Five-year graduate with any diploma *Five-year graduates who earn an AP score of 3 or higher, an IB score of 4 or higher, or a CLEP score of 50 or higher will generate 140 points.	75
Six-year graduate with any diploma	50
HiSET	25
Non-graduate without HiSET	0

C. Beginning in 2015-16 (2014-15 graduates), points shall be assigned for each member of a cohort according to the following table.

Student Result	Points
HS Diploma plus (a) AP score of 3 or higher, IB Score of 4 or higher, or CLEP score of 50 or higher OR (b) Advanced statewide Jump Start credential *Students achieving both (a) and (b) will generate 160 points.	150

Student Result	Points
HS Diploma plus (a) At least one passing course grade for TOPS core curriculum credit of the following type: AP, college credit, dual enrollment, or IB OR (b) Basic statewide Jump Start credential *Students achieving both (a) and (b) will generate 115 points.	110
Four-year graduate (includes Career Diploma student with a regional Jump Start credential)	100
Five-year graduate with any diploma *Five-year graduates who earn an AP score of 3 or higher, an IB score of 4 or higher, or a CLEP score of 50 or higher will generate 140 points.	75
Six-year graduate with any diploma	50
HiSET	25
Non-graduate without HiSET	0

D. The graduation index of a school shall be the average number of points earned by cohort members.

E.1. The diploma must be earned no later than the third administration of the summer retest following the fourth year of high school of the students' cohort.

a. For example, a student who finishes the fourth year of high school in 2012 must complete the assessment requirements before or during the 2014 summer test administration.

2. When related to awarding fifth year graduate points, the enrollment must be continuous and consist of at least 45 calendar days.

F. To ensure the accuracy of data used to calculate the graduation index, the calculation shall lag one year behind the collection of the data. (The index earned by the graduating class of 2012 will be used for 2013 accountability calculations.)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009), LR 36:1769 (August 2010), repromulgated LR 36:1994 (September 2010), amended LR 36:2243 (October 2010), LR 37:3201 (November 2011), LR 38:1391 (June 2012), LR 38:3109 (December 2012), LR 39:306 (February 2013), LR 39:2444 (September 2013), LR 40:1317 (July 2014).

**Chapter 13. Rewards/Recognition**

**§1301. Reward Eligibility**

A. A school shall be labeled a “reward school” if it meets the following growth goals.

1. For schools labeled an “A” for the previous academic year, such schools shall improve their SPS by five points. If an “A” school is within five points of the total possible points (i.e., 150), then the school shall need to reach an overall score of 150.

2. For schools labeled “B,” “C,” “D,” or “F,” such schools shall improve their SPS by 10 points.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December

2003), amended LR 30:1446 (July 2004), LR 31:1513 (July 2005), LR 33:1334 (July 2007), LR 33:2595 (December 2007), LR 38:3111 (December 2012), LR 40:1317 (July 2014).

### **Chapter 23. Reconstitution/Alternate Governance Plans**

#### **§2301. Schools Requiring Reconstitution/Alternate Governance Plans**

A. Districts shall notify SBESE of all school closures and reconstitution by December 31 of the previous academic year. Notice shall include requests for site code changes, grade reconfigurations, and attendance zone changes. Requests to close schools after October 1 will not be approved until the end of the current academic year.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2749 (December 2003), amended LR 31:1516 (July 2005), LR 31:2765 (November 2005), LR 33:2599 (December 2007), LR 38:3113 (December 2012), LR 40:1318 (July 2014).

### **Chapter 31. Data Correction and Appeals/Waivers Procedure**

#### **§3101. Appeals/Waivers and Data Certification Processes**

A. - A.2. ...

3. Each LEA must collect supporting documentation for every data element that is corrected and maintain the documentation on file for at least four years.

A.4. - C.2. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2751 (December 2003), amended LR 30:1620 (August 2004), repromulgated LR 30:1996 (September 2004), amended LR 30:2257 (October 2004), LR 31:2422 (October 2005), LR 35:2313 (November 2009), LR 38:3113 (December 2012), LR 40:1318 (July 2014).

### **Chapter 33. New Schools and/or Significantly Reconfigured Schools**

#### **§3301. Inclusion of New Schools**

A. - D.2. ...

E. Schools that do not align with the patterns described in this Section will be included in accountability as soon as the required data is available.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 31:2765 (November 2005), LR 33:2599 (December 2007), LR 36:1992 (September 2010), LR 37:3201 (November 2011), LR 38:2358 (September 2012), LR 38:3114 (December 2012), LR 40:1318 (July 2014).

#### **§3303. Reconfigured Schools**

A. - E. ...

F. The LDE will consult with the district concerning the SPS calculation when unusual circumstances or configurations exist.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 31:2765

(November 2005), LR 33:2600 (December 2007), LR 36:1993 (September 2010), LR 37:3201 (November 2011), LR 38:3114 (December 2012), LR 40:1318 (July 2014).

### **Chapter 41. Data Collection and Data Verification §4101. Valid Data Considerations**

A.1. - A.2.c. ...

B. A test score shall be entered for all eligible students within a given school. For any eligible student who does not take the test, including those who are absent, a score of "0" on the CRT and NRT shall be calculated in the school's SPS. To assist a school in dealing with absent students, the Louisiana Department of Education shall provide an extended testing period for test administration. The only exceptions to this policy are students who were sick during the test and re-testing periods and who have formal documentation for that period.

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 30:2446 (November 2004), LR 32:1028 (June 2006), LR 38:3115 (December 2012), LR 40:1318 (July 2014).

### **Chapter 43. District Accountability**

#### **§4301. Inclusion of All Districts**

A. - B.2. ...

C. District Performance Score (DPS). A district performance score (DPS) shall be calculated in the same manner as a combination school performance score, aggregating all of the students in the district.

1. Assessment data from students enrolled in a district for a full academic year shall be used to calculate the DPS, as well as performance on graduation index, cohort graduation rate, dropout/credit accumulation index and any progress points for which the district is eligible.

2. The DPS shall be reported as a numeric value and a letter grade shall be assigned based on the numeric value, except as otherwise outlined in §303 of this bulletin.

D. Subgroup Component. District AYP shall be determined by evaluating the aggregate performance of subgroups.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2755 (December 2003), amended LR 30:1446 (July 2004), LR 32:543 (April 2006), LR 37:2119 (July 2011), LR 38:3116 (December 2012), LR 40:1318 (July 2014).

#### **§4317. District Accountability Data Corrections**

A. Since data used for district accountability results are derived from school-level data, district accountability data corrections should be handled during the school accountability appeals period.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2446 (November 2004), amended LR 40:760 (April 2014), LR 40:1318 (July 2014).

Heather Cope  
Executive Director

1407#010

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.701, 2209, and 3501)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted revisions to *Bulletin 111—The Louisiana School, District and State Accountability System*: §701, Overview of Assessment Programs in Louisiana; §2209, WorkKeys; and §3501, Approved Home Study Program Students.

**Title 28  
EDUCATION**

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

**Chapter 7. Assessment Program Overview**

**§701. Overview of Assessment Programs in Louisiana**

**A. Norm-Referenced and Criterion-Referenced Testing Programs Since 1986**

Name of Assessment Program	Assessment Population	Administered
<b>Kindergarten Screening</b>		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	fall 1987–
<b>Norm-Referenced Tests (NRTs)</b>		
California Achievement Test (CAT/F)	grades 4, 6, and 9	spring 1988–spring 1992 (no longer administered)
California Achievement Test (CAT/5)	grades 4 and 6 grade 8	spring 1993–spring 1997 spring 1997 only (no longer administered)
Iowa Tests of Basic Skills (ITBS) (form L) and Iowa Tests of Educational Development (ITED) (form M)	grades 4, 6, 8, 9, 10, and 11	spring 1998 (no longer administered)
ITBS ITED (form M)	grades 3, 5, 6, and 7 grade 9	spring 1999–spring 2002 (no longer administered)
ITBS ITED (form B)	grades 3, 5, 6, and 7 grade 9	spring 2003–spring 2005 (no longer administered)
ITBS	grade 2	spring 2012–
<b>Criterion-Referenced Tests (CRTs)</b>		
National Assessment of Educational Progress (NAEP)	grades 4, 8, and 12	spring 1990–
Louisiana Educational Assessment Program (LEAP)	grades 3, 5, and 7	spring 1989–spring 1998 (no longer administered)
Graduation Exit Examination (“old” GEE)	grades 10 and 11	spring 1989–spring 2003 (state administered) fall 2003– (district administered)

Name of Assessment Program	Assessment Population	Administered
Louisiana Educational Assessment Program (LEAP) (ELA and Mathematics)	grades 4 and 8	spring 1999–
LEAP (Science and Social Studies)	grades 4 and 8	spring 2000–
Graduation Exit Examination (GEE) (ELA and Mathematics)	grade 10	spring 2001–
GEE (Science and Social Studies)	grade 11	spring 2002–
End-Of-Course Tests (EOCT)	Algebra I	fall 2007–
EOCT	English II	fall 2008–
EOCT	Geometry	fall 2009–
EOCT	Biology	fall 2010–
EOCT	Applied Algebra I form	spring 2011–
EOCT	English III	fall 2011–
EOCT	U.S. History	fall 2012–
EXPLORE	grades 8 and 9	spring 2013
PLAN	grade 10	spring 2013
ACT	grade 11	spring 2013
WorkKeys	grade 11	spring 2015
<b>Integrated NRT/CRT</b>		
Integrated Louisiana Educational Assessment Program (iLEAP)	grades 3, 5, 7, and 9	spring 2006
iLEAP	grade 9	spring 2010 (last administration of grade 9 iLEAP)
<b>Special Population Assessments</b>		
Louisiana Alternate Assessment, Level 1 (LAA 1)	Students with Individualized Education Programs (IEPs) who meet participation criteria in grades 3–11	spring 2000–2007
LAA 1	ELA and Mathematics (grade spans 3–4; 5–6; 7–8; 9–10); Science (grades 4, 8, and 11)	Revised spring 2008–
LAA 1 ELA and Mathematics	grade 9	spring 2010 (last administration of grade 9 LAA 1)
Louisiana Alternate Assessment, Level 2 (LAA 2) ELA and Mathematics (Grades 4, 8, and 10) Science and Social Studies (Grade 11)	grades 4, 8, 10, and 11	spring 2006–
LAA 2 ELA and Mathematics	grades 5, 6, 7, and 9	spring 2007–
LAA 2 ELA and Mathematics	grade 9	spring 2010 (last administration of grade 9 LAA 2)
LAA 2 Science and Social Studies	grades 4 and 8	spring 2008–
Louisiana Alternate Assessment-B (LAA-B) ["out-of-level" test]	Students with Individualized Education Programs (IEPs) who met eligibility criteria in grades 3–11.	spring 1999–spring 2003 (no longer administered)

Name of Assessment Program	Assessment Population	Administered
English Language Development Assessment (ELDA)	Limited English Proficient (LEP) students in grades K–12	spring 2005–
Academic Skills Assessment (ASA) and ASA LAA 2 form	Students pursuing a State-Approved Skills Certificate (SASC) or GED	spring 2012 (one administration only, spring 2012)

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1534 (July 2005), amended LR 32:235 (February 2006), LR 34:66 (January 2008), LR 34:1352 (July 2008), LR 35:218 (February 2009), LR 36:967 (May 2010), LR 37:858 (March 2011), LR 38:34 (January 2012), LR 38:34 (January 2012), LR 39:74 (January 2013), LR 39:1019 (April 2013), LR 40:1319 (July 2014).

### Chapter 22. ACT Program

#### §2209. WorkKeys

A. The ACT WorkKeys assessment for 11th grade students in the Jump Start program assesses the academic and career skills that are needed to be successful in the workplace. It assists in identifying educational pathways that can further develop the proficiencies that are critical to job success. WorkKeys matches student skills to job profiles in order to support students in developing successful career pathways.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 40:1320 (July 2014).

### Chapter 35. Assessment of Students in Special Circumstances

#### §3501. Approved Home Study Program Students

A. - H. ...

I. Students enrolled in state-approved home study programs are not eligible to participate in LAA 1, LAA 2, ELDA, EOC, or the state administration of EXPLORE, PLAN, WorkKeys or ACT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:236.1-17.236.2, R.S. 17:6 (A) (10) (11) (15), R. S. 17:10, R. S. 17:22 (6), R. S. 17:391.1-17:391.10, and R. S. 17:411.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1563 (July 2005), amended by the Board of Elementary and Secondary Education, LR 32:240 (February 2006), LR 33:264 (February 2007), LR 36:983 (May 2010), LR 37:821 (March 2011), LR 39:1430 (June 2013), LR 40:1320 (July 2014).

Heather Cope  
Executive Director

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### RULE

#### Board of Elementary and Secondary Education

Bulletin 119—Louisiana School Transportation Specifications and Procedures (LAC 28: CXIII.2509)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted revisions to *Bulletin 119—Louisiana Louisiana Register Vol. 40, No. 07 July 20, 2014*

*School Transportation Specifications and Procedures: §2509, Used School Buses.* The policy revision gives districts the opportunity to purchase buses within a wider window of life expectancy.

### Title 28

### EDUCATION

#### Part CXIII. Bulletin 119—Louisiana School Transportation Specifications and Procedures Chapter 25. Purchase, Sale, Lease, and Repair of School Buses

#### §2509. Used School Buses

A. Any used school bus purchased for use in Louisiana by or for a school system shall meet current legal requirements of the *Louisiana Revised Statutes* for motor vehicles and shall meet Louisiana specifications for school buses that were in effect on the date the vehicle was manufactured. No vehicle with rated capacity of more than 10 passengers shall be classified as a school bus and thereby used to transport students to and from school and school-related activities unless said vehicle originally was manufactured and certified as a school bus and maintained the certification as a school bus all in accordance with federal and state requirements throughout the life of the vehicle.

B. All replacement school buses, at the time they are acquired by the owner, must be 10 or less model years old for all owners/operators and school districts, unless acquired from an owner who operated the school bus for not less than the two previous years in the same school district as the school bus will be operated after acquisition. The number of years shall be reckoned from the date of the model year (see *Calculating the Age of School Buses, §3103*).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999), amended LR 26:639 (April 2000), LR 27:187 (February 2001), LR 36:1479 (July 2010), LR 37:3204 (November 2011), LR 40:1320 (July 2014).

Heather Cope  
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### RULE

#### Board of Elementary and Secondary Education

Bulletin 126—Charter Schools  
(LAC 28: CXXXIX.103, 105, 505, 1101, 1103, 1303, 1503, 1903, 1905, 2301, 2303, 2713, 2907, and 2909)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted revisions to *Bulletin 126—Charter Schools: §103, Definitions; §105, Purpose of Charter Schools; §505, Eligibility to Apply for a Type 4 Charter School; §1101, Charter School Evaluation; §1103, Alternate Evaluation of Charter Schools; §1303, Extension Review; §1503, Charter Renewal Process and Timeline; §1903, Material Amendments for BESE-Authorized Charter Schools; §1905, Non-Material Amendments for BESE-Authorized Charter Schools; §2301, State Funding; §2303, Federal Funding; §2713, At-Risk Students; §2907, Leave of*

Absence; and §2909, Employee Benefits. The policy changes set standards for future charter school extensions and renewals, create an extension and renewal evaluation process for alternative charter schools, edit typos, and remove out-of-date policy. These processes already exist and the policy simply raises the standards involved.

## Title 28 EDUCATION

### Part CXXXIX. Bulletin 126—Charter Schools

#### Chapter 1. General Provisions

##### §103. Definitions

A. The words defined in this Section shall have the meanings set forth below whenever they appear in this policy, unless:

1. the context in which they are used clearly requires a different meaning; or
2. a different definition is prescribed for a particular provision.

*Appropriate Technical Infrastructure*—any servers, programs, internet access, and/or management systems that allow user interaction, provide sufficient bandwidth to host courses or online services, and sustain peak periods of usage without a reduction in performance.

*At-Risk Pupil*—any pupil about whom at least one of the following is true:

- i. is eligible to participate in the federal free or reduced lunch program by demonstrating that he meets the income requirements established for participation in the program, not necessarily by participating in the program;
- ii. is under the age of 20 and has been withdrawn from school prior to graduation for not less than one semester;
- iii. is under the age of 20 and has failed to achieve the required score on any portion of the examination required for high school graduation;
- iv. is in the eighth grade or below and is reading two or more grade levels below grade level as determined by one or more of the tests required pursuant to R.S. 17:24.4;
- v. has been identified as an exceptional child as defined in R.S. 17:1943, not including gifted and talented; or
- vi. is the mother or father of a child.

*BESE and/or Board*—the state Board of Elementary and Secondary Education as created by the Louisiana Constitution and the *Louisiana Revised Statutes*.

*Charter*—the agreement and authorization to operate a charter school, which includes the charter contracts and exhibits.

*Chartering Authority*—a local school board or the state Board of Elementary and Secondary Education.

*Charter Operator*—the nonprofit corporation or school board authorized to operate a charter school.

*Charter School*—an independent public school that provides a program of elementary and/or secondary education established pursuant to and in accordance with the provisions of the Louisiana charter school law to provide a learning environment that will improve pupil achievement.

*Charter School Application*—the proposal submitted to BESE, which includes but is not limited to, responses to questions concerning:

- i. a charter school's education program;
- ii. governance, leadership, and management;
- iii. financial plan; and

- iv. facilities.

*Charter School Law*—Louisiana laws, R.S. 17:3971 et seq., governing the operation of a charter school.

*Core Subject*—shall include those subjects defined as core subjects in Bulletin 741.

*Department of Education or LDE or Department*—the Louisiana Department of Education. The Department of Education includes the recovery school district, or RSD, where references are made to type 5 charter schools.

*Hearing Officer*—the individual assigned by BESE to perform adjudicatory functions at charter school revocation hearings.

*Instructional and Communication Hardware*—any equipment used to ensure students can access and engage with the educational program (e.g., headphones, wireless air cards, learning management systems, web-based communication tools).

*Instructional Coach*—a parent or guardian, extended adult family member, or other adult designated by the parent or guardian who works in person with each virtual charter school student under the guidance of the Louisiana-licensed professional teacher.

*Local School Board*—any city, parish, or other local education agency.

*Management Organization*—a for-profit company that manages academic, fiscal, and operational services on behalf of boards of directors of BESE-authorized charter schools through contractual agreements.

*Public Service Organization*—any community-based group of 50 or more persons incorporated under the laws of this state that meets all of the following requirements:

- i. has a charitable, eleemosynary, or philanthropic purpose; and is qualified as a tax-exempt organization under section 501(c) of the United States *Internal Revenue Code* and is organized for a public purpose.

*State Superintendent*—the superintendent of education, who is the chief administrative officer of the Louisiana Department of Education, and who shall administer, coordinate, and supervise the activities of the department in accordance with law, regulation, and policy.

*Technical Access*—computer and internet availability sufficient to ensure access for all students.

*Virtual School*—an educational program operated for a minimum of one academic year and covering specified educational learning objectives for the purpose of obtaining a Louisiana certified diploma, the delivery of such a program being through an electronic medium such that the students are not required to be at a specific location in order to receive instruction from a teacher, but instead access instruction remotely through computers and other technology, which may separate the student and teacher by time and space. This does not preclude the ability of said program to host face-to-face meetings, including field trips, extracurricular activities, conferences between the student, parents, and teachers, or any such related events.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1357 (July 2008), amended LR 37:867 (March 2011), LR 37:2383 (August 2011), LR 38:37 (January 2012), LR 38:750 (March 2012), repromulgated LR

38:1392 (June 2012), amended LR 38:1583 (July 2012), LR 39:3062 (November 2013), LR 40:1321 (July 2014).

### **§105. Purpose of Charter Schools**

A. The charter school law was enacted by the Louisiana Legislature to create a structure whereby city, parish, and other local public school boards and BESE can authorize the creation of innovative kinds of independent public schools for students in Louisiana.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3972, and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1358 (July 2008), amended LR 40:1322 (July 2014).

### **Chapter 5. Charter School Application and Approval Process**

#### **§505. Eligibility to Apply for a Type 4 Charter School**

A. - A.3. ...

B. The eligibility criteria set forth in this Section shall be the minimum criteria necessary to be approved for a type 4 charter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1360 (July 2008), amended LR 39:1431 (June 2013), LR 40:1322 (July 2014).

### **Chapter 11. Ongoing Review of Charter Schools**

#### **§1101. Charter School Evaluation**

A. - E. ...

F. BESE shall receive a report on the review of type 2, type 4, and type 5 charter schools not later than January of each year. This annual report will include charter contract extension determinations.

F.1. - I.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:871 (March 2011), repromulgated LR 37:1124 (April 2011), amended LR 37:2385 (August 2011), LR 38:751 (March 2012), repromulgated LR 38:1393 (June 2012), amended LR 38:3118 (December 2012), LR 39:1433 (June 2013), LR 39:3065 (November 2013), amended LR 40:1322 (July 2014).

#### **§1103. Alternate Evaluation of Charter Schools**

A. - B. ...

C. BESE-Authorized Alternative Charter School Frameworks

1. BESE may approve alternative charter school extension and renewal frameworks that set forth specific criteria the LDE will use to annually evaluate the student performance of certain BESE-authorized alternative charter schools. Criteria used in the frameworks shall correspond to student performance criteria. The charter school performance compact shall be used to annually evaluate the financial and organizational performance of schools evaluated.

a. A charter school eligible for evaluation with an alternative charter school extension and renewal framework shall:

i. serve a non-traditional student population and mission as reflected in its approved charter;

ii. elect to be evaluated by the alternate framework;

iii. receive approval by BESE as an alternative charter school and meet the requirements of Bulletin 111, §3501.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1366 (July 2008), amended LR 40:1322 (July 2014).

### **Chapter 13. Charter Term**

#### **§1303. Extension Review**

A. ...

B. Each type 2, type 4, and type 5 charter school's extension review shall be used to determine if the school will receive a one-year extension, as follows.

1. Contract Extension

a. Each charter school shall be reviewed based on academic, financial, and legal and contractual performance data collected by the Department of Education. If such performance data reveal that the charter school is achieving the following goals and objectives, the board shall extend the duration of the charter for a maximum initial term of five years.

i. For the December 2014 and December 2015 extension processes, a charter school shall:

(a) meet or approach expectations on the most recent evaluation in financial performance according to the charter school performance compact and a financial risk assessment rating that has not been deemed to require "dialogue" as set forth in §1101.E; and

(b) have no violation of legal or contractual standards as defined in §1101.I.3; and

(c) meet one of the following student performance standards that aligns with the structure of the school.

(i). Turnaround schools, schools qualified to receive a letter grade of "T" per Bulletin 111, §1105, school has earned a letter grade of "D" or higher based on performance data from the school's third year of operation; or school has made an average of 5 or more points of growth per year of the charter contract (from the pre-assessment index to the last year of data).

(ii). Non-turnaround schools, school has earned a letter grade of "D" or higher based on performance data from the school's third year of operation;

(iii). Alternative charter schools, schools approved by the department to use an alternative charter school extension and renewal framework, school has met the standards for extension from an alternative charter school extension and renewal framework

2. - 3.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:2387 (August 2011), LR 38:751 (March 2012), repromulgated LR 38:1393 (June 2012), amended LR 38:3118 (December 2012), LR 39:1435 (June 2013), LR 39:3065 (November 2013), LR 40:1322 (July 2014).

## Chapter 15. Charter Renewal

### §1503. Charter Renewal Process and Timeline

A. ...

#### B. Student Performance

1. Each charter school is required to make demonstrable improvements in student performance over the term of its charter contract.

a. BESE will rely on data from the state's assessment and accountability program as objective and verifiable measures of student achievement and school performance. Student performance is the primary indicator of school quality; therefore, BESE will heavily factor each charter school's student performance data in all renewal decisions.

2. Consistent with the philosophy of rewarding strong performance and providing incentives for schools to strive for continual improvement, the renewal terms for BESE-authorized charter schools will be linked to each school's letter grade (based on the school's performance on the state assessment in the year prior to the renewal application) in accordance with the table that follows.

Maximum Charter Renewal Terms	
Letter Grades	Maximum Renewal Term
F	3 years
D	3 Years
C	6 Years
B	7 Years
A	10 years

3. A charter school in its initial term where fewer than 50 percent of its enrolled grades are testable under state accountability will be eligible for a renewal term of three years.

4. For the December 2014 renewal process, a BESE-authorized charter school receiving a letter grade of "F," in the prior academic year will not be eligible for renewal, unless one of these conditions are met:

a. a charter school that by contract serves a unique student population where an alternate evaluation tool, including a BESE-approved alternative charter school extension and renewal framework, has been established between the charter operator and the board may be renewed for a term not to exceed five years;

b. a turnaround charter school that qualified to receive a letter grade of "T" per Bulletin 111, §1105 that has made an average of 5 or more points of growth per year of the charter contract (from the pre-assessment index to the last year of data).

5. For initial renewals during the December 2015 renewal process, a BESE-authorized charter school receiving a letter grade of "F" in the prior academic year will not be eligible for renewal, unless one of these conditions are met:

a. a charter school that by contract serves a unique student population where an alternate evaluation tool, including a BESE-approved alternative charter school extension and renewal framework, has been established between the charter operator and the board may be renewed for a term not to exceed five years;

b. a turnaround charter school that qualified to receive a letter grade of "T" per Bulletin 111, §1105 that has

made an average of 5 or more points of growth per year of the charter contract (from the pre-assessment index to the last year of data).

6. For subsequent renewals during the December 2015 renewal process, a BESE-authorized charter school receiving a letter grade of "D" or "F" in the prior academic year will not be eligible for renewal, unless one of these conditions are met:

a. a charter school that by contract serves a unique student population where an alternate evaluation tool, including a BESE-approved alternative charter school extension and renewal framework, has been established between the charter operator and the board may be renewed for a term not to exceed five years;

b. a turnaround charter school that qualified to receive a letter grade of "T" per Bulletin 111, §1105 that has made an average of 5 or more points of assessment index growth per year of the charter contract.

7. If, in the state superintendent's judgment, the non-renewal of a charter school that does not meet the criteria for renewal in its initial or subsequent charter term would likely require many students to attend lower performing schools, and the state superintendent recommends its renewal, the charter may be renewed for a term not to exceed three years. Prior to recommending such renewal, the state superintendent must demonstrate that efforts to find a new, high-quality operator for the school were unsuccessful.

#### C. Financial Performance

1. Each charter operator is required to engage in financial practices, financial reporting, and financial audits to ensure the proper use of public funds and the successful fiscal operation of the charter school. The charter school shall be evaluated using the financial risk assessment and the financial indicators included in the charter school performance compact.

C.2. - E.5. ...

#### F. Subsequent Renewal for BESE-Authorized Charter Schools

1. The department will establish a process by which each charter school shall be required to indicate whether it will be seeking a subsequent renewal.

2. Not later than January of the charter school's final contract year, the state superintendent of education will make a recommendation to BESE about the disposition of any school seeking renewal. The basis for the recommendation will be the charter school's student, financial, legal and contractual performance during its current charter contract.

3. Based on the school's academic, financial, and legal and contractual performance over the current charter contract term, the superintendent may recommend one of the following actions:

a. renewal for the maximum term identified in the maximum charter renewal terms table in Subsection B, above not to exceed a maximum term of 10 years;

b. renewal for a shorter term (based on deficiencies in financial and/or organizational performance); or

c. non-renewal.

4. A recommendation for non-renewal may also include a recommendation that a new charter provider operate the school.



### G. Automatic Renewal of Charter Schools

1. A charter school which has met or exceeded for the three preceding school years the benchmarks established for it in accordance with the school and district accountability system, has demonstrated growth in student academic achievement for the three preceding school years, and has had no significant audit findings during the term of the charter agreement shall be deemed a high-performing school, and such school's charter shall be automatically renewed.

2. A charter school that meets the following conditions shall be automatically renewed and shall be exempted from the renewal process requirements listed in this Section, as appropriate:

- a. has received a letter grade of A or B;
- b. has demonstrated growth in student academic achievement as measured by an increasing school performance score over the three preceding school years;
- c. has received a "meets expectations" designation in its most recent evaluation in organizational performance according to the charter school performance compact; and
- d. has received a "meets expectations" designation in its most recent evaluation in financial performance according to the charter school performance compact.

3. The automatic renewal term shall be in line with the terms specified in Paragraph B.2 of this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:871 (March 2011), LR 37:2388 (August 2011), LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 38:3119 (December 2012), LR 39:1436 (June 2013), LR 39:3066 (November 2013), LR 40:1323 (July 2014).

### **Chapter 19. Amendments to BESE-Authorized Charters**

#### **§1903. Material Amendments for BESE-Authorized Charter Schools**

A. - C. ...

D. The LDE shall make recommendations to BESE on each material amendment request it receives from a charter operator.

E. BESE shall delegate authority to the department to approve a material amendment regarding Paragraphs A.2 and A.3 of this Section for any charter school meeting the following conditions, as determined by the department:

1. no violations of legal or contractual standards, as defined in §1101.F.3; and
2. is not in "dialogue" with the department, as defined in §1101.E.5.c; and
3. one of the following student performance standards:
  - a. the school's most recent performance label was a "C" or higher; or
  - b. not allowing the expansion into new grades or acceptance of greater numbers of students would result in students attending a lower performing school; or
  - c. the school has made ten points of SPS growth over the previous two years.

F. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education in LR 34:1369 (July 2008), amended LR 37:873 (March 2011), LR 37:2389 (August 2011), LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 38:3120 (December 2012), LR 39:3067 (November 2013), LR 40:1324 (July 2014).

#### **§1905. Non-Material Amendments for BESE-Authorized Charter Schools**

A. A non-material amendment to a charter is an amendment that makes non-substantive changes to a school's charter. Non-material amendments may include:

1. changes to the mailing address, telephone, and/or facsimile number of the charter school;
2. changes to the designated contact person for the charter operator or changes to the contact person located at the charter school site; and
3. changes in any option expressed in the charter contract exhibits with respect to Teachers' Retirement System of Louisiana.

B. - C. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education in LR 34:1370 (July 2008), amended LR 37:873 (March 2011), LR 39:3068 (November 2013), amended LR 40:1324 (July 2014).

### **Chapter 23. Charter School Funding**

#### **§2301. State Funding**

A. - E.2. ...

F. Type 2 charter schools approved prior to July 1, 2008 shall receive a per pupil amount from the Louisiana Department of Education each year based on the October 1 membership count of the charter school and using state funds specifically provided for this purpose. In order to provide for adjustments in allocations made to type 2 charter schools as a result of changes in enrollment, BESE may provide annually for a February pupil membership count to reflect any changes in pupil enrollment that may occur after October 1 of each year. Type 2 charter schools authorized by the state Board of Elementary and Secondary Education after July 1, 2008, shall receive a per pupil amount each year as provided in the Minimum Foundation Program approved formula.

F.1. - G.3. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3995.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008), amended LR 37:874 (March 2011), LR 39:3250 (December 2013), LR 40:1324 (July 2014).

#### **§2303. Federal Funding**

A. - B. ...

C. For each pupil enrolled in a charter school who is entitled to special education services, any state special education funding beyond that provided in the Minimum Foundation Program and any federal funds for special education for that pupil that would have been allocated for that pupil shall be allocated to the charter school which the pupil attends.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3995.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education in LR 34:1372 (July 2008), amended LR 39:3251 (December 2013), LR 40:1324 (July 2014).

**Chapter 27. Charter School Recruitment and Enrollment**

**§2713. At-Risk Students**

A. Except as otherwise provided by charter school law, type 1 and type 2 charter schools created as new schools shall maintain an at-risk student population percentage, based on the October 1 pupil membership count, that is equal to the percentage of students eligible for the federal free or reduced lunch program in the district in which the charter school is located or the average of districts from which students served by the charter school reside.

1. The charter school's at-risk population shall consist of 85 percent of students who are eligible for the federal free and reduced lunch program and thus defined as at-risk pursuant to §103 of this bulletin.

2. The remaining 15 percent of a charter school's at-risk population may consist of at students defined as at-risk in §103 of this bulletin.

B. A charter school's required at-risk percentage, based on the percentages of a city or parish school system, shall remain fixed during the term of its approved charter at the percentage which existed during the school year that the charter proposal was approved, unless otherwise specified in the charter that the charter school will reflect the current year's at-risk percentage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) R.S. 17:3973, R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:875 (March 2011), LR 40:1325 (July 2014).

**Chapter 29. Charter School Staff**

**§2907. Leave of Absence**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3997.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1376 (July 2008), amended LR 37:876 (March 2011), repealed LR 40:1325 (July 2014).

**§2909. Employee Benefits**

A. All potential charter school employees shall be notified of the specific benefits they will be offered, as specified in the charter operator's charter.

B. Charter school employees shall be eligible for participation in any or all benefits which would otherwise accrue to employees in any other elementary or secondary school including, but not limited to, the school employees' and teachers' retirement systems, subject to the school's approved charter, which must provide for such participation.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3997.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1376 (July 2008), amended LR 40:1325 (July 2014).

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**RULE**

**Board of Elementary and Secondary Education**

Bulletin 138—Jump Start Program  
(LAC 28:CLXIII.101, 201, 301, 303, and 305)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act the Board of Elementary and Secondary Education has amended *Bulletin 111—The Louisiana School, District and State Accountability System*, §101, Overview, §201, Jump Start Program Authorization, §301, General Provisions, §303, Jump Start Instructional Staff, and §305, Student Participation in Jump Start Programs. The policy defines the rules for the establishment of Jump Start Programs by regional teams. Jump Start is Louisiana's new program for school districts, colleges, and businesses to collaborate in providing career courses and workplace experiences to high school students, allowing them to continue their education after high school while certifying them for the career fields most likely to lead to high-wage careers.

**Title 28  
EDUCATION**

**Part CLXIII. Bulletin 138—Jump Start Program**

**Chapter 1. General Provisions**

**§101. Overview**

A. Louisiana's dynamic economy will increasingly demand young adults who are literate and numerate problem solvers capable of lifelong learning. To effectively prepare Louisiana public school students to graduate high school with the knowledge and skills required for employment in this economy, the Louisiana Department of Education (LDE) shall administer locally-developed comprehensive career and technical education (CTE) programs, hereinafter referred to as Jump Start.

B. Jump Start programs shall fulfill and replace CTE areas of concentration required in Bulletin 741, Section 2319, by prescribing the academic preparation and CTE courses and training experiences by which students will meet the requirements to attain a high school diploma and earn industry credentials certifying their readiness to participate in key job sectors.

C. Jump start programs shall prepare students to earn statewide industry-based certifications (IBCs) aligned with high-growth, high-wage job sectors as approved by Louisiana's Workforce Investment Council (WIC) pursuant to R.S. 23:2065. Pathways preparing students to earn statewide IBCs shall be augmented by regionally-relevant CTE programs, hereinafter referred to as regional CTE pathways, jointly developed by local stakeholders and approved by BESE. BESE shall annually authorize regional CTE pathways pursuant to a review and a favorable recommendation by the state superintendent of education.

D. Jump start programs shall prepare participating students to participate in high-growth, high-wage and regionally-relevant job sectors while also enabling them to continue their post-secondary education and career development.

E. Courses and training provided through approved jump start programs shall be offered to all high school students regardless of chosen diploma pathway, including as elective credit for students pursuing a college diploma; however, students must complete an approved jump start program in order to receive a career diploma, pursuant to Bulletin 741, Section 2319.

F. Jump start programs shall be developed jointly by regional teams consisting of LEAs, technical and community colleges, business and industry leaders, and economic and workforce development experts, pursuant to rules adopted by BESE and guidelines set forth by the LDE.

G. LEAs shall receive technical assistance from the LDE in developing jump start programs, may receive funds through the Minimum Foundation Program formula to support the launch and implementation of such programs, and shall receive points in the school and district accountability system for successful student outcomes, as provided in Bulletin 111.

H. This bulletin sets forth the rules and regulations governing the development, approval, implementation, review, and reauthorization of jump start programs and student participation in jump start programs. Nothing herein shall be construed to relieve LEAs of complying with policies contained in other bulletins unless specifically authorized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:183.2, R.S. 17:2930, and R.S. 23:2065;

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 40:1325 (July 2014).

## **Chapter 2. Jump Start Regional Teams and Program Authorization**

### **§201. Jump Start Program Authorization**

A. Jump Start regional teams shall consist of:

1. partnering LEAs, including local school systems that shall make every reasonable attempt to partner with charter school LEAs in the region;

2. one or more public postsecondary education institutions, with priority consideration given to the state's technical and community colleges; and

3. one or more of the following:

a. local business and industry leaders, including industry association leaders; or

b. local and regional economic development or workforce development experts.

B. The state superintendent of education shall recommend for the board's approval a framework and timeline for the submission and evaluation of jump start program proposals that may include, but not be limited to, the following:

1. a list of the stakeholders on the regional team, including a description of how the regional team has engaged all LEAs in the region, including charter school LEAs, in an effort to address student and school needs;

2. a vision statement of what the regional team hopes to achieve; describing targeted student outcomes; instructional partners and resources required to achieve the targeted student outcomes across the region; the team of stakeholders committed to working collaboratively to achieve targeted student career outcomes; and the types of course offerings and career readiness experiences that regional stakeholders plan to deliver to achieve the targeted student career outcomes;

3. indications of regional job demand by targeted industry sector, provided by the Louisiana Workforce Commission (LWC), a Louisiana post-secondary institution, or an equivalently-credible source;

4. descriptions of the competencies and skills that leading local industries desire in entry-level hires;

5. descriptions of targeted student learning outcomes by CTE pathway, including sequences of courses, testing, and workplace experiences or certifications necessary to document positive student outcomes;

6. plans for implementing a career readiness course;

7. descriptions of appropriate education and training providers, such as industry, other LEAs or schools, or technical colleges, that can provide effective work-based learning opportunities for students;

8. plans to support students at all levels of academic preparation master core academic content early in high school so that less remediation time is required;

9. identification of logistical challenges of students being educated or trained at different campuses or worksites, as well as solutions to these challenges;

10. plans for a formalized process whereby school counselors and staff can provide high-quality career awareness education and counseling beginning in middle school and throughout high school;

11. preliminary budgetary and implementation plans to successfully launch, fund and sustain regional CTE pathways, including logistics and counseling needs and the utilization of any state financial support for career and technical education;

12. description of how the proposed regional CTE pathways will be accessible to all students; and

13. plans for evaluation and continuous improvement for each proposed regional CTE pathway, including indications of how critical data will be compiled and analyzed.

C. Approved regional CTE pathways shall adhere to the same academic requirements as statewide IBC pathways, enabling students to continue their education post-high school graduation.

D. The LDE shall collaborate with the LWC and the Louisiana Department of Economic Development (LED) to evaluate proposed regional CTE pathways and Jump Start regional team proposals. The evaluation process may include but will not necessarily be limited to assessments of:

1. the depth and commitment of each regional team;

2. the appropriateness and rigor of each proposed regional CTE graduation pathway;

3. the implementation readiness of each regional team; and

4. the quality of proposed student outcomes.

E. Following the evaluation of each proposed regional CTE pathway and the review of the entire Jump Start program proposal, the state superintendent of education shall recommend BESE's approval of all proposals receiving a favorable evaluation. The state superintendent may recommend approval of all, some, or none of the proposed regional CTE pathways based on the evaluation process described in this section.

F. The LDE shall regularly evaluate all approved regional CTE pathways to determine the extent to which they are producing positive student outcomes. The LDE

shall incorporate into its evaluations factors that may include but will not necessarily be limited to:

1. student graduation rates, including comparative graduation rates between students in a regionally-relevant CTE programs and other students enrolled in participating LEAs;

2. formal and informal feedback from regional employers on the skill levels and work-readiness of graduates from each approved regional CTE pathway;

3. assessment results by cohorts in each regional CTE graduation pathway; and

4. other relevant factors discussed and reviewed with the LEAs implementing these regional CTE graduation pathways.

G. The state superintendent of education shall not recommend any previously approved regional CTE pathway that does not receive a favorable recommendation for continued approval, unless the LEA has submitted a satisfactory improvement plan to address the program's weaknesses.

H. The LDE shall maintain an inventory of all approved regional CTE pathways and associated application materials, making all materials available for review by regional teams throughout the state as a way of promoting best practices and replicating high-quality regional CTE pathways.

I. The LDE shall provide technical assistance to each jump start regional team, which may include:

1. examples of jump start regional teams' vision statements to guide creation of vision statements and Jump Start proposals;

2. identification of target industry sectors for each region, supported by documented regional job opportunities;

3. sample graduation pathways for each targeted job sector, specifying course progressions (by course title and content) and industry testing or certification requirements;

4. identification and confirmation of instructional capacity to teach required courses in targeted career pathways;

5. identification of required inventory of authentic workplace experiences, such as job shadowing, day-at-work, and internships for each CTE pathway, indicating locations and participating industry partners. This will include workplace visitation agreements, work shadowing agreements and apprenticeship agreements, as well as regional plans for developing a sustainable portfolio of authentic workplace experiences;

6. identification of student career counseling models and supports;

7. identification of instructional assessment methodologies and implementation of quality assurance and quality control methods and metrics;

8. development of operational plans for any pilot programs to be implemented as early as the 2014-2015 school year and thereafter;

9. articulation agreements with post-secondary education institutions;

10. CTE pathway evaluation plans, including data collection and analysis plans;

11. regional team meeting participation and/or facilitation; and

12. assistance in developing components of Jump Start proposals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:183.2, and R.S. 17:2930.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 40:1326 (July 2014).

### **Chapter 3. Jump Start Program Requirements**

#### **§301. General Provisions**

A. All academic and technical training experiences, student services, and student activities associated with approved Jump Start programs must be in compliance with all applicable state and federal laws, rules, and regulations.

B. Approved jump start programs shall maintain the following quality components:

1. strategic budgeting that covers annual expenses and invests strategically in long-term capacity;

2. formal and informal collaborations, contractual arrangements and affiliations with local employers and post-secondary education institutions;

3. adequate staffing and facilities capacity required to implement high-quality CTE pathways;

4. a plan for recruiting and training instructors needed to deliver approved courses and training to students; and

5. a program evaluation plan that includes and prioritizes student outcome data.

C. LEAs shall serve students with exceptionalities participating in jump start programs in accordance with their individualized education plan. Students entitled to special education services shall receive such services through the LEA in which they are enrolled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:183.2, and R.S. 17:2930.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 40:1327 (July 2014).

#### **§303. Jump Start Instructional Staff**

A. City, parish, and other local public school board instructors of approved jump start programs must meet the minimum requirements set forth in *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, or be in compliance with the reciprocal instructor certification policy for instructors who reside in other states but who are employed by authorized course providers to satisfy the state certification requirements pursuant to state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S.17.1 and R.S. 17:4002.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 40:1327 (July 2014).

#### **§305. Student Participation in Jump Start Programs**

A. Each LEA participating in a regional team shall establish policies and procedures for students participating in an approved jump start program. Such policies and procedures shall include, but not be limited to the following:

1. credits earned through approved jump start program courses and training experiences shall appear on each such student's official transcript and shall satisfy graduation requirements as applicable;

2. assessments required pursuant to Bulletin 118 shall be administered to each such student;

3. all services to which each such student attending public school would be entitled if attending the school in which he is enrolled full-time for all courses, including but not limited to special education services pursuant to the student's individualized education plan, shall be provided; and

4. each LEA that provides transportation for students within its jurisdiction shall also provide students participating in Jump Start transportation services within the same jurisdiction.

B.1. Each LEA participating in a regional team shall make available to all students the courses and training experiences included in approved Jump Start programs in order to meet career diploma graduation requirements or to satisfy elective credit requirements.

2. Jump Start programs shall include a required career readiness course to teach students the employability skills needed to succeed in a high-performance work organization, including workplace, interpersonal, communication, leadership, and basic soft skills. The focus of career readiness courses shall be to teach students transferable skills necessary to succeed in the ever-changing workplace through teamwork, problem solving, communication, and self-management.

C. Enrollment of students in courses offered by approved course or training providers shall satisfy the requirements of Louisiana's compulsory attendance laws.

D. Each LEA participating in a regional team shall assure that all students enrolled in grades nine through twelve, including transitional ninth grade, are afforded the opportunity to participate in and benefit from approved Jump Start programs. Students who have not yet completed required core academic content may participate in Jump Start programs if deemed appropriate by the LEA, in order to assist them in:

1. facilitating the transition from middle school or junior high school to high school;
2. improving study skills;
3. building self-esteem and social skills;
4. developing critical thinking and problem-solving strategies;
5. acquiring employment skills;
6. promoting self-reflection and self-advocacy skills;
7. increasing school attendance;
8. improving attitudes toward school;
9. avoiding dropping out of school; and
10. establishing life and career goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:183.2, and R.S. 17:2930.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 40:1327 (July 2014).

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## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Curriculum and Instruction  
(LAC 28: CXV.2317 and 2318)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2317, High Schools and §2318, The College Diploma. The policy revisions align

high school entrance requirements with the new Jump Start career education program and phase out the Basic Core graduation requirements.

## Title 28

### EDUCATION

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

#### Chapter 23. Curriculum and Instruction

#### Subchapter A. Standards and Curricula

#### §2317. High Schools

A. - D. ...

E. A Louisiana state high school diploma cannot be denied to a student who meets the state minimum high school graduation requirements.

F. - G. ...

H. Prior to the beginning of the school year, students may switch diploma pathways provided they have the consent of their parent or guardian and have been advised by a school counselor.

I. Community Service Diploma Endorsement

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:154, R.S. 17:1944, and R.S. 17:1945.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 36:1485 (July 2010), LR 37:1137 (April 2011), LR 38:754 (March 2012), LR 39:1038 (April 2013), LR 39:2216 (August 2013), LR 40:1328 (July 2014).

#### §2318. The College Diploma

A. Curriculum Requirements

1. For incoming freshmen in 2008-2009 through 2013-2014, the 24 units required for the college diploma shall include 16 required units and 8 elective units for the Louisiana Basic Core curriculum, or 21 required units and 3 elective units for the Louisiana Core 4 curriculum; the elective units can be earned at technical colleges as provided in §2389. For incoming freshmen in 2010-2011 through 2013-2014, students completing the basic core curriculum must complete a career area of concentration or a Jump Start program to earn a high school diploma.

2. For incoming freshmen in 2008-2009 through 2013-2014, all ninth graders in the college and career diploma pathway will be enrolled in the Louisiana Core 4 curriculum.

a. After the student has attended high school for a minimum of two years as determined by the school, the student and the student's parent, guardian, or custodian may request that the student be exempt from completing the Louisiana Core 4 curriculum.

b. The following conditions shall be satisfied for consideration of the exemption of a student from completing the Louisiana Core 4 curriculum.

i. The student, the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection) shall meet to discuss the student's progress and determine what is in the student's best interest for the continuation of his educational pursuit and future educational plan.

ii. During the meeting, the student's parent, guardian, or custodian shall determine whether the student will achieve greater educational benefits by continuing the Louisiana Core 4 curriculum or completing the Louisiana basic core curriculum.

iii. The student's parent, guardian, or custodian shall sign and file with the school a written statement asserting their consent to the student graduating without completing the Louisiana Core 4 curriculum and acknowledging that one consequence of not completing the Louisiana Core 4 curriculum may be ineligibility to enroll in into a Louisiana four-year public college or university. The statement will then be approved upon the signature of the principal or the principal's designee.

iv. The student, the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection) shall jointly revise the individual graduation plan.

c. The student in the Louisiana basic core curriculum may return to the Louisiana Core 4 curriculum, in consultation with the student's parent, guardian, or custodian and the school counselor (or other staff member who assists students in course selection).

d. After a student who is 18 years of age or older has attended high school for two years, as determined by the school, the student may request to be exempt from completing the Louisiana Core 4 curriculum by satisfying the conditions cited in LAC 28: CXV.2318.A.3.b with the exception of the requirement for the participation of the parent, guardian, or custodian, given that the parent/guardian has been notified.

**B. Assessment Requirements**

1. - 7.a. ...

**C. Minimum Course Requirements**

1. For incoming freshmen in 2008-2009 through 2013-2014 who are completing the Louisiana basic core curriculum, the minimum course requirements for graduation shall be the following.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. - h. ...

2. For incoming freshmen in 2008-2009 through 2013-2014 who are completing the Louisiana Core 4 curriculum, the minimum course requirements shall be the following.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. - k.iv. ...

3. For incoming freshmen in 2014-2015 and beyond who are completing the college diploma, the minimum course requirements shall be the following:

a. - j. ...

**4. High School Area of Concentration**

4.a. - 6.a.vi. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:1128 (April 2011), LR 37:2129 (July 2011), LR 37:2132 (July 2011), LR 37:3193

(November 2011), LR 38:754, 761 (March 2012), LR 38:1001 (April 2012), LR 38:1584 (July 2012), LR 40:1328 (July 2014).

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**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 746—Louisiana Standards for State Certification of School Personnel—Standards for Secondary Career and Technical Trade and Industrial Education Personnel (LAC 28: CXXXI.Chapter 5)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §501, Introduction; §504, Career and Technical Certificate Types Issued between July 1, 2006 and September 1, 2014; §505, Career and Technical Certificate Types Issued after September 1, 2014; §506.CTTIE-1 and CTTIE-2 Certificates Eligibility Requirements; §507, CTTIE Areas of Specialization; §509, CTTIE-1 Certificates Renewal Guidelines for certificates initially issued prior to September 1, 2014; and §511, Process for Reinstating Lapsed CTTIE-2 Certificates. The policy revisions amend the Career and Technical Education certification pathways to facilitate industry professionals' entry into teaching positions, give greater credit to workplace experience and expertise, and provide essential training on instructional strategies.

**Title 28**

**EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**  
**Chapter 5. Standards for Secondary Career and Technical Trade and Industrial Education Personnel**

**§501. Introduction**

A. Career and technical trade and industrial education (CTTIE) certificates authorize full time or part time employment for instructors of CTTIE classes. The applicant being certified under requirements found in this bulletin may teach CTTIE courses as listed on the Teach Louisiana website (<http://www.teachlouisiana.net>).

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 32:1812 (October 2006), amended LR 35:2752 (December 2009), LR 40:1329 (July 2014).

**§504. Career and Technical Certificate Types Issued between July 1, 2006 and September 1, 2014**

A. CTTIE-1 Certificate—valid for one year; renewable for a maximum of five years while holder completes the requirements to transition to a CTTIE-2 certificate. Candidates must successfully meet the standards of effectiveness for the renewal of this certificate pursuant to Bulletin 130 and R.S. 17:3902. The holder may meet the requirements in §506 or §509 to transition to a CTTIE-2.

B. CTTIE-2 Certificate—valid for five years initially and may be renewed thereafter for a period of five years at the request of the employing LEA. For renewal of the CTTIE-2 certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S. 17:3902. To qualify for this certificate, an individual must meet requirements for a CTTIE-1 certificate and have earned the appropriate CTTIE coursework. All educators holding CTTIE-2 certificates shall meet the criteria in §506.C by September 1, 2019. To allow time to meet new eligibility requirements, CTTIE-2 certificates set to expire before September 1, 2019 may be renewed up to but not beyond September 1, 2019 if the candidate successfully meets the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S. 17:3902.

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 35:2752 (December 2009), amended LR 38:3137 (December 2012), LR 40:1329 (July 2014).

#### **§505. Career and Technical Certificate Types Issued after September 1, 2014**

A. CTTIE-1 Certificate—valid for one year; renewable for a maximum of five years while holder completes requirements for CTTIE-2 certificate in §506 and, when required, new instructor workshop. Candidates must successfully meet the standards of effectiveness for the renewal of this certificate pursuant to Bulletin 130 and R.S.17:3902.

B. CTTIE-2 Certificate—valid for five years initially and may be renewed thereafter for a period of five years at the request of the employing LEA. For renewal of the CTTIE-2 certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S. 17:3902. Applicants are not required to hold a CTTIE-1 certification prior to issuance of a CTTIE-2 certificate if they meet the requirements in §506.C.

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 35:2752 (December 2009), amended LR 38:3137 (December 2012), LR 40:1330 (July 2014).

#### **§506. CTTIE-1 and CTTIE-2 Certificates-Eligibility Requirements**

A. CTTIE-1 and CTTIE-2 certificates are issued to instructors who teach CTTIE courses listed on the "Teach Louisiana" website.

##### **B. CTTIE-1 Eligibility Requirements**

1. Applicants shall hold a high school diploma, or have passed an equivalency test approved by the Department of Education.

2. Applicants shall have a minimum of four years of full time work experience or 7,680 hours of experience in the selected career and technical field:

a. at least one year of full time work experience or 1,920 hours of the required work experience must have been acquired within the five calendar years immediately prior to certification;

b. graduates of community and technical colleges will be given credit for two years or 3,840 hours of occupational experience if the training is in the field for which the applicant is applying; and

c. graduates with a bachelor's degree from a regionally accredited college or university will be given credit for two years or 3,840 hours of experience;

d. graduates with an advanced degree from a regionally accredited college or university will be given credit for three years or 5,760 hours of occupational experience;

e. graduates with a technical degree in the selected field and a bachelor's degree from a regionally accredited college or university will be given credit for three years or 5,760 hours of occupational experience;

f. graduates with a bachelor's degree from a regionally accredited college or university and an industry based certification (IBC) in the selected field, or who pass the appropriate national occupational competency testing institute (NOCTI) exam if industry-based certification is not available, will be given credit for three years or 5,760 hours of occupational experience;

g. applicants holding current approved industry-based certification, or who pass the approved NOCTI exam if industry-based certification is not available, will be given credit for two years or 3,840 hours of work experience. An industry-based certification may not be combined with educational attainment to qualify for a waiver from all required work experience.

3. Applicants with an earned baccalaureate degree and who hold an industry-based certification (IBC) in the selected instructional field may also apply years of teaching experience in that field toward the required work experience.

4. Applicants with prior teaching experience at a postsecondary institution in the selected instructional field may apply those years of teaching at a postsecondary institution toward the required work experience.

5. In addition to CTTIE certification, a current license must be held when a state or national license is required in the workplace. A state or national license will be recognized as an industry-based certification.

6. Applicants shall complete a new instructor workshop, if necessary. New instructor workshop must be completed prior to renewal. The department shall make available a list of new instructor course providers on the "Teach Louisiana" website. Applicants with at least three years of effective K-12 teaching experience as defined by Bulletin 130 or three years of post-secondary teaching experience are not subject to this requirement.

##### **C. CTTIE-2 Eligibility Requirements**

1. Applicants shall hold a current, appropriate and recognized industry instructor certificate aligned with the Louisiana Workforce Investment Council IBC list, if applicable as determined by the LDE, or a bachelor's degree from a regionally accredited college or university.

2. Applicant shall complete a new instructor workshop, if necessary. New instructor workshop must be

completed prior to renewal. The department shall make available a list of new instructor course providers on the "Teach Louisiana" website. Applicants with at least three years of effective K-12 teaching experience as defined by Bulletin 130 or three years of post-secondary teaching experience are not subject to this requirement.

**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 32:1813 (October 2006), amended LR 35:2752 (December 2009), LR 36:2843 (December 2010), LR 38:2366 (September 2012), LR 40:1330 (July 2014).

#### **§507. CTTIE Areas of Specialization**

##### **A. Certified Nursing Assistant (CNA) Eligibility Requirements**

1. Applicant shall be a professional nursing program graduate with current Louisiana licensure as a registered nurse (RN) or licensed practical nurse (LPN).

2. All instructors shall have a CNA "train the trainer certificate" and meet certified nursing assistant regulations, as mandated by the Department of Health and Hospitals (DHH), Health Standards Section.

3. LPNs may serve as a certified nursing assistant instructor under the direct supervision of a RN. LPNs, under the general supervision of the primary instructor, may provide classroom and skills training instruction and supervision if they have two years of experience in caring for the elderly and/or chronically ill.

**B. Certified Nursing Assistant, Program Coordinator—Eligibility Requirements.** The program coordinator shall have the following experience and qualifications:

1. current Louisiana licensure as a registered nurse (RN);

2. a minimum of two years of nursing experience, of which at least one year must be in caring for the elderly or chronically ill, obtained through employment in any of the following:

- a. a nursing facility/unit;
- b. a geriatrics department;
- c. a chronic care hospital;
- d. other long-term care setting; or
- e. experience in varied responsibilities including,

but not limited to, direct resident care or supervision and staff education;

3. completion of VTIE, CTTIE, CNA "train-the-trainer" type program or a master's degree or higher;

4. all instructors must meet requirements mandated by the Louisiana Department of Health and Hospitals (DHH), Health Standards Section;

##### **C. Emergency Medical Technician**

1. An emergency medical technician (EMT) instructor must be approved by the Bureau of EMS.

##### **D. Sports Medicine Eligibility Requirements**

1. Sports medicine instructors shall have at least a Bachelor of Science degree and have received and maintained a current state and/or national certification as an athletic trainer and meet all CTTIE requirements.

2. Applicants pursuing a master's degree in athletic training that are working as an athletic trainer graduate assistant at a regionally accredited university may count these work experience hours toward meeting the required work hours for the CTTIE application. CTTIE application

must include a letter from the director of athletics at the university with the actual number of hours worked as well as assigned duties.

**E. Jobs for America's Graduates (JAG) Louisiana Job Specialist eligibility requirements (one of the following):**

1. a bachelor's degree from a state-approved and regionally accredited college or university, plus two years of full-time work experience, or 3,840 hours of work experience within four years of date of application; or

2. a valid standard Louisiana teaching or school counselor certification.

**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 40:1331 (July 2014).

#### **§509. CTTIE-1 Certificates Renewal Guidelines for certificates initially issued prior to September 1, 2014**

**A. Holder must earn at least three semester hours or 45 contact hours in approved coursework each year until a minimum number of required semester hours or contact hours have been completed, as follows:**

1. with no degree—15 semester hours or 225 contact hours;

2. with an associate degree—12 semester hours or 180 contact hours;

3. with a baccalaureate degree—9 semester hours or 135 contact hours;

4. with a graduate degree—6 semester hours or 90 contact hours;

5. with a valid Louisiana teaching certificate (type A, B, C, level 1, 2, 3 or OS)—3 semester hours or 45 contact hours (new instructor workshop is not required);

6. with 3 years of post-secondary teaching experience—3 semester hours or 45 contact hours (must include the new instructor workshop);

a. renewal guidelines—valid for 5 years initially and may be renewed thereafter for a period of five years at the request of an LEA. For renewal of the CTTIE-2 certificate, candidates must successfully meet the standards of effectiveness for at least 3 years during the 5-year initial or renewal period pursuant to Bulletin 130 and R.S. 17:3902.

**B. The coursework must be completed from the following approved list:**

1. new instructor workshop (mandatory for all instructors who do not hold a valid Louisiana teaching certificate and do not have three years of successful teaching experience);

2. foundations of career and technical education;

3. preparation of career and technical education instructional materials;

4. management of the career and technical education classroom(s)/laboratory(ies);

5. occupational safety and health;

6. testing and evaluation in career and technical education;

7. teaching special needs students in career and technical education;

8. methods of teaching career and technical education;

9. occupational analysis and course development;

10. ethics and diversity in the workplace/classroom;

11. computer technology in the classroom;



12. curriculum planning;
13. career guidance;
14. management of change;
15. basic theory in career and technical education;
16. advanced theory in career and technical education;
17. development of career and technical teacher competency;
18. adolescent psychology;
19. other education pedagogy courses, including online courses, from regionally accredited institutions. Must have prior approval from the employing LEA.

C. If a state or national license is required in the workplace, a current license must be held. A state or national license will be recognized as an industry-based certification.

D. Upon successful completion of the required hours, and upon written request, a VTIE or a CTTIE temporary certificate was converted to a permanent CTTIE certificate until June 30, 2006. After June 30, 2006, certificates for all holders of VTIE, CTTIE, and CTTIE-1 certificates who are completing the required hours will be converted to five year CTTIE-2 certificates upon written request.

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 32:1814 (October 2006), amended LR 33:2356 (November 2007), LR 35:2753 (December 2009), LR 36:2000 (September 2010), LR 38:3137 (December 2012), LR 40:1331 (July 2014).

**§511. Process for Reinstating Lapsed CTTIE-2 Certificates**

A. If holder allows a period of five consecutive calendar years to pass in which he/she is not a regularly employed teacher for at least one semester, or 90 consecutive days, the certificate will lapse for disuse.

B. A CTTIE-2 certificate may be reinstated if, holder is able to present evidence that he/she meets the requirements for a CTTIE-2 license.

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 32:1814 (October 2006), amended LR 35:2754 (December 2009), LR 36:2001 (September 2010), LR 40:1332 (July 2014).

Heather Cope  
Executive Director

1407#008

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 1566—Pupil Progression Policies and Procedures (LAC 28:XXXIX.503)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has approved for advertisement revisions to *Bulletin 1566—Pupil Progression Policies and Procedures*, §503, Regular Placement. The policy revisions clarify policies related to the decision to place students who fail to

meet the promotional standard on the eighth grade LEAP test in the transitional ninth grade.

**Title 28**

**EDUCATION**

**Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures**

**Chapter 5. Placement Policies—General Requirements**

**§503. Regular Placement**

A. - B.1.c. ...

d. At the conclusion of the 2013-2014 school year, any first-time eighth grade student who does not meet the passing standard set forth in §701.A of this bulletin and any student not eligible for any waiver pursuant to §707 of this bulletin, after taking the state assessments in spring and summer, may be placed on a high school campus in transitional ninth grade.

e. At the conclusion of the 2014-2015 school year, LEAs shall follow the guidelines set forth in §701.B to determine, based on evidence of student learning, whether eighth grade students may be promoted to the ninth grade or placed on a high school campus in transitional ninth grade.

f. At the conclusion of the 2015-2016 school year and beyond, any eighth grade student who does not meet the passing standard pursuant to §701.C of this bulletin and who is not eligible for a waiver pursuant to §707 of this bulletin, after taking the state assessments in spring and summer, may be placed on a high school campus in transitional ninth grade.

g. The decision to place a student in the transitional ninth grade or to retain a student in the eighth grade shall be made by the school in which the student is enrolled in the eighth grade, in consultation with the student's parents.

h. Each LEA shall admit transitional ninth grade students, subject to any admissions requirements approved by the school's governing authority or charter authorizer.

i. The following shall govern the transitional ninth grade.

i. Students placed in the transitional ninth grade shall participate in the summer remediation program offered by the LEA and the summer retest.

ii. After one full year of transitional ninth grade, students shall be included in the ninth grade graduation cohort for high school accountability.

iii. Students enrolled in transitional ninth grade shall receive remediation in any subjects in which they did not score at or above proficient, as determined by BESE. A plan outlining such remediation shall be included in the student's individual graduation plan.

iv. Students enrolled in transitional ninth grade shall have opportunities to take career and technical education courses and participate in any career training opportunities included in a high school career pathway developed by a consortium of LEAs, post-secondary colleges and universities, and local business and industry, and approved by the LDE.

v. Students enrolled in transitional ninth grade shall receive dropout prevention and mentoring services based on proven strategies to retain and graduate at-risk students. The LDE shall make available to LEAs a list of recommended strategies and technical assistance needed to offer students such services.

vi. Transitional ninth grades in charter schools authorized to serve students through eighth grade and those authorized to serve students in ninth grade and higher shall be governed by policy contained in *Bulletin 126—Charter Schools*.

C. - E.1.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 2000), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:123 (February 2003), LR 30:407 (March 2004), LR 31:1974 (August 2005), LR 31:3103 (December 2005), LR 33:2063 (October 2007), LR 34:2389 (November 2008), LR 36:2003 (September 2010), LR 40:1332 (July 2014).

Heather Cope  
Executive Director

1407#007

## RULE

### Board of Elementary and Secondary Education

Bulletin 1929—Louisiana Accounting and Uniform Governmental Handbook (LAC 28:XLI.1501)

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 has adopted *Bulletin 1929—Louisiana Accounting and Uniform Governmental Handbook*, §1501, Seventy Percent Expenditure Requirement. The policy revision removes the policy language from the Minimum Foundation Program and places it in Bulletin 1929.

## Title 28 EDUCATION

### Part XLI. Bulletin 1929—Louisiana Accounting and Uniform Governmental Handbook

#### Chapter 15. Expenditure Requirements

##### §1501. Seventy Percent Expenditure Requirement

A. To provide for appropriate accountability of state funds while providing local school system flexibility in determining specific expenditures, local education agencies shall ensure that 70 percent of the local education agency general fund expenditures are in the areas of instruction and school administration at the school building level as derived by the Department of Education.

B. The definition of *instruction* shall provide for:

1. the activities dealing directly with the interaction between teachers and students including, but not limited to, teacher and teacher aide salaries, employee benefits, purchased professional and technical services, textbooks and instructional materials and supplies, and instructional equipment;

2. student support activities designed to assess and improve the well-being of students and to supplement the teaching process, including attendance and social work, guidance, health and psychological activities; and

3. instructional support activities associated with assisting the instructional staff with the content and process of providing learning experiences for students including activities of improvement of *instruction*, *instruction* and

curriculum development, instructional staff training, library/media, and instructional related technology.

C. School administration shall include the activities performed by the principal, assistant principals, and other assistants while they supervise all operations of the school, evaluate the staff members of the school, assign duties to staff members, supervise and maintain the records of the school, and coordinate school instructional activities with those of the school system. These activities may also include the work of clerical staff in support of the teaching and administrative duties.

D. For local education agencies that fail this requirement, but perform at or above the state average in the district performance score (DPS), a waiver for this noncompliance should be provided.

E. For local education agencies that fail this requirement, and also perform below the state average in the district performance score (DPS), the following consequences shall apply.

1. Local education agencies shall assess expenditures in non-instructional areas including a self-assessment and/or hiring an independent firm to determine operational activities that could be streamlined through outsourcing, privatization, or consolidation and provide a report to BESE on the implementation plan to redirect any savings from these actions to instructional activities according to timelines set by the Department of Education.

2. Local education agencies shall examine the manner in which state and federal funds are utilized, make revisions to incorporate new spending patterns, and provide a report to BESE on the implementation of these actions according to timelines set by the Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 40:1333 (July 2014).

Heather Cope  
Executive Director

1407#006

## RULE

### Department of Environmental Quality Office of the Secretary Legal Division

2013 Annual Incorporation by Reference of  
Certain Federal Air Quality Regulations  
(LAC 33:III.506, 507, 2160, 3003,  
5116, 5311 and 5901)(AQ343ft)

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.506, 507, 2160, 3003, 5116, 5311 and 5901 (Log #AQ343ft).

This Rule is identical to federal regulations found in 40 CFR Part 51, Appendix M; 40 CFR Part 60; 40 CFR Part 61; 40 CFR Part 63; 40 CFR Part 68; 40 CFR Part 70.6(a) and 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 Box

4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule incorporates by reference (IBR) into the Louisiana Administrative Code (LAC), Title 33, Part III, Air Regulations the following federal regulations included in the July 1, 2013 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 which updates the references to July 1, 2013, for Standard of Performance for New Stationary Sources, 40, CFR Part 60. This Rule also updates the references to July 1, 2013, for the National Emission Standards for Hazardous Air Pollutants (NESHAP) and for NESHAP for Source Categories, 40 CFR Parts 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, 2013, 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 is 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.

## Title 33 ENVIRONMENTAL QUALITY

### Part III. Air

#### Chapter 5. Permit Procedures

##### §506. Clean Air Interstate Rule Requirements

A. - B.4. ...

C. Annual Sulfur Dioxide. Except as specified in this Section, The federal SO<sub>2</sub> model Rule, published in the *Code of Federal Regulation* at 40 CFR 96, July 1, 2013, is hereby incorporated by reference, except for Subpart III-CAIR SO<sub>2</sub> OPT-in Units and all references to opt-in units.

D. - E. ...

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 32:1597 (September 2006), amended LR 33:1622 (August 2007), LR 33:2083 (October 2007), LR 34:978 (June 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), repromulgated LR 36:2551 (November 2010), amended LR 37:2989 (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).

##### §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, 2013. 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).

#### 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, 2013, 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).

**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, 2013, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are amendments to 40 CFR 60: subpart CCCC and DDDD (78 FR 9111-9213, February 7, 2013). These amendments set forth the Environmental Protection Agency's (EPA) final decision on the issues for which it granted reconsideration in the March 21, 2011, final Rule (76 FR 15703-15790), along with other amendments that establishes effective dates for the standards and makes technical corrections; final Rule to 40 CFR 60 subpart MMMM and LLLL promulgated on March 21, 2011, (76 FR 15372-15453); and 40 CFR 60 Subpart Ga as promulgated on August 14, 2012, (77 FR 48433-48448).

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).

**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, 2013, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

40 CFR Part 61	Subpart/Appendix Heading
* * *	
[See Prior Text in Subpart A - Appendix C]	

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).

**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, 2013, 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).

**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, 2013, 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).

**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, 2013.

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).

Herman Robinson, CPM  
Executive Counsel

1407#023

**RULE**

**Department of Environmental Quality**  
**Office of the Secretary**  
**Legal Division**

Conditional Exclusions for Solvent Contaminated Wipes  
(LAC 33:V.105 and 109)(HW114ft)

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 Hazardous Waste regulations, LAC 33:V.105.D and 109 (Log #HW114ft).

This Rule is identical to federal regulations found in 78 FR 147, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule adopts the revised federal exclusions for certain solvent contaminated wipes generated in Louisiana. Louisiana's hazardous waste program operates under a federal grant from the U.S. EPA. Part of the requirement for maintaining this grant is to maintain the Louisiana hazardous waste regulations so that they are equivalent to or more stringent than the corresponding federal regulations. The basis and rationale of this Rule is to mirror the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental Quality—**  
**Hazardous Waste**

**Chapter 1. General Provisions and Definitions**

**§105. Program Scope**

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Wastes that are excluded from regulation are found in this Section.

A. - D.1.v.iii. ...

iv. glass removed from CRTs, provided that it meets the requirements of LAC 33:V.4911;

w. solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that:

i. the solvent-contaminated wipes, when accumulated, stored, and transported, are contained in nonleaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is

complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

ii. the solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

iii. at the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes shall contain *no free liquids* as defined in LAC 33:V.109;

iv. free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in LAC 33:V.Subpart 1;

v. generators shall maintain, at their sites, the following documentation:

(a). the name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(b). documentation that the 180-day accumulation time limit in LAC 33:V.105.D.1.w.ii is being met; and

(c). the description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning; and

vi. the solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402, or section 307 of the Clean Water Act.

2. - 2.p.v. ...

q. solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that:

i. the solvent-contaminated wipes, when accumulated, stored, and transported, are contained in nonleaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

ii. the solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

iii. at the point of being transported for disposal, the solvent-contaminated wipes shall contain *no free liquids* as defined in LAC 33:V.109;

iv. free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in LAC 33:V.Subpart 1;

v. generators shall maintain at their sites the following documentation:

(a). the name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(b). documentation that the 180 day accumulation time limit in LAC 33:V.105.D.2.q.ii is being met; and

(c). a description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

vi. the solvent-contaminated wipes are sent for disposal:

(a). to a municipal solid waste landfill regulated under LAC 33:VII.711, or to a hazardous waste landfill regulated under LAC 33:V.Chapter 25 or LAC 33:V.Chapter 43.Subchapter M; or

(b). to a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under LAC 33:V.Chapter 30.

D.3. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq., and in particular, 2186(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813, 831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564, 567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007), LR 34:614 (April 2008), LR 34:1008 (June 2008), LR 34:1893 (September 2008), LR 34:2395 (November 2008), LR 35:1878 (September 2009), LR 36:2553 (November 2010), LR 38:791 (March 2012), amended by the Office of the Secretary, Legal Division, LR 40:1336 (July 2014).

## §109. Definitions

For all purposes of these Rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

\* \* \*

*No Free Liquids*—as used in LAC 33:V.105.D.1.w and LAC 33:V.105.D.2.q, means that solvent-contaminated wipes may not contain free liquids as determined by method 9095B (paint filter liquids test), included in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (EPA Publication SW-846), which is incorporated by reference at LAC 33:V.110, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the administrative authority.

\* \* \*

### *Solvent-Contaminated Wipe*—

1. a wipe that, after use or after cleaning up a spill:
  - a. contains one or more of the F001 through F005 solvents listed in LAC 33:V.4901.C, or the corresponding P- or U-listed solvents listed in LAC 33:V.4901.E or F;
  - b. exhibits a hazardous characteristic found in LAC 33:V.4903, when that characteristic results from a solvent listed in LAC 33:V.4901; and/or
  - c. exhibits only the hazardous waste characteristic of ignitability found in LAC 33:V.4903.B;
2. solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at LAC 33:V.105.D.1.w and LAC 33:V.105.D.2.q.

\* \* \*

*Wipe*—a woven or nonwoven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71

(January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008), LR 34:1894 (September 2008), LR 34:2396 (November 2008), LR 36:1235 (June 2010), repromulgated LR 36:1535 (July 2010), amended LR 36:2554 (November 2010), LR 38:774, 781 (March 2012), repromulgated LR 38:1009 (April 2012), amended by the Office of the Secretary, Legal Division, LR 40:1338 (July 2014).

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Executive Counsel

1407#022

## RULE

### Department of Environmental Quality Office of the Secretary Legal Division

#### Maintaining Equivalency with Federal Regulations (LAC 33:XV.102, Chapter 3, Chapter 4, 573 and 763)(RP056ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations, LAC 33:XV.102, 304, 322, 328, 410, 417, 431, 499, 573 and 763 (Log #RP056ft).

This Rule is identical to federal regulations found in 10 CFR 20, 30, 32 and 35, 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 will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule will update the state regulations to be compatible with changes in the federal regulations. This Rule addresses 23 comments from the NRC on eight different amendments to the state regulations. The changes in the state regulations are category A, B, C and NRC requirements for the state of Louisiana to remain an NRC agreement state. The basis and rationale for this Rule is to mirror federal regulations and maintain the Agreement State Program. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

## Title 33

### ENVIRONMENTAL QUALITY Part XV. Radiation Protection

#### Chapter 1. General Provisions

##### §102. Definitions and Abbreviations

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

\* \* \*

*Radiation Area*—an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of five millirems (0.05 millisievert) in one hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.(1).

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

### **Chapter 3. Licensing of Radioactive Material**

#### **Subchapter A. Exemptions**

#### **§304. Radioactive Material Other Than Source Material**

##### **A. Exempt Concentrations**

1. Except as provided in Paragraphs A.3 and 4 of this Section, any person is exempt from this Chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires products or materials containing radioactive material in concentrations not in excess of those listed in schedule A of this Chapter.

2. This Section shall not be deemed to authorize the import of byproduct material or products containing byproduct material.

3. A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in these regulations to the extent that this person transfers byproduct material contained in a product or material in concentrations not in excess of those specified in schedule A of this Chapter and introduced into the product or material by a licensee holding a specific license issued pursuant to 10 CFR 32.11 expressly authorizing such introduction. This exemption does not apply to the transfer of byproduct material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

4. No person may introduce byproduct material into a product or material, knowing or having reason to believe that it will be transferred to persons exempt under LAC 33:XV.304.A.1 or equivalent regulations of any agreement state, except in accordance with a specific license issued pursuant to 10 CFR 32.11.

##### **B. Exempt Quantities**

1. Except as provided in Paragraphs B.3-5 of this Section, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in individual quantities, none of which exceeds the applicable quantity set forth in schedule B of this Chapter.

2. ...

3. LAC 33:XV.304.B does not authorize the production, packaging, repackaging, or transfer of byproduct material for purposes of commercial distribution or the incorporation of byproduct material into products intended for commercial distribution.

4. No person may, for purposes of commercial distribution, transfer byproduct material in the individual quantities set forth in schedule B of this Chapter knowing, or having reason to believe, that such quantities of byproduct material will be transferred to persons exempt under Subsection B of this Section or equivalent regulations of the U.S. Nuclear Regulatory Commission or any other agreement state, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission in accordance with 10 CFR 32.18 or by the administrative authority in accordance with LAC 33:XV.328.B, which license states that the byproduct material may be transferred by the licensee to persons exempt under Subsection B of this Section or the equivalent regulations of the U.S. Nuclear Regulatory Commission, or any other agreement state or licensing state. Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

5. No person may, for purposes of producing an increased radiation level, combine quantities of byproduct material covered by this exemption so that the aggregate quantity exceeds the limits set forth in 10 CFR 30.71 schedule B, except for byproduct material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the regulations in this Chapter.

##### **C. Exempt Items**

1. Certain Items Containing Byproduct Material. Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Except for persons who apply byproduct material to, or persons who incorporate byproduct material into, the following products, or persons who initially transfer for sale or distribution the following products containing byproduct material, any person is exempt from these regulations to the extent that he or she receives, possesses, uses, transfers, owns, or acquires the following products:

a. timepieces or hands or dials containing not more than the following specified quantities of byproduct material and not exceeding the following specified levels of radiation:

i. - vi. ...

vii. the levels of radiation from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

vii.(a). - viii. ...

b. devices such as:

i. static elimination devices which contain, as a sealed source or sources, byproduct material consisting of a total of not more than 500 microcurie (18.5 MBq) of polonium-210 per device;

ii. ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq



(500  $\mu\text{Ci}$ ) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device;

iii. such devices authorized before October 23, 2012, for use under the general license then provided in 10 CFR 31.3 and equivalent regulations of agreement states and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Nuclear Regulatory Commission;

c. ...

d. marine compasses containing not more than 750 millicuries of tritium gas and other marine navigational instruments containing not more than 250 millicuries of tritium gas manufactured before December 17, 2007;

e. ionization chamber smoke detectors containing not more than 1 microcurie ( $\mu\text{Ci}$ ) of americium-241 per detector in the form of a foil and designed to protect life and property from fires;

f. electron tubes, provided that no tube contains more than one of the following specified quantities of byproduct material:

i. 150 millicuries of tritium per microwave receiver protector tube or 10 millicuries of tritium per any other electron tube;

ii. 1 microcurie of cobalt-60;

iii. 5 microcuries of nickel-63;

iv. 30 microcuries of krypton-85;

v. 5 microcuries of cesium-137;

vi. 30 microcuries of promethium-147; and vii. provided further, that the levels of radiation from each electron tube containing byproduct material do not exceed 1 millirad per hour at 1 centimeter from any surface when measured through 7 milligrams per square centimeter of absorber; and

viii. for purposes of this Subsection, *electron tubes* include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents;

g. ionizing radiation measuring instruments containing, for the purposes of internal calibration or standardization, one or more sources of byproduct material, provided that:

i. each source contains no more than one exempt quantity set forth in Schedule B of this Chapter;

ii. each instrument contains no more than 10 exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one or different types of radionuclides, and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in Schedule B of this Chapter, provided that the sum of such fractions shall not exceed unity; and

iii. for purposes of this Section, 0.05 microcurie of americium-241 is considered an exempt quantity under Schedule B of this Chapter.

## 2. Self-Luminous Products Containing Byproduct Material

a. Tritium, Krypton-85, or Promethium-147. Except for persons who manufacture, process, produce, or initially

transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147, any person is exempt from the requirements for a license set forth in these regulations to the extent that such person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR 32.22, which license authorizes the initial transfer of the product for use under this Subparagraph. Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under this Subparagraph, shall apply for a license under 10 CFR 32.22 and for a certificate of registration in accordance with 10 CFR 32.210. The exemption in this Subparagraph does not apply to tritium, krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments.

2.b. - 4.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2091 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1226 (August 2001), amended by the Office of the Secretary, Legal Division, LR 38:2746 (November 2012), LR 40:1339 (July 2014).

## Subchapter C. General Licenses

### §322. General Licenses: Radioactive Material Other Than Source Material

A. Certain Devices and Equipment. A general license is hereby issued to transfer, receive, acquire, own, possess, and use radioactive material incorporated in the following devices or equipment that have been manufactured, tested, and labeled by the manufacturer in accordance with a specific license issued to the manufacturer by the U.S. Nuclear Regulatory Commission for use pursuant to 10 CFR 31.3. Attention is directed particularly to the provisions of 10 CFR 20 concerning labeling of containers. This general license is subject to the provisions of LAC 33:XV.104-109, 304.A. 3 and 4, 331, 340, 350, and Chapters 4, 10, and 15 of these regulations.

A.1. - J.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2567 (November 2000), LR 27:1226 (August 2001), LR 30:1663 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2524 (October 2005), LR 32:811 (May 2006), LR 33:448 (March 2007), LR 33:2177 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:1340 (July 2014).

**Subchapter D. Specific Licenses**

**§328. Special Requirements for Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Byproduct Material**

A. Licensing the Introduction of Byproduct Material into Products in Exempt Concentrations. No person may introduce byproduct material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under LAC 33:XV.304.A.1 or equivalent regulations of an agreement state, except in accordance with a license issued pursuant to 10 CFR 32.11.

B. - M.4.g....

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2569 (November 2000), LR 26:2768 (December 2000), LR 27:1228 (August 2001), LR 30:1664 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2526 (October 2005), LR 33:2179 (October 2007), LR 36:1771 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2746 (November 2012), LR 40:1341 (July 2014).

**Chapter 4. Standards for Protection against Radiation**

**Subchapter B. Radiation Protection Programs**

**§410. Occupational Dose Limits for Adults**

A. - B. ...

C. When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent shall be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the department. The assigned deep dose equivalent shall be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure or the results of individual monitoring are unavailable.

D. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:969 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2769 (December 2000), LR 30:1188 (June 2004), amended by the Office of the Secretary, Legal Division, LR 40:1341 (July 2014).

**§417. Dose to an Embryo/Fetus**

A. - B. ...

C. The dose equivalent to the embryo/fetus is the sum of:

1. the deep-dose equivalent to the declared pregnant woman; and

2. the dose equivalent to the embryo/fetus resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

D. If by the time the woman declares pregnancy to the licensee or registrant, the dose equivalent to the embryo/fetus has exceeded 5 mSv (0.5 rem), the licensee or registrant shall be deemed to be in compliance with Subsection A of this Section if the additional dose equivalent to the embryo/fetus does not exceed 0.5 mSv (0.05 rem) during the remainder of the pregnancy.<sup>2</sup>

<sup>2</sup>The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91, "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987), that no more than 0.5 mSv (0.05 rem) to the embryo/fetus be received in any one month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:970 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2769 (December 2000), amended by the Office of the Secretary, Legal Division, LR 40:1341 (July 2014).

**§431. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose**

A. Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this Chapter. Each licensee or registrant shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:

1. - 4.b....

c. when only one individual monitoring device is issued to determine the effective dose equivalent for external radiation in accordance with LAC 33:XV.410.D, it shall be located at the neck outside the protective apron. When a second individual monitoring device is used for the same purpose, it shall be located under the protective apron at the waist. The second individual monitoring device is required for a declared pregnant woman.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:971 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2770 (December 2000), amended by the Office of the Secretary, Legal Division, LR 40:1341 (July 2014).

**Subchapter Z. Appendices**

**§499. Appendices A, B, C, D, E**

A. Appendix A

Appendix A Assigned Protection Factors for Respirators <sup>a</sup>		
Type of Respirator	Operating Mode	Assigned Protection Factors (APF)
I. Air-Purifying Respirators [Particulate <sup>b</sup> Only] <sup>c</sup>		
* * *		

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B. Appendix B

**Appendix B**

**Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage**

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The derived air concentration (DAC) values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by:

$$\begin{aligned}
 \text{DAC} &= \frac{\text{ALI (in } \mu\text{Ci)}}{(2000 \text{ hrs/working yr} \times 60 \text{ min/hr} \times 2 \times 10^4)} \mu\text{Ci/ml} \\
 &= \frac{\text{ALI}}{2.4 \times 10^9} \mu\text{Ci}
 \end{aligned}$$

where:

2 x 10<sup>4</sup> ml is the volume of air breathed per minute at work by the reference man under working conditions of light work.

\*\*\*

Appendix C. - Appendix E. ...

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 20:653 (June 1994), LR 22:973 (October 1996), LR 24:2096 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2580 (November 2000), LR 28:1012 (May 2002), amended by the Office of Environmental Assessment, LR 31:48 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2530 (October 2005), LR 33:2183 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:1341 (July 2014).

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

**Subchapter B. Personal Radiation Safety Requirements for Radiographers**

**§573. Conducting Industrial Radiographic Operations**

A. - E.2. ...

3. two years of documented radiation protection experience, including knowledge of industrial radiographic operations, with at least 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:1234 (August 2001), amended LR 28:1951 (September 2002), LR 29:34 (January 2003), amended by the Office of the Secretary, Legal Division, LR 40:1342 (July 2014).

**Chapter 7. Use of Radionuclides in the Healing Arts**

**§713. Suppliers**

A. For medical use, a licensee may only use:

1. sealed sources or devices, manufactured, labeled, packaged, and distributed in accordance with a license issued in accordance with these regulations or the equivalent

regulations of another agreement state, a licensing state, or the Nuclear Regulatory Commission;

2. sealed sources or devices non-commercially transferred from a Nuclear Regulatory Commission Medical Licensee, a licensing state medical use licensee, or an agreement state medical use licensee; and

3. teletherapy sources manufactured and distributed in accordance with a license issued pursuant to these regulations or the equivalent regulations of another agreement state, a licensing state, or the U.S. Nuclear Regulatory Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2103 (November 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 36:1772 (August 2010), amended by the Office of the Secretary, Legal Division, LR 40:1342 (July 2014).

**§763. Training**

A. Training for a Radiation Safety Officer. Except as provided in Subsection B of this Section, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in LAC 33:XV.706 to be an individual:

1. who is certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Paragraphs A.4 and 5 of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. - b.ii. ...

(a). under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Nuclear Regulatory Commission or an agreement state; or

(b). in a clinical nuclear medicine facility providing diagnostic and/or therapeutic services under the direction of a physician who meets the requirements for an authorized user in Subsection B, or D or Paragraph E.1 of this Section; and

1.b.iii. - 3. ...

a. is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state in accordance with Subsection J of this Section, and who has experience in radiation safety for similar types of use of byproduct material for which the licensee is seeking the approval of the individual as radiation safety officer, and who meets the requirements in Paragraphs A.4 and 5 of this Section; or

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

4. A physician, dentist, or podiatrist identified as an authorized user for the medical use of byproduct material on a license issued by the Nuclear Regulatory Commission or agreement state, a permit issued by a commission master material licensee, a permit issued by a commission or an agreement state broad scope licensee, or a permit issued by a commission master material license broad scope permittee

before October 24, 2002, who performs only those medical uses for which he or she was authorized on that date need not comply with the training requirements of this Section.

5. A physician, dentist, or podiatrist identified as an authorized user for the medical use of byproduct material on a license issued by the Nuclear Regulatory Commission or agreement state, a permit issued by a commission master material licensee, a permit issued by a commission or an agreement state broad scope licensee, or a permit issued by a commission master material license broad scope permittee who performs only those medical uses for which he or she was authorized between October 24, 2002 and April 29, 2005, need not comply with the training requirements of this Section.

6. - 7. ...

C. Training for Uptake, Dilution, and Excretion Studies. Except as provided in Subsection B of this Section, the licensee shall require the authorized user of unsealed byproduct material for the uses authorized in LAC 33:XV.729 to be a physician:

1. who is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Subparagraph C.3.b of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. - b. ...

2. who is an authorized user under Subsection D or Paragraph E.1 of this Section, or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements or Subparagraph C.3.a of this Section;

3. - 3.a.i.(e). ...

ii. work experience, under the supervision of an authorized user who meets the requirements in Subsection B or C or D or Paragraph E.1 of this Section, or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements involving:

(a). - (f). ...

b. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Subsection B or C or D or Paragraph E.1 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements, that the individual has satisfactorily completed the requirements in Subparagraph C.1.a or C.3.a of this Section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in LAC 33:XV.729.

D. Training for Imaging and Localization Studies. Except as provided in Subsection B of this Section, the licensee shall require the authorized user of unsealed byproduct material for the uses authorized in LAC 33:XV.731.H to be a physician:

1. who is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Subparagraph D.3.b of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an

agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 3.a.i.(e). ...

ii. work experience, under the supervision of an authorized user, who meets the requirements in this Subsection, Subsection B or Subclause D.3.a.ii.(f) and Paragraph E.1 of this Section, or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements involving:

(a). - (g). ...

b. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this Subsection, Subsection B or Subclause D.3.a.ii.(f) and Paragraph E.1 of this Section, or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements that the individual has satisfactorily completed the requirements in Subparagraph D.1.a or D.3.a of this Section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in LAC 33:XV.729 and LAC 33:XV.731.H.

E. - E.1. ...

a. who is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Division E.1.b.i.(b).(vii) and Clause E.1.b.ii of this Section. (Specialty boards whose certification processes have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

a.i. - b.i.(a).(v). ...

(b). work experience, under the supervision of an authorized user who meets the requirements in this paragraph, Subsection B of this Section or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. A supervising authorized user, who meets the requirements in Subparagraph E.1.b of this Section, shall also have experience in administering dosages in the same dosage category or categories (i.e., Division E.1.b.i.(b).(vii) of this Section) as the individual requesting authorized user status. The work experience shall involve:

(i). - (vii).[d]. ...

ii. has obtained written attestation that the individual has satisfactorily completed the requirements in Clause E.1.a.i and Division E.1.b.i.(b).(vii) or Clause E.1.b.i of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in LAC 33:XV.735.C. The written attestation shall be signed by a preceptor authorized user who meets the requirements in this Paragraph, Subsection B of this Section or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. The preceptor authorized user who meets the requirements in Subparagraph E.1.b of this Section shall have experience in administering dosages in the same dosage category or categories (i.e., Division E.1.b.i.(b).(vii) of this Section) as the individual requesting authorized user status.

2. Training for the Oral Administration of Sodium Iodide I-131 Requiring a Written Directive in Quantities Less Than or Equal To 1.22 Gigabecquerels (33 millicuries).

Except as provided in Subsection B of this Section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries) to be a physician:

a. who is certified by a medical specialty board whose certification process includes all of the requirements in Clauses E.2.c.i and ii of this Section and whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Clause E.2.c.iii of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.); or

b. who is an authorized user in accordance with Paragraph E.1 of this Section for uses listed in Subdivision E.1.b.i.(b).(vii).[a] or [b] of this Section, Paragraph E.3 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements; or

c. - c.i.(e). ...

ii. has work experience, under the supervision of an authorized user who meets the requirements in Subsection B or Paragraph E.1, 2, or 3 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. A supervising authorized user who meets the requirements in Subparagraph E.1.b of this Section shall also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[a] or [b] of this Section. The work experience shall involve:

(a) - (e). ...

(f). administering dosages to patients or human research subjects that includes at least three cases involving the oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

iii. has obtained written attestation that the individual has satisfactorily completed the requirements in Clauses E.2.c.i and ii of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized in LAC 33:XV.735.C. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Subsection B or Paragraph E.1, 2, or 3 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. A preceptor authorized user who meets the requirement in Subparagraph E.1.b of this Section shall also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[a] or [b] of this Section.

3. Training for the Oral Administration of Sodium Iodide I-131 Requiring a Written Directive in Quantities Greater Than 1.22 Gigabecquerels (33 millicuries). Except as provided in Subsection B of this Section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries) to be a physician:

a. who is certified by a medical specialty board whose certification process includes all of the requirements in Clauses E.3.c.i and ii of this Section and whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who

meets the requirements in Clause E.3.c.iii of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.); or

b. who is an authorized user in accordance with Paragraph E.1 of this Section for uses listed in Subdivision E.1.b.i.(b).(vii).[b] of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements; or

c. - c.i.(e). ...

ii. has work experience, under the supervision of an authorized user who meets the requirements in Subsection B or Paragraph E.1 or 3 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. A supervising authorized user who meets the requirements in Subparagraph E.1.b of this Section shall also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[b] of this Section. The work experience shall involve:

(a) - (e). ...

(f). administering dosages to patients or human research subjects that includes at least three cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

iii. has obtained written attestation that the individual has satisfactorily completed the requirements in Clauses E.3.c.i and ii of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized in LAC 33:XV.735.C. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Subsection B or Paragraph E.1 or 3 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. A preceptor authorized user who meets the requirements in Subparagraph E.1.b of this Section shall also have experience in administering dosages as specified in Subdivision E.1.b.i.(b).(vii).[b] of this Section.

4. Training for the Parenteral Administration of Unsealed Byproduct Material Requiring a Written Directive. Except as provided in Subsection B of this Section, the licensee shall require an authorized user for the parenteral administration requiring a written directive to be a physician:

a. who is an authorized user in accordance with Paragraph E.1 of this Section for uses listed in Subdivision E.1.b.i.(b).(vii).[c] or [d] of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements; or

b. who is an authorized user in accordance with Subsection F or I of this Section, or equivalent agreement state requirements, Nuclear Regulatory Commission requirements, and who meets the requirements in Subparagraph E.4.d of this Section; or

c. who is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state in accordance with Subsection F or I of this Section, and who meets the requirements in Subparagraph E.4.d of this Section; or

d. - d.i.(e). ...

ii. has work experience, under the supervision of an authorized user who meets the requirements in Subsection B or Paragraph E.1 or 4 of this Section, or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements in the parenteral administration, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in Paragraph E.1 of this Section shall have experience in administering dosages as specified in Subdivisions E.1.b.i.(b).(vii).[c] and/or [d] of this Section. The work experience shall involve:

(a) - (f). ...

iii. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraph E.4.b or c of this Section, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed byproduct material requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements in Subsection B or Paragraph E.1 or 4 of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements. A preceptor authorized user who meets the requirements in Paragraph E.1 of this Section shall have experience in administering dosages as specified in Subdivisions E.1.b.i.(b).(vii).[c] and/or [d] of this Section.

F. ...

1. who is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Subparagraph F.2.c of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 2.a.i.(d). ...

ii. 500 hours of work experience under the supervision of an authorized user who meets the requirements in this Subsection, Subsection B of this Section or equivalent agreement state requirements or Nuclear Regulatory Commission requirements at a medical institution, involving:

(a) - (f). ...

b. has completed three years of supervised clinical experience in radiation oncology under the supervision of an authorized user who meets the requirements in this Subsection, Subsection B of this Section or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required in Subparagraph F.2.a.ii of this Section; and

c. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in this Subsection, Subsection B of this Section or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements that the individual has satisfactorily completed the requirements in Subparagraph F.1.a, or Paragraph F.2.a and b of this Section, and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized in LAC 33:XV.741.

G. ...

1. who is an authorized user in accordance with Subsection F of this Section, or equivalent agreement state requirements or Nuclear Regulatory Commission requirements; or

2. - 2.b.iv. ...

c. has obtained written attestation, signed by a preceptor authorized user who meets the requirements in Subsections B or F and G of this Section, or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements that the individual has satisfactorily completed the requirements in Paragraphs G.1 and 2 of this Section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

H. ...

1. who is certified by a specialty board whose certification process includes all of the requirements in Paragraphs H.2 and 3 of this Section and whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.); or

H.2. - I. ...

1. who is certified by a medical specialty board whose certification process has been recognized by the commission or an agreement state, and who meets the requirements in Subparagraph I.2.c and Paragraph I.3 of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 2.a.i.(d). ...

ii. 500 hours of work experience under the supervision of an authorized user who meets the requirements in this Subsection, or Subsection B of this Section or equivalent agreement state requirements or Nuclear Regulatory Commission requirements at a medical institution, involving:

(a) - (f). ...

b. has completed three years of supervised clinical experience in radiation therapy under the supervision of an authorized user who meets the requirements in this Subsection, or Subsection B of this Section or equivalent agreement state requirements, or Nuclear Regulatory Commission requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for

Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required in Clause I.2.a.ii of this Section; and

c. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraph I.1.a or Subparagraphs I.2.a and b and Paragraph I.3 of this Section, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in this Subsection or Subsection B of this Section or equivalent agreement state requirements or Nuclear Regulatory Commission requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

I.3. - J. ...

1. who is certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Subparagraph J.2.b and Paragraph J.3 of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

a. - b.i. ...

ii. in a clinical radiation facility providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of a physician who meets the requirements for an authorized user in Subsection B, F or I of this Section; and

1.c. - 2.a.iv. ...

b. has obtained written attestation that the individual has satisfactorily completed the requirements in Subparagraphs J.1.a and b and Paragraph J.3, or Subparagraph J.2.a and Paragraph J.3, of this Section, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in this Subsection, Subsection B of this Section or equivalent agreement state requirements or Nuclear Regulatory Commission requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

J.3. - K. ...

1. who is certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an agreement state, and who meets the requirements in Subparagraph K.2.b of this Section. (The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an agreement state will be posted on the NRC's web page.) To

have its certification process recognized, a specialty board shall require all candidates for certification to:

1.a. - 2.b. ...

L. Reserved.

M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2106 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2590 (November 2000), LR 30:1186 (June 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:814 (May 2006), LR 34:983 (June 2008), LR 34:2121 (October 2008), LR 36:1772 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:1342 (July 2014).

Herman Robinson, CPM  
Executive Counsel

1407#021

**RULE**

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

Reorganization of Procurement Regulations  
(LAC 34:V.Chapters 3-33)

The passage of Act 864 of the 2014 Regular Legislative Session combined and reorganized the following chapters of title 39 of the *Louisiana Revised Statutes*: chapter 16 (Professional, Personal, Consulting, and Social Services Procurement) and chapter 17 (the Louisiana Procurement Code). This realignment of statutes makes it necessary to perform this counterpart combination of the rules promulgated under the aforesaid chapters of law. No changes have been made to any of those rules formerly located in LAC, Title 34, Part I, Subparts 1 and 3, and LAC, Title 34, Part V.

Disposition Table	
Chapters—Old to New	
Old Placement	New Placement
LAC 34:I.Chapter 3	LAC 34:V.Chapter 3
LAC 34:I.Chapter 5	LAC 34:V.Chapter 5
LAC 34:I.Chapter 6	LAC 34:V.Chapter 6
LAC 34:I.Chapter 7	LAC 34:V.Chapter 7
LAC 34:I.Chapter 9	LAC 34:V.Chapter 9
LAC 34:I.Chapter 11	LAC 34:V.Chapter 11
LAC 34:I.Chapter 13	LAC 34:V.Chapter 13
LAC 34:I.Chapter 15	LAC 34:V.Chapter 15
LAC 34:I.Chapter 17	LAC 34:V.Chapter 17
LAC 34:I.Chapter 18	LAC 34:V.Chapter 18
LAC 34:I.Chapter 19	LAC 34:V.Chapter 19
LAC 34:I.Chapter 20	LAC 34:V.Chapter 20
LAC 34:I.Chapter 21	LAC 34:V.Chapter 21
LAC 34:I.Chapter 22	LAC 34:V.Chapter 22
LAC 34:I.Chapter 23	LAC 34:V.Chapter 23
LAC 34:I.Chapter 25	LAC 34:V.Chapter 25
LAC 34:I.Chapter 29	LAC 34:V.Chapter 29
LAC 34:I.Chapter 31	LAC 34:V.Chapter 31
LAC 34:I.Chapter 33	LAC 34:V.Chapter 33



**Title 34**  
**GOVERNMENT CONTRACTS, PROCUREMENT**  
**AND PROPERTY CONTROL**

**Part V. Procurement of Professional, Personal,**  
**Consulting and Social Service**

**Chapter 3. Specifications**

**§301. 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, construction or major repair item. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery. Unless the context requires otherwise, the terms *specification* and *purchase description* are used interchangeably throughout these regulations.

2. The purpose of a specification is to serve as a basis for obtaining a supply, service, or major repair item adequate and suitable for the state's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the state that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the state's requirements.

3. All definitions as listed in R.S. 39:1556 and R.S. 39:1591 will apply.

B. Nonrestrictiveness. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or major repair item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that is not practicable to use a less restrictive specification.

C. Preference for Commercially Available Products. It is the general policy of this state to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

D. Escalation and De-Escalation Clauses. Bid 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).

**§303. Availability of Documents**  
**[Formerly LAC 34:I.303]**

A. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection pursuant to R.S. 44.1.

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).

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

A. Statutory Authority of the Chief Procurement Officer and State Agencies. The chief procurement officer is authorized to prepare specifications in accordance with R.S. 39:1652, subject to the authority granted purchasing agencies in R.S. 39:1653 of the Louisiana Procurement Code.

B. Delegation of Authority to State Agencies. The chief procurement officer may delegate in writing the authority to prepare and utilize specifications to purchasing agencies and using agencies for any type of supplies, services, or major repairs provided such delegations may be revoked by the chief procurement officer.

C. Authority to Contract for Preparation of Specifications

1. A contract to prepare specifications for state use in procurement of supplies or services 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 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).

**§307. Procedures for the Development of Specifications**  
**[Formerly LAC 34:I.307]**

A. Provisions of General Application

1. Application of Section. This Section applies to all persons who may prepare a specification for state use, including the chief procurement officer, the head of a purchasing agency, the head of a using agency, the designees of such officers, and also consultants, architects, engineers, designers, and other draftsmen of specifications used for public contracts.

2. Specification of Alternates May Be Included. To the extent feasible, a specification may provide alternate descriptions of supplies, services, or major repair items where two or more design, functional, or performance criteria will satisfactorily meet the state's requirements.

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).

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

A. Proprietary Specifications

1. Definition. *Proprietary Specification*—a specification that cites brand name, model number, or some other designation 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 the head of a purchasing agency 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 are:

i. revolving fund purchases for resale, such as groceries, canned goods, packing house products, drug sundries, candy, tobacco and other similar items;

ii. revolving fund purchases of foods for cafeterias, dining halls or dormitories;

iii. standard replacement parts such as automobiles, machinery, and equipment;

iv. repairs to automobiles, machinery, equipment, etc.

3. Competition. The procurement officer shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Chapter 9 (Sole Source Procurement) of this Part.

4. Reports. The chief procurement officer shall submit reports to the commissioner or cabinet department head within 90 days after the end of the fiscal year stating:

- a. any brand name contracts used;
- b. the number of suppliers solicited;
- c. the identity of these suppliers;
- d. the supplier awarded the contract; and
- e. the contract price.

#### B. Brand Name or Equal Specification

1. Definition. A specification that cites brand names, model number, or other identifications as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

2. Use. Some examples of circumstances which could necessitate the use of brand name or equal specifications are:

a. no specification for a common or general use item or qualified products list is available; or

b. time does not permit the preparation of another form of specification, not including a brand name specification; or

c. the nature of the product or the nature of the state's requirements makes use of a brand name or equal specification suitable for the procurement; or

d. use of a brand name or equal specification is in the state's best interest;

e. 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.

#### 3. Competition

a. 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.

b. 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. Definition. *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 invitation for bids; on approved brands list.

2. Use. A qualified products list may be developed with the approval of the chief procurement officer, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or major repair items prior to issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.

3. Comments, Final Approval, Revisions, and Cancellation. Comments on final approval of, and revisions to the proposed criteria and methodology for establishing and maintaining a qualified products list, and the cancellation thereof, shall follow the procedures of Subparagraphs D.3.b-e of this Section applicable to specifications for common or general use items.

#### 4. Solicitation

a. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

b. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements.

#### 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(A) and (B).

2. Use. If a specification for a common or general use item has been developed or a qualified products list has been developed for a particular supply, service, or major repair item, or need, it shall be used unless the chief procurement officer or the head of a purchasing agency makes a written determination that its use is not in the state's best interest and that another specification shall be used.

#### 3. Special Additional Procedures

a. Preparation and Utilization. A specification for common or general use shall, to the extent practicable, be prepared to be utilized:

i. when a supply, service, or major repair item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or major repair item as commercially produced or provided remain relatively stable while the frequency or volume of procurement is significant;

ii. where the state's recurring needs require uniquely designed or specially produced items; or

iii. when the chief procurement officer, or the head of a purchasing or using agency authorized to prepare such specifications, finds it to be in the state's best interest.

b. In the event a using agency requests the preparation of a specification for a common or general use item, the chief procurement officer shall prepare such a specification if such officer determines the conditions in Clauses 3.a.i-iii have been met.

c. Comments on the Draft. The chief procurement officer, or the head of a purchasing or using agency preparing a specification for a common or general use item, shall provide an opportunity to comment on the draft specification to the using agencies, and 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 by the head of a purchasing or using agency authorized to give such approval.

e. Revisions. Revisions to specifications for common or general use items which do not change the technical elements of the specifications but which are necessary for clarification may be made upon approval of the chief procurement officer, or the head of a purchasing or using agency authorized to approve such specifications. Interim revisions to fit the requirements for a particular procurement which change the technical elements of the specification may be made by the chief procurement officer, or the head of a purchasing or using agency authorized to approve such a specification. All other revisions shall be made in accordance with Subparagraphs D.3.a-d of this Section.

f. Cancellation. A specification for a common or general use item may be canceled by the chief procurement officer, or by the head of a purchasing or using agency authorized to give final approval to such specifications.

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.

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).

## **Chapter 5. Competitive Sealed Bidding**

### **§501. Content of the Invitation for Bids**

**[Formerly LAC 34:I.501]**

#### **A. Invitation for Bids**

1. Purchases where the estimated cost is over \$5,000 shall be made by sending out written invitations for bids to at least five responsible bidders, and if feasible, use should be made of state purchasing's computerized vendor list. Purchases where the estimated cost is over \$25,000 shall be advertised in accordance with R.S. 39:1594. All advertisements or written invitations for bids shall contain general descriptions of the classes of commodities on which bids are solicited and shall state:

- a. the date and time when bids will be received, opened and publicly read;
- b. the names and locations of the state agencies for which the purchases are to be made;
- c. where and how specifications and bid forms may be obtained.

2. The invitation for bids 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 for bids shall include the following:

1. the purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description; and

2. the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

C. Incorporation by Reference. The invitation for bids may incorporate documents by reference provided that the invitation for bids 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 for bid.

E. Types of Purchases. Purchases are made in two different ways.

1. *Open Market*—a purchase made other than under a schedule or term contract.

2. *Term Contracting*—a technique by which a source of supply is established for a specific period of time. Term contracts are usually based on indefinite quantities to be ordered "as needed," although such contracts can specify definite quantities with deliveries extended over the contract period.

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).

### **§503. Bidding Time**

**[Formerly LAC 34:I.503]**

A. Bidding time is the period of time between the date of distribution of the invitation for bids 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 21 days should 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).

### **§505. Addenda Modifying Invitation for Bids**

**[Formerly LAC 34:I.505]**

A. Addenda modifying invitation for bids shall not be issued within a period of three working days 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 for bid within the three working day period prior to the advertised time for the opening of bids, then the opening of bids shall be

extended exactly one week, without the requirement of re-advertising. Addenda shall be sent to all prospective bidders known to have received an invitation for 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).

### **§507. 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. Bids submitted in the following manner will not be accepted:

1. bid contains no signature indicating an intent to be bound;

2. bid filled out in pencil; and bids must be received at the address specified in the invitation for bids prior to bid opening time in order to be considered.

#### B. Bid Samples and Descriptive Literature

1. Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, packaging, or operation of an item which enables the state to consider whether the item meets its specifications and needs.

2. *Bid Sample*—a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

3. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

4. The invitation for bids shall state whether bid samples or descriptive literature should be submitted. Unsolicited bid samples may not be returned.

5. When required, samples must be received not later than the time set or specified for bid opening, free of expense to the state. Samples should be marked plainly with name and address of bidder, bid number and opening date of bid, also memorandum indicating whether bidder desires return of sample or samples. Providing they have not been used or made useless through tests, when requested, samples submitted will be returned at bidder's risk and expense. All samples submitted are subject to mutilation as the result of tests by the agency. Failure to submit samples within time allowed will result in disqualification or nonconsideration of bid.

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 for bid.

D. All or Part. Bids may be considered for all or part of total quantities.

E. Bids Binding. Unless otherwise specified, all formal bids shall be binding for a minimum of 30 calendar days. Nevertheless, if the lowest responsive and responsible bidder is willing to keep his price firm in excess of 30 days, the state may award to this bidder after this period has expired, or after the period specified in the formal bid has expired.

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

G. Taxes. Vendor is responsible for including all applicable taxes in the bid price.

**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).

### **§509. Bidder Lists**

#### **[Formerly LAC 34:I.509]**

A. Bidder lists may be compiled to provide the state with the names of businesses that may be interested in competing for various types of state contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a state contract.

B. Where feasible, use should be made of the state purchasing'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).

### **§511. 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 for bids and shall be advertised if over \$25,000 and attendance is mandatory. The conference should be held long enough after the invitation for bids 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 for bids unless a change is made by written addenda as provided in §505.

**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).

### **§515. Pre-Opening Modification or Withdrawal of Bids**

#### **[Formerly LAC 34:I.515]**

A. Procedure. Bids may be modified or withdrawn by written, telegraphic or fax notice received at the address designated in the invitation for bids prior to the time set for bid opening, as recorded by date stamp at the purchasing agency.

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, unless return is requested in writing.

C. Disposition of Bid Security. Bid security, if any, shall be returned to the bidder if requested when withdrawal of the bid is permitted.

D. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate 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 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014).

**§517. Late Bids**

**[Formerly LAC 34:I.517]**

A. Formal bids and addenda thereto, received at the address designated in the invitation for bids after time specified for bid opening will not be considered, whether delayed in the mail or for any other causes whatsoever. If a bid is delayed by actions of the agency handling the solicitation, and this delay prejudices a vendor, then the 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).

**§519. Receipt, Opening and Recording of Bids**

**[Formerly LAC 34:I.519]**

A. Receipt. Upon receipt, all bids and modifications will be time-stamped but not opened. They shall be stored in a secure place until bid opening time.

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 for bids. The names of the bidders and the bid price shall be read aloud or otherwise made available and shall be recorded.

2. The opened bids shall be available for public inspection, in accordance with R.S. 44:Chapter I.

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 for bids.

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).

**§521. 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 within three business days after bid opening, and supported in writing. 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. Minor Informalities. Minor informalities are matters of form rather than substance which are evident from the bid document, or insignificant mistakes that can be waived or

corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The chief procurement officer or the head of a purchasing agency may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the state. Examples include, but are not limited to, the failure of a bidder to:

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

2. sign the bid, but only if the unsigned bid is accompanied by other signed material indicating the bidder's intent to be bound;

3. sign or initial write-overs, or corrections in bids;

4. get an agency's certification that a mandatory job-site visit was made; and

5. return nonmandatory pages of the bid proposal.

C. Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Some examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, unit prices placed in the extended amount column, and failure to return an addendum provided there is evidence that the addendum was received. When an error is made in extending total prices the unit bid price will govern. Under no circumstances will a unit bid price be altered or corrected unless it is obvious that a unit price is submitted in a different unit of measure than shown on the bid form and the bidder's extended total verifies that the unit bid price was submitted using a wrong unit of measure, then the unit price may be changed to correspond with the correct unit of measure.

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).

**§523. Bid Guaranty and Bond**

**[Formerly LAC 34:I.523]**

A. Bid Guaranty

1. When specified in the invitation for bids, 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.

2. If a bid bond is used, it shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide* to write individual bonds up to 10 percent of policyholders' surplus as shown in the *A.M. Best's Key Rating Guide*.

B. Performance Bond

1. Any performance bond furnished shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana domiciled insurance company with at least an A- rating in the latest printing of the *A.M. Best's Key Rating Guide* to

write individual bonds up to 10 percent of policyholders' surplus as shown in the *A.M. Best's Key Rating Guide* or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

2. No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A- rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

3. In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the state of Louisiana. If a performance bond has been required, the requirement cannot be waived, unless otherwise allowed by Louisiana statutes.

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).

#### **§525. General Guaranty**

##### **[Formerly LAC 34:I.525]**

A. At a minimum, the state shall require that the contractor submit to the following guarantees.

1. Hold the state, its agents and employees harmless against any liability for negligent acts or omissions by the contractor.

2. Hold the state, its agents and employees harmless against any liability for infringement of any copyright or patent arising from performance of this contract.

3. Protect the state against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit.

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.

B. The contractor may propose substitute guarantees which provide greater protection to the state.

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).

#### **§527. 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 for bids." See R.S. 39:1594(G) (Competitive Sealed Bidding, Award) of the Louisiana Procurement Code. The invitation for bids

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 for bids.

#### **B. Responsibility and Responsiveness**

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

*Responsible Bidder or Offeror*—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.

#### **C. Product Acceptability**

1. The invitation for bids 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. inspection or testing of a product prior to award for such characteristics as quality or workmanship;

b. examination of such elements as appearance, finish, taste, or feel; or

c. other examinations to determine whether the product conforms with any other purchase description requirements, such as unit packaging. If bidder changes the unit or packaging, and it is determined that the change prejudices other bidders, then the bid for the changed item shall be rejected.

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 for bids. 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 for bids. Only objectively measurable criteria which are set forth in the invitation for bids 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. be reasonable estimates based upon information the state has available concerning future use; and

b. treat all bids equitably.

E. Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that required by the invitation for bids 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).

## §529. 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 for bids.

### B. Resident Business Preference

1. In state contracts awarded by competitive sealed bidding, resident businesses shall be preferred to nonresident businesses where there is a tie bid and where there will be no sacrifice or loss of quality.

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

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

b. employs a minimum of two employees who are residents of the state.

C. Award. In the discretion of the chief procurement officer or the head of a purchasing agency, award shall be made in any manner that will discourage tie bids. A written determination justifying the manner of award must be made. This would include, but is not limited to, consideration of such factors as resident business, proximity, past performance, delivery, completeness of bid proposal. Tie bids over \$10,000 must be reported to the attorney general. (See Chapter 23, Reporting of Suspected Collusive Bidding or Negotiations).

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).

## §531. Awarding of Bids

[Formerly LAC 34:I.531]

A. Rejection of Bids. The right is reserved to reject any or all bids in whole or in part, and to award by items, parts of items, or by any group of items specified. Also, the right is reserved to waive technical defects when the best interest of the state thereby will be served.

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 §535.

### C. Cash Discounts

1. Open Market Purchases and Definite Quantity Term Contracts. All cash discounts will be taken. However, cash discounts will only be considered in determining an award on terms for 30 days or more and at least 1 percent.

2. Indefinite Quantity Term Contracts. Cash discounts will be accepted and taken but will not be considered in determining awards.

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

E. Availability of Funds. A contract shall be deemed executory only to the extent of appropriations available to each agency for the purchase of such articles.

### F. All or None Bids

1. A business may limit a bid on acceptance of the whole bid, whereupon the state shall not thereafter reject

part of such bid and award on the remainder. An award shall be made to the "all or none" bid only if it is the overall low bid on all items, or those items bid.

2. Overall low bid shall be that bid whose total bid, including all items bid, is the lowest dollar amount; be it an individual's bid or a computation of all low bids on individual items of those bids that are not conditioned "all or none."

a. Open Market Purchases. When multiple items are contained on any solicitation and the state chooses to make an item or group award in order to save the state the cost of issuing a different purchase order, an award may be made to a vendor on that item if the total bid for said item is \$1,000 or less, and the difference between the low bidder and the bidder receiving the award is \$100 or less.

b. An "all or none" bid may be awarded in a similar fashion, to save the state the cost of issuing another purchase order, if the difference in the overall cost between the vendors is \$100 or less and no single item exceeds \$1,000.

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).

## §533. Documentation of Award

[Formerly LAC 34:I.533]

A. Following award, a record showing the basis for determining the successful bidder, including reasons for rejecting any nonresponsive bids, shall be made a part of 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 8:331 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014).

## §535. Publicizing Awards

[Formerly LAC 34:I.535]

A. Written notice of award shall be sent to the successful bidder. In procurement over \$25,000, each unsuccessful bidder shall be notified of the award provided that he submitted with his bid a self-addressed stamped envelope requesting this information. Notice of award shall be made a part of 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 8:331 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014).

## §537. Assignments

[Formerly LAC 34:I.537]

A. No contract or purchase order or proceeds thereof may be assigned, sublet or transferred without written consent 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).

## **§539. Deliveries**

### **[Formerly LAC 34:I.539]**

A. Extension of Time. Any extension of time on delivery or project completion time must be requested in writing by the vendor and accepted or rejected in writing by the purchasing department. Such extension is applicable only to the particular item or shipment affected.

B. Additional Charges. No delivery charges shall be added to invoices except when express delivery is substituted on an order for less expensive methods specified in contract. In such cases, when requested by the agency, the difference between freight or mail and express charges may be added to the invoice.

C. Weight Checking. Deliveries shall be subject to reweighing on official scales designated by the state. Payments shall be made on the basis of net weight of materials delivered.

D. Rejection of Deliveries, Payment for Used Portion. Payment for any used portion of delivery found (as a result of tests or otherwise) to be inferior to specifications or contract requirements, will be made by the state on an adjusted price basis, using the procedures outlined in R.S. 39:1673.

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 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 Purchasing, Division of Administration. Also, the state agencies shall report any offer of a reduction in contract price to Purchasing, 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. Invoices. Upon delivery of each order and its acceptance by the state agency, the supplier shall bill the state agency by means of invoice and the invoice shall make reference to the purchase order number, contract award number, and/or purchase requisition number. All invoices shall be submitted by the supplier on the supplier's own invoice forms, in duplicate, directly to the accounting office of the state agency as required by the purchase order.

#### **G. Payment**

1. After receipt and acceptance of order and receipt of valid invoice, payment will be made by the state agency within 30 days. Payment will be made at the respective unit prices shown on the bid or price schedule, less any percentages off list price, less federal excise tax (unless otherwise specified), less cash discount earned.

2. If a state agency without reasonable cause fails to make any payment due within 90 days of the due date prescribed by contract, the state agency shall pay a penalty in accordance with R.S. 39:1695.

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).

## **Chapter 6. Reverse Auctions**

### **§601. Definition**

#### **[Formerly LAC 34:I.601]**

A. For the purpose of this Section, using agency means the Office of State Purchasing using the reverse auction process on its own behalf or on behalf of other state agencies.

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).

### **§603. Application**

#### **[Formerly LAC 34:I.603]**

A. Where the using agency utilizes the reverse auction process on behalf of a single state agency, the head of the state agency requesting a reverse auction shall provide:

1. reasons that the best interest of the state would be served and that electronic online bidding is more advantageous than other procurement methods;
2. specifications and terms and conditions to be used for the procurement.

B. When the using agency uses the reverse auction process on its own behalf or on behalf of multiple state agencies, the director of state purchasing shall be considered the department head of the using agency.

C. Vendors shall register before the opening date and time, and as part of the registration, shall agree to any terms and conditions and other requirements of the solicitation.

D. Vendors and/or products shall be prequalified prior to placing bids and only bidders who are prequalified will be allowed to submit bids.

1. The prequalification criteria shall be prescribed in the solicitation.
2. The prequalification period shall be announced in the solicitation.

3. The prequalification period shall end 10 days prior to the beginning of the auction.

4. Bidders shall be notified as to whether they have been prequalified in writing at least seven days prior to the beginning of the auction.

5. When applicable, prequalified products for a particular solicitation shall be announced on the state's internet-based system for posting vendor opportunities seven days prior to the beginning of the auction.

6. Any bidder aggrieved by the pre-qualification process shall have the right to protest the solicitation in accordance with the provisions of R.S. 39:1671.

E. 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.

1. Online reverse auctions shall last no less than one hour.

F. 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.

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

H. All bids shall be posted electronically and updated on a real-time basis. All prices must be received in the state's system by the announced closing time regardless of what time it was submitted by the vendor.

I. 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.

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

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).

#### **§605. Addenda Modifying a Reverse Auction**

**[Formerly LAC 34:I.605]**

A. Addenda will be issued in accordance with §505 of these rules.

B. It is the responsibility of the bidder to obtain any solicitation amendment(s) if the solicitation and addenda are posted on the state's internet-based system for posting bid opportunities.

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).

#### **§607. Price Submittals**

**[Formerly LAC 34:I.607]**

A. Bidders may submit multiple prices during the event. The lowest price offered will become the price portion of the bid response.

B. The preference provisions of R.S. 39:1595, 1595.1, 1595.2, 1595.3, 1595.6, and 1595.7 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).

#### **§609. Withdrawal of Bids**

**[Formerly LAC 34:I.609]**

A. Withdrawal of bids will be handled in accordance with §521 of 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 State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014).

#### **§611. Tie Bids**

**[Formerly LAC 34:I.611]**

A. In the event that multiple bidders submit identical prices for the same goods or services, the bid received first will be considered to be the lowest. Any other identical bids received later will be considered in the order received.

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).

#### **§613. Rejected Bids**

**[Formerly LAC 34:I.613]**

A. The awarding authority may reject any bid, in whole or in part, if any of the following occur:

1. bids offered for materials, supplies, services, products, or equipment that are not in compliance with the requirements, specifications, terms or conditions as stated in the reverse auction;

2. the price of the lowest responsive and responsible bid exceeds the amount budgeted for the procurement;

3. it is determined that awarding any item is not in the best interest of the agency/department.

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).

#### **§615. Public Viewing of Auction Event**

**[Formerly LAC 34:I.615]**

A. The public may view the internet auction event which will be conducted such that the names of the bidders will not be disclosed until after the completion of the auction, at which time the event record will be available to the public.

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).

#### **§617. Security**

**[Formerly LAC 34:I.617]**

A. All reverse auctions shall be conducted in accordance with the electronic security requirements of the Office of Information Technology.

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).

### **Chapter 7. Small Purchases**

#### **§701. Small Purchases**

**[Formerly LAC 34:I.701]**

A. Any procurement not exceeding the amount established by executive order of the governor may be made in accordance with small purchase procedures prescribed by such executive order, except that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

B. Any person who intentionally violates this Part will be penalized in accordance with R.S. 39:1679.

C. See appropriate Executive Order entitled "Small Purchases."

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 40:1355 (July 2014).



## **Chapter 9. Sole Source Procurement**

### **§901. Application**

#### **[Formerly LAC 34:I.901]**

A. These provisions shall apply to all sole source procurement unless emergency conditions exist as defined in Chapter 11 (Emergency Procurement) of these regulations.

B. R.S. 39:1597 of the Louisiana Procurement Code provides in pertinent part:

"A contract may be awarded for a required supply, service, or major repair without competition when, under regulations, the chief procurement officer or his designee above the level of procurement officer determines in writing that there is only one source for the required supply, service, or major repair item."

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

HISTORICAL NOTE: Promulgated by the Office of 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).

### **§905. Conditions for Use of Sole Source Procurement**

#### **[Formerly LAC 34:I.905]**

#### **A. Determination**

1. The determination as to whether a procurement shall be made as a sole source shall be made by the chief procurement officer, or head of a purchasing agency. 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 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 offeror for that item. Examples of circumstances which could necessitate sole source procurement are:

a. where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;

b. where a sole supplier's item is needed for trial use or testing;

c. procurement of items for resale;

d. procurement of public utility services;

e. registered breeding stock may be purchased on a selective basis without bids, 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 bids 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 or which has been previously purchased by an individual or corporation 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 state purchasing 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 state purchasing all of the following:

a. the price for which the used equipment may be obtained;

b. the plan for maintenance and repair of the equipment and the cost thereof;

c. the savings that will accrue to the state because of the purchase of the used equipment;

d. the fact that following the procedures set out in the Louisiana Procurement Code will result in the loss of the opportunity to purchase the equipment.

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).

### **§907. Record of Sole Source Procurement**

#### **[Formerly LAC 34:I.907]**

A. A record of sole source procurement shall be maintained that lists:

1. each contractor's name;

2. the amount and type of each contract;

3. a listing of the supplies, services, or major repairs procured under each contract; and

4. the identification number of each contract file.

B. The record for the previous fiscal year shall be submitted to the legislature at the beginning of the legislative session.

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), amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014).

## **Chapter 11. Emergency Procurement**

### **§1101. Application**

#### **[Formerly LAC 34:I.1101]**

A. The provisions of this Section apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

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 40:1356 (July 2014).

### **§1103. Definition of Emergency Conditions**

#### **[Formerly LAC 34:I.1103]**

A. An emergency condition is a situation which creates a threat to public health, welfare, safety, or public property such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the chief procurement officer. The existence of such condition creates an immediate and serious need for supplies, services, or major repairs that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. the functioning of Louisiana government;
2. the preservation or protection of property; or
3. the health or safety of any person.

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), amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014).

### **§1105. Scope of Emergency Procurement**

**[Formerly LAC 34:I.1105]**

A. Emergency procurement shall be limited to only those supplies, services, or major repair items necessary to meet the emergency.

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).

### **§1107. Authority to Make Emergency Procurement**

**[Formerly LAC 34:I.1107]**

A. Any state agency may make emergency procurement of up to \$5,000 when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the chief procurement officer shall be obtained prior to the procurement. Prior to all such emergency procurement of \$5,000 or more, the chief procurement officer, head of a state agency, or either officer's designee shall approve the procurement. Fax requests should be submitted if time permits, and must contain adequate justification for the emergency.

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), amended LR 21:566 (June 1995), LR 40:1357 (July 2014).

### **§1109. Source Selection Methods**

**[Formerly LAC 34:I.1109]**

A. General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or major repair items are procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained. Any offer accepted shall be confirmed in writing.

B. After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an invitation for bids 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).

### **§1111. Determination and Record of Emergency Procurement**

**[Formerly LAC 34:I.1111]**

A. Determination. The procurement officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of a particular contractor. Such determination shall be sent promptly to the chief procurement officer.

B. Record

1. A record of emergency procurement shall be maintained that lists:

- a. each contractor's name;
- b. the amount and type of each contract;
- c. a listing of the supplies, services, or major repairs procured under each contract; and
- d. the identification number of each contract file.

2. The record for the previous fiscal year shall be submitted to the legislature at the beginning of the legislative session.

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).

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

#### **§1301. Scope**

**[Formerly LAC 34:I.1301]**

A. The provisions of this Section shall govern the cancellation of solicitations issued by the state and rejections of bids or proposals in whole or in 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 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1357 (July 2014).

#### **§1303. Policy**

**[Formerly LAC 34:I.1303]**

A. Solicitations should only be issued when there is a funded, valid need unless the solicitation states that it is for informational purposes only. Preparing and distributing a solicitation requires the expenditure of state time and funds. Businesses likewise incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be canceled only when it is in the state's best interests.

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 Office, LR 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1357 (July 2014).

#### **§1305. Cancellation of Solicitations—Notice**

**[Formerly LAC 34:I.1305]**

A. Each solicitation issued by the state shall state that the solicitation may be canceled as provided in these 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 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1357 (July 2014).

**§1307. Reasons for Cancellation**  
**[Formerly LAC 34:I.1307]**

A. A solicitation may be canceled in whole or in part when the chief procurement officer or the head of a purchasing agency determines in writing that such action is in the state's best interest for reasons including but not limited to:

1. the state no longer requires the supplies, services, or major repairs;
2. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
3. ambiguous or otherwise inadequate specifications were part of the solicitation;
4. the solicitation did not provide for consideration of all factors of significant cost to the state;
5. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
6. all otherwise acceptable bids received are at unreasonable prices; or
7. there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

B. When a solicitation is canceled prior to opening, a notice of cancellation shall be sent to all businesses solicited. When a solicitation or item is canceled after bids are opened, a notice of cancellation should be sent to all bidders if the amount canceled exceeds the "Small Purchases" Executive Order.

C. The notice of cancellation shall:

1. identify the solicitation;
2. briefly explain the reason for cancellation; and
3. where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar supplies, services, or major repairs.

D. Documentation. The reasons for cancellation shall be made a part of the procurement file and available for public inspection.

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).

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

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

B. Notice in Solicitation. Each solicitation issued by the state shall provide that any bid 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 submitted in competitive sealed bidding and

includes submissions under Chapter 7 (Small Purchases). Reasons for rejecting a bid include but are not limited to:

1. the business that submitted the bid is nonresponsive as determined under §1511 of these regulations;
2. the bid is not responsive, that is, it does not conform in all substantive respects to the invitation for bids. (See Chapter 5 of these regulations); 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 for bids. See Chapter 5, §527.

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).

**§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 have been opened, the bids 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).

**Chapter 15. Responsibility and Prequalification**  
**§1501. Definitions**

**[Formerly LAC 34:I.1501]**

*Responsible Bidder or Offeror*—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 R.S. 39:1591(7) and R.S. 39:1601 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 for bid.

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

*Suppliers*—as used in R.S. 39:1602 (Prequalification of Suppliers) of the Louisiana Procurement Code, means prospective bidders or offerors.

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).

**§1503. Application**

**[Formerly LAC 34:I.1503]**

A. A determination of responsibility or nonresponsibility shall be governed by this Section.

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).

**§1505. Standards of Responsibility**  
**[Formerly LAC 34:I.1505]**

A. Standards

1. Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, whether a prospective contractor:

a. has the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability of meeting all contractual requirements;

b. has a satisfactory record of performance;

c. has a satisfactory record of integrity;

d. has qualified legally to contract with the state; and

e. has supplied the necessary information in connection with the inquiry concerning responsibility.

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

B. Information Pertaining to Responsibility. The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

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).

**§1507. Ability to Meet Standards**  
**[Formerly LAC 34:I.1507]**

A. The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

1. evidence that such contractor possesses such necessary items;

2. acceptable plans to subcontract for such necessary items; or

3. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

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).

**§1509. Duty Concerning Responsibility**  
**[Formerly LAC 34:I.1509]**

A. Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible.

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).

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

A. If a bidder or offeror 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. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The determination shall be made part of the procurement file.

B. Any such bidder 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).

**Chapter 17. Types of Contracts**  
**§1701. Centralization of Contracting Authority**  
**[Formerly LAC 34:I.1701]**

A. If the central purchasing agency has entered into a statewide competitive contract for supplies or services, all state governmental bodies, excluding those exempted from central purchasing 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.

1. Functional differences, for example:

a. size available is not suitable because of space limitations;

b. compatibility with existing equipment.

2. Agency's need is so small that it cannot use the minimum order quantity in the contract.

3. Delivery of contract item does not meet agency's urgent requirement.

B. A lower local price is not justification for exception. The contract vendor has guaranteed prices for the term of the contract and is delivering the item to the agency.

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).

**§1703. Policy Regarding Selection of Contract Types**  
**[Formerly LAC 34:I.1703]**

A. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or major repairs to be procured, the uncertainties which may be involved in contract performance, and the extent to which the state or the contractor is to assume the risk of the cost of performance of the contract.

B. The objective when selecting a contract type is to obtain the greatest value of supplies, services, or major repairs at the lowest overall cost to the state. In order to achieve this objective, the chief procurement officer, before

choosing a contract type, should review those elements of the procurement which directly affect the cost and risk of performance and profit incentives bearing on the performance.

C. Among the factors to be considered in selecting any type of contract are:

1. the type and complexity of the supply, service, or major repair items being procured;
2. the difficulty of estimating performance costs such as the inability of the state to develop definitive specifications to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
3. the administrative costs to both parties;
4. the degree to which the state must provide technical coordination during the performance of the contract;
5. the effect of the choice of the type of contract on the amount of competition to be expected;
6. the stability of material or commodity market prices or wage levels;
7. the urgency of the requirement; and
8. the length of contract performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1591.

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).

#### **§1705. Cost-Plus-a-Percentage-of-Cost Contracts [Formerly LAC 34:I.1705]**

A. The cost-plus-a-percentage-of-cost system of contracting shall not be used.

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), repromulgated LR 21:566 (June 1995), repromulgated LR 40:1360 (July 2014).

#### **§1707. Types of Contracts**

##### **[Formerly LAC 34:I.1707]**

A. Subject to the limitations of R.S. 39:1611 and 1612, any type of contract which will promote the best interest of the state may be used, provided that the chief procurement officer makes a written determination justifying the type of contract used.

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 40:1360 (July 2014).

#### **§1709. Use of Brand Name, LaMAS (Louisiana Multiple Award Schedule), and Multi-State Contracts**

##### **[Formerly LAC 34:I.1709]**

A. The state reserves the right to create and use brand name, LaMAS, and multi-state contracts (hereinafter referred to as Louisiana price schedules for different brands of same or similar item(s)).

B. Where Louisiana price schedules ("LaPS") exist for same or similar item(s) and the procurement is above \$25,000, all eligible users of these contracts will utilize the following procedures.

1. Prepare a request for responses that may include, if applicable the following: (A request for response is an informal process used to make a best value determination.)

a. a performance-based statement of work that includes such things as:

- i. the work to be performed;
- ii. location of work;
- iii. period of performance;
- iv. deliverable schedule;
- v. applicable performance standards;
- vi. acceptance criteria;
- vii. any special requirements (e.g., security clearances, special knowledge, etc.);
- viii. the products required using a generic description of products and functions whenever possible;

b. if necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks;

c. a best value determination is one that considers, in addition to underlying contract pricing, such factors as:

- i. probable life of the item selected;
- ii. environmental and energy efficiency considerations;
- iii. technical qualifications;
- iv. delivery terms;
- v. warranty;
- vi. maintenance availability;
- vii. administrative costs;
- viii. compatibility of an item within the user's environment; and

ix. user's familiarity with the item or service;

d. a request for submittal of a firm-fixed total price for labor and/or products which are no higher than prices in the LaPS contract.

2. Submit the request for response to at least three LaPS contract holders, whenever available, offering functionally equivalent products and/or services that will meet the agency's needs.

3. Evaluate responses and select the contractor to receive the order.

a. After responses have been evaluated, the order shall be placed with the contractor that represents the best value that meets the agency's needs. The ordering agency should give preference to small-entrepreneurships or small and emerging businesses when two or more contractors can provide the services and/or products at the same firm-fixed total price.

b. The ordering agency shall document in the procurement file the evaluation of the contractors' responses that formed the basis for the selection. The documentation shall identify the contractor from which the services and/or products were purchased, the services and/or products purchased, and the cost of the resulting purchase order.

c. Purchases shall not be artificially divided to avoid the requirements of this section when recurring requirements for same products are known.

d. Nothing herein relieves a state agency from following Office of Information Technology requirements for submission of IT 10 requests, for annual IT budget requests, or mid-year budget adjustment requests.

e. A listing of all contracts applicable to this Section will be maintained on the Office of State Purchasing's website <http://www.doa.louisiana.gov/osp/osp.htm>

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).

## **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 offeror 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).

### **§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 offeror, 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 offerors 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. the state shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract;

2. the state shall reserve the right to take bids separately if the chief procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring or special need of the state;

3. the contract shall allow the state to procure supplies produced, or services performed, incidental to the state's own programs, such as industries of correctional institutions and other similar industries, when such supplies or services satisfy the need.

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).

### **§1805. Intent to Use**

**[Formerly LAC 34:I.1805]**

A. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award should be stated in the solicitation.

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

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).

### **§1807. Determination Required**

**[Formerly LAC 34:I.1807]**

A. The chief procurement officer shall make a written determination setting forth the reasons for a progressive or multiple award, which shall be made a part of 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 21:566 (June 1995), repromulgated LR 40:1361 (July 2014).

## **Chapter 19. Multi-Year Contracts**

### **§1901. Determination**

**[Formerly LAC 34:I.1901]**

A. The multi-year method of contracting can be used to contract for more than one fiscal year when it has been determined in writing by the chief procurement officer that:

1. a multi-year contract will serve the best interests of the state by encouraging effective competition or otherwise prompting economies in state procurement; and

2. that the estimated requirements cover the period of the contract and are reasonably firm and continuing.

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).

### **§1903. Conditions for Use of Multi-Year Contracts**

**[Formerly LAC 34:I.1903]**

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

1. contract performance which requires alteration in the contractor's facilities or operations involving high start-up costs;

2. contracts requiring 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.

B. The following factors are among those relevant in determining if a multi-year contract may be used:

1. firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

2. lower production costs because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices;

3. stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or

4. the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

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).

### **§1905. Multi-Year Contract Procedure**

#### **[Formerly LAC 34:I.1905]**

A. Solicitation. The solicitation shall state:

1. the amount of supplies or services 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, 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);

3. that the multi-year contract will be canceled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the state's rights or the contractor's rights under any other termination clause in the contract;

4. that the chief procurement officer must notify the contractor that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

5. how the multi-year contract award will be determined.

B. Evaluation and Award. The evaluation and award shall be made based on the total costs for the term as stated in the solicitation and permitted under the source selection method utilized.

C. Cancellation

1. Cancellation, as used in multi-year contracting, means the cancellation of the total requirements for the remaining portion of the contract because funds were not appropriated or otherwise made available.

2. Cancellation results when the procurement officer notifies the contractor of nonavailability of funds for contract performance for any subsequent fiscal period.

D. Multi-Year Contract Regulations Inapplicable. Section 1903 (Conditions for Use of Multi-Year Contracts) and Section 1905 (Multi-Year Contract Procedure) apply only to contracts for supplies or services described in this Section.

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).

### **Chapter 20. Leases of Movable**

#### **§2001. Description**

##### **[Formerly LAC 34:I.2001]**

A. A lease of movables is a contract for the use of equipment under which title does not pass to the state.

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 40:1362 (July 2014).

#### **§2003. Use**

##### **[Formerly LAC 34:I.2003]**

A. A lease of movables may be entered into provided:

1. it has been competitively bid in accordance with these rules and regulations, applicable executive orders, and policy and procedure memoranda;

2. it is in the best interest of the state;

3. all conditions for renewal and costs of termination are set forth in the lease.

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 40:1362 (July 2014).

#### **§2005. Lease with Purchase Option**

##### **[Formerly LAC 34:I.2005]**

A. Unless a requirement can be met only by the leased supply as determined in writing by an officer above the level of procurement officer, a purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding. Before exercising such an option the chief procurement officer shall:

1. investigate alternative means of procuring comparable supplies; and,

2. compare estimated costs and benefits associated with the alternative means and the exercise of such option, for example, the benefit of buying new state-of-the-art equipment compared to the estimated initial savings associated with exercise of a purchase option.

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 40:1362 (July 2014).

### **Chapter 21. Miscellaneous Provisions**

#### **§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 by competitive sealed bidding, 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.

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).

#### **§2103. Exercise of Option**

##### **[Formerly LAC 34:I.2103]**

A. Before exercising any option for renewal, extension, or purchase, the chief procurement officer should 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).

**§2105. Goods Manufactured or Services Performed by Sheltered Workshops**

**[Formerly LAC 34:I.2105]**

A. R.S. 39:1595.4 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.

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).

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

**§2201. Inspection**

**[Formerly LAC 34:I.2201]**

A. State contracts may provide that the state may inspect supplies and services at the contractor or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract and shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the procurement officer. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

B. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

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).

**§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. 39:1622; and

2. investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to R.S. 39:1672.

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).

**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 offerors 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).

**§2303. Independent Price Determination**

**[Formerly LAC 34:I.2303]**

A. Every solicitation shall provide that by submitting a bid or offer, the bidder or offeror 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).

**§2305. Reporting Suspected Anticompetitive Practices**

**[Formerly LAC 34:I.2305]**

A. The chief procurement officer, in consultation with the attorney general, shall develop procedures, including forms, for reporting suspected anticompetitive practices. A procurement officer who suspects that an anticompetitive practice has occurred or may be occurring shall report the suspected anticompetitive practice to the Attorney General's Office, Anti-Trust Division.

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).

**§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. a study of the bidding history of a supply, service, or major repair item over an amount of time sufficient to determine any significant bidding patterns or changes;

2. a review of similar state contract awards over a period of time; or

3. consultation with outside sources of information, such as bidders or offerors 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).

### **§2309. Identical Bidding**

#### **[Formerly LAC 34:I.2309]**

A. The term "identical bidding" means the submission by bidders or offerors 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. the supply is a commodity with a well-established market price or a brand name with a "suggested retail price;"
2. the quantity being purchased is small in relation to the supplier's total sales;
3. early delivery is required; or
4. transportation expenses are low relative to total costs.

B. In seeking to determine whether collusion has taken place, the procurement officer should view the identical bids against present and past pricing policies of the bidders or offerors, 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 may also result from resale price maintenance agreements which are described in §2311.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 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014).

### **§2311. Possible Anticompetitive Practices**

#### **[Formerly LAC 34:I.2311]**

A. General. The practices which are described in Subsections B-F of this Section and which the procurement officer suspects might be anticompetitive shall be reported in accordance with §2305 (Reporting Suspected Anticompetitive Practices).

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

C. Resale Price Maintenance. The practice of resale price maintenance consists of an agreement between a manufacturer and a distributor or a dealer to fix the resale price of a supply. A procurement officer should consider the possibility that such an agreement exists where prices offered adhere to an established pattern, such as a published price schedule, and identical bidding occurs.

D. Sharing of the Business. Sharing of the business occurs where potential bidders or offerors allocate business

among themselves based on the customers or the territory involved. Thus a procurement officer might discover that a potential bidder or offeror is not participating in a state procurement because a particular state agency, or a particular territory has not been allocated to such bidder or offeror by the producer or manufacturer.

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

F. Group Boycott. A group boycott results from an agreement between competitors not to deal with another competitor or not to participate in, for instance, a state procurement until the boycotting competitors' conditions are met by the boycotted competitor or the state. The boycott of a competitor by other competitors may have an effect on the market structure or price of a supply, service, or major repair items needed by the state.

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).

## **Chapter 25. Intergovernmental Regulations**

### **§2501. Scope**

#### **[Formerly LAC 34:I.2501]**

A. This Part applies to cooperative purchasing and other cooperative activities authorized by R.S. 39:1702.

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 8:341 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014).

### **§2503. Cooperative Purchasing Shall Not Adversely Affect Employees**

#### **[Formerly LAC 34:I.2503]**

A. No employee of any public procurement unit participating in any cooperative purchasing activity authorized by part VII (Intergovernmental Relations) of the Louisiana Procurement Code shall suffer any loss of salary, seniority, tenure, or pension rights, or be adversely affected as a result of any such activity.

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 8:341 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014).

### **§2505. Cooperative Purchasing Agreement in Form of Open-Ended State Contract**

#### **[Formerly LAC 34:I.2505]**

A. Cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.

B. Any agreement between the state and a local public procurement unit entered into pursuant to R.S. 39:1702 which provides that certain open-ended state procurement contracts shall be available to the local public procurement unit, shall also provide that:

1. the state shall conduct the procurement in compliance with the Louisiana Procurement Code;

2. when the local public procurement unit agrees to procure any supply or service under the state contract, its requirements for such supply or service shall be obtained by placing purchase orders against the appropriate state contract in accordance with the terms and conditions of such contract;

3. payment for supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;

4. inspection and acceptance of supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;

5. the state may terminate the agreement for failure of the local public procurement unit to comply with the terms of the contract or pay a contractor to whom the state has awarded an open-ended contract;

6. the exercise of any warranty rights attaching to supplies or services received by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit; and

7. failure of a local public procurement unit which is procuring supplies or services under a state contract to secure performance from the contractor in accordance with the terms and conditions of its purchase order will not necessarily require the state or any other local public procurement unit to consider the default or to discontinue procuring under the 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 8:341 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014).

**§2506. 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 state purchasing 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 state purchasing contract.

C. Establishment of a state contract based on GSA pricing will only be considered when there is a valid business case.

D. State agencies shall not procure materials, supplies or equipment directly under a GSA contract. The State Central Purchasing Agency of the Division of Administration will:

1. be responsible for analyzing and determining the feasibility of establishing a LaMAS state contract based on GSA prices; and

2. issue procedures for establishment and utilization of this type of contract.

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. 39:1591(6). Louisiana licensed dealers or distributors shall agree to:

1. Louisiana terms and conditions; and

2. provide written consent from the GSA contractor to extend current GSA pricing to the state of Louisiana.

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).

**§2507. Supply of Personnel, Information, and Services [Formerly LAC 34:I.2507]**

A. Requests made to a public procurement unit by another public procurement unit or external procurement activity to provide or make available personnel, services, information, or technical services pursuant to R.S. 39:1706, shall be complied with only to the extent that the chief procurement officer determines that it is practical and feasible to do so in terms of personnel, time, and other resources.

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 8:341 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1365 (July 2014).

**Chapter 29. Education**

**§2901. Department of Education Procurement [Formerly LAC 34:I.2901]**

A. The Department of Education shall conduct the procurement of all supplies, services, and major repairs, as defined by the Louisiana Procurement Code, R.S. 39:1551 et seq., through the central purchasing agency of the Division of Administration. This rule does not extend to those items exempted in R.S. 39:1572(A)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1572(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 14:429 (July 1988), repromulgated LR 40:1365 (July 2014).

**Chapter 31. Conduct of Hearing—Louisiana Procurement Code**

**§3101. Definitions [Formerly LAC 34:I.3101]**

*Aggrieved Person*—a person who files a written protest in connection with the solicitation or award or the issuance of a written notice of intent to award a contract under the Louisiana Procurement Code and has or may have a pecuniary or other property interest in the award of the contract.

*Candidate for Suspension or Debarment*—a candidate for suspension or debarment is a person, who in the opinion of the chief procurement officer has committed an action giving cause for suspension or debarment pursuant to R.S. 39:1672.C.

*Commissioner*—the commissioner of the Division of Administration.

*Contractor*—a person who has been awarded a contract.

*Hearing Officer*—the chief procurement officer or his designee who shall exercise such authority as is granted for the conduct of protests in accordance with the provisions of

the Louisiana Procurement Code [title 39:1551 et seq., section 1671(B)].

*Interested Person*—any person who has submitted a bid in response to an invitation for bids, 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.

*Party*—as used herein, unless the content clearly indicates otherwise, is either a contractor or a candidate for suspension or debarment or both.

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 40:1366 (July 2014).

### **§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 §§601, 1671, 1672, and 1673 of title 39 of the *Louisiana Revised Statutes*.

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).

### **§3105. Initiation of Hearing**

#### **[Formerly LAC 34:I.3105]**

A. Responsibility of Bidders and Offerors. A hearing held to consider the disqualification of a bidder or offeror 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 prior to the opening of bids. 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. The written protest must state the issue(s) protested. The protest hearing is limited to the issues contained in the written protest unless there is a showing that an issue not mentioned ought to be examined in order to properly dispose of the matter, or, in the public interest, there is other good ground for consideration of other issues and evidence.

2. Upon receipt of a written protest in conformity with the preceding Paragraph, the chief procurement officer shall cause to issue a written notice to the aggrieved person and shall also, issue a written notice to all interested persons.

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.

D. Contract and Breach of Contract Controversies. Hearings on controversies between the state and a contractor

based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission shall commence with issuance of written notice by the chief procurement officer on his motion for reasons set forth in the notice or at the request of the contractor communicated in writing to the chief procurement officer and the head of the governmental body of the state utilizing the supplies, services, or major repairs under the 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 9:210 (April 1983), amended LR 22:280 (April 1996), repromulgated LR 40:1366 (July 2014).

### **§3107. Notice**

#### **[Formerly LAC 34:I.3107]**

A. The written notice required to be sent in order to commence a hearing within the foregoing section of these rules for the adjudicatory hearings provided for to parties, aggrieved persons, or interested persons who do not waive their rights shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the statutes and rules involved;
4. a short and plain statement of the matters asserted.

B. If the chief procurement officer is unable to state the matters in detail at the time notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, the chief procurement officer shall issue a more detailed notice prior to the date set for the hearing.

C. In addition to the requirements of the notice set forth above, the notice may contain a statement advising all parties, aggrieved persons, or interested persons as applicable that failure to participate in the noticed hearing shall serve to waive any and all further administrative remedies.

D. Whenever practical, the notice shall be served by return receipt certified mail. Where time or other factors render mail service impractical, the chief procurement officer may effect service by any other means reasonably calculated to communicate the written notice.

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 40:1366 (July 2014).

### **§3109. Hearing; Record**

#### **[Formerly LAC 34:I.3109]**

##### **A. Hearing**

1. An opportunity shall be afforded all parties, aggrieved persons, or interested persons to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

2. The hearing officer may, in his discretion, request written views from a governmental body which will be directly affected by the outcome of the adjudicatory hearing and give such weight to the submission as the facts and law require. A copy of such written submission shall be provided

to all parties, aggrieved persons, or interested persons participating in the adjudicatory proceeding.

3. Informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

B. Record

1. The record shall contain:

- a. all pleadings, motions, intermediate rulings;
- b. evidence received or considered or a résumé thereof if not transcribed;
- c. a statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;
- d. offers of proof, objections, and rulings thereon;
- e. proposed findings and exceptions;
- f. any decision, opinion, or report by the officer presiding at the hearing.

2. The hearing officer shall have all proceedings before him recorded electronically and may in his discretion, or shall upon written request of any party, aggrieved person, or interested person, cause to be made a full transcript of said proceedings.

a. The cost of a transcript shall be paid by the Division of Administration when the hearing officer elects upon his motion to transcribe the proceedings. In such event, any party, aggrieved person, or interested person requesting a copy shall be given a copy upon first paying the actual cost thereof or upon payment of the cost of a portion of the transcript if the request is for a particular portion of the transcript.

b. The cost of a transcript shall be paid by the party, aggrieved person, or interested person when a transcript is made at their request. Copies requested shall be paid for by the party, aggrieved person, interested person, or the hearing officer as the case may be.

3. Findings of fact made by the hearing officer shall be based exclusively on the evidence and on matters officially noticed.

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 40:1366 (July 2014).

**§3111. Rules of Evidence; Official Notice; Oaths and Affirmations; Subpoenas; Depositions and Discovery; and Confidential Privileged Information**  
**[Formerly LAC 34:I.3111]**

A. Rules of Evidence

1. The hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. He shall give effect to the rules of privilege recognized by law. He may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties, aggrieved person, or interested persons will not be prejudiced substantially, any part of the evidence may be received in written form.

2. All evidence, including records and documents in the possession of the governmental agency of which the

hearing officer desires to avail himself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

B. Official Notice. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within a governmental agency's specialized knowledge. Parties, aggrieved persons, or interested persons shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. A governmental agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

C. Oaths and Affirmations. The hearing officer shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues. The hearing officer shall also have authority to raise issues not otherwise raised by persons party to a hearing where such an issue is pertinent to a proper disposition of the matter.

D. Subpoenas. The hearing officer shall have power to sign and issue subpoenas requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall be issued until the party, aggrieved person, interested person, or governmental agency who wishes to subpoena the witness first deposits a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party, aggrieved person, interested person, or governmental agency who wishes to subpoena such witness as may be fixed by the hearing officer with reference to the value of the time employed and the degree of learning or skill required. Whenever any person summoned neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or give testimony, as required, the hearing officer may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt.

E. Depositions and Discovery. The hearing officer, governmental agency, or any party, aggrieved person, or interested person may take the depositions of witnesses, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in the record of the hearing. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by hearing officer in accordance with the rules of evidence provided in these rules.

F. Confidential and Privileged Information

1. Records and documents, in the possession of a governmental body, the hearing officer, or any officer or employee, including conclusions drawn therefrom which are deemed confidential and privileged shall not be made available for adjudication proceedings and shall not be subject to subpoena by any person or other state or federal agency.

2. Such records or documents shall only include any private contracts, geological and geophysical information and data, trade secrets and commercial or financial data, which are obtained by an agency through a voluntary agreement between the agency and any person, which said records and documents are designated as confidential and privileged by the parties when obtained, or records and documents which are specifically exempt from disclosure by statute.

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 40:1367 (July 2014).

**§3113. Decisions and Orders of the Hearing Officer**  
**[Formerly LAC 34:I.3113]**

A. If the subject matter of the hearing is not resolved, the hearing officer shall, within 14 days of the conclusion of a protest hearing, or within a reasonable time of the conclusion of a hearing to determine responsibility, suspension or debarment, or a controversy between the state and a contractor, issue a written decision stating the reasons for the action taken and informing the party, aggrieved person, or interested person of the right to administrative review and thereafter judicial review where applicable.

1. A copy of the decision or order shall be mailed or otherwise furnished the party, aggrieved person, or interested person immediately.

B. The decision of the hearing officer shall become final and conclusive unless the decision is fraudulent or the party, aggrieved person, or interested person adversely affected by the decision or order has timely appealed administratively to the commissioner.

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 offeror. Notice of the right to judicial review of the final decision shall accompany service of the final decision.

C. A bidder or offeror 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. the decision or order is clearly contrary to the law and the evidence;

b. the party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

c. there is a showing that issues not previously considered ought to be examined in order to properly dispose of the matter; or

d. there is other good ground for further consideration of the issues and the evidence in the public interest;

2. the request for rehearing on behalf of a bidder or offeror 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).

**§3115. Administrative Appeal to the Commissioner**  
**[Formerly LAC 34:I.3115]**

A. The commissioner shall have authority to review and determine any appeal by a party, aggrieved person or interested person who has intervened in a hearing before the hearing officer from a determination by the hearing officer from an adjudication on a protest of a solicitation, award, or intent to award, a suspension or debarment, or a controversy between the state and a contractor.

B. Scope of Appellate Review by the Commissioner

1. An appeal to the commissioner authorized by R.S. 39:1681 and the foregoing provision shall be limited to a review of the record of the proceedings before the hearing officer and written briefs submitted by or on behalf of persons who have appealed.

2. A person seeking review by the commissioner of a decision by the hearing officer may, within the time limitations fixed herein below for appeals, raise by separate written documents:

a. the existence and discovery since hearing of new evidence important to the issues which he could not have with due diligence obtained before or during trial; or

b. the existence of issues not previously considered which ought to be examined in order to properly dispose of the matter. Upon receipt of such separate written document, the commissioner, should he deem the assertions well founded, may either remand the matter to the hearing office or grant a hearing to consider the assertions himself. In either event, whether the assertions are heard by the hearing officer or the commissioner, the evidence or submissions of said hearing shall be incorporated into the record and considered in the administrative appeal.

C. Appeal of Protest Hearing. An aggrieved person or an interested person who has participated in the proceedings before the hearing officer appealed from shall file an appeal to the commissioner within seven days of receipt of the decision of the hearing officer. The commissioner shall decide within 14 days whether the solicitation or award or intent thereof was in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. A copy of the decision of the commissioner on the appeal shall be mailed or otherwise furnished immediately to the aggrieved person or interested person who has appealed or otherwise participated in the appeal from the decision of the hearing officer. The decision of the commissioner on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or

2. the person adversely affected by the decision of the commissioner has timely appealed to the court in accordance with R.S. 39:1691(A).

D. Appeal of Suspension or Debarment Hearing. A party shall file his appeal with the commissioner from a suspension or debarment hearing within 14 days of the receipt of the decision of suspension or debarment from the hearing officer. The commissioner shall decide within 14 days whether, or the extent to which, the debarment or suspension was in accordance with the constitution, statute, regulations, and the best interests of the state and was fair. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person or any other party interviewing. The decision of the commissioner on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the debarred or suspended party has timely appealed to the court in accordance with R.S. 39:1691(B). The filing of a petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner except as is provided under the section entitled "Procedure upon Judicial Review" of this rule.

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

1. the decision is fraudulent; or
2. the contractor has timely appealed to the court in accordance with R.S. 39:1691(C). The filing of a petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner except as is provided under §3119, "Procedure upon Judicial Review."

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).

**§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, offeror, 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. Debarment or Suspension. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the constitution, statute, and regulations. Such actions shall extend to actions for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691(B) shall be commenced within six months after receipt of the decision of the commissioner under R.S. 39:1684(C).

C. Actions under Contracts or for Breach of Contract. The Nineteenth Judicial District Court shall have exclusive

venue over an action between the state and a contractor who contracts with the state, for any cause of action which arises under or by virtue of the contract for a breach of the contract or whether the action is for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691(C) shall be commenced within six months after receipt of the decision of the commissioner under R.S. 39:1685(C).

D. Disqualification of Bidders or Offerors. A bidder or offeror 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).

**§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 offeror 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 offeror, 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.

2. The filing of a petition shall stay progress of a solicitation or award of a contract unless the chief procurement officer makes a written determination that the awarding of the contract is necessary without delay to protect the substantial interests of the state. Upon such determination, no court shall enjoin progress under the award except after notice and hearing.

C. Review. The review shall be conducted by the Nineteenth Judicial District Court without a jury and shall be confined to the record. In case of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs. There shall be no right of review by a trial de novo.

D. Judgment on Review. The court may affirm the decision of the commissioner or chief procurement officer, as the case may be, or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of the agency;
3. made upon lawful procedure;
4. affected by other error of law;

5. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

6. manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge of 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).

### **§3121. Appeals**

**[Formerly LAC 34:I.3121]**

A. Review of a final judgment of the district court to the Court of Appeal for the First Circuit shall be taken as in other civil cases.

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 40:1370 (July 2014).

### **Chapter 33. Vendors**

#### **§3301. Vendor Fees**

**[Formerly LAC 34:I.3301]**

A. An annual subscription fee of \$50 will be charged in-state vendors and \$100 will be charged out-of-state vendors to become eligible to be on a computerized state bid list. Failure to be on the computerized state bid list will only remove your company from automatically receiving bids. State purchasing will continue to advertise bids in accordance with required laws. The fee covers the fiscal year period July through June. For a preceding fiscal year, any payments received after April 1 through June 30 will be prorated as follows:

1. in-state vendors—\$15; and
2. out-of-state vendors—\$30.

B. This fee entitles the vendor to be on the bid list for one fiscal year, automatically receive all state purchasing bid solicitations in selected commodity categories, receive a *How to do Business with the State of Louisiana* book and includes registration fees for vendor seminars.

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).

Jan B. Cassidy  
Assistant Commissioner

1407#034

## **RULE**

### **Department of Health and Hospitals Board of Medical Examiners**

Perfusionists; General, Licensure  
and Certification and Practice  
(LAC 46:XLV.251-255, 2701-2751, and 5801-5811)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1270, and the Louisiana Perfusion Licensure Act, R.S. 37:1331-1343, the Louisiana State Board of Medical Examiners (board) has adopted rules respecting the general regulation, licensure, certification and practice of perfusionists, Title 46, (Professional And Occupational Standards), Part XLV (Medical Professions), Subpart 1 (General), Chapter 1 (Fees and Costs), Subchapter O, §§251-255, Subpart 2 (Licensure and Certification), Chapter 27, §§2701-2751 and Subpart 3 (Practice), Chapter 58, §§5801-5811. The rules are set forth below.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLV. Medical Professions**

##### **Subpart 1. General**

#### **Chapter 1. Fees and Costs**

##### **Subchapter O. Perfusionists Fees**

#### **§251. Scope of Subchapter**

A. The rules of this Subchapter prescribe the fees and costs applicable to the board's issuance of a license or provisional license to practice perfusion in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343, 37:1270 and 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 40:1370 (July 2014).

#### **§253. Licenses and Permit**

A. For processing an application for a license as a licensed perfusionist a fee of \$300 shall be payable to the board.

B. For processing an application for a provisional license as a perfusionist a fee of \$200 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343, 37:1270, 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 40:1370 (July 2014).

#### **§255. Renewals and Extensions**

A. For processing an application for renewal of a licensed perfusionist's license a fee of \$150 shall be payable to the board.

B. For processing an extension of a provisional license as a perfusionist a fee of \$100 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343, 37:1270 and 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health Hospitals, Board of Medical Examiners, LR 40:1370 (July 2014).

## Subpart 2. Licensure and Certification

### Chapter 27. Perfusionists

#### Subchapter A. General Provisions

##### §2701. Scope of Chapter

A. The rules of this Chapter govern the licensing of perfusionists in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1371 (July 2014).

##### §2703. Definitions

A. As used in this Chapter, unless the context clearly states otherwise, the following terms and phrases shall have the meanings specified.

*Advisory Committee on Perfusion or Committee*—the committee established in R.S. 37:1339.

*American Board of Cardiovascular Perfusion or ABCP*—the national credentialing entity for the perfusionist profession, or its successor.

*Applicant*—a person who has applied to the board for a license or provisional license to practice perfusion.

*Board*—the Louisiana State Board of Medical Examiners.

*Extracorporeal Circulation*—the diversion of a patient's blood through a heart-lung machine or similar device that assumes the functions of the patient's heart, lungs, kidney, liver or other organs.

*Good Moral Character*—as applied to an applicant, means that an applicant has not, prior to or during the pendency of an application to the board been guilty of any act, omission, condition or circumstance which would provide legal cause for the denial, suspension or revocation of a perfusionist's license; the applicant has not, prior to or in connection with his application, made any representation to the board, knowingly or unknowingly, which is in fact false or misleading as to material fact or omits to state any fact or matter that is material to the application; and the applicant has not made any representation or failed to make a representation or engaged in any act or omission which is false, deceptive, fraudulent or misleading in achieving or obtaining any of the qualifications for a license required by this Chapter.

*License*—the lawful authority to engage in the practice of perfusion in this state, as evidenced by a certificate duly issued by and under the official seal of the board as a licensed perfusionist or provisional licensed perfusionist.

*Licensed Perfusionist*—a perfusionist who is currently licensed by the board to practice perfusion in this state.

*Perfusion*—the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, respiratory systems or other organs, or a combination of those activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters including, but not limited to, the following activities conducted upon the written prescription or verbal order of a physician and/or provided in accordance with *perfusion* protocols:

a. the use of extracorporeal circulation, long-term cardiopulmonary support techniques, including extracorporeal carbon dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic techniques;

b. counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb *perfusion*;

c. blood management techniques, advanced life support, and other related functions;

d. in the performance of the acts described in this Subparagraph:

i. the administration of pharmacological agents, therapeutic agents, blood products or anesthetic agents through the extracorporeal circuit as ordered by a physician;

ii. the performance and use of:

(a). anticoagulation monitoring and analysis;

(b). physiologic monitoring and analysis;

(c). blood gas and chemistry monitoring and analysis;

(d). hematologic monitoring and analysis;

(e). hypothermia;

(f). hyperthermia;

(g). hemoconcentration and hemodilution; and

(h). hemodialysis;

iii. the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics and the implementation of appropriate reporting, *perfusion* protocols or changes in or the initiation of an emergency.

*Perfusionist*—an individual who is qualified by academic and clinical education, to operate the extracorporeal circulation equipment during any medical situation where it is necessary to support or replace a person's cardiopulmonary, circulatory or respiratory function. A *perfusionist* is responsible for the selection of appropriate equipment and techniques necessary for support, treatment, measurement, or supplementation of the cardiopulmonary and circulatory system of a patient, including the safe monitoring, analysis, and treatment of physiologic conditions.

*Perfusion Licensure Act or Act*—R.S. 37:1331-1343, as may be amended or supplemented.

*Perfusion Protocols*—perfusion related policies and protocols developed or approved by a licensed health facility or a physician through collaboration with administrators, licensed perfusionists, and other health care professionals. Such protocols shall be in writing, kept current, maintained at the health facility or by the physician and produced at the board's request.

*Physician*—an individual who is currently licensed by the board to practice medicine in the state of Louisiana.

*Provisional Licensed Perfusionist*—an individual who is provisionally licensed under this Chapter to engage in perfusion under the supervision and direction of a licensed perfusionist. A provisional license is of determinate, limited duration and implies no right or entitlement to the issuance of a license as a licensed perfusionist.

*Supervision and Direction*—responsible direction and control by a licensed perfusionist for the proper performance of perfusion services by a provisional licensed perfusionist.



Such supervision shall not be construed to require the immediate physical presence of the licensed perfusionist; however, the licensed perfusionist shall be accessible on-site or immediately available by telephone, telecommunications or other electronic means to furnish assistance and direction at all times that a provisional licensed perfusionist performs perfusion.

*Supervising Perfusionist*—an individual who is currently licensed by the board under this Chapter as a licensed perfusionist, who provides supervision and direction to a provisional licensed perfusionist.

*United States Government*—any department, agency or bureau of the United States Armed Forces or Veterans Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1371 (July 2014).

## **Subchapter B. Requirements and Qualifications for Licensure**

### **§2705. Scope of Subchapter**

A. The rules of this Subchapter govern and prescribe the requirements, qualifications and conditions requisite to eligibility for licensure as a licensed perfusionist and provisional licensed perfusionist in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1372 (July 2014).

### **§2707. Licensed Perfusionist**

A. The board may issue a license to practice as a licensed perfusionist to an individual who has made application to the board. To be eligible for licensure as a licensed perfusionist an applicant shall:

1. be at least 18 years of age;
2. be of good moral character;
3. be a high school graduate or have the equivalent of a high school diploma;
4. be a graduate of a perfusion education program, the educational standards of which have been established by the Accreditation Committee for Perfusion Education, and accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), or their successors or such other accrediting organization as the board may subsequently approve;
5. have passed the clinical perfusion certification examination offered by the American Board of Cardiovascular Perfusion, or its successor organization;
6. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the United States Citizenship and Immigration Services of the United States, Department of Homeland Security, under and pursuant to the Immigration and Nationality Act (66 Stat. 163) and the regulations thereunder (8 C.F.R.);
7. satisfy the applicable fees as prescribed by Chapter 1 of these rules;
8. satisfy the procedures and requirements for application provided by Subchapter C of this Chapter; and

9. not be otherwise disqualified for licensure by virtue of the existence of any grounds for denial of licensure as provided by the Act or in Chapter 58 of these rules.

B. An individual who meets all of the requirements set forth in Subsection A of this Section, save for §2707.A.4 and 5, may nevertheless be licensed by the board provided the applicant:

1. as of July 1, 2003, was operating cardiopulmonary bypass systems during cardiac surgical cases in a licensed health care facility in this state as the applicant's primary function; and

2. is actively engaged in the practice of perfusion consistent with applicable law.

C. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1372 (July 2014).

### **§2709. Recognition of Perfusion Education Programs**

A. Graduation from an accredited perfusion education program is among the required qualifications for licensure as a perfusionist. This qualification shall be deemed to be satisfied if, as of the date of the applicant's graduation, such program is accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP).

B. A perfusion education program that is not accredited, or whose accreditation has been revoked or suspended by CAAHEP, shall be deemed unacceptable to qualify applicants for licensure in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1372 (July 2014).

### **§2711. License by Reciprocity**

A. The board may issue a license to practice as a licensed perfusionist to an applicant who holds a current, unrestricted license to practice as a perfusionist duly issued by the licensing authority of another state, the District of Columbia, or a territory of the United States, and meets and satisfies all of the qualifications, procedures and requirements specified by Section 2707 of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1372 (July 2014).

### **§2713. Provisional License**

A. The board may issue a license to practice as a provisional licensed perfusionist to an individual who has made application to the board. To be eligible for a provisional license an applicant shall:

1. meet and satisfy all of the qualifications, procedures and requirements specified by Section 2707 of this Subchapter, save for passage of the certification

examination in clinical perfusion offered by the American Board of Cardiovascular Perfusion; and

2. identify a supervising licensed perfusionist who has agreed to provide supervision and direction at all times during which the applicant provides perfusion services as a provisional licensed perfusionist. A provisional licensed perfusionist may have multiple supervising perfusionists provided; however, the individual identified in an application to the board as the supervising perfusionist shall be deemed to be the primary supervising perfusionist.

B. The burden of satisfying the board as to the qualifications and eligibility of the applicant for a provisional license shall be on the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in a manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1372 (July 2014).

### **Subchapter C. Application**

#### **§2715. Purpose and Scope**

A. The rules of this Subchapter govern the procedures and requirements for application to the board for a license to practice as a licensed perfusionist or provisional licensed perfusionist in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1373 (July 2014).

#### **§2717. Application Procedure**

A. Application for licensure or provisional licensure shall be made in a format approved by the board.

B. Applications and instructions may be obtained from the board's web page or by personal or written request to the board.

C. An application under this Chapter shall include:

1. proof documented in a form satisfactory to the board that the applicant possesses the qualifications set forth in this Chapter;

2. one recent photograph of the applicant;

3. certification of the truthfulness and authenticity of all information, representations and documents contained in or submitted with the completed application;

4. criminal history record information;

5. payment of the applicable fee as provided in Chapter 1 of these rules; and

6. such other information and documentation as the board may require.

D. An applicant for a provisional license shall, in addition, cause written verification of a supervising licensed perfusionist's agreement to provide supervision and direction to be submitted in a format and manner prescribed by the board.

E. All documents required to be submitted to the board must be the original thereof. For good cause shown, the board may waive or modify this requirement.

F. The board may reject or refuse to consider any application which is not complete in every detail, including submission of every document or item required by the

application. The board may, at its discretion, require a more detailed or complete response to any request for information set forth in the application as a condition to consideration of an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1373 (July 2014).

#### **§2719. Effect of Application**

A. The submission of an application for licensure to the board shall constitute and operate as an authorization by the applicant to each educational institution at which the applicant has matriculated, each governmental agency to which the applicant has applied for any license, permit, certificate or registration, each person, firm, corporation, organization or association by whom or with whom the applicant has been employed as a perfusionist, each physician whom the applicant has consulted or seen for diagnosis or treatment, and each professional or trade organization to which the applicant has applied for membership, to disclose and release to the board any and all information and documentation concerning the applicant which the board deems material to consideration of the application. With respect to any such information or documentation, the submission of an application for licensure to the board shall equally constitute and operate as a consent by the applicant to the disclosure and release of such information and documentation as a waiver by the applicant of any privileges or right of confidentiality which the applicant would otherwise possess with respect thereto.

B. By submission of an application for licensure to the board, an applicant shall be deemed to have given his consent to submit to physical or mental examinations if, when, and in the manner so directed by the board if the board has reasonable grounds to believe that the applicant's capacity to act as a perfusionist with reasonable skill or safety may be compromised by physical or mental condition, disease or infirmity, and the applicant shall be deemed to have waived all objections as to the admissibility or disclosure of findings, reports or recommendations pertaining thereto on the grounds of privileges provided by law.

C. The submission of an application for licensure to the board shall constitute and operate as an authorization and consent by the applicant to the board to disclose any information or documentation set forth in or submitted with the applicant's application or obtained by the board from other persons, firms, corporations, associations or governmental entities pursuant to this Section, to any person, firm, corporation, association or governmental entity having a lawful, legitimate and reasonable need therefor, including, without limitation, the perfusion licensing authority of any state, the American Board of Cardiovascular Perfusion, the Louisiana Department of Health and Hospitals, federal, state, county or parish and municipal health and law enforcement agencies and the Armed Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1373 (July 2014).

## **Subchapter D. Examination**

### **§2721. Purpose and Scope**

A. The rules of this Subchapter govern the procedures and requirements applicable to the examination for licensure as a licensed perfusionist in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1374 (July 2014).

### **§2723. Designation of Examination**

A. The examination accepted by the board for licensure as a licensed perfusionist is the certification examination for clinical perfusion administered by the American Board of Cardiovascular Perfusion or its successor, or such other certifying entity as the board may subsequently approve.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1374 (July 2014).

### **§2725. Restriction, Limitation on Examinations**

A. An applicant who fails to obtain a passing score upon taking any part of the American Board of Cardiovascular Perfusion's certification examination four times shall not thereafter be considered for licensure until successfully completing such continuing education or additional training as may be recommended by the advisory committee and approved by the board or as the board may otherwise determine appropriate. For multiple failures beyond four attempts such education or training may include, without limitation, repeating all or a portion of any didactic and/or clinical training required for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1374 (July 2014).

### **§2727. Passing Score**

A. An applicant will be deemed to have successfully passed the examination accepted by the board if he or she attains a score equivalent to that required by American Board of Cardiovascular Perfusion (ABCP) as a passing score.

B. Applicants shall be required to authorize the ABCP to release their test scores to the board each time the applicant-examinee attempts the examination according to the procedures for such notification established by the ABCP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1374 (July 2014).

## **Subchapter E. Licensure Issuance, Termination, Renewal, Reinstatement and Inactive Status**

### **§2729. Issuance of License**

A. If the qualifications, requirements and procedures prescribed or incorporated in this Chapter are met to the satisfaction of the board, the board shall license the applicant to practice perfusion in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1374 (July 2014).

### **§2731. Expiration of Licenses**

A. Every license issued by the board to a licensed perfusionist shall expire, and thereby become null, void and to no effect two years following its issuance on the last day of the month in which the licensee was born.

B. Every provisional license issued by the board shall be effective for two years and shall expire and become null and void on the earlier of:

1. two years from the date of issuance;
2. the date on which the board takes action following notice of:

a. the applicant's certification in clinical perfusion by virtue of the successful completion of the ABCP examination; or

b. the applicant's fourth unsuccessful attempt to pass any part of the ABCP examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1374 (July 2014).

### **§2733. Renewal of License, Extension of Provisional License**

A. Every license issued by the board to a licensed perfusionist shall be renewed every two years on or before the last day of the month in which the licensee was born by submitting to the board:

1. a renewal application in a format prescribed by the board;
2. documentation of satisfaction of the continuing requirement prescribed by Subchapter G of this Chapter;
3. the renewal fee prescribed in Chapter 1 of these rules; and
4. such other information or documentation as the board may require.

B. An applicant previously licensed by the board in accordance with §2707.B of this Chapter shall, in addition to satisfying the requirements of Subsection A of this Section, provide written documentation in a form and manner deemed acceptable to the board from one or more physicians, supervisors and/or hospital administrators, affirming that since his or her last renewal the applicant has been actively engaged in the practice of perfusion and has been primarily responsible for providing perfusion services in a licensed health care facility in this state.

C. Renewal applications and instructions may be obtained from the board's web page or upon personal or written request to the board.

D. Provisional License. A provisional license is not subject to renewal but may be extended at the discretion of the board upon a request which:

1. is submitted in writing;
2. is signed by the provisional licensed perfusionist and by the licensed perfusionist on file with the board as the applicant's supervising licensed perfusionist;
3. is received by the board at least 30 days prior to the expiration of the provisional license; and
4. identifies a life-threatening or significant medical condition or another extenuating circumstance deemed acceptable to the board.

E. The duration of any such extension shall be set by the board in its discretion but shall in no instance exceed the original term of the provisional license. Such an extension may be conditioned upon any terms or conditions that the board may deem appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1374 (July 2014).

#### **§2735. Reinstatement of License**

A. A perfusionist's license which has expired for less than five years from the date of expiration may be reinstated by the board subject to the conditions and procedures hereinafter provided.

B. An application for reinstatement shall be submitted in a format approved by the board and be accompanied by:

1. a statistical affidavit in a form provided by the board;

2. a recent photograph;

3. documentation of at least 15 hours of continuing education, not less than 5 of which shall be in category I activities meeting the standards prescribed by the ABCP or such other organization as the board may subsequently approve, for each year that the license was expired;

4. such other information and documentation as is referred to or specified in this Chapter or as the board may require to evidence qualification for licensure; and

5. the renewal fee set forth in Chapter 1 of these rules, plus a penalty computed as follows:

a. if the application for reinstatement is made less than two years from the date of license expiration, the penalty shall be equal to the renewal fee;

b. if the application for reinstatement is made more than two years from the date of license expiration, the penalty shall be equal to twice the renewal fee.

C. A perfusionist whose license has lapsed and expired for a period in excess of two years, during which the applicant has not been licensed or engaged in the practice of perfusion in any state shall, in addition, be required to perform such continuing education or additional training as may be recommended by the advisory committee and approved by the board or as the board may otherwise determine to be appropriate.

D. A perfusionist whose license has lapsed and expired for a period in excess of five years is not eligible for reinstatement consideration but may apply to the board for an initial license pursuant to the applicable rules of this Chapter.

E. A provisional license is not subject to reinstatement.

F. A request for reinstatement may be denied by virtue of the existence of any grounds for denial of licensure as provided by the Act or these rules.

G. The burden of satisfying the board as to the qualifications and eligibility of the applicant for reinstatement of the license as a licensed perfusionist shall be on the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in a manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1375 (July 2014).

#### **§2737. Inactive License Status**

A. A perfusionist's license may be placed on inactive status by giving notice to the board in writing, at least thirty days prior to the time prescribed for license renewal, on forms prescribed by the board. A perfusionist whose license is on inactive status shall be excused from payment of renewal fees and shall not practice perfusion in this state. Any individual who engages in practice while on inactive status shall be subject to administrative action under R.S. 37:1341.

B. A license on inactive status may be reinstated to active status upon application to the board, upon:

1. payment of the current renewal fee;

2. documentation of at least 15 hours of continuing education, not less than 5 of which shall be in category I activities meeting the standards prescribed by the ABCP or such other organization that the board may subsequently approve, for each year that the license was placed on inactive status; and

3. such other information and documentation as is referred to or specified in this Chapter or as the board may require to evidence qualification for licensure.

C. A perfusionist whose license has been inactive for a period in excess of two years, during which the applicant has not been licensed or engaged in the practice of perfusion in any state shall, in addition, be required to perform such continuing education or additional training as may be recommended by the advisory committee and approved by the board or as the board may determine to be appropriate.

D. A perfusionist whose license has been inactive in excess of five years is not eligible for reinstatement to active status but may apply to the board for an initial license pursuant to the applicable rules of this Chapter.

E. A request for reinstatement to active status may be denied by virtue of the existence of any grounds for denial of licensure as provided by the Act or these rules.

F. A provision license is not subject to placement on inactive license status.

G. The burden of satisfying the board as to the qualifications and eligibility of the applicant for reinstatement to active status as a licensed perfusionist shall be on the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in a manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1375 (July 2014).

#### **Subchapter F. Advisory Committee**

##### **§2739. Organization; Authority**

A. The Advisory Committee on Perfusion (the "committee") as established, appointed and organized pursuant to R.S. 37:1339 of the Act, is hereby recognized by the board.

B. The committee shall:

1. have such authority as is accorded to it by the Act;

2. function as prescribed by the Act;

3. advise the board on issues affecting the licensing of perfusionists and on the regulation of perfusion in this state;

4. perform such other functions and provide such additional advice as the board may request; and

5. receive reimbursement for travel expenses incurred during attendance at committee meetings and other business of the committee when authorized by the board.

C. **Committee Meetings, Officers.** The advisory committee shall meet at least once each calendar year, or more frequently as may be deemed necessary by a quorum of the committee or by the board. The presence of four members shall constitute a quorum of the committee. The committee shall elect from among its members a chair and a vice-chair. The chair, or in the chair's absence or unavailability, the vice-chair, shall call, designate the date, time and place and preside at all meetings of the committee and record, or cause to be recorded, accurate and complete minutes of all meetings of the committee and shall cause copies of the same to be provided to the board.

D. **Confidentiality.** In discharging the functions authorized under this Section the committee and the individual members thereof shall, when acting within the scope of such authority, be deemed agents of the board. All information obtained by the committee members relative to individual applicants or licensees pursuant to this Section shall be considered confidential. Advisory committee members are prohibited from communicating, disclosing, or in any way releasing to anyone other than the board any confidential information or documents obtained when acting as agents of the board without first obtaining the written authorization of the board.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1376 (July 2014).

## **Subchapter G. Continuing Education**

### **§2741. Scope of Subchapter**

A. The rules of this Subchapter provide the continuing education requirement necessary for licensure renewal as a licensed perfusionist.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1376 (July 2014).

### **§2743. Continuing Educational Requirement**

A. A licensed perfusionist shall, within each two year period in which he or she holds a license, successfully complete a minimum of thirty units of continuing education, not less than ten of which shall be in category I courses meeting the standards prescribed by the ABCP.

B. For purposes of this Chapter, one continuing education unit is equivalent to 50 minutes of participation in an organized continuing education program.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1376 (July 2014).

### **§2745. Approval of Program Sponsors**

A. Any program, course, seminar, workshop or other activity meeting the standards prescribed by the ABCP, the

American Medical Association ("AMA"), any AMA recognized medical specialty certification organization, the Louisiana State Medical Society or the Louisiana Hospital Association, shall be deemed approved for purposes of satisfying the continuing education requirement of this Subchapter.

B. Upon the recommendation of the advisory committee, or on its own motion, the board may designate additional organizations and entities whose programs, courses, seminars, workshops, or other activities shall be deemed approved by the board for purposes of qualifying as approved continuing education.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1376 (July 2014).

### **§2747. Documentation Procedure**

A. Documentation of satisfaction of the continuing education requirement prescribed by this Subchapter need not accompany an application for licensure renewal; however, an applicant shall certify the satisfaction of such requirements.

B. A record or certificate of attendance shall be maintained for at least four years from the date of completion of a continuing education program.

C. The board shall randomly select for audit no fewer than 3 percent of the licensees each year for an audit of continuing education activities. In addition, the board or advisory committee has the right to audit any questionable documentation of activities. Verification shall be submitted within thirty days of the notification of audit. A licensee's failure to notify the board of a change of mailing address will not absolve the licensee from the audit requirement.

D. Any continuing education not presumptively approved pursuant to §2745 of this Chapter, shall be referred to the advisory committee for its evaluation and recommendations prior to licensure denial or renewal.

E. If the advisory committee determines that a continuing education program does not qualify for recognition by the board or does not qualify for the number of units claimed by the applicant, the board shall give notice of such determination to the applicant. An applicant may appeal the advisory committee's recommendation to the board by written request delivered to the board within 10 days of such notice. The board's decision with respect to approval and recognition of such program or activity shall be final.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1376 (July 2014).

### **§2749. Failure to Satisfy Continuing Education Requirement; Falsification**

A. An applicant for renewal of licensure who fails to evidence satisfaction of the continuing education requirement prescribed by these rules shall be given written notice of such failure by the board. The license of the applicant shall remain in full force and effect for a period of 90 days following the mailing of such notice, following which it shall be deemed expired, unrenewed and subject to suspension or revocation without further notice unless the

applicant shall have, within such 90 days, furnished the board satisfactory evidence by affidavit that:

1. the applicant has satisfied the applicable continuing education requirement; or

2. the applicant's failure to satisfy the continuing education requirement was occasioned by disability, illness or other good cause as may be determined by the board pursuant to §2751 of this Chapter.

B. A license which has expired by nonrenewal or has been suspended or revoked for failure to satisfy the continuing education requirement of this Subchapter may be reinstated by the board upon application to the board pursuant to §2735 of this Chapter, accompanied by payment of the applicable fees, together with documentation and certification that the applicant has, for each year since the date on which the applicant's license lapsed, expired, or was suspended or revoked, completed 15 units of approved continuing education, no less than 5 of which shall be in category I courses meeting the standards prescribed by the ABCP.

C. Any licensee who falsely certifies compliance with the continuing education requirement will be subject to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1376 (July 2014).

#### **§2751. Waiver of Requirement**

A. The board may, in its discretion, waive all or part of the continuing education required by these rules in favor of a licensed perfusionist who makes written request for waiver to the board and evidences to its satisfaction a permanent physical disability, illness, financial hardship or other similar extenuating circumstances precluding the individual's satisfaction of the requirement.

B. Any licensed perfusionist submitting a continuing education waiver request is required to do so on or before the date specified for licensure renewal by these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1377 (July 2014).

### **Subpart 3. Practice**

#### **Chapter 58. Perfusionists**

##### **Subchapter A. General Provisions**

#### **§5801. Scope of Chapter**

A. The rules of this Chapter govern the practice of perfusion in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1377 (July 2014).

#### **§5803. General Definitions**

A. The definitions set forth in Chapter 27 of these rules shall equally apply to this Chapter, unless the context clearly states otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1377 (July 2014).

### **Subchapter B. Unauthorized Practice, Exemptions, and Designation of Licenses**

#### **§5805. Unauthorized Practice**

A. No individual shall engage or attempt to engage in the practice of perfusion in this state, unless he or she holds a current license or a provisional license issued by the board under Chapter 27 of these rules.

B. An individual who does not hold a current license issued by the board as a licensed perfusionist, or whose license has been suspended, revoked or placed on inactive status, shall not use in conjunction with his or her name the words "licensed perfusionist," "LP," or any other similar words, letters, abbreviations or insignia indicating directly or by implication, that he or she is a licensed perfusionist or that the services provided by such individual constitute perfusion.

C. An individual who does not hold a current provisional license issued by the board, or whose provisional license has been suspended or revoked, shall not use in conjunction with his or her name the words "provisional licensed perfusionist," "PLP" or any other similar words, letters, abbreviations, or insignia indicating directly or by implication, that he or she is a provisional licensed perfusionist or that the services provided by such individual constitute perfusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1377 (July 2014).

#### **§5807. Exemptions from Licensure**

A. The prohibitions of §5805.A of this Chapter shall not prohibit an individual:

1. who is a qualified perfusionist employed by the United States Government from engaging in the practice of perfusion while acting in the discharge of his or her official duties;

2. who is an appropriately trained and qualified health care provider from:

a. monitoring an extracorporeal membrane oxygenation (ECMO) circuit in conjunction and with the consultation of a licensed perfusionist; or

b. performing autotransfusion under the direct or indirect supervision of a licensed perfusionist.

3. currently licensed in this state as a registered nurse from performing perfusion services;

4. acting under and within the scope of a license issued by the board or another licensing agency of the state of Louisiana;

5. pursuing a course of study as a student in a CAAHEP accredited perfusion education program from performing perfusion services, provided:

a. the service is an integral part of the student's course of study;

b. the service is performed under the direct supervision of licensed perfusionist who is assigned to supervise the student and who is on duty and immediately available in the assigned patient care area; and

c. the student is identified by title, name tag or otherwise which clearly designates the individual's status as a student or trainee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1377 (July 2014).

### **Subchapter C. Mutual Obligations**

#### **§5809. Mutual Obligations and Responsibilities**

A. A licensed perfusionist and provisional licensed perfusionist shall be obligated to:

1. comply with reasonable requests by the board for personal appearances, information and documentation relative to the functions, activities and performance of the licensed perfusionist or provisional licensed perfusionist;

2. as a licensed perfusionist, practice under the written prescription or verbal orders of a physician and/or pursuant to perfusion protocols as defined by R.S. 37:1333;

3. as a supervising perfusionist, provide supervision and direction for all perfusion services performed by a provisional licensed perfusionist, and insure that all perfusion services provided are appropriate for the individual's level of training and experience;

4. as a provisional licensed perfusionist, practice at all times under the supervision and direction of a licensed perfusionist; and

5. immediately notify the board in writing, of the withdrawal or designation of a new licensed perfusionist to serve as the primary supervising perfusionist for a provisional licensed perfusionist.

B. A licensed perfusionist and provisional licensed perfusionist shall insure compliance with the obligations, responsibilities and provisions set forth in the Act, Chapter 27 and this Chapter, and immediately report any violation or noncompliance thereof to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(A)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1378 (July 2014).

### **Subchapter D. Grounds for Administrative Action**

#### **§5811. Causes for Administrative Action**

A. The board may deny, refuse to issue, renew, reinstate or reactivate, or may suspend, revoke or impose probationary terms, conditions and restrictions on the license of a licensed perfusionist or provisional licensed perfusionist if the licensee or applicant has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public.

B. As used herein, *unprofessional conduct* by an applicant, licensed perfusionist or provisional licensed perfusionist in this state shall mean and include, but not be limited to:

1. conviction of a crime or entry of a plea of guilty or nolo contendere to a criminal charge constituting a felony under the laws of Louisiana, the United States, or the state in which such conviction or plea was entered;

2. conviction of a crime or entry of a plea of guilty or nolo contendere to a criminal charge constituting a misdemeanor under the laws of Louisiana, the United States, or the state in which such conviction or plea was entered, arising out of the practice of perfusion;

3. fraud, deceit, misrepresentation, or concealment of material facts in procuring or attempting to procure a license or provisional license to engage in the practice of perfusion;

4. providing false testimony before the board or providing false sworn information to the board;

5. the habitual or recurring abuse of drugs, including alcohol, which affect the central nervous system and which are capable of inducing physiological or psychological dependence;

6. cognitive or clinical incompetency;

7. interdiction by due process of law;

8. continuing or recurring practice which fails to satisfy the prevailing and usually accepted standards of the practice of perfusion in this state;

9. solicitation of patients or self-promotion through advertising or communication, public or private, which is fraudulent, false, deceptive, or misleading;

10. knowingly performing any act which in any way assists an individual, who is not currently licensed as perfusionist or provisional licensed perfusionist, or otherwise exempt from licensure pursuant to the Act or Chapter 27 of these rules, to engage in the practice of perfusion in this state, or having a professional connection with or lending one's name to an illegal practitioner;

11. delegating the performance of perfusion services to a individual who the licensee knows or has reason to know is not qualified by training, experience or licensure to perform such service;

12. inability to practice perfusion with reasonable competence, skill or safety to patients because of mental or physical illness, condition or deficiency, including but not limited to deterioration through the aging process or excessive use or abuse of drugs, including alcohol;

13. refusal to submit to examination and inquiry by a physician, health care professional, or at an institution designated by the board to inquire into the physical and/or mental fitness and ability of an applicant or licensee to practice perfusion with reasonable skill or safety;

14. failure to respond or to provide information or items within the time requested by the board's staff, respond to a subpoena issued by the board, or to complete an evaluation within the time designated by the board;

15. practicing or otherwise engaging in conduct or functions beyond the scope of licensure authorized by the Act;

16. intentional violation of any federal or state law, parish or municipal ordinance, the state sanitary code, or rule or regulation relative to any contagious or infectious disease;

17. violation of the code of ethics adopted and published by the American Board of Cardiovascular Perfusion;

18. the refusal of the licensing authority of another state to issue, renew, reinstate or reactivate a license or permit to practice perfusion in that state, or the revocation, suspension, or other restriction imposed on a license or permit issued by such licensing authority which prevents, restricts, or conditions practice in that state, or the surrender of a license or permit issued by another state when criminal or administrative charges are pending or threatened against the holder of such license or permit;

19. violating or helping someone else violate any order, decision, rule or regulation of the board or any provision of the Act.

C. A license or provisional license that has been suspended by the board shall be subject to expiration during suspension.

D. The refusal to issue, renew, reinstate or reactivate a license, or to issue a provisional license, or the imposition of probationary or other conditions upon the holder of a license or provisional license, or on an applicant, may be entered into by consent of the individual and the board or may be ordered by the board in a decision made after a hearing in accordance with the Administrative Procedure Act, R.S. 49:951 et seq., and the applicable rules and regulations of the board.

E. The board may, in its discretion, reinstate the license of a licensed perfusionist or provisional licensed perfusionist that has been suspended or revoked or otherwise restricted, or restore to unrestricted status any license or provisional license subject to probationary terms, conditions or restrictions upon payment, if applicable, of the reinstatement fee and satisfaction of such terms and conditions as may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1331-1343 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:1378 (July 2014).

Cecilia Mouton, M.D.  
Executive Director

1407#077

**RULE**

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

Medical Transportation Program  
Emergency Ambulance Services  
Reimbursement Rate Reduction  
(LAC 50:XXVII.325 and 353)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XXVII.325 and §353 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXVII. Medical Transportation Program**

**Chapter 3. Emergency Medical Transportation**

**Subchapter B. Ground Transportation**

**§325. Reimbursement**

A. - I. ...

J. Effective for dates of service on or after August 1, 2012, the reimbursement rates for emergency ambulance transportation services shall be reduced by five percent of the rates on file as of July 31, 2012.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services

Financing, LR 36:1248 (June 2010), LR 36:2564 (November 2010), LR 37:3029 (October 2011), LR 39:1285 (May 2013), LR 40:1379 (July 2014).

**Subchapter C. Aircraft Transportation**

**§353. Reimbursement**

A. - G. ...

H. Effective for dates of service on or after August 1, 2012, the reimbursement rates for fixed winged and rotor winged emergency air ambulance services shall be reduced by five percent of the rates on file as of July 31, 2012.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2594 (November 2010), LR 37:3029 (October 2011), LR 39:1285 (May 2013), LR 40:1379 (July 2014).

Kathy H. Kliebert  
Secretary

1407#073

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

**Application and Reporting Forms (LAC 42:III.120)**

The Louisiana Gaming Control, pursuant to R.S. 27:15 and R.S. 27:24, has amended LAC 42:III.120.

**Title 42**

**LOUISIANA GAMING**

**Part III. Gaming Control Board**

**Chapter 1. General Provisions**

**§120. Application and Reporting Forms**

A. - A.3.u. ...

v. Video Draw Poker Associated Business Entity Form, DPSSP 6504;

**LOUISIANA GAMING CONTROL BOARD  
DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONS  
OFFICE OF STATE POLICE  
GAMING ENFORCEMENT DIVISION  
(BOX A-28)  
7919 INDEPENDENCE BOULEVARD  
BATON ROUGE, LA 70806**



**VIDEO DRAW POKER ASSOCIATED BUSINESS ENTITY FORM**

(MUST BE TYPED)

This form must be completed for each business entity associated with a Licensee or an Applicant for a Video Draw Poker Gaming License. This form should not be completed by a Licensee, Applicant for a Video Draw Poker Gaming License or a business operated as a sole proprietorship.

Legal Name of Business Entity		
d/b/a (if applicable)		
Federal Tax ID No.	State Tax ID No.	Business Telephone No. ( ) -
Physical Address (Street or Hwy.) _____ _____ _____		Official Mailing Address for Receiving Official Correspondence <u>All Information Must be Kept</u>



City	State	Zip	Current (Street or P.O. Box)
			_____
			_____
			_____
			City State Zip
Contact Person for Business Entity & Title/Position Held	Contact's Email Address	Contact's Telephone No. ( ) -	

1. Business structure of the entity (i.e., Corporation, Partnership, Limited Liability Company, Joint Venture, Trust, etc.). If Corporation, indicate type (i.e. Publicly Held, Sub-Chapter S, etc.). **Attach** articles of incorporation, articles of organization, partnership agreement, joint venture agreement or trust agreement, as well as any bylaws or operating agreement and the most recent annual report.

2. Attach a list of all owners of the entity with ownership percentages totaling 100%.

3. Attach a list of all management personnel of the entity with his/her title/position.

**4. STATE AND FEDERAL TAX FILING AND PAYMENT CERTIFICATION**

1. By initialing I am hereby certifying that the entity is current in the filing and payment of all Louisiana taxes and returns owed to the Louisiana Department of Revenue (LDR) and complies with the tax requirements found in LAC 42:XI 2405 (B)(1)(a) and (b).	Initials
2. By initialing I am hereby certifying that the entity is current in the filing and payment of all Federal taxes and returns owed to the Internal Revenue Service (IRS) and complies with the requirements found in LAC 42:XI 2405 (B)(1)(a) and (b).	Initials

DPSSP 6504 (R 01/2014) 1 Entity Certification of Review \_\_\_\_\_  
Initials Date

**SIGNATURE OF INDIVIDUAL FURNISHING DISCLOSURE INFORMATION**

I, \_\_\_\_\_, being duly sworn, depose and say that I am duly authorized to act on behalf of and bind the entity and, that on behalf of the entity, I have read the foregoing form, and hereby represent and warrant that the statements and responses provided herein are true and correct to the best of my knowledge, information, and belief, and represent a complete and accurate account of the requested information. In addition, I have read, understand and agree, on behalf of the entity to comply with the statutes which govern video draw poker gaming that are contained within La. R.S. 27:1 et seq., as well as the corresponding regulations contained within L.A.C. 42:III.101 et seq., and L.A.C. 42 XI.2401 et seq. Furthermore, I have executed this statement voluntarily with the knowledge that any failure to provide the correct information is cause for the denial of any original or renewal application or the revocation of any license, permit or other certification or approval issued or granted by the State of Louisiana, and that the making of any false statement is a violation of La. R.S. 27:440(A) and is punishable by up to ten (10) years in prison or a fine of up to ten thousand dollars (\$10,000.00) or both.

Name of Business Entity (Print or Type) \_\_\_\_\_  
Name of Authorized Individual (Print or Type) Position \_\_\_\_\_

Signature of Authorized Individual \_\_\_\_\_

**SIGNATURE OF PREPARER:**

I, \_\_\_\_\_, being duly sworn, depose and say that I am the person who prepared the form on behalf of the entity, that the statements and responses provided herein of which I have knowledge are true and correct to the best of my knowledge, information, and belief, and represent a complete and accurate account of the requested information, and that any statements or responses of which I do not have knowledge represent a complete and accurate account of the information provided by the entity. In addition, I have read and understand the statutes which govern video draw poker gaming that are contained within La. R.S. 27:1 et seq., as well as the corresponding regulations contained within L.A.C. 42:III.101 et seq., and L.A.C. 42: XI.2401 et seq. Furthermore, I have executed this statement voluntarily with the knowledge that any failure to provide the

correct information is cause for the denial of any original or renewal application or the revocation of any license, permit or other certification or approval issued or granted by the state of Louisiana, and that the making of any false statement is a violation of La. R.S. 27:440(A) and is punishable by up to ten (10) years in prison or a fine of up to ten thousand dollars (\$10,000.00) or both.

Name of Preparer (Print or Type) \_\_\_\_\_  
Signature of Preparer \_\_\_\_\_

**NOTARY PUBLIC: Sworn to and subscribed before me, the undersigned Notary Public, in**

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(City) (County/Parish) (State)

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Name of Notary Public and Notary or Bar Roll Number (Print/Type) \_\_\_\_\_  
Signature of Notary Public \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

DPSSP 6504 (R 01/2014) 2 Entity Certification of Review \_\_\_\_\_  
Initials Date

A.4. - C. ...  
AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR. 26:340 (February 2000), amended LR 40:1379 (July 2014).

Ronnie Jones  
Chairman  
1407#014

**RULE**  
**Department of Public Safety and Corrections**  
**Gaming Control Board**

Certification (LAC 42:III.2117 and 2325)

The Louisiana Gaming Control Board, pursuant to R.S. 27:15 and R.S. 27:24, has amended LAC 42:III.2117 and LAC 42:III.2325.H.

**Title 42**  
**LOUISIANA GAMING**  
**Part III. Gaming Control Board**  
**Chapter 21. Licenses and Permits**  
**§2117. Certification Required, Riverboat Only**

A. Before any riverboat may be operated or may continue to operate under the authority of the Act, the applicant or, if the application has been approved, the licensee, shall provide to the division evidence that the riverboat has a valid certificate of inspection from the United States Coast Guard for carriage of passengers on navigable rivers, lakes, and bayous as provided by the Act and for the carriage of a minimum total of 600 passengers and crew or, if the riverboat is a non-certificated vessel as defined in R.S. 27:44, evidence that the riverboat has a valid certificate of compliance issued by the board based on the recommendation of an approved third-party inspector.

B. The sole inspection standard for non-certificated vessels is the guide for alternative inspection of riverboat gaming vessels as adopted and amended by the board.

C. A non-certificated vessel shall be inspected by the third-party inspector annually in accordance with R.S. 27:44.1. Non-compliant items identified by the third-party inspector will be remedied within the time period given. Failure to remedy any discrepancy timely shall be reported to the division by the third-party inspector and may result in sanctions including a civil penalty.

D. A non-certificated vessel shall be inspected quarterly by the licensee. The results of the inspection will be documented and made available to the division.

E. The licensee shall submit a copy of all required certificates of compliance to the Senate Committee on Judiciary Section "B" and the House Committee on the Administration of Criminal Justice of the Louisiana Legislature within 25 days of receiving the certificate from the board. The licensee shall provide proof to the board of compliance with this Subsection. Failure to timely submit a certificate of compliance shall result in a civil penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:1612 (July 2012), amended LR 40:1380 (July 2014).

**Chapter 23. Compliance, Inspections and Investigations**

Editor's Note: The information for this Chapter was consolidated from corresponding Chapters in Parts VII, IX, and XIII prior to their being repealed.

**§2325. Administrative Actions and Penalty Schedule**

- A. - G. ...
- H. Penalty Schedule

Section Reference	Description	Base Penalty	Proscriptive Period (Months)
<b>Louisiana Administrative Code, Title 42, Part III</b>			
<b>Chapter 21. Licenses and Permits</b>			
* * *			
2117. E	Certification Required, Riverboat Only	\$2,500	24
* * *			

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:1620 (July 2012), amended LR 40:1381 (July 2014).

Ronnie Jones  
Chairman

1407#015

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Electronic Submission of Documents (LAC 42:III.401)

The Louisiana Gaming Control Board, pursuant to R.S. 27:15 and R.S. 27:24, has amended LAC 42:III.401.C.

**Title 42**

**LOUISIANA GAMING**

**Part III. Gaming Control Board**

**Chapter 4. Electronic Submission of Documents**

**§401. General**

A. - B. ...

C. When submitted electronically, any document otherwise required to be subscribed or acknowledged before a notary public shall include an online certification in accordance with R.S. 9:2621 in lieu of the notarized sworn subscription or acknowledgement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:2934 (November 2012), amended LR 40:1381 (July 2014).

Ronnie Jones  
Chairman

1407#016

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Video Draw Poker (LAC 42:XI.Chapter 24)

Editor's Note: The following Rule is being repromulgated to correct a publishing error. The original Rule can be viewed in its entirety in the June 20, 2014 edition of the *Louisiana Register* on pages 1108-1111.

The Louisiana Gaming Control Board, pursuant to R.S. 27:15 and R.S. 27:24, has amended LAC 42:XI.2401, 2403, 2405, 2407, 2409, 2413, 2415, 2417 and 2424.

**Title 42**

**LOUISIANA GAMING**

**Part XI. Video Poker**

**Chapter 24. Video Draw Poker**

**§2401. Statement of Department Policy**

A. The rules contained herein are promulgated by the Video Gaming Division of the Office of State Police in order to facilitate implementation of the video draw poker devices control law, R.S 27:401 et seq., to achieve the effective regulation of the video gaming industry, and to maintain the health, welfare, and safety of the public. These considerations shall control the application and interpretation of the rules. Any subsequent restatement, repeal, or amendment of these rules shall be in accordance with the aforementioned considerations.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq., the Act.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 40:1108 (June 2014), repromulgated LR 40:1381 (July 2014).

### §2403. Definitions

A. The provisions of the Louisiana video draw poker devices control law relating to the definitions of words, terms, and phrases are hereby incorporated by reference and made a part hereof, and shall apply and govern the interpretation of these regulations, except as otherwise specifically declared or as is clearly apparent from the context of the regulations herein. The following words, terms, and phrases shall have the ascribed meaning indicated below.

*Act*—the provisions of Chapter 8 of Title 27, R.S. 27:401-457 and its amendments hereafter.

\* \* \*

*Permittee*—for purposes of these rules, shall have the same meaning as "video draw poker employee" as provided in R.S. 27:402.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:266 (February 2004), repromulgated LR 30:439 (March 2004), amended LR 32:108 (January 2006), LR 36:2045 (September 2010), LR 38:2935 (November 2012), LR 40:1108 (June 2014), repromulgated LR 40:1382 (July 2014).

### §2405. Application and License

A.1. - A.3. ...

4. All applicants shall be required to disclose any violation of an administrative regulation from any jurisdiction.

5. - 5.a.i. ...

(a). provides proof of application to the local governing authority of the parish where the truck stop is to be located for a certificate of compliance with applicable zoning ordinances and building codes, a statement of approval for the operation of video draw poker devices at a truck stop facility as required by R.S. 27:452(C), and has published the public notices required by R.S. 27:419; or

(b). has applied with the appropriate authority for a building permit, and has published the public notices required by R.S. 27:419.

ii. - ii.(a). ...

(b). proof of publication of the notice of intent to build a qualified truck stop facility as required by R.S. 27:419(A);

(c). proof of issuance of the press release required by R.S. 27:419(D); and

a.ii.(d). - c.iii. ...

d. For purposes of determining compliance with the distance requirements provided in R.S. 27:422, the date of application shall be the date the certificate of compliance was received from the applicable local governing authority or the date the application for a building permit was filed, whichever last occurred.

A.6. - D.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the

Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:955 (May 1998), LR 26:346 (February 2000), LR 26:2322 (October 2000), LR 27:61 (January 2001), LR 29:362 (March 2003), LR 30:267 (February 2004), repromulgated LR 30:439 (March 2004), amended LR 34:1037 (June 2008), LR 35:82 (January 2009), repromulgated LR 35:490 (March 2009), amended LR 36:2045 (September 2010), LR 38:2935 (November 2012), LR 40:1109 (June 2014), repromulgated LR 40:1382 (July 2014).

### §2407. Operation of Video Draw Poker Devices

A. Responsibilities of Licensees

1. - 8. ...

a. All promotions shall comply with the Act and these regulations as well as all federal and state laws and regulations and municipal ordinances including, but not limited to, R.S. 27:502 and the Louisiana charitable raffles, bingo and keno licensing law, R.S. 4:701 et seq. The establishment licensee, and/or the device owner conducting the promotion is/are responsible for ensuring that all promotions are in compliance with this Paragraph.

A.8.b. - D.16. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:441 (March 2004), amended LR 33:857 (May 2007), LR 36:2046 (September 2010), LR 36:2874 (December 2010), LR 38:2936 (November 2012), repromulgated LR 38:3234 (December 2012), amended LR 40:1109 (June 2014), repromulgated LR 40:1382 (July 2014).

### §2409. Revenues

A. License Fees

A.1. - B.5. ...

6. The annual device operation fees are as follows:

a. a restaurant, bar, tavern, cocktail lounge, club, motel, or hotel, as provided in R.S. 27:435(A)(5)(a);

b. a Louisiana State Racing Commission licensed pari-mutuel wagering facility, as provided in R.S. 27:435(A)(5)(b)(i);

c. a Louisiana State Racing Commission licensed off-track wagering facility, as provided in R.S. 27:435(A)(5)(b)(ii);

d. a qualified truck stop facility, as provided in R.S. 27:435(A)(5)(c).

C. - E.2.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:268 (February 2004), repromulgated LR 30:442 (March 2004), amended LR 38:2936 (November 2012), LR 40:1109 (June 2014), repromulgated LR 40:1382 (July 2014).

### §2413. Devices

A. Device Specifications

1. All devices shall include all of the specifications and features as provided in R.S. 27:405. In addition, all devices shall include the following specifications and features:

1.a. - 3....

4. A valid ticket voucher shall contain all information required by R.S. 27:406. In addition, a valid ticket voucher shall contain the program name and/or software number.

A.5. - L.1.c.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:197 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), amended LR 25:85 (January 1999), LR 30:269 (February 2004), repromulgated LR 30:446 (March 2004), amended LR 32:109 (January 2006), LR 32:1613 (September 2006), LR 40:1109 (June 2014), repromulgated LR 40:1382 (July 2014).

**§2415. Gaming Establishments**

**A. Establishment Licenses**

1. The division may issue a license to qualified applicants based on the type of business being conducted. The types of licenses and the requirements for these licenses are as follows:

a. *Type "I" License*—any bar, tavern, cocktail lounge, or club only, as defined in R.S. 27:402(14) shall be designated as a type "I" establishment;

b. *Type "II" License*—any restaurant, as defined in R.S. 27:402(14) shall be designated as a type "II" establishment;

c. *Type "III" License*—a hotel or motel as defined in R.S. 27:402(8) and R.S. 27:414 shall be designated as a type "III" establishment;

d. *Type "IV" License*—a Louisiana State Racing Commission licensed race track, pari-mutuel wagering facility, or off-track wagering facility as defined in R.S. 27:402(10) (licensed establishment) shall be designated a type "IV" establishment;

e. *Type "V" License*—a qualified truck stop facility as defined in R.S. 27:417 shall be designated a type "V" establishment.

B. - C.2. ...

3. No video draw poker devices which a qualified truck stop facility is licensed to operate on the premises shall be located or operated in the convenience store, trucker lounges, laundry rooms, shower rooms, and/or hallway areas of the truck stop facility. Video draw poker devices shall be located and operated in areas designated primarily for gaming, as defined in R.S. 27:401 et seq., and/or in lounges/bars and restaurants that meet the criteria of R.S. 27:401 et seq., and part II of chapter 1 or part II of chapter 2 of title 26 of the *Louisiana Revised Statutes* of 1950. In areas legally accessible to minors the device areas shall comply with the provisions of R.S. 27:430(F)(2) and LAC 42:XI.2415.D.2.

**D. Structural Requirements for Licensed Establishments**

1. ...

2. Any licensed establishments that allow mixed patronage shall have devices for play and operation only in designated areas. These gaming areas shall be physically separated by a partition as provided in R.S. 27:430(F). The partition shall be permanently affixed and solid except for an opening to allow for player access into the gaming area.

D.3. - E.1. ...

2. All applicants for a truck stop license shall comply with the distance requirements as provided in R.S. 27:422.

3. ...

AUTHORITY NOTE: Promulgated in accordance with L.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:197 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:1504 (August 1998), LR 26:1321 (June 2000), LR 36:2047 (September 2010), LR 39:329 (February 2013), LR 40:1109 (June 2014), repromulgated LR 40:1383 (July 2014).

**§2417. Code of Conduct of Licensees and Permittees**

A. - B.3. ...

4. any person required to be found suitable or approved in connection with the granting of any license or permit shall have a continuing duty to notify the division of his/her/its arrest, summons, citation or charge for any criminal offense or violation including DWI; however, minor traffic violations need not be included. All licensees and permittees shall have a continuing duty to notify the division of any fact, event, occurrence, matter or action that may affect the conduct of gaming or the business and financial arrangements incidental thereto or the ability to conduct the activities for which the licensee or permittee is licensed or permitted. Such notification shall be made within ten calendar days of the arrest, summons, citation, charge, fact, event, occurrence, matter or action;

B.5. - C.1.j. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq., and R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:197 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 27:59 (January 2001), LR 30:270 (February 2004), repromulgated LR 30:447 (March 2004), amended LR 38:2936 (November 2012), LR 40:1110 (June 2014), repromulgated LR 40:1383 (July 2014).

**§2424. Enforcement Actions of the Board**

A. Pursuant to R.S. 27:432 et seq., in lieu of other administrative action, the division may impose a civil penalty as provided for in the penalty schedule contained in Subsection B.

**B. Penalty Schedule**

Regulation Number	Violation Description	1st	2nd	3rd
<b>Application and License</b>				
***				
<b>Video Gaming Devices</b>				
***				
<b>Revenues</b>				
***				
<b>Regulatory, Communication, and Reporting Responsibilities</b>				
***				
<b>Devices</b>				
***				
<b>Gaming Establishments</b>				
***				
<b>Code of Conduct of Licensee</b>				
***				
<b>Investigations</b>				
***				

Regulation Number	Violation Description	1st	2nd	3rd
<b>Miscellaneous</b>				
27:402(14)	Expired ATC Permits Renewed during Investigation or Adjudication Establishments Primarily Engaged in the Retail Sale of Prepared Foods and Alcoholic Beverages Must Possess a Valid Class A-General Retail Permit or a Class A-Restaurant Permit			1000 Plus 500 For Each 30-Day (or Portion of A 30-Day) Period
27:435(F)(2)	A Non-Sufficient Fund Return	250	500	1000 or Admin Action
27:435(K)(4)(b)	Required Annual Fees Submitted after July First, but on or before July Thirty-First	Type 1 Or 2 License 250	Type 3-8 License 500	
27:435(K)(4)(c)	Required Annual Fees Submitted after July Thirty-First, but on or before August Thirty-First	Type 1 Or 2 License 500	Type 3-8 License 1000	
27:435(L)	A Complete Renewal Application Filed within 30 Calendar Days after the Expiration of the License	500		
27:443	Allowing Underage Patron to Play Video Gaming Device	1000	1000	Revocation

C. A violation shall be considered a second or subsequent violation in accordance with the provisions of R.S. 27:432.1(D)(1)(b).

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board. LR 36:2874 (December 2010), amended LR 38:2936 (November 2012), LR 40:1110 (June 2014), repromulgated LR 40:1383 (July 2014).

Ronnie Jones  
Chairman

1407#074

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Video Draw Poker—Application and Licensure  
(LAC 42:XI.2405)

The Louisiana Gaming Control Board, pursuant to R.S. 27:15 and R.S. 27:24, has amended LAC 42:XI.2405.B.1.b.

**Title 42  
LOUISIANA GAMING  
Part XI. Video Poker**

**Chapter 24. Video Draw Poker  
§2405. Application and License**

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

b. All applicants for a license and licensees shall be current in filing all applicable tax returns and in the payment of all taxes, interest and penalties owed to all appropriate local taxing authorities, and the state of Louisiana, excluding contested amounts pursuant to applicable statutes, and excluding items for which the Department of Revenue and Taxation or the appropriate local taxing authority has accepted a payment schedule of back taxes.

B.2. - D.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:955 (May 1998), LR 26:346 (February 2000), LR 26:2322 (October 2000), LR 27:61 (January 2001), LR 29:362 (March 2003), LR 30:267 (February 2004), repromulgated LR 30:439 (March 2004), amended LR 34:1037 (June 2008), LR 35:82 (January 2009), repromulgated LR 35:490 (March 2009), amended LR 36:2045 (September 2010), LR 38:2935 (November 2012), LR 40:1105, 1109 (June 2014), LR 40:1384 (July 2014).

Ronnie Jones  
Chairman

1407#017

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Video Draw Poker—Maintenance and Penalty Schedule  
(LAC 42:XI.2413 and 2424)

The Louisiana Gaming Control Board, pursuant to R.S. 27:15 and R.S. 27:24, has amended LAC 42:XI.2413.E and LAC 42:XI.2424.B.

**Title 42  
LOUISIANA GAMING  
Part XI. Video Poker**

**Chapter 24. Video Draw Poker**

**§2413. Devices**

A. - D.3. ...

E. Maintenance

1. Only certified technicians may access the interior of an enrolled and enabled video gaming device. Access includes routine maintenance, repairs or replacement of parts, paper, etc.

2. A certified technician level 1 and certified technician level 2 shall only be employed by an entity that is licensed by the division.

3. A certified technician level 2 must be certified by the manufacturer for the specific devices he works on.

4. Access of video draw poker devices by certified technicians, levels 1 and 2, must be authorized in writing by the device owner prior to accessing any device.

5. A device owner who authorizes a certified technician to access the device owner's video draw poker gaming device(s) is responsible for any actions by the certified technician that would constitute a violation of these regulations or the Act.

6. Access to any video draw poker gaming device by an unauthorized certified technician or by an individual who does not possess a current and valid certified technician permit, whether or not access by the uncertified individual was authorized by the device owner, is a violation of these regulations and the Act. The device owner shall be responsible for such violation. In addition, the device owner shall be responsible for any actions by an unauthorized certified technician or an uncertified individual who accesses the video draw poker gaming device(s) that would constitute a violation of these regulations or the Act.

7. All device owners shall maintain a current, written maintenance log for each video draw poker gaming device operating within a licensed establishment, on a form approved by the division, for the purpose of keeping records of routine maintenance and repairs. All log entries shall contain the following information:

- a. time and date of access of the video draw poker gaming device;
- b. reason for access of the video draw poker gaming device;
- c. mechanical (hard) and electronic (soft) meter readings of the video draw poker gaming device;
- d. the signed and printed name and state issued permit number of the certified individual accessing the video draw poker gaming device;
- e. area of the video draw poker gaming device accessed; and
- f. time and date the video draw poker gaming device was secured.

8. A division-approved RAM clear chip and procedure shall be used when a video draw poker gaming device's memory is to be cleared.

9. Whenever a video draw poker gaming device's software program is to be changed or upgraded, prior approval shall be obtained from the division, and the video draw poker gaming device's memory shall be cleared using a division-approved RAM clear chip.

10. Only licensed manufacturers, licensed distributors, and division personnel are allowed to possess RAM clear chips for video draw poker gaming devices.

11. Use of any other method to clear a video draw poker gaming device memory is prohibited unless specifically authorized by the division.

12. The division shall be notified before a video draw poker gaming device is disconnected from the division's central computer.

13. A video draw poker gaming device may not be substituted or replaced until the replacement video draw poker gaming device has been approved by the division and the proper validation decal has been affixed.

F. - L.1.c.ii. ....

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq., and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:197 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), amended LR 25:85 (January 1999), LR 30:269 (February 2004), repromulgated LR 30:446 (March 2004), amended LR 32:109 (January 2006), LR 32:1613 (September 2006), LR 40:1109 (June 2014), LR 40:1384 (July 2014).

**§2424. Enforcement Actions of the Board**

- A. ...
- B. Penalty Schedule

Regulation Number	Violation Description	1st	2nd	3rd
* * *				
<b>Devices</b>				
* * *				
2413 E 1	Only Certified Technicians May Access The Interior Of An Enrolled And Enabled Device	1000	2000	Admin Action
2413 E 7	All Device Owners Shall Maintain A Current, Written Maintenance Log For Each Device Operating Within A Licensed Establishment On A Division Approved Form	100	200	300
2413 E 8	A Division Approved Ram Clear Chip And Procedure Shall Be Used When A Device's Memory Is To Be Cleared	500	1000	Admin Action
2413 E 9	Prior Approval Must Be Obtained Before A Software Program Is Changed In Any Device	500	1000	Admin Action
2413 E 12	The Division Shall Be Notified Before A Device Is Disconnected From Central Computer	500	1000	Admin Action
* * *				

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 36:2874 (December 2010), amended LR 38:2936 (November 2012), LR 40:1106, 1107, 1108, 1110 (June 2014), LR 40:1385 (July 2014).

Ronnie Jones  
Chairman

1407#018

**RULE**

**Department of Public Safety and Corrections  
Gaming Control Board**

Video Draw Poker—Penalty Schedule (LAC 42:XI.2424)

The Louisiana Gaming Control Board, pursuant to R.S. 27:15 and R.S. 27:24, has amended LAC 42:XI.2424.B.

**Title 42**

**LOUISIANA GAMING**

**Part XI. Video Poker**

**Chapter 24. Video Draw Poker**

**§2424. Enforcement Actions of the Board**

- A. ...
- B. Penalty Schedule

Regulation Number	Violation Description	1st	2nd	3rd
<b>Application and License</b>				
* * *				
<b>Video Gaming Devices</b>				

Regulation Number	Violation Description	1st	2nd	3rd
***				
<b>Revenues</b>				
***				
<b>Regulatory, Communication, and Reporting Responsibilities</b>				
***				
<b>Devices</b>				
***				
<b>Gaming Establishments</b>				
***				
<b>Code of Conduct of Licensee</b>				
***				
2417 B 4	Failure to disclose within 10 calendar days, the following:			
	Misdemeanor Arrest	250	250	500
	Felony Arrest	500	1000	Admin Action 500
	Marriage/Divorce/ Property Settlement	250	250	
	Entity Name Change or Conversion	500	Admin Action	Admin Action
	Management Change (appointment or resignation)	500	Admin Action	Admin Action
***				
<b>Investigations</b>				
***				
<b>Miscellaneous</b>				
***				

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board. LR 36:2874 (December 2010), amended LR 38:2936 (November 2012), LR 40:1106, 1107, 1108, 1110 (June 2014), LR 40:1385 (July 2014).

Ronnie Jones  
Chairman

1407#020

### RULE

#### Department of Public Safety and Corrections Gaming Control Board

##### Video Draw Poker—Placement of Devices (LAC 42:XI.2415 and 2424)

The Louisiana Gaming Control, pursuant to R.S. 27:15 and R.S. 27:24, has amended LAC 42:XI.2415.C and LAC 42:XI.2424.B.

#### Title 42 LOUISIANA GAMING Part XI. Video Poker

#### Chapter 24. Video Draw Poker

#### §2415. Gaming Establishments

A. - B.2. ...

C. Placement of Devices in Licensed Establishments

1. Video draw poker devices shall be physically located within the licensed establishment. Video draw poker

devices operated on the premises of a licensed restaurant shall be grouped together in a designated area within the licensed establishment and shall comply with the provisions of R.S. 27:430(F) and LAC 42:XI.2415.D.2.

2. ...

3. Video poker devices operated on the premises of a licensed truck stop facility shall be located in an area designated for gaming and separated for adult patronage only as provided in R.S. 27:417(A)(7). No video draw poker devices operated at a licensed truck stop facility may be located in any fuel facility, convenience store, restaurant, hotel or motel located on the truck stop facility, or in any trucker's lounge, laundry room, shower room, or hallway area of any building located on the truck stop facility.

D. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with L.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:197 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:1504 (August 1998), LR 26:1321 (June 2000), LR 36:2047 (September 2010), LR 39:329 (February 2013), LR 40:1106, 1110 (June 2014), LR 40:1386 (July 2014).

#### §2424. Enforcement Actions of the Board

A. Pursuant to R.S. 27:308 et seq., in lieu of other administrative action, the division may impose a civil penalty as provided for in the penalty schedule contained in Subsection B.

B. Penalty Schedule

Regulation Number	Violation Description	1st	2nd	3rd
***				
<b>Gaming Establishments</b>				
***				
2415 C 1	Device Improperly Located	250 per device	Admin Action	Admin Action
2415 C 2	No Device Shall Be Placed Closer Than 6 Inches To Any Other Device (May Be Placed Back To Back)	100	200	300
2415 C 3	Device Improperly Located	250 per device	Admin Action	Admin Action
***				

C. A violation shall be considered a second or subsequent violation in accordance with the provisions of R.S. 27:308.1(D)(1)(b).

D. All civil penalties shall be paid by personal, company, certified or cashier's check, money order, electronic funds transfer or other form of electronic payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 36:2874 (December 2010), amended LR 38:2936 (November 2012), LR 40:1106, 1107, 1108, 1110 (June 2014), LR 40:1386 (July 2014).

Ronnie Jones  
Chairman

1407#019

## RULE

### Department of State Commercial Division Office of Uniform Commercial Code

Uniform Commercial Code  
(LAC 10:XIX.Chapters 1-3)

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and under the authority of Louisiana's Uniform Commercial Code (R.S. 10:9-101 et seq.), R.S. 10:9-526, Public Law 99-198 (Food Security Act of 1985), and R.S. 36:742, the Secretary of State has amended various sections of the Rule for the Uniform Commercial Code (LAC 10:XIX.Chapters 1-3) to comply with legislation enacted.

#### Title 10

### FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

#### Part XIX. Uniform Commercial Code

#### Chapter 1. Secured Transactions

#### §103. Place of Filing—When Filing Is Required in Louisiana

A. The proper place to file in order to perfect a security interest is with the clerk of court of any parish.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-501, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013), amended LR 40:1387 (July 2014).

#### §105. Formal Requisites of Financing Statement

A. To be effective, a financing statement must:

1. give the debtor's name and mailing address:

a. a financing statement sufficiently shows the name of the debtor if it gives the individual (if the debtor is an individual to whom Louisiana has issued a driver's license that is not expired, the name of the debtor must be shown as indicated on his driver's license), partnership, or corporate name of the debtor (if the debtor is a registered organization such as a corporation or a limited liability company, the name of the debtor must be the registered organization's name on the public organic record with Louisiana's secretary of state or other jurisdiction of organization) (as applicable); and

b. the trade names of the debtor (providing only the debtor's trade name does not sufficiently provide the name of the debtor), and the names of the partners, members, associates, or other persons comprising the debtor may also be set forth in the financing statement at the option of the secured party;

A.2. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-502, R.S. 10:9-526, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2789 (October 2013), amended LR 40:1387 (July 2014).

#### §127. Schedule of Fees for Filing and Information Requests

A. ...

B. An additional fee of \$2 per filing will be charged on bulk UCC filings submitted electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-519 et seq., R.S. 10:9-525, R.S. 10:9-526, R.S. 36:742, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013), amended LR 40:1387 (July 2014)

#### Chapter 2. Internal Revenue Service Tax Liens §201. Place of Filing

A. The proper place to file notices of federal tax liens affecting movable property (corporeal and incorporeal) is with the clerk of court of any parish (the "filing officer").

AUTHORITY NOTE: Promulgated in accordance with R.S. 10:9-501 et seq., R.S. 10:9-526, R.S. 36:742, and R.S. 52:52.

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2793 (October 2013), amended LR 40:1387 (July 2014).

#### Chapter 3. Central Registry §301. Definitions

*Buyer in the Ordinary Course of Business*—a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations and is in the business of selling farm products.

*Central Registry*—the master index maintained by the secretary of state reflecting information contained in all effective financing statements, and statements evidencing assignments, amendments, continuations, and terminations thereof.

*Commission Merchant*—any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

*Creditor*—any person who holds a security interest in a farm product.

*Crop Year*—

1. for a crop grown in soil, the calendar year in which it is harvested or to be harvested;
2. for animals, the calendar year in which they are born or acquired; or
3. for poultry or eggs, the calendar year in which they are sold or to be sold.

*Cumulative Addendum*—a document listing all information transmitted by the filing officers to the central registry as of the date of issuance that was not included on the most recent master list.

*Debtor*—any person who owns or has an ownership interest in farm products which are subject to a security interest of creditors.

*Effective Financing Statement*—a written instrument which is an abstract of a security device and which complies with the provisions of R.S. 3:3654(E). An effective financing statement may also contain additional information sufficient to constitute a financing statement or other statement under chapter 9 of title 10 of the *Louisiana Revised Statutes*.

*EFS*—an effective financing statement.

*Encumbrance Certificate*—a written document which lists all effective financing statements affecting a person which have been filed with the filing officer and containing the information required by this Chapter to be transmitted to the secretary of state for inclusion in the central registry on the date and at the time the certificate is issued and which complies with the provisions of R.S. 3:3654(F).

*Farm Product*—any type of crop whether growing or to be grown, and whether harvested or unharvested, or any species of livestock, or any type of agricultural commodity or



product raised or cultivated of every type and description, including but not limited to cattle, hogs, sheep, horses, bees, rabbits, or poultry, and oysters, crabs, prawns, shrimp, alligators, turtles, and fish raised, produced, cultivated, harvested, or gathered on any beds of bodies of water, whether owned, leased, or licensed by the debtor, grains, beans, vegetables, grasses, legumes, melons, tobacco, cotton, flowers, shrubberies, plants and fruits, nuts and berries, and other similar products whether of trees or other sources, or if they are a product of such crop or livestock in its unmanufactured state, such as seed, ginned cotton, wool-clip, honey, syrup, meat, milk, eggs, and cut, harvested, or standing timber, or supplies used or produced in farming operations, and if they are in the possession, including civil possession as defined in Civil Code articles 3421 and 3431, of a debtor engaged in planting, producing, raising, cultivating, harvesting, gathering, fattening, grazing, or other farming operations.

*Filing*—the receipt of an EFS, amendment, assignment, continuation, release, or termination of an EFS by the filing officer stamped with the date and time received and assigned a file number.

*Filing Officer*—the clerk of court of any parish.

*Knows or Knowledge*—actual knowledge.

*Master List*—a document listing all effective financing statements, amendments, assignments, and continuations of effective financing statements which:

1. is organized according to farm products; and
2. is arranged within each such product:
  - a. in alphabetical order according to the last name of the individual debtors, or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors;
  - b. in numerical order according to the Social Security number of the individual debtors, or, in the case of debtors doing business other than as individuals, the Social Security number or employer identification number of such debtors;

- c. geographically by parish; and
  - d. by crop year.

*Office*—the Office of the Secretary of State of the state of Louisiana.

*Person*—any individual, partnership, corporation, trust or any other business entity.

*Portion*—portion of the master list distributed to registrants regularly that cover the farm products in which such registrant has indicated an interest.

*Registrant*—any person, who has made application with the Office of the Secretary of State, has paid the required registration fee, and received written notice that his application has been accepted.

*Regular Business Day*—any day that the Office of the Secretary of State and filing officers are open for routine business.

*Secretary*—the Secretary of State of the state of Louisiana, or his duly authorized agent.

*Secured Party*—a creditor with a security interest in farm products.

*Security Device*—a written instrument that establishes a creditor's security interest in farm products or any pledge or privilege described in R.S. 9:4521, whether or not evidenced by a written instrument.

*Security Interest*—an interest in or encumbrance upon farm products that secures payment or performance of an obligation.

*Selling Agent*—a person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farm operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3652, R.S. 3:3654, R.S. 3:3655, R.S. 10:9-526, R.S. 36:742, Civil Code Articles 3421 and 3431, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2794 (October 2013), amended LR 40:1387 (July 2014).

### §307. Filing Procedures

A. The proper place to file in order to perfect a security interest in farm products is with the clerk of court of any parish (the “filing officer”).

B. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3651 et seq., R.S. 10:9-526, R.S. 36:742, and Public Law 99-198 (Food Security Act of 1985).

HISTORICAL NOTE: Promulgated by the Department of State, Commercial Division, Office of Uniform Commercial Code, LR 39:2795 (October 2013), amended LR 40:1388 (July 2014).

Tom Schedler  
Secretary of State

1407#033

## RULE

### Department of Transportation and Development Professional Engineering and Land Surveying Board

Board Committees and Examination/Experience  
Requirements for Professional Engineer Licensure  
(LAC 46:LXI. 707, 1305, and 1509)

Under the authority of the Louisiana professional engineering and land surveying licensure law, R.S. 37:681 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Professional Engineering and Land Surveying Board has amended its rules contained in LAC 46:LXI.707, 1305, and 1509.

This is a technical revision of existing rules under which LAPELS operates. The revisions include an update to the structure and duties of various board standing committees and the decoupling of the examination and experience requirements for professional engineer licensure for certain applicants.

## Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXI. Professional Engineers and Land Surveyors Chapter 7. Bylaws

##### §707. Board Organization

A. - D.4. ...

E. Committees. The board may establish standing committees, including but not limited to the following: executive committee, engineering committees, land surveying committee, engineer intern committee, liaison and law review committee, education/accreditation committee,

finance committee, nominations and awards committee, complaint review committees, continuing professional development committee, firm licensure committee, and enforcement committee. The board may also establish ad hoc committees from time to time as necessary.

1. Power to Appoint. Unless otherwise provided below, the chairman of the board shall have the power to make all committee appointments. All committee appointments shall be effective from date of appointment until March 31 of the following year.

2. Executive Committee. The chairman, vice chairman, secretary, and treasurer shall constitute the executive committee. The chairman of the board shall serve as chairman of the executive committee. The executive committee shall oversee the operations of the office of the board and shall advise the executive director as to the conduct of the business of the board between meetings. The executive committee shall also make recommendations to the board with respect to personnel, policies and procedures.

3. Engineering Committees. The chairman of the board shall appoint one or more engineering committees, with not less than two board members on each committee. At least two of the board members on each engineering committee shall be professional engineers. Each of these committees shall:

- a. review applications for licensure in each respective discipline of engineering; and
- b. recommend approval or disapproval of applications.

4. Land Surveying Committee. The chairman of the board shall appoint a land surveying committee composed of not less than two board members. At least two of the board members on the land surveying committee shall be professional land surveyors. The land surveying committee shall:

- a. - b. ...
- c. recommend approval or disapproval of applications;
- d. conduct oral examinations or interviews of applicants, as necessary;
- e. supervise the selection of examinations on the Louisiana laws of land surveying; and
- f. recommend passing scores for the examinations on the Louisiana laws of land surveying.

5. Engineer Intern Committee. The chairman of the board shall appoint an engineer intern committee composed of not less than two board members. At least two of the board members on the engineer intern committee shall be professional engineers. The engineer intern committee shall review, as necessary, applications for certification as an engineer intern and shall recommend approval or disapproval of applications.

6. Liaison and Law Review Committee. The chairman of the board shall appoint a liaison and law review committee composed of not less than two board members. The liaison and law review committee shall work with similar committees of professional and technical organizations on matters of mutual concern. The liaison and law review committee shall also make recommendations to the board in matters concerned with the licensure law and the rules of the board.

7. Education/Accreditation Committee. The chairman of the board shall appoint an education/accreditation committee composed of not less than two board members. The education/accreditation committee shall evaluate and make recommendations to the board concerning the quality of the engineering and land surveying curricula, along with evaluation of the faculties and facilities of schools within Louisiana. The education/accreditation committee shall also have the power to make inspections in the course of its evaluations.

8. Finance Committee. The chairman of the board shall appoint a finance committee composed of not less than two board members. The treasurer will serve as the chairman of the finance committee. The finance committee shall make studies, reports and recommendations to the board on fiscal matters. The finance committee shall also prepare a budget for presentation to the board no later than the November meeting.

9. Nominations and Awards Committee. The chairman of the board shall appoint a nominations and awards committee composed of not less than two board members. The nominations and awards committee shall present to the board a list of nominations for election of board officers and for any applicable awards.

10. Complaint Review Committees. Complaint review committees shall be composed of not less than three board members appointed by the enforcement staff on a case-by-case basis. Complaint review committees shall review the results of investigations against licensees, certificate holders and unlicensed persons; decide whether or not to prefer charges; and/or recommend appropriate action to the board. Any decision, including the preferal of charges, shall be made by a minimum two-thirds vote of the board members serving on a committee.

11. Continuing Professional Development Committee. The chairman of the board shall appoint a continuing professional development committee composed of not less than two board members. The continuing professional development committee shall review and make recommendations to the board regarding continuing professional development rules, policies and providers/sponsors.

12. Firm Licensure Committee. The chairman of the board shall appoint a firm licensure committee composed of not less than two board members. The firm licensure committee shall review and make recommendations to the board regarding applications for firm licensure and other issues relating to firm licensure.

13. Enforcement Committee. The chairman of the board shall appoint an enforcement committee composed of not less than two board members. At least one of the board members on the enforcement committee shall be a professional engineer and at least one of the board members shall be a professional land surveyor. The enforcement committee shall make recommendations to the board regarding the board's investigative, disciplinary and enforcement policies, procedures and practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February

1976), amended LR 5:110 (May 1979), LR 11:1179 (December 1985), LR 19:54 (January 1993), LR 21:1353 (December 1995), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1024 (July 2001), LR 30:1707 (August 2004), LR 33:2788 (December 2007), LR 35:1908 (September 2009), LR 37:2411 (August 2011), LR 38:2563 (October 2012), LR 40:1388 (July 2014).

### **Chapter 13. Examinations**

#### **§1305. Approval to Take the Examination in the Principles and Practice of Engineering**

A. An applicant who meets all of the other requirements for licensure as a professional engineer may be permitted to take the examination in the principles and practice of engineering in the discipline in which he/she seeks licensure.

B. An applicant who has already been duly certified as an engineer intern by the board, but has not yet met the experience requirement for licensure as a professional engineer, may be permitted to take the examination in the principles and practice of engineering in the discipline in which he/she seeks licensure.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:688.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:113 (May 1979), amended LR 7:647 (December 1981), LR 11:363 (April 1985), LR 11:950 (October 1985), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1030 (July 2001), LR 30:1715 (August 2004), LR 40:1390 (July 2014).

### **Chapter 15. Experience**

#### **§1509. Experience at Time of Application**

A. ...

B. For applicants for professional engineer licensure under §903.A.1 of these rules who have not already been duly certified as engineer interns by the board, the “verifiable record of four years or more of progressive experience obtained subsequent to meeting the educational and applicable experience qualifications to be an engineer intern” must be gained by the time of application. However, for any such applicant who has already been duly certified as an engineer intern by the board, such experience may be gained up to the time of licensure, rather than by the time of application.

C. For applicants for professional land surveyor licensure under §909.A.1 of these rules, the “verifiable record of four years or more of combined office and field experience in land surveying including two years or more of progressive experience on land surveying projects under the supervision of a professional land surveyor” must be gained by the time of application.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:688.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1031 (July 2001), amended LR 30:1716 (August 2004), LR 37:2413 (August 2011), LR 38:2565 (October 2012), LR 40:1390 (July 2014).

Donna D. Sentell  
Executive Director

1407#041

## **RULE**

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

#### **Wild Seafood Certification Program (LAC 76:I.701, 704, 705, and 709)**

**Editor’s Note:** This Rule is being repromulgated because of an error upon submission. Substantive changes were published in a Potpourri in the January 2014 edition of the *Louisiana Register* (pages 193-194). The original Rule can be viewed in the April 2014 edition of the *Louisiana Register* (pages 804-806).

The secretary of wildlife and fisheries hereby establishes rules and regulations which require product registration and supply chain verification for certain participants in the Louisiana Wild Seafood Certification Program (R.S. 56:578.15). The changes to the Louisiana Wild Seafood Certification Program will enable the department to better verify and monitor seafood products and businesses using the programs logo. The seafood certification program strives to increase consumer confidence and increase demand for Louisiana seafood. The primary mission with this origin-based certification program is to build a unified brand that will attract not only consumers, but also food service and seafood distribution buyers who want to be sure they are sourcing the best tasting seafood in the world: Louisiana seafood.

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 final Rule.

#### **Title 76**

### **WILDLIFE AND FISHERIES**

#### **Part I. Wildlife and Fisheries Commission and Agencies Thereunder**

#### **Chapter 7. Louisiana Wild Seafood Certification Program**

#### **§701. Declaration of Policy, Purposes, and Intent**

A. ...

B. For the purpose of this Chapter, the following will be defined as:

*Commingled*—to cause to blend together, mix or combine; particularly as it applies to mixing non-certified seafood with LWSCP products;

*Landed*—taken and brought ashore;

*LDAF*—Louisiana Department of Agriculture and Forestry;

*LDHH*—Louisiana Department of Health and Hospitals;

*LDWF*—Louisiana Department of Wildlife and Fisheries;

*LWSCP*—Louisiana Wild Seafood Certification Program;

*Origin Test*—method of verifying product was taken from the Gulf of Mexico or Louisiana waters;

*Packaged*—product that is contained in a closed and sealed package or container for sale which contains product labeling and designated weight, count, or volume;

*Processed*—any method of preparing fish or fish products for market including drying to a point of

dehydration, canning, salting, freezing, breeding, or cooking for immediate consumption, but not simple packing of fresh fish in a sack, bag, package, crate, box, lug or vat for transport or holding.

### C. Policy

1. Participation in the LWSCP is voluntary and limited to those individuals or entities meeting the following criteria:

a. must possess one of the following resident or non-resident Louisiana licenses:

- i. commercial fisherman's license;
- ii. senior commercial license;
- iii. fresh products dealer license;
- iv. seafood wholesale/retail dealer;
- v. seafood retail dealer;

b. wholesale/retail dealers must have their facility located within Louisiana. Retailers are not required to have their facility located within Louisiana;

c. eligible participants not requiring an LDWF license include in-state restaurants or grocers who only sell seafood that is fully prepared by cooking for immediate consumption by the consumer, and all out-of-state retailers;

i. LDWF may issue an LWSCP wholesale/retail dealer permit to docks and landings that do not possess the required LDHH permit. The LWSCP permit shall be issued on the condition that the LDHH permit is obtained by January 1 2015.

d. must possess and be in compliance with all other state and federal permits, licenses, and laws regarding the buying, acquiring, or handling, from any person, by any means whatsoever, any species of fish or seafood products, whether fresh, frozen, processed, or unprocessed, for sale or resale, whether on a commission basis or otherwise. Including but not limited to any LDWF, LDHH or LDAF permits regulations;

e. if required, retailers and restaurants which meet the supply chain verification requirements as specified in §704 of this Chapter.

2. Product considered eligible to possess the LWSCP logo must meet the following criteria:

a. eligible wild seafood includes crab, oysters, freshwater finfish, saltwater finfish, crawfish, and shrimp. Seafood must be wild-caught, taken from Louisiana waters or from the Gulf of Mexico and any other adjacent state waters, and landed in Louisiana. Farmed and/or aquaculture products are excluded from program participation;

b. seafood must be taken by a Louisiana licensed commercial fishermen. Seafood must be landed in Louisiana and either be sold under a LWSCP-participating fresh products dealer license, or be purchased and/or physically acquired by a wholesale/retail seafood dealer participating in the LWSCP. Transfer of product throughout the supply chain must be between LWSCP participants until the product has been placed in a sealed and LWSCP-labeled retail packaging;

c. seafood commingled with any other seafood that does not meet the above requirements, domestic or foreign, shall be prohibited from possessing the LWSCP label;

d. seafood products that are properly registered as required by §704 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15 and R.S. 56:23.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of the Secretary, LR 38:1999 (August 2012), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 39:1062 (April 2013), LR 40:804 (April 2014), repromulgated LR 40:1390 (July 2014).

### §704. Product Registration and Supply Chain Verification

A. Seafood or seafood products that are packaged for retail sale shall be registered with LDWF. No packaged retail seafood product shall possess the LWSCP logo unless it has been registered. Seafood products which are produced, packaged, and sold exclusively at the location of retail sale shall be exempt from the registration requirement.

1. Applications for product registration shall only be submitted by the person who owns the brand.

2. Product registrations are valid for 1 year and expire 12 months from the date of registration.

3. Applications for product registration shall be accepted at any time of the year.

4. Persons applying to register a product shall submit to LDWF the following information:

- a. the brand name of the product to be registered;
- b. the person who owns the brand name listed;
- c. the person who packages the product;
- d. species or species group indicated on product packaging;

e. invoices from the previous three months showing LWSCP-certified seafood purchases specific to the product being registered from a vendor who possesses an LWSCP permit. Exceptions to invoice submission requirements may be considered on a case-by-case basis for the following reasons:

- i. bulk purchases;
- ii. purchases from a vendor who has applied for, but does not yet possess an LWSCP permit, upon application approval and issuance of an LWSCP permit to the vendor;
- f. photo or image of package containing product brand and name.

5. When a person registering a product does not directly purchase the seafood to be used in the product, the packager of the product may submit invoices to satisfy the invoice submission requirements of this Subsection.

B. Retailers and restaurants selling and/or serving unpackaged seafood, prepared or not prepared, who wish to identify such seafood with the LWSCP logo shall provide, at the time of initial application, invoices from the previous three months showing LWSCP-certified seafood purchases from a vendor who possesses an LWSCP permit at the time of their application.

1. At each annual permit renewal thereafter, invoices meeting these provisions from 6 months out of the last 12 months shall be submitted.

2. Exceptions to invoice submission requirements may be considered on a case-by-case basis for the following reasons:

- a. bulk purchases;
- b. purchases from a vendor who has applied for, but does not yet possess an LWSCP permit, upon application approval and issuance of an LWSCP permit to the vendor;
- c. persons possessing an LWSCP less than 12 months at the time of renewal.

C. Invoices required under the provisions of this Section shall not be required to disclose pricing information. Pricing information may be redacted, so long as the remainder of the invoice remains unaltered and intact. Invoices provided under the provisions of this Section are for verification purposes only and the only record to be maintained shall be a digital image of the submitted invoice. With the exception of invoice date, LDWF shall not enter information contained on submitted invoices into any database or other electronic format whatsoever. Invoices submitted under the provisions of this Section shall be considered fisheries-dependent data under LAC 76:I.321.F and held confidential and shall not be subject to public records requests.

D. Persons participating in an LDWF-approved electronic traceability program and who allow LDWF access for verification purposes shall be exempt from all invoice submission provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15 and R.S. 56:23.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:805 (April 2014), repromulgated LR 40:1391 (July 2014).

**§705. Logo Use Guidelines and Standards**

A. - F. ...

G. When the LWSCP logo is utilized for general marketing purposes as described in Paragraphs 3, 5, 7, and 8 of Subsection E, and when it is not associated with a specifically named product, one of following statements must appear immediately below the LWSCP logo:

1. "Ask us about our certified products;" or
2. "Ask us about our certified menu items."

a. Similar alternative statements may be approved by LDWF on a case-by-case basis upon request.

H. The secretary may authorize use of the logo in materials promoting the LWSCP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15 and R.S. 56:23.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of the Secretary, LR 38:2000 (August 2012), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:805 (April 2014), repromulgated LR 40:1392 (July 2014).

**§709. Monitoring and Enforcement**

A. - D. ...

E. LWSCP Violations

1. Any violation of the above LWSCP program rules shall constitute a class 1 violation under the authority of R.S. 56:23. The provisions of this Section do not exempt any person from other laws, rules, regulation, and license requirements for this or other jurisdictions.

2. If any required licenses or permits (LDWF, LDAF, LDHH) are revoked or temporarily suspended, the participant shall be automatically removed from the LWSCP and shall not be able to use the LWSCP logo. When the license(s) or permit(s) are reinstated, participant can be reinstated into the LWSCP via the renewal application process.

3.a. The following program violations involving LWSCP-labeled seafood products shall result in its seizure:

- i. commingling non-certified seafood with certified seafood;
- ii. intentional misrepresentation of program seafood;
- iii. any trademark infringement practices with LWSCP trademark and trade name;
- iv. fraudulent trip tickets and/or record keeping; and
- v. short weight violations.

b. Any seizures or forfeitures of LWSCP-labeled seafood product or materials shall be disposed of in accordance with LAC 76:I.305.B.

4. The department shall not issue a permit or register a product to any person convicted of the following offenses for the specified length of time from date of conviction.

Offense	Ineligible Period
Commingling non-certified seafood into certified program packaging	36 months
Misrepresentation of program seafood	36 months
Any trademark infringement practices with LWSCP trademark and trade name	36 months
Falsification or lack of trip tickets or other sales records, invoices, or bills of lading required by the program	36 months
Submission of fraudulent LWSCP application	36 months
Short weights	First offense 12 months; second offense 36 months
Scale tampering	First offense 12 months; second offense 36 months
Not adhering to labeling guidelines	First offense 12 months; second offense 36 months

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15, R.S. 56:23, and 56:301.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of the Secretary, LR 38:2001 (August 2012), repromulgated LR 38:2566 (October 2012), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:805 (April 2014), repromulgated LR 40:1392 (July 2014).

Robert J. Barham  
Secretary

1407#043

# Notices of Intent

## NOTICE OF INTENT

### Department of Economic Development Office of the Secretary

Ports of Louisiana Tax Credits: Import-Export  
Tax Credit Program (LAC 13:I.Chapter 39)

The Department of Economic Development, Office of the Secretary, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 36:104, hereby gives notice of its intent to adopt the following rules of the Ports of Louisiana Tax Credits: Import-Export Credit Program as LAC 13:I.Chapter 39, Subchapter B.

#### Title 13

#### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

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

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

#### §3921. Purpose and Definitions

##### A. Purpose

1. The primary purpose of this Subchapter is to encourage the use of state port facilities in Louisiana. The utilization of public port facilities for the import and export of cargo to or from distribution, manufacturing, fabrication, assembly, processing, or warehousing sites in Louisiana is essential to Louisiana's economic health and the ability of business and industry associated with the maritime industry to compete cost effectively on a regional, national and global scale.

##### B. Definitions

*Applicant*—the international business entity submitting application for certification of tax credits.

*Application*—information provided by the applicant that is required to participate in the import-export tax credit program that has been verified by an independent certified public accountant or other third party approved by Louisiana Economic Development, which shall be filed annually for the prior calendar year's qualified cargo.

*Application Date*—the date an application for preliminary certification of a project is received by LED.

*Baseline Tonnage*—any breakbulk or containerized machinery, equipment, materials, products, or commodities owned by an international business entity receiving the credit, which are imported or exported to or from a Louisiana facility and which are so moved by way of an oceangoing vessel berthed at a Louisiana public port facility during the 2013 calendar year.

*Breakbulk Cargo*—machinery, equipment, materials, products, or commodities, including but not limited to palletized or unpalletized bagged, packaged, wrapped, drummed, baled, or crated goods and commodities, or offshore drilling platforms and equipment, and shall not include bulk cargo.

*Bulk Cargo*—loose, unpackaged, non-containerized cargo or any liquid or dry commodities that are handled in bulk.

*Certified Tonnage*—the number of tons of qualified cargo in a calendar year minus the number of tons of baseline tonnage.

*COA*—the commissioner of administration of the state of Louisiana.

*Containerized Cargo*—any machinery, equipment, materials, products, or commodities shipped in containers which are rigid, sealed, reusable metal boxes in which merchandise is shipped by vessel, truck, or rail.

*DOTD*—the Louisiana Department of Transportation and Development.

*Export Cargo*—any breakbulk or containerized cargo brought from the state of Louisiana to a foreign country, excluding bulk cargo.

*Import Cargo*—any breakbulk or containerized cargo brought to the state of Louisiana from a foreign country, excluding bulk cargo.

*International Business Entity*—a taxpayer corporation, partnership, limited liability company, or other commercial entity, all or a portion of whose activities involve the import or export of breakbulk or containerized cargo to or from a Louisiana facility.

*JLCB*—the Joint Legislative Committee on the Budget.

*LED*—the Louisiana Department of Economic Development.

*LDR*—the Louisiana Department of Revenue.

*Louisiana Expenditures*—shipping costs incurred in the transporting, warehousing, storing, and blast freezing of qualified cargo between the Louisiana facility and the cargo's point of entry to or exit from the state.

*Louisiana Facility*—manufacturing, fabrication, assembly, distribution, processing, or warehousing facilities located within Louisiana.

*Oceangoing Vessel*—any vessel, ship, barge, or watercraft that floats, including offshore oil exploration platforms.

*Public Port*—any deep-water port commission or port, harbor and terminal district as defined in article VI, section 44 of the Constitution of Louisiana, and any other port, harbor, and terminal district established under title 34 of the *Louisiana Revised Statutes* of 1950.

*Qualified Cargo*—any breakbulk or containerized machinery, equipment, materials, products, or commodities owned by an international business entity, that are imported or exported to or from a Louisiana facility by means of an oceangoing vessel berthed at a public port facility.

*Significant Positive Economic Benefit*—net positive tax revenue that shall be determined by taking into account direct, indirect, and induced impacts of the project based on a standard economic impact methodology utilized by the COA, and the value of the credit, and any other state tax and

financial incentives that are used by LED to secure the project or activity.

*State*—the state of Louisiana.

*SBC*—the Louisiana State Bond Commission.

*Ton*—a net ton of 2000 pounds and in the case of containerized cargo it shall exclude the weight of the container.

*Verified Statement*—information required by Section 3923(D), verified by the applicant's chief executive officer or most senior officer responsible for shipping and distribution.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:

### **§3923. Application**

A. An international business entity submitting an application is eligible to receive tax credits for certified tonnage following preliminary certification by LED, certification of significant positive economic benefit by the COA, approval of JLCB, approval by SBC and final certification by LED.

B. No applications will be received for import-export tax credits prior to July 1, 2014.

C. Applications may be filed after January 1 of each year for qualified cargo shipped during the immediately preceding calendar year.

D. No more than one application may be filed by an applicant for a calendar year, and shall include all qualified cargo for that calendar year.

E. The application shall include the following information:

1. a verified statement of baseline tonnage;
2. a verified statement of qualified cargo specifically including:
  - a. total annual volume and tons of breakbulk or containerized cargo exported from or imported to a Louisiana facility;
  - b. all shipping Louisiana expenditures directly associated with imports or exports through Louisiana public ports, and general freight charges, or a distribution of those expenditures that can be identified as Louisiana expenditures across the following six key shipping-related categories:
    - i. international shipping, which are those Louisiana expenditures for shipping between the Louisiana port and international locations such as pilotage, tugs, harbor fees, linement and dockage;
    - ii. water transportation, which are those Louisiana expenditures for intrastate shipping by barge or other vessel;
    - iii. truck transportation, which are those Louisiana expenditures for intrastate transportation by road;
    - iv. rail transportation, which are those Louisiana expenditures for intrastate transportation by rail;
    - v. warehousing and storage, which are those Louisiana expenditures for wharfage, stevedoring, drayage, warehousing, storage, and other loading and unloading charges;
    - vi. blast freezing, which are those specific Louisiana expenditures for freezing or other cold storage.
  - c. any additional information required by LED.
3. The applicant must retain documentation supporting the information in the verified statement for a

three-year period. Upon good cause, all books and records of the applicant relating to the application shall be subject to audit by LED, at applicant's expense.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:

### **§3925. Preliminary Certification**

- A. LED shall review the application and determine:
1. eligibility of the applicant;
  2. certified tonnage; and
  3. the estimated significant positive economic benefit of the cargo shipment, taking into consideration:
    - a. the nature of the cargo as either containerized or breakbulk;
    - b. transit of the cargo across the docks of a Louisiana public port;
    - c. the origination and terminus of the cargo from or to a Louisiana or international location;
    - d. the impact of the cargo shipment in promoting port and harbor activity;
    - e. the impact of the cargo shipment on the employment of Louisiana residents;
    - f. the impact of the cargo shipment on the overall economy of the state.

B. If LED determines that the applicant is eligible, LED shall issue a preliminary certification of the certified tonnage, the maximum amount of tax credits that could be issued (no more than \$5.00 per ton of certified tonnage), a recommended finding as to significant positive economic benefit and, if less than the maximum, the recommended amount of tax credits warranted by the estimated significant positive economic benefit.

C. LED shall send the preliminary certification and economic analysis to the COA.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:

### **§3927. Certification of Significant Positive Economic Benefit**

A. The COA shall review the application, LED preliminary certification and economic analysis, and determine whether a certification of significant positive economic benefit may be issued.

1. COA may issue a certification if he finds that there will be significant positive economic benefit received by the state to offset the effect to the state of the tax credits as a result of either:
  - a. increased port activity because of grant; or
  - b. otherwise.
2. The COA's certification shall state the amount of tax credits for which significant positive economic benefit is determined.
3. The COA's certification shall be submitted to the JLCB and the SBC for approval.
4. If the COA's certification is approved by both the JLCB and the SBC, it shall be delivered to the Secretary of LED for final certification.
  - a. Approval by the JLCB shall not be granted earlier than July 1, 2014.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:

### **§3929. Final Certification**

A. The secretary of LED (or his designated program administrator) shall issue a final certification of tax credits in the amount certified by the COA and approved by JLCB and SBC, and deliver copies to the applicant and LDR.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:

### **§3931. Tax Credit Limitations**

A. Tax credits shall be issued on a first come, first served basis, based upon the date of final certification.

B. No applicant shall receive a final certification of tax credits under this program in an amount greater than two million five hundred thousand dollars for certified cargo in any calendar year.

C. LED shall not issue final certification of tax credits under this program in a total amount for all applicants greater than \$6,250,000 in any single fiscal year.

D. Applications exceeding the limitations provided in this section will be deemed reduced to the applicable limits.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:

### **§3933. Claiming Tax Credits**

A. There shall be allowed a credit against the individual income, corporate income, and corporation franchise tax liability of a taxpayer who has received a final certification from LED, provided that the credit shall be allowed only against the tax liability of the international business entity which receives the certification.

B. Tax credits are earned in the tax year in which LED issues final certification.

C. The first year in which tax credits may be claimed against taxes is the tax year in which the tax credits are earned.

D. If the tax credit allowed exceeds the amount of taxes due for the tax period, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years.

E. The applicant shall attach the final certification to its return when claiming the credits.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:

### **§3935. Audit, Recapture and Recovery of Tax Credits**

A. Recapture. If LED finds that tax credits have been improperly issued, LED shall issue a revised final certification disallowing the improperly issued tax credits and send copies thereof to the applicant and LDR. The applicant's state income tax liability for such taxable period shall be increased by an amount necessary for the recapture of the tax credits allowed.

B. Recovery. Credits previously granted to an applicant, but later disallowed, may be recovered by LDR through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December 31 of the year in which the credits were earned.

C. Interest. Interest may be assessed and collected, at a rate of three percentage points above the rate provided in R.S. 39:3500(B)(1), which shall be computed from the original due date of the return on which the credit was taken.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:

### **§3937 Termination of Program**

A. No import-export credits shall be granted after January 1, 2020. Applications for certification of tax credits for all certified tonnage through December 31, 2018 must be submitted no later than July 1, 2019 to allow sufficient time for final certification of the tax credits by December 31, 2019.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 40:

#### **Family Impact Statement**

It is anticipated that the proposed Rule amendment will have no significant effect on the: stability of the family, authority and rights of parents regarding the education and supervision of their children, functioning of the family, family earnings and family budget, behavior and personal responsibility of children, ability of the family or a local government to perform the function as contained in the proposed Rule.

#### **Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

#### **Small Business Statement**

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

#### **Provider Impact Statement**

The proposed rulemaking will have no provider impact as described in HCR 170 of 2014.

#### **Public Comments**

Interested persons should submit written comments on the proposed Rule to Paul Sawyer, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to the Capitol Annex Building, Second Floor, 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be sent by fax to (225)342-9448 or by email to paul.sawyer@la.gov. All comments must be submitted (mailed and received) not later than 5 p.m. on August 25, 2014.

#### **Public Hearing**

A meeting for the purpose of receiving the presentation of oral comments will be held at 10 a.m. on August 25, 2014 at the Department of Economic Development, 1301 N. Third St., Baton Rouge, LA.

Anne G. Villa  
Assistant Secretary



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Ports of Louisiana Tax Credits:  
Import-Export Tax Credit Program**

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary  
Legal Division**

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

There will be no explicit incremental costs or savings to state or local governmental units due to the implementation of this rule because the underlying statute (Act 474 of the 2009 Regular Session) expressly prohibits LED from hiring personnel to administer the program. As such, the Louisiana Department of Economic Development will implement and administer the program with existing staff and resources resulting in implicit administrative costs of resources diverted to this program from other activities. The proposed rule has no measurable cost (savings) impact on local governmental units.

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

The proposed rule provides for the administration of the Ports of Louisiana Import-Export Tax Credit program pursuant to R.S. 47:6036. The statute allows the granting of nonrefundable tax credits against the Louisiana corporate franchise and individual income tax of a maximum amount of \$6.25 million per year. This is the amount described in Section 3931 (C) in the proposed rule that states that LED shall not issue final certification of tax credits under this program in a total amount for all applicants greater than six million two hundred fifty thousand dollars in any single fiscal year. Actual annual realizations against those taxes will depend upon the available tax liabilities of the specific program participants, and can be greater than \$6.25 million in a particular year if credits are unrealized in some years then accumulated and carried forward to a subsequent year. The statute includes eligibility criteria that require any loss of state revenue resulting from the program to be offset by significant positive economic benefit created by incremental new cargo activity. Incremental new cargo activity is the difference between qualified cargo tons in a year and the tons in the 2013 calendar year. Thus, the referenced positive economic benefits are associated with any growth in cargo tons.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

The proposed rule will benefit eligible applicants by providing a tax credit equal to no more than \$5 per ton of qualified cargo, and will not exceed a total benefit of \$2.5 million in tax credits per fiscal year.

Application fee, which is calculated by multiplying total transportation costs by 0.002. The fee will be no less than \$200 and no more than \$5,000.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be reduced in other competing businesses that do not participate in the program.

Steven Grissom  
Deputy Secretary  
1407#075

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

Licenses for Irradiators and Well Logging;  
Compatibility Changes; Transportation Notifications; and  
Technical Corrections (LAC 33:XV.102, 325, 326, 331,  
550, 1519, 1599, 1731 and 1733)(RP057ft)

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 Radiation Protection regulations, LAC 33:XV.102, 325, 326, 331, 550, 1519, 1599, 1731 and 1733 (Log #RP057ft).

This Rule is identical to federal regulations found in 10 C.F.R. 30, 31, 34, 36, 39, 40 and 71, 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 will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule makes minor changes to the requirements for specific licenses for irradiators and well logging. It addresses changes in two sections from compatibility category B to compatibility category C. This Rule changes notification requirements to Indian tribes regarding shipment of certain types of nuclear waste. It also makes technical corrections to four sections. This Rule will update the state regulations to be compatible with changes in the federal regulations. The changes in the state regulations are category B, C, and H and S requirements for the state of Louisiana to remain an NRC agreement state. The basis and rationale for this Rule are to mirror the federal regulations and maintain an adequate agreement state program. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part XV. Radiation Protection**

**Chapter 1. General Provisions**

**§102. Definitions and Abbreviations**

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

\*\*\*

*Indian Tribe*—an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

\*\*\*

*Tribal Official*—the highest ranking individual that represents tribal leadership, such as the chief, president, or tribal council leadership.

\*\*\*

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

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

### **Chapter 3. Licensing of Radioactive Material**

#### **Subchapter D. Specific Licenses**

##### **§325. General Requirements for the Issuance of Specific Licenses**

A. Upon a determination that an application meets the requirements of these regulations, the department shall issue a specific license authorizing the possession and use of byproduct material. A license application will be approved if the department determines that:

1. the applicant is qualified by training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to protect health and minimize danger to life or property;

2. the applicant's proposed equipment, facilities, and procedures are adequate to protect health and minimize danger to life or property;

3. the application is for a purpose authorized by these regulations;

4. the applicant satisfies any applicable special requirements contained in LAC 33:XV.326, 327, 328, Chapters 5, 7, 13, 17, or 20; and

B. - D.8.d.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 23:1140 (September 1997), LR 24:2091 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1017 (May 2000), LR 26:2568 (November 2000), LR 27:1227 (August 2001), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1578 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2178 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:

##### **§326. Special Requirements for Issuance of Certain Specific Licenses for Radioactive Material**

A. ...

1. the applicant shall satisfy the general requirements specified in LAC 33:XV.325.A.1-4 and the requirements contained in this Part;

2. - 2.e. ...

3. the application shall include an outline of the written operating and emergency procedures listed in LAC 33:XV.1737 that describes the radiation safety aspects of the procedures;

4. ...

5. the application shall include a description of the access control systems required by LAC 33:XV.1715, the radiation monitors required by LAC 33:XV.1721, the method of detecting leaking sources required by LAC 33:XV.1743, including the sensitivity of the method, and a diagram of the facility that shows the locations of all required interlocks and radiation monitors;

6. if the applicant intends to perform leak testing of dry-source-storage sealed sources, the applicant shall establish procedures for performing leak testing and submit a description of these procedures to the department. The description shall include the:

a. methods of performing the analysis;

b. pertinent experience of the individual who analyzes the samples; and

c. instruments to be used;

7. ...

8. the applicant shall describe the inspection and maintenance checks, including the frequency of the checks required by LAC 33:XV.1745.

B. ...

C. Specific Licenses for Well Logging. The department will approve an application for a specific license for the use of licensed material in well logging if the applicant meets the following requirements.

1. The applicant shall satisfy the general requirements specified in LAC 33:XV.325.A for byproduct material, and any special requirements contained in this Part.

2. The applicant shall develop a program for training logging supervisors and logging assistants, and submit to the department a description of this program which specifies the:

a. initial training;

b. on-the-job training;

c. annual safety reviews provided by the licensee;

d. means the applicant will use to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the department's regulations and licensing requirements and the applicant's operating and emergency procedures; and

e. means the applicant will use to demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

3. The applicant shall submit to the department written operating and emergency procedures as described in LAC 33:XV.2021, or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

4. The applicant shall establish and submit to the department its program for annual inspections of the job performance of each logging supervisor to ensure that the department's regulations, license requirements, and the applicant's operating and emergency procedures are followed. Inspection records shall be retained for three years after each annual internal inspection.

5. The applicant shall submit to the department a description of its overall organizational structure as it applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

6. If an applicant performs leak testing of sealed sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits used. If the applicant analyzes its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the department. The description shall include the:

- a. instruments to be used;
- b. methods of performing the analysis; and
- c. pertinent experience of the person who will analyze the wipe samples.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2569 (November 2000), LR 27:1228 (August 2001), LR 30:1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:45 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2525 (October 2005), LR 33:2178 (October 2007), LR 34:1027 (June 2008), amended by the Office of the Secretary, Legal Division, LR 40:

### **§331. Specific Terms and Conditions of Licenses**

A. - E.1. ...

2. an entity (as that term is defined in 11 U.S.C. 101(15)) controlling the licensee or listing the license or licensee as property of the estate; or

3. an affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2571 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2527 (October 2005), LR 33:2180 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:

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

### **Subchapter A. Equipment Control**

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

A. ...

1. each radiographic exposure device and all associated equipment shall meet the requirements specified in American National Standard (ANSI) N432-1980 Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography, (published as *NBS Handbook 136*, issued January 1981). This publication has been approved for incorporation by reference by the director

of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This publication may be purchased from the American National Standards Institute, Inc., 25 West 43rd Street, New York, New York 10036; telephone: (212) 642-4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission Library, 11545 Rockville Pike, Rockville, Maryland 20852. A copy of the document is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030. Engineering analyses may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the department may find this an acceptable alternative to actual testing of the component in accordance with the referenced standard;

2. - 5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 21:554 (June 1995), LR 23:1138 (September 1997), LR 24:2100 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), amended by the Office of the Secretary, Legal Division, LR 40:

## **Chapter 15. Transportation of Radioactive Material**

### **§1519. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste**

#### **[Formerly §1516]**

A. As specified in Subsections B, C, and D of this Section, each licensee shall provide advance notification to the governor, or to the governor's designee, of the shipment of licensed material, within or across the boundary of Louisiana, before the transport, or delivery to a carrier for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage. A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the *Federal Register* on June 30, 1995 (60 FR 34306). The list of governor's designees and tribal official's designees of participating tribes will be published annually in the *Federal Register* on or about June 30 to reflect any changes in the information. The list of the names and mailing addresses of the governors' designees and tribal official's designees of participating tribes is also available on request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. In Louisiana, the governor's designee is the Louisiana State Police, 7919 Independence Boulevard, Box 66614 (#A2621), Baton Rouge, LA 70896-6614.

1. As specified in Subsections B, C, and D of this Section, after June 11, 2013, each licensee shall provide advance notification to the *tribal official* as defined in LAC 33:XV.102 of participating tribes referenced in Subsection A of this Section, or the official's designee, of the shipment of licensed material, within or across the boundary of the tribe's reservation, before the transport, or delivery to a

carrier for transport, of licensed material outside the confines of the licensee's plant, or other place of use or storage.

B. - C. ...

1. The notification shall be made in writing to the office of each appropriate governor or to the governor's designee, the office of each appropriate tribal official or tribal official's designee, and to the department.

2. ...

3. A notification delivered by any means other than mail shall reach the office of the governor or the governor's designee or the tribal official or tribal official's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

C.4. - D.3. ...

4. the seven-day period during which arrival of the shipment at the boundary of the state or tribal reservation is estimated to occur;

5. - 6. ...

E. A licensee who finds that schedule information previously furnished to the governor or to the governor's designee or a tribal official or tribal official's designee, in accordance with this Section, will not be met shall telephone a responsible individual in the office of the governor or of the governor's designee or the tribal official or tribal official's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.

F. Each licensee who cancels a nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified, each tribal official or to the tribal official's designee previously notified, and to the department. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1269 (June 2000), LR 26:2602 (November 2000), amended by the Office of Environmental Assessment, LR 30:2029 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2190 (October 2007), LR 34:2111 (October 2008), amended by the Office of the Secretary, Legal Division, LR 40:

**§1599. Appendix—Incorporation by Reference of 10 CFR Part 71, Appendix A, Tables A-1, A-2, A-3, and A-4; Procedures for Determining A<sub>1</sub> and A<sub>2</sub> [Formerly §1517]**

A. Tables A-1, A-2, A-3, and A-4 in 10 CFR Part 71, Appendix A, July 6, 2012, are hereby incorporated by reference. These tables are used to determine the values of A<sub>1</sub> and A<sub>2</sub>, as described in Subsections B-F of this Section.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000),

amended LR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:701 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 34:2114 (October 2008), LR 35:1110 (June 2009), LR 36:2275 (October 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:

**Chapter 17. Licensing and Radiation Safety Requirements for Irradiators**

**§1731. Design Requirements**

A. - F. ...

G. Access Control. For panoramic irradiators, the licensee shall verify from the design and logic diagram that the access control system shall meet the requirements of LAC 33:XV.1715.

H. - L. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2116 (November 1998), amended by the Office of the Secretary, Legal Division, LR 40:

**§1733. Construction Monitoring and Acceptance Testing**

A. - E. ...

F. Source Rack. For panoramic irradiators, the licensee shall test the movement of the source racks for proper operation prior to source loading; testing shall include source rack lowering due to simulated loss of power. For all irradiators with product conveyor systems, the licensee shall observe and test the operation of the conveyor system to assure that the requirements in LAC 33:XV.1727 are met for protection of the source rack and the mechanism that moves the rack; testing shall include tests of any limit switches and interlocks used to protect the source rack and mechanism that moves that rack from moving product carriers.

G. - L. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2116 (November 1998), amended by the Office of the Secretary, Legal Division, LR 40:

**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 RP057ft. Such comments must be received no later than August 27, 2014, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. The comment

period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of RP057ft. This regulation is available on the internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

#### **Public Hearing**

A public hearing will be held on August 27, 2014, 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.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM  
Executive Counsel

1407#024

### **NOTICE OF INTENT**

#### **Office of the Governor Real Estate Commission**

Real Estate Teams and Groups  
(LAC 46:LXVII.Chapter 19)

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., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to enact LAC 46:LXVII.Chapter 19, Real Estate Teams and Groups. The proposed rules provide guidelines and procedures for establishing and maintaining a real estate team or group.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LXVII. Real Estate Subpart 1. Real Estate**

#### **Chapter 19. Real Estate Teams and Groups**

##### **§1901. Definitions**

A. For the purpose of this Chapter, *team* or *group* shall mean a collective name used by two or more real estate licensees, who represent themselves to the public as a part of one entity that performs real estate license activities under the supervision of the same sponsoring broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1430 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 40:

##### **§1903. Sponsorship**

A. Team or group members shall be sponsored by the same broker and, if applicable, shall conduct all real estate license activity from the office or branch office where their individual license is held.

B. Licensees shall not form a team or group without written approval from the sponsoring broker.

C. The sponsoring broker shall designate a member of each approved team or group as the contact member responsible for all communications between the broker and the team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1430 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 40:

##### **§1905. Team or Group Names**

A. Team or group names shall not contain terms that could lead the public to believe that the team or group is offering real estate brokerage services independent of the sponsoring broker. These terms shall include, but are not limited to:

1. real estate;
2. brokerage or real estate brokerage;
3. realty;
4. company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1430 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 40:

##### **§1907. Team or Group Leaders**

A. The sponsoring broker shall be responsible for all license activity of team or group members sponsored by the broker.

B. The designated contact member of each team or group shall maintain a current list of all team or group members, which shall be provided to the sponsoring broker upon formation of the team or group and immediately upon any change thereafter.

C. A current record of all team or group names, and the members thereof, shall be maintained by the sponsoring broker in a manner that can be made readily available to the LREC upon request, including record inspections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1430 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 40:

##### **§1909. Team Advertising**

A. A team or group name shall not be used in advertising without the written approval of the sponsoring broker.

B. The term "team" or "group" may be used to advertise real estate license activities provided that:

1. the use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person or entity is lawfully doing business;
2. the team or group is composed of more than one licensee;
3. the advertising complies with all other applicable provisions of this Chapter and LAC 46:LXVII.Chapter 25 of these rules and regulations.

C. An unlicensed person shall not be named, acknowledged, referred to, or otherwise included in any team or group advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1430 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 40:

**§1911. Disputes**

A. The commission shall not intervene or become otherwise involved in team or group disputes, including those pertaining to financial obligations that are the result of a business relationship between a team or group, team or group member, branch manager, sponsoring broker, or any combination thereof, including the payment of commissions and dues to professional organizations. Such disputes shall be settled by the respective parties or by a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1430et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 40:

**Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the July 20, 2014 *Louisiana Register*. The proposed Rule has no known impact on family, formation, stability, or autonomy.

**Poverty Impact Statement**

The proposed Rule has no known impact on poverty as described in R.S. 49:973.

**Provider Impact Statement**

The proposed Rule has no known impact on providers of services for individuals with developmental disabilities.

**Public Comments**

Interested parties may submit written comments on the proposed regulations to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809 or sboudreaux@lrec.state.la.us, through August 9, 2014, at 4:30 p.m.

**Public Hearing**

If it becomes necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedure Act, a hearing will be held on Thursday, August 28, 2014, at 9 a.m. at the office of the Louisiana Real Estate Commission, 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Real Estate Teams and Groups**

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

There are no estimated implementation costs (savings) to state or local governmental units as a result of the proposed Rule change.

The proposed Rule change provides guidelines and procedures for establishing and maintaining a real estate team/group. In addition to the definition of real estate teams/groups, the proposed Rules provide the procedures by

which a real estate team/group must operate, so as to remain in compliance with the Louisiana Real Estate License Law.

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

The proposed Rule change will not have an effect on revenue collections of states or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The formation of a team/group is an industry trend whereby two or more real estate licensees combine their services into a collective effort. Any costs or benefits will be determined by the team/group members and the manner in which they elect to carry out their real estate license activities.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed Rule change will not impact competition and employment. The decision to establish or join a team/group is made at the discretion of the individual licensee and is not a requirement for obtaining or maintaining a real estate license.

Bruce Unangst  
Executive Director  
1407#027

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing  
and  
Office of Behavioral Health**

Behavioral Health Services  
Physician Payment Methodology  
(LAC 50:XXXIII.Chapter 17)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health propose to adopt LAC 50:XXXIII.Chapter 17 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to implement a coordinated behavioral health services system under the Medicaid Program, called the Louisiana Behavioral Health Partnership (LBHP), to provide adequate coordination and delivery of behavioral health services through the utilization of a statewide management organization (*Louisiana Register*, Volume 38, Number 2).

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health promulgated an Emergency Rule which amended the provisions governing the reimbursement of physician services rendered in the LBHP in order to establish a distinct payment methodology that is independent of the payment methodology established for physicians in the Professional Services Program (*Louisiana Register*, Volume 39, Number 4). This proposed Rule is being promulgated to continue the provisions of the April 20, 2013 Emergency Rule.

**Title 50**  
**PUBLIC HEALTH—MEDICAL ASSISTANCE**  
**Part XXXIII. Behavioral Health Services**  
**Subpart 2. General Provisions**  
**Chapter 17. Behavioral Health Services**  
**Reimbursements**

**§1701. Physician Payment Methodology**

A. The reimbursement rates for physician services rendered under the Louisiana Behavioral Health Partnership (LBHP) shall be a flat fee for each covered service as specified on the established Medicaid fee schedule. The reimbursement rates shall be based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

B. Effective for dates of service on or after April 20, 2013, the reimbursement for behavioral health services rendered by a physician under the LBHP shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable for services rendered to Medicaid recipients.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 40:

**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 or autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in 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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, August 27, 2014 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an

opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT**  
**FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Behavioral Health Services**  
**Physician Payment Methodology**

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 14-15. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 14-15 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 14-15. It is anticipated that \$164 will be collected in FY 15-16 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 continues the provisions of the April 20, 2013 emergency rule which amended the provisions governing the reimbursement of physician services rendered in the Louisiana Behavioral Health Partnership (LBHP) in order to establish a distinct payment methodology that is independent of the payment methodology established for physicians in the Professional Services Program, but with no changes to the current rate in effect. It is anticipated that implementation of this proposed rule will not have economic costs or benefits for FY 14-15, FY 15-16 and FY 16-17.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1407#067

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Disproportionate Share Hospital Payments  
Non-Rural Community Hospitals  
(LAC 50:V.2701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.2701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Due to a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing disproportionate share hospital (DSH) payments to non-rural community hospitals to eliminate the community hospital psychiatric DSH pool (*Louisiana Register*, Volume 30, Number 1). These provisions were promulgated in a final Rule published in the April 20, 2014 edition of the *Louisiana Register* along with other provisions governing DSH payments.

The department has now determined that the February 1, 2013 Emergency Rule and subsequent April 20, 2014 final Rule inadvertently repealed the provisions governing DSH payments to public, non-rural community hospitals. The department promulgated an Emergency Rule which amended the provisions governing DSH payments in order to re-establish the provisions governing payments to public, non-rural community hospitals (*Louisiana Register*, Volume 40, Number 4). This proposed Rule is being promulgated to continue the provisions of the March 30, 2014 Emergency Rule.

#### **Title 50**

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

#### **Part V. Medical Assistance Program—Hospital Services**

#### **Subpart 3. Disproportionate Share Hospital Payments**

#### **Chapter 27. Qualifying Hospitals**

#### **§2701. Non-Rural Community Hospitals**

##### **A. Definitions**

*Non-Rural Community Hospital*—a non-state, non-rural hospital that may be either publicly or privately owned. Psychiatric, rehabilitation and long term hospitals may also qualify for this category.

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1 of each fiscal year. The department will claim the federal share for these certified public expenditures. The Department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 18 and may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1 may not receive Title XIX claim payments or any disproportionate share payments until the department receives the required certifications.

C. Hospitals shall submit supporting patient specific data in a format specified by the department, reports on their efforts to collect reimbursement for medical services from patients to reduce gross uninsured costs, and their most current year-end financial statements. Those hospitals that fail to provide such statements shall receive no payments and any payment previously made shall be refunded to the department. Submitted hospital charge data must agree with

the hospital's monthly revenue and usage reports which reconcile to the monthly and annual financial statements. The submitted data shall be subject to verification by the department before DSH payments are made.

D. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose.

E. The DSH payment shall be made as an annual lump sum payment.

F. Hospitals qualifying as non-rural community hospitals in state fiscal year 2013-14 may also qualify in the federally mandated statutory hospital category.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

#### **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 or autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in 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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, August 27, 2014 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Disproportionate Share Hospital  
Payments—Non-Rural Community Hospitals**

**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 14-15. It is anticipated that \$410(\$205 SGF and \$205 FED) will be expended in FY 14-15 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 14-15. It is anticipated that \$205 will be collected in FY 14-15 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, which continues the provisions of the March 30, 2014 Emergency Rule, amended the provisions governing disproportionate share hospital (DSH) payments in order to re-establish the provisions governing payments to public, non-rural community hospitals which had been inadvertently repealed from the DSH payments Rule. It is anticipated that implementation of this proposed rule will not have economic costs or benefits for FY 14-15, FY 15-16, and FY 16-17. This proposed Rule, which continues the provisions of the March 30, 2014 Emergency Rule, amended the provisions governing disproportionate share hospital (DSH) payments in order to re-establish the provisions governing payments to public, non-rural community hospitals which had been inadvertently repealed from the DSH payments Rule. It is anticipated that implementation of this proposed rule will not have economic costs or benefits for FY 14-15, FY 15-16, and FY 16-17.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

This rule has no known effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1407#068

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

**Health Examination for Employees, Volunteers and Patients  
at Certain Medical Facilities (LAC 51:II.503)**

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH, OPH), intends to update and revise the *Louisiana Administrative Code* (Louisiana Sanitary Code), Title 51, "The Control of Diseases," Chapter 5, "Health Examination for Employees, Volunteers and Patients at Certain Medical Facilities." This

action will provide a third alternative to the annual screening testing of employees and volunteers at Louisiana hospitals and nursing homes now required on an annual basis. This third alternative is a simple screening questionnaire, which may be used instead of the other alternatives, the tuberculin skin test, also known as the Mantoux test, or the blood test, also known as the blood assay test. The initial screening test of an employee or volunteer upon initial employment or acceptance as a volunteer will remain either the skin test or the blood assay test. The requirement for screening testing of patients remains unchanged.

**Title 51**

**PUBLIC HEALTH—SANITARY CODE**

**Part II. The Control of Diseases**

**Chapter 5. Health Examinations for Employees,  
Volunteers and Patients at Certain  
Medical Facilities**

**§503. Mandatory Tuberculosis Testing**

A. [formerly paragraph 2:022] All persons prior to or at the time of employment at any hospital or nursing home (as defined in Parts XIX and XX, respectively, herein, and including intermediate care facilities for the developmentally disabled) requiring licensing by the Department of Health and Hospitals or at any Department of Health and Hospitals, Office of Public Health parish health unit or Department of Health and Hospitals, Office of Public Health out-patient health care facility or any person prior to or at the time of commencing volunteer work involving direct patient care at any hospital or nursing home (as defined in Parts XIX and XX, respectively, herein, and including intermediate care facilities for the developmentally disabled) requiring licensing by the Department of Health and Hospitals or at any Department of Health and Hospitals, Office of Public Health parish health unit or Department of Health and Hospitals, Office of Public Health out-patient health care facility shall be free of tuberculosis in a communicable state as evidenced by either:

1. a negative purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method or a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration;

2. a normal chest X-ray, if the skin test or a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration; is positive; or

3. a statement from a licensed physician certifying that the individual is non-infectious if the X-ray is other than normal. The individual shall not be denied access to work solely on the basis of being infected with tuberculosis, provided the infection is not communicable.

B. [formerly paragraph 2:023] Any employee or volunteer at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals or at any Department of Health and Hospitals, Office of Public Health parish health unit or Department of Public Health and Hospitals, Office of Public Health out-patient health care facility who has a positive purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, or a positive blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration; or a chest x-ray other than normal, in order to remain employed or

continue work as a volunteer, shall complete an adequate course of chemotherapy for tuberculosis as prescribed by a Louisiana licensed physician, or shall present a signed statement from a Louisiana licensed physician stating that chemotherapy is not indicated.

C. [formerly paragraph 2:024] Any employee or volunteer at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals or at any Department of Health and Hospitals, Office of Public Health parish health unit or Department of Public Health and Hospitals, Office of Public Health outpatient health care facility who has a negative purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, or a negative result of a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration in order to remain employed or continue work as a volunteer, shall be rescreened annually by one of the following methods: purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, or a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration remains negative, or a completed questionnaire asking of the person pertinent questions related to active tuberculosis symptoms, including, but not limited to: do you have a productive cough that has lasted at least 3 weeks? (Yes or No), are you coughing up blood (hemoptysis)? (Yes or No), have you had an unexplained weight loss recently? (Yes or No), have you had fever, chills, or night sweats for 3 or more days? (Yes or No). Any employee converting from a negative to a positive purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method or a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration or having indicated symptoms of active tuberculosis revealed by the completed questionnaire, which indicates the person may have tuberculosis in a communicable state shall be referred to a physician and followed as indicated in §503.B. All initial screening test results and all follow-up screening test results shall be kept in each employee's or volunteer's health record.

D. [formerly paragraph 2:033] All persons with Acquired Immunodeficiency Syndrome (AIDS) or known to be infected with the Human Immunodeficiency Virus (HIV), in the process of receiving medical treatment related to such condition, shall be screened for tuberculosis in a communicable state, with screening to include a chest X-ray. Sputum smear and culture shall be done if the chest X-ray is abnormal or if the patient exhibits symptoms of tuberculosis. Screening for tuberculosis shall be repeated as medically indicated.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1220 (June 2002), amended LR 32:98 (January 2006), LR 33:93 (January 2007), LR 37:598 (February 2011), LR 40:

#### **Family Impact Statement**

1. The effect on the stability of the family. The goal of this Rule is to prevent disease and illnesses; therefore, a lower disease and illness rate of family members because of this Rule should help the family to remain stable.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. No effect on the authority and rights of parents regarding the education and supervision of their children is anticipated as a result of this proposed rulemaking.

3. The effect on the functioning of the family. The goal of this Rule is to prevent disease and illnesses; therefore, a lower disease and illness rate of family members because of this Rule should help the family to function better than it may should a family member become ill if such Rule did not exist.

4. The effect on the family earnings and family budget. It is expected that family members would remain more healthy with the adoption of this rule than if such Rule did not exist; therefore, the family earnings and budget may be protected from additional costs should a family member become ill if such Rule did not exist.

5. The effect on the behavior and personal responsibility of children. No effect on the behavior and personal responsibility of children is anticipated as a result of this proposed rulemaking.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. The family or local governments have no function to perform under this Rule; therefore, the family or local government's ability to perform the function under this Rule is a non-issue.

#### **Poverty Impact Statement**

1. The effect on household income, assets, and financial security. There will be no effect on household income, assets and financial security.

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. There will be no effect on employment and workforce development.

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.

#### **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. Effect on the 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**

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Friday, August 29, 2014 by close of business or by 4:30 pm, and should be addressed to Dr. Louis Trachtman, Tuberculosis Control Program, Center

for Community and Preventive Health, Office of Public Health, 1450 Poydras Avenue, New Orleans, LA, Suite 2029, 70112, telephone: (504) 568-5048.

**Public Hearing**

DHH-OPH will conduct a public hearing at 9 a.m. on August 29, 2014 in Room 173 of the Bienville Building, 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 6th and North 5th Street/North Street and Main Street. (catercorner 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.

J.T. Lane  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Health Examination for Employees, Volunteers and Patients at Certain Medical Facilities**

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

The Office of Public Health (OPH) proposes to amend Title 51 Part II Section 503 of the Public Health Sanitary Code related to Health Examinations for Employees, Volunteers and Patients at Certain Medical Facilities.

It is not anticipated that the proposed action will result in any significant implementation costs to local governmental units.

The proposed rule changes will result in an estimated cost of \$1,148 to publish the notice of intent and final rule in the *Louisiana Register*. OPH has sufficient funds to implement the proposed action.

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

There are no anticipated effects on the revenue collections of state or local governmental units anticipated as a result of promulgating the proposed rule changes.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The rule change will result in a possible economic saving to those hospitals and nursing homes choosing to implement the optional third alternative of a simple questionnaire instead of the tuberculin skin test or blood assay test for repeated annual screening testing of employees and volunteers. The estimated saving of utilizing the third alternative of the simple screening questionnaire is approximately \$45 to \$60 per test per employee or volunteer per year.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There are no effects on competition and employment anticipated as a result of these proposed rule changes.

J.T. Lane  
Assistant Secretary  
1407#037

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Home and Community-Based Services Waivers  
Support Coordination Standards for Participation  
(LAC 50:XXI.Chapter 5)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.Chapter 5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services (OAAS) adopted provisions to establish Standards for Participation for support coordination agencies that provide support coordination services to participants in OAAS-administered waiver programs (*Louisiana Register*, Volume 39, Number 11).

The department has now determined that it is necessary to amend the provisions governing support coordination services rendered to participants of OAAS-administered waiver programs to further clarify these provisions.

**Title 50**

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

**Subpart 1. General Provisions**

**Chapter 5. Support Coordination Standards for  
Participation for Office of Aging and  
Adult Services Waiver  
Programs Subchapter A. General  
Provisions**

**§509. Certification Review**

A. Compliance with certification requirements is determined by OAAS through its agency review and support coordination monitoring processes. This review is usually annual but may be conducted at any time and may be conducted without advance notice. Monitors must be given access to all areas of the agency and all relevant files and records.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3087 (November 2013), amended LR 40:

**Subchapter B. Administration and Organization**

**§513. Governing Body**

A. ...

1. An agency shall have documents identifying all members of the governing body, their addresses, their terms of membership, and officers of the governing body.

2. The governing body shall hold formal meetings at least twice a year.

3. There shall be written minutes of all formal meetings of the governing body.

4. There shall be governing body by-laws which specify the frequency of meetings and quorum requirements.

B. The governing body of a support coordination agency shall:

1. - 2. ...

3. review and approve the agency's annual budget; and

4. designate a person to act as administrator and delegate sufficient authority to this person to manage the agency.

5. - 11. Repealed.

C. - C.10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3087 (November 2013), amended LR 40:

### **§515. Business Location and Operations**

A. Each support coordination agency shall have a business location which shall not be in an occupied personal residence. The business location shall be in the DHH region for which the certification is issued and shall be where the agency:

1. ...

2. maintains the agency's personnel records; and

3. maintains the agency's participant service records.

4. Repealed

B. The business location shall have:

1. - 3. ...

4. internet access and a working e-mail address;

5. hours of operation, which must be at least 40 hours a week, Monday-Friday, posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

B.6. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3088 (November 2013), amended LR 40:

### **§517. Financial Management**

A. - B. ...

C. For the protection of its participants, staff, facilities, and the general public, the agency must have at least \$150,000 in general liability and at least \$150,000 in professional liability insurance coverage.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3088 (November 2013), amended LR 40:

### **§521. Organizational Communication**

A. The agency must establish procedures to assure adequate communication among staff to provide continuity of services to the participant and to facilitate feedback from

staff, participants, families, and when appropriate, the community.

B. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3089 (November 2013), amended LR 40:

### **Subchapter C. Provider Responsibilities**

#### **§529. Transfers and Discharges**

A. - C. ...

D. The transfer or discharge responsibilities of the support coordinator shall include:

1. - 2. ...

3. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary on the health, behavioral, and social issues of the participant and shall be provided to the receiving support coordination agency (if applicable).

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3090 (November 2013), amended LR 40:

#### **§531. Staffing Requirements**

A. Agencies must maintain sufficient staff to comply with OAAS staffing, timeline, workload, and performance requirements. This includes, but is not limited to, including sufficient support coordinators and support coordinator supervisors that have passed all of the OAAS training and certification requirements. At all times, an agency must have at least one certified support coordination supervisor and at least one certified support coordinator, both employed full time. Agencies may employ staff who are not certified to perform services or requirements other than assessment and care planning.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3091 (November 2013), amended LR 40:

#### **§533. Personnel Standards**

A. Support coordinators must meet one of the following requirements:

1. - 3.j. ...

k. gerontology;

A.3.l. - B.3. ...

4. a bachelor's degree in liberal arts or general studies with a concentration of at least 16 hours in one of the following fields: psychology, education, counseling, social services, sociology, philosophy, family and participant sciences, criminal justice, rehab services, child development, substance abuse, gerontology, or vocational rehabilitation and two years of paid post degree experience in providing support coordination services.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3091 (November 2013), amended LR 40:

### §537. Orientation and Training

A. ...

B. Orientation shall be provided by the agency to all staff, volunteers and students within five working days of begin/employment date.

C. Orientation and training of at least 32 hours shall be provided by the agency to all newly hired support coordinators within five working days of employment. The topics shall be agency/OAAS specific and shall include, at a minimum:

1. core OAAS support coordination requirements;
2. agency policies and procedures;
3. confidentiality;
4. case record documentation;
5. participant rights protection and reporting of violations;
6. professional ethics;
7. emergency and safety procedures;
8. infection control, including universal precautions;
9. overview of all OAAS waivers and services;
10. fundamentals of support coordination (e.g. person centered planning, emergency planning, back-up staff planning, critical incident reporting, risk assessment and mitigation, etc.);
11. interviewing techniques;
12. data management;
13. communication skills;
14. community resources;
15. continuous quality improvement; and
16. abuse and neglect policies and procedures.

D. Upon completion of the agency-provided training requirements set forth above, support coordinators and support coordination supervisors must successfully complete all OAAS Assessment and care planning training.

E. ...

F. All support coordinators and support coordination supervisors must complete a minimum of 16 hours of training per year. For new employees, the orientation cannot be counted toward the 16 hour minimum annual training requirement. The 16 hours of initial training for support coordinators required in the first 90 days of employment may be counted toward the 16 hour minimum annual training requirement. Routine supervision shall not be considered training.

G. A newly hired or promoted support coordination supervisor must, in addition to satisfactorily completing the orientation and training set forth above, also complete a minimum of 24 hours on all of the following topics prior to assuming support coordination supervisory responsibilities:

1. orientation/in-service training of staff;
  2. evaluating staff;
  3. approaches to supervision;
  4. managing workload and performance requirements;
  5. conflict resolution;
  6. documentation;
  7. population specific service needs and resources;
- and
8. the support coordination supervisor's role in continuous quality improvement (CQI) systems.

9. - 11. Repealed.

H. Documentation of all orientation and training must be placed in the individual's personnel file. Documentation must include a training agenda, name of presenter(s), title, agency affiliation and/or other sources of training (e.g. web/on-line trainings, etc.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3092 (November 2013), amended LR 40:

### §539. Participant Rights

A. - B. ...

C. Each support coordination agency's written policies and procedures, at a minimum, shall ensure the participant's right to:

1. confidentiality;
2. privacy;
3. impartial access to treatment regardless of race, religion, sex, ethnicity, age or disability;
4. access to the interpretive services, translated material and similar accommodations as appropriate;
5. access to his/her records upon the participant's written consent for release of information;
6. an explanation of the nature of services to be received;
7. actively participate in services;
8. refuse services or participate in any activity against their will;
9. obtain copies of the support coordination agency's complaint or grievance procedures;
10. file a complaint or grievance without retribution, retaliation or discharge;
11. be informed of the financial aspect of services;
12. give informed written consent prior to being involved in research projects;
13. refuse to participate in any research project without compromising access to services;
14. be free from mental, emotional and physical abuse and neglect;
15. be free from chemical or physical restraints;
16. receive services that are delivered in a professional manner and are respectful of the participant's wishes concerning their home environment;
17. receive services in the least intrusive manner appropriate to their needs;
18. contact any advocacy resources as needed, especially during grievance procedures; and;
19. discontinue services with one provider and choose the services of another provider.

20. - 24. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3092 (November 2013), amended LR 40:

### §541. Grievances

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3093 (November 2013), amended LR 40:

#### **§543. Critical Incident Reporting**

A. ...

B. - B.5. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3093 (November 2013), amended LR 40:

#### **§545. Participant Records**

A. Participant records shall be maintained in the support coordinator's office. The support coordinator shall have a current written record for each participant.

1. - 6. Repealed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3093 (November 2013), amended LR 40:

#### **§547. Emergency Preparedness**

A. ...

B. Continuity of Operations. The support coordination agency shall have an emergency preparedness plan to maintain continuity of the agency'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 agency's ability to render services.

1. - 9. Repealed.

C. The support coordination agency shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

D. The support coordinator shall cooperate with the department and with the local or parish Office of Homeland Security and Emergency Preparedness in the event of an emergency or disaster and shall provide information as requested.

E. The support coordinator shall monitor weather warnings and watches as well as evacuation orders from local and state emergency preparedness officials.

F. All agency employees shall be trained in emergency or disaster preparedness. Training shall include orientation, ongoing training, and participation in planned drills for all personnel.

G. Upon request by the department, the support coordination agency shall submit a copy of its emergency preparedness plan and a written summary attesting to how the plan was followed and executed.

H. - I.5. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3094 (November 2013), amended LR 40:

#### **§549. Continuous Quality Improvement Plan**

A. Support coordination agencies shall have a continuous quality improvement (CQI) plan which governs the agency's internal quality management activities.

B. The CQI plan shall demonstrate a process of continuous cyclical improvement and include the following:

1. *design*—continuous quality improvement approach detailing how the agency monitors its operations and makes improvements when problems are detected;

2. *discovery*—the methods used to uncover problems and deviations from plan design and programmatic processes in a timely fashion;

3. *remediation*—the process of addressing and resolving problems uncovered in the course of discovery; and

4. *improvement*—the actions taken to make adjustments to the system's processes or procedures to prevent or minimize future problems.

C. - D.7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3094 (November 2013), amended LR 40:

#### **§551. Support Coordination Monitoring**

A. Support coordination agencies shall be monitored annually as outlined in the OAAS policies and procedures.

1. - 4. Repealed

B. Support coordination agencies shall offer full cooperation with the OAAS during the monitoring process. Responsibilities of the support coordination agency in the monitoring process include, but are not limited to:

1. providing policy and procedure manuals, personnel records, case records, and other documentation;

2. providing space for documentation review and support coordinator interviews; and

3. coordinating agency support coordinator interviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3095 (November 2013), amended LR 40:

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 or autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this

proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may increase direct or indirect cost to the provider to provide the same level of service due to the costs associated with securing the minimum amount required for general and professional liability insurance for those providers who currently carry less. The proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the increased insurance premium adversely impacts the provider's financial standing.

#### **Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, August 27, 2014 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Home and Community-Based Services Waivers Support Coordination Standards for Participation**

#### **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 14-15. It is anticipated that \$1,558 (\$779 SGF and \$779 FED) will be expended in FY 14-15 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 14-15. It is anticipated that \$779 will be collected in FY 14-15 for the federal share of the expense for promulgation of this proposed rule and the final rule. 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 14-15. It is anticipated that \$779 will be collected in FY 14-15 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 support coordination services rendered to participants of OAAS-administered waiver programs to further clarify these provisions. It is anticipated that implementation of this proposed rule may have economic costs for a small number of providers who may have increased liability insurance costs for FY 14-15, FY 15-16 and FY 16-17.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has may have a negative effect on competition and employment for those providers who have increased liability insurance costs.

J. Ruth Kennedy  
Medicaid Director  
1407#069

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Inpatient Hospital Services  
Out-of-State Hospitals  
Reimbursement Methodology

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal the December 20, 2000 Rule governing the reimbursement methodology for inpatient hospital services provided by out-of-state hospitals covered under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254, and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule governing the reimbursement of inpatient hospital services provided by out-of-state border hospitals (*Louisiana Register*, Volume 26, Number 12).

Pursuant to a settlement agreement, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which repealed the provisions of the December 20, 2000 Rule governing the reimbursement methodology for inpatient hospital services provided by out-of-state border hospitals (*Louisiana Register*, Volume 40, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2014 Emergency Rule.

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S.

49:972 due to the loss of Medicaid coverage of these services in out-of-state border hospital areas.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have an adverse impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 in the event that the financial burden on families may increase as a result of the removal of Medicaid coverage of these services in out-of-state border hospital areas.

**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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, August 27, 2014 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Inpatient Hospital Services**

**Out-of-State Hospitals—Reimbursement Methodology**

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

It is anticipated that the implementation of this proposed Rule will result in estimated state general fund programmatic costs of \$763,467 for FY 14-15, \$781,270 for FY 15-16 and \$802,787 for FY 16-17. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed Rule and the Final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$1,248,755 for FY 14-15, \$1,291,065 for FY 15-16 and \$1,331,718 for FY 16-17. It is anticipated that \$123 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the Final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed Rule continues the provisions of the July 1, 2014 Emergency Rule which repealed the provisions of the December 20, 2000 Rule governing the reimbursement methodology for inpatient hospital services provided by out-of-state border hospitals to ensure that the provisions are consistent with the Department's operational policies currently in place. These provisions authorize reimbursement to out-of-state border hospitals at the equivalent rate to Louisiana hospitals by peer group. It is anticipated that implementation of this proposed rule will increase program expenditures for inpatient hospital services by approximately \$2,011,976 for FY 14-15, \$2,072,335 for FY 15-16 and \$2,134,505 for FY 16-17.

**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 and employment.

J. Ruth Kennedy  
Medicaid Director  
1407#070

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Inpatient Hospital Services  
Reimbursement Methodology  
(LAC 50:V.551 and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.551 and §967 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services in order to continue medical education payments to state hospitals, children's specialty hospitals and acute care hospitals classified as teaching hospitals when the hospitals are reimbursed by prepaid risk-bearing MCOs for inpatient hospital services (*Louisiana Register*, Volume 38, Number 11). Due to a budgetary shortfall in state fiscal year 2013, the department amended the provisions governing the reimbursement methodology for



inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 40, Number 2). However, the provisions in Sections 551 and 967 governing medical education payments were inadvertently omitted from the Rule.

To ensure that the provisions governing inpatient hospital services are promulgated in a clear and concise manner, the department promulgated an Emergency Rule which amended the provisions governing inpatient hospital services in order to incorporate the provisions governing medical education payments which were inadvertently omitted from the February 20, 2014 Rule (*Louisiana Register*, Volume 40, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 20, 2014 Emergency Rule.

## **Title 50**

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

#### **Part V. Hospital Services**

##### **Subpart 1. Inpatient Hospital Services**

##### **Chapter 5. State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

##### **§551. Acute Care Hospitals**

A. - D. ...

E. Effective for dates of service on or after February 1, 2012, medical education payments for inpatient services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be paid monthly by Medicaid as interim lump sum payments.

1. Hospitals with qualifying medical education programs shall submit a listing of inpatient claims paid each month by each MCO.

a. *Qualifying Medical Education Programs*—graduate medical education, paramedical education, and nursing schools.

2. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days times the medical education costs included in each state hospital's interim per diem rate as calculated per the latest filed Medicaid cost report.

3. Final payment shall be determined based on the actual MCO covered days and allowable inpatient Medicaid medical education costs for the cost reporting period per the Medicaid cost report.

F. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to state-owned acute care hospitals, excluding Villa Feliciana and inpatient psychiatric services, shall be reduced by 10 percent of the per diem rate on file as of July 31, 2012.

1. The Medicaid payments to state-owned hospitals that qualify for the supplemental payments, excluding Villa Feliciana and inpatient psychiatric services, shall be reimbursed at 90 percent of allowable costs and shall not be subject to per discharge or per diem limits.

2. The Medicaid payments to state-owned hospitals that do not qualify for the supplemental payments shall be reimbursed at 54 percent of allowable costs.

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, amended LR 38:1241 (May 2012), LR 38:2772 (November 2012), LR 40:312 (February 2014), LR 40:

##### **Chapter 9. Non-Rural, Non-State Hospitals**

##### **Subchapter B. Reimbursement Methodology**

##### **§967. Children's Specialty Hospitals**

A. - H. ...

I. Effective for dates of service on or after February 1, 2012, medical education payments for inpatient services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be paid by Medicaid monthly as interim lump sum payments.

1. Hospitals with qualifying medical education programs shall submit a listing of inpatient claims paid each month by each MCO.

a. *Qualifying Medical Education Programs*—graduate medical education, paramedical education, and nursing schools.

2. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days times the medical education costs included in each children's specialty hospital's interim per diem rate as calculated per the latest filed Medicaid cost report.

3. Final payment shall be determined based on the actual MCO covered days and medical education costs for the cost reporting period per the Medicaid cost report. Reimbursement shall be at the same percentage that is reimbursed for fee-for-service covered Medicaid costs after application of reimbursement caps as specified in §967.A.-C and reductions specified in §967.F-H.

J. - K. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), LR 40:

##### **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 or autonomy as described in R.S. 49:972.

##### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in 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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, August 27, 2014 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Inpatient Hospital Services  
Reimbursement Methodology**

**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 14-15. It is anticipated that \$574 (\$287 SGF and \$287 FED) will be expended in FY 14-15 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 14-15. It is anticipated that \$287 will be collected in FY 14-15 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 continues the provisions of the July 20, 2014 Emergency Rule which amended the provisions governing inpatient hospital services in order to incorporate the provisions governing medical education payments which were inadvertently omitted from the February 20, 2014 Rule. It is anticipated that implementation of this proposed rule will not have economic costs or benefits for FY 14-15, FY 15-16 and FY 16-17.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1407#071

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

Physician Practice; Office-Based Surgery  
(LAC 46:XLV.Chapter 73)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1270, the Louisiana State Board of Medical Examiners (board) intends to amend its rules governing office-based surgery, LAC 46XLV.7301 et seq. The proposed amendments update definitions and better provide for consistency with current terminology in the application of various levels of sedation and corresponding health care providers involved in the treatment and care of patients undergoing office-based surgery (OBS); redefine exemptions and prohibitions; better provide for quality of care and patient monitoring; add more specificity to documentation requirements and maintenance of medical records and pre-surgical evaluations; provide mechanisms for the board to identify physicians performing OBS procedures; and update the rules generally.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Profession  
Subpart 3. Practice**

**Chapter 73. Office-Based Surgery  
Subchapter A. General Provisions  
§7303. Definitions**

A. As used in this Chapter, unless the content clearly states otherwise, the following terms and phrases shall have the meanings specified.

*Anesthesia*—moderate sedation or deep sedation, as such terms are defined in this Section.

\* \* \*

*Certified Registered Nurse Anesthetist (CRNA)*—an advanced practice registered nurse certified according to the requirements of a nationally recognized certifying body approved by the Louisiana State Board of Nursing ("Board of Nursing") who possesses a current license or permit duly authorized by the Board of Nursing to select and administer anesthetics or provide ancillary services to patients pursuant to R.S. 37:911 et seq., and who, pursuant to R.S. 37:911 et seq., administers anesthetics and ancillary services under the direction and supervision of a physician who is licensed to practice under the laws of the state of Louisiana.

*Deep Sedation/Analgesia*—a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. Monitoring of patients undergoing deep sedation shall only be performed by an anesthesia provider.

*General Anesthesia*—a drug-induced loss of consciousness, by use of any anesthetic induction agent or

otherwise, during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. General anesthesia shall only be performed by an anesthesia provider.

\*\*\*

*Moderate Sedation/Analgesia (conscious sedation)*—a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Monitoring of the patients undergoing moderate sedation shall be performed by qualified monitoring personnel or an anesthesia provider.

\*\*\*

*Qualified Monitoring Personnel*—an appropriately trained, qualified and licensed health care provider in this state, who is currently certified in advanced cardiac life support, or pediatric advanced life support for pediatric patients, and designated to monitor and attend to the patient during the pre-operative, intra-operative and post-operative periods.

\*\*\*

*Single Oral Dose*—one dosage unit of a medication in an amount recommended by the manufacturer of the drug for oral administration to the patient.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004), amended LR 40:

### §7305. Exemptions

A. This Chapter shall not apply to the following surgical procedures or clinical settings:

1. exempt surgical procedures include those:

a. that do not involve a drug induced alteration of consciousness and do not require the use of anesthesia or an anesthetic agent, those using only local, topical or regional anesthesia or those using a single oral dose of a sedative or analgesic which is appropriate for the unsupervised treatment of anxiety or pain; and/or

b. ...

2. exempt clinical settings include:

a. - d.iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:425 (March 2004), amended LR 40:

### §7307. Prohibitions

A. ...

B. The level of sedation utilized for office-based surgery shall be appropriate to the procedure. Under no circumstances shall a physician withhold appropriate sedation or under-sedate a patient for the purpose of avoiding compliance with the requirements of this Chapter.

C. General anesthesia shall not be utilized in office-based surgery. Any surgery or surgical procedure that employs general anesthesia shall only be performed in an exempted clinical setting as described in Section 7305 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:425 (March 2004), amended LR 40:

### §7308. Required Information

A. Each physician shall report to the board annually as a condition to the issuance or renewal of medical licensure, whether or not and the location(s) where the physician performs office-based surgery, along with such other information as the board may request.

B. The information shall be reported in a format prepared by the board, which shall be made a part of or accompany each physician's renewal application for medical licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR

### §7309. Prerequisite Conditions

A. - A.2.a.i. ...

ii. have completed residency training in a specialty that encompasses the procedure performed in an office-based surgery setting;

b. ...

c. physician performing office-based surgery shall ensure that all individuals who provide patient care in the office-based surgery setting are duly qualified, trained and possess a current valid license or certificate to perform their assigned duties.

3. - 4a. ...

5. Patient Care

a. A physician performing office-based surgery shall remain physically present throughout surgery and be immediately available for diagnosis, treatment and management of complications or emergencies. The physician shall also insure the provision of indicated post-anesthesia care.

b. The anesthesia provider or qualified monitoring personnel shall be physically present throughout the surgery.

c. The anesthesia provider or qualified monitoring personnel shall remain in the facility until all patients have been released from anesthesia care by a CRNA or a physician.

d. Discharge of a patient shall be properly documented in the medical record and include:

i. confirmation of stable vital signs;

ii. return to pre-surgical mental status;

iii. adequate pain control;

iv. minimal bleeding, nausea and vomiting;

v. confirmation that the patient has been discharged in the company of a competent adult; and

vi. time of discharge.

6. - 6.b....

c. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, heart rate and breath sounds shall be monitored using a precordial stethoscope or similar device and blood

pressure measurements shall be re-established using a non-electrical blood pressure measuring device until power is restored.

6.d. - 7.c. ...

8. Medical Records

a. A complete medical record shall be documented and maintained by the physician performing office-based surgery of the patient history, physical and other examinations and diagnostic evaluations, consultations, laboratory and diagnostic reports, informed consents, preoperative, inter-operative and postoperative anesthesia assessments, the course of anesthesia, including monitoring modalities and drug administration, discharge and any follow-up care.

9. Policies and Procedures

a. A written policy and procedure manual for the orderly conduct of the facility shall be prepared, maintained on-site and updated annually, as evidenced by the dated signature of a physician performing office-based surgery at the facility for the following areas:

i. - iii.(c). ...

b. All facility personnel providing patient care shall be familiar with, appropriately trained in and annually review the facility's written policies and procedures. The policy and procedure manual shall specify the duties and responsibilities of all facility personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:425 (March 2004), amended LR 40:

**§7311. Administration of Anesthesia**

A. Evaluation of the Patient. All patients shall have a pre-surgical evaluation (history and physical) to screen for and identify any medical condition that could adversely affect the patient's response to the medications utilized for moderate or deep sedation.

B. - C. ...

D. Administration of Anesthesia. Deep sedation/analgesia shall be administered by an anesthesia provider who shall not participate in the surgery.

E. Monitoring. Monitoring of the patient shall include continuous monitoring of ventilation, oxygenation and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry, electrocardiogram continuously, non-invasive blood pressure measured at appropriate intervals, an oxygen analyzer and an end-tidal carbon dioxide analyzer. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated. An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure. Post-operatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable. Monitoring and observations shall be documented in the patient's medical record. Qualified monitoring personnel assigned to monitor a patient shall not participate in the surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:427 (March 2004), amended LR 40:

**§7314. Creation of Log; Board Access to Log and Facilities**

A. A physician shall create and maintain a continuous log by calendar date of all office-based surgical procedures. The log shall include patient identifiers and the type and duration of each procedure and remain at the physician's office-based surgery facility. The log shall be provided to the board's staff or its agents upon request.

B. A physician who performs office-based surgery shall respond to the inquiries and requests of, and make his or her office-based surgery facility available for inspection by, the board's staff or its agents at any reasonable time without the necessity of prior notice. The failure or refusal to respond or comply with such inquiries or requests, or make an office-based surgery facility available for inspection, shall be deemed a violation of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

**Provider Impact Statement**

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

**Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed amendment to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA, 70130, (504) 568-6820, ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., August 19, 2014.

**Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the Board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on August 26, 2014, at 10 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New

Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Cecilia Mouton, M.D.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Physician Practice;  
Office-Based Surgery**

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

Other than one-time costs for notice and rule publication estimated at a total of \$689 in FY 15, it is not anticipated that the proposed amendments will not result in any additional costs or savings to the Board or other state or local governmental units. The Board anticipates devoting some administrative resources to processing that portion of its annual renewal applications for physicians who perform office-based surgery (OBS). The number of physicians performing OBS is unknown but believed to be relatively small and the information will be included in, and processed with, existing systems for annual renewals of medical licensure. The Board anticipates it can absorb the projected modest increase in administrative workload with existing personnel and resources.

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

There is no anticipated effect on the revenue collections of the Board of Medical Examiners or any state or local governmental unit.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Any physician who: uses general anesthesia in an OBS setting that is not exempt under Section 7305A.2 of the rules; does not utilize an anesthesia provider to monitor patients undergoing deep sedation; utilizes unlicensed individuals, or licensed individuals who are not certified in advanced life support measures, to monitor and attend to OBS patients; or performs OBS as defined by the rules, would be directly affected by the proposed amendments and may experience an increase in costs and/or decrease in revenue to an extent that is not quantifiable. It is not possible to estimate the proposed rule change's impact in these respects as no information or data is available either as to the number of physicians who perform OBS falling within the purview of the existing rules or the extent to which they may/may not already comply with the proposed changes. Patients undergoing OBS procedures may realize potential benefits to their health, safety, and welfare.

Pursuant to the proposed amendments, OBS requiring the use of general anesthesia may only be performed in an exempted clinical setting, only anesthesia providers may monitor patients receiving deep sedation, and only licensed health care providers who are properly certified in advanced life support measures may monitor/attend to patients undergoing OBS procedures. Further, the proposed changes to the levels of sedation and exemptions may result in application of the rules to some procedures that were previously exempt under Section 7305A.1. The proposed amendments also require physicians to report whether they perform OBS on their renewal application for medical licensure, maintain a list of OBS and update their OBS policy and procedure manual on an annual basis. The Board does not anticipate that these requirements will have a material effect on paperwork or workload of affected physicians.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is not anticipated that the proposed rules will have any significant impact on competition or employment in either the public or private sector.

Cecilia Mouton, M.D.  
Executive Director  
1407#042

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Professional Services Program  
Family Planning Services  
Long-Acting Reversible Contraceptives Reimbursements  
(LAC 50:IX.15145)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15145 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides Medicaid coverage and reimbursement for family planning services, including long-acting reversible contraceptives (LARCs), under the Professional Services Program.

The department has determined that the reimbursement rates for LARCs covered under the Professional Services Program are markedly below the current acquisition cost to the provider. To ensure Medicaid recipients continue to have access to long-acting reversible contraceptives, and to ensure continued provider participation in the Professional Services Program, the department now proposes to amend the provisions governing the reimbursement methodology for family planning services to establish provider reimbursements for long-acting reversible contraceptives according to the fee on file at the time of insertion.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part IX. Professional Services Program**

**Subpart 15. Reimbursement**

**Chapter 151. Reimbursement Methodology**

**Subchapter E. Family Planning Services**

**§15145. Long-Acting Reversible Contraceptives**

A. The reimbursement rates for acquiring long-acting reversible contraceptives shall be adjusted to accommodate annual changes in acquisition cost. Physicians and professional services practitioners shall be reimbursed for the contraceptive according to the fee on file at the time of insertion.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

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 may have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by increasing access to long-acting reversible contraceptives.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by reducing the financial burden to families for costs associated with the acquisition of long-acting reversible contraceptives.

#### **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, may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers for services they already render.

#### **Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Wednesday, August 27, 2014 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kathy H. Kliebert  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Professional Services Program Family Planning Services—Long-Acting Reversible Contraceptives Reimbursements**

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

It is anticipated that the implementation of this proposed rule will result in estimated state general fund programmatic costs of \$478,892 for FY 14-15, \$699,958 for FY 15-16 and

\$719,236 for FY 16-17, which includes the cost for the unit differential and increased utilization by physicians. However, the costs associated with long-acting reversible contraceptives may be offset by an indeterminable savings realized from a reduction in expenditures associated with avoided pregnancy and infant medical costs. The savings is currently unknown for exceeding the cost in any out years. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$783,239 for FY 14-15, \$1,156,695 for FY 15-16 and \$1,193,117 for FY 16-17. It is anticipated that \$164 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16.

The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

#### **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 family planning services covered under the Professional Services Program in order to establish provider reimbursements at the cost of acquisition for long-acting reversible contraceptives. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$1,261,803 for FY 14-15, \$1,856,653 for FY 15-16 and \$1,912,353 for FY 16-17.

#### **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, but may have a positive effect on employment if the financial standing of providers is improved by the increased payment amounts.

J. Ruth Kennedy  
Medicaid Director  
1407#072

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Registration of Foods, Drugs, Cosmetics,  
and Prophylactic Devices (LAC 51:VI.105)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH-OPH), intends to reenact and amend parts of Sections 101 and 105 of Part VI (Manufacturing, Processing, Packing, and Holding of Food, Drugs, and Cosmetics) of the Louisiana state *Sanitary Code*

(LAC 51). This Rule is being proposed to increase the fees assessed for product registration from their current levels to the maximum allowed by statute (R.S. 40:628). The Legislature last granted a fee increase during the 1st Extraordinary Session but fees were not subsequently raised by Rule.

#### **Title 51**

### **PUBLIC HEALTH—SANITARY CODE**

#### **Part VI. Manufacturing, Processing, Packing, and Holding of Food, Drugs, and Cosmetics**

#### **Chapter 1. General Regulations, Definitions, Permits, Registration, Machinery, Equipment and Utensils, Premises and Buildings, Temperature Control**

#### **§101. Definitions [formerly paragraph 6:001]**

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

\* \* \*

*Dba*—the actual or juridical person whose name and address appear on the label of a product as the responsible party for said product.

\* \* \*

*Out-of-State Soft Drink*—those items meeting the definition of Soft drink in §1101.A of this Part and bearing a dba statement whose address is outside of the state of Louisiana

\* \* \*

*Product Category*—classification of products subject to registration into one of five groups: milk and dairy products (M), seafood products (S), other foods and beverages (F), drugs (D), cosmetics (C), or prophylactics (P). These categories are exclusive of items defined as *out-of-state soft drinks*.

\* \* \*

AUTHORITY NOTE: The first source of authority for promulgation of the sanitary code is in R.S. 36:258(B), with more particular provisions found in Chapters 1 and 4 of Title 40 of the Louisiana Revised Statutes. This Part is promulgated in accordance with R.S. 40:4(A)(1)(a) and R.S. 40:5(2)(3)(5)(8)(15)(17)(19)(21). Also see R.S. 40:601 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1230 (June 2002), amended LR 40:

#### **§105. Registration of Foods, Drugs, Cosmetics, and Prophylactic Devices [formerly paragraph 6:008-1]**

A. Louisiana Food and Drug Unit of the OPH/DHH

B. - D. ...

E. Food and Drug Unit Office, R.S. 40: 627(1D)

F. Product registration fees shall be assessed according to the following schedule:

1. for out-of-state soft drinks, according to the provisions of R.S. 40:716;

2. for all other products subject to registration requirements, a per product per *dba* per product category fee, up to the maximum allowed for under R.S. 40:628(B) per *dba* per product category.

G. For registration renewals, the provisions of Subsection F will be effective beginning with registrations having an expiration date of June 30, 2016.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1)(a), R.S. 40:5(2)(3)(5)(8)(15)(17)(19)(21), R.S. 40:628 and R.S. 40:716.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28: 1232 (June 2002), amended LR 40:

#### **Family Impact Statement**

1. The effect on the stability of the family. The goal of this Rule is to prevent disease and illnesses; therefore, a lower disease and illness rate of family members because of this Rule should help the family to remain stable.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. No effect on the authority and rights of parents regarding the education and supervision of their children is anticipated as a result of this proposed rulemaking.

3. The effect on the functioning of the family. The goal of this Rule is to prevent disease and illnesses; therefore, a lower disease and illness rate of family members because of this Rule should help the family to function better than it may should a family member become ill if such Rule did not exist.

4. The effect on the family earnings and family budget. It is expected that family members would remain more healthy with the adoption of this rule than if such Rule did not exist; therefore, the family earnings and budget may be protected from additional costs should a family member become ill if such Rule did not exist.

5. The effect on the behavior and personal responsibility of children. No effect on the behavior and personal responsibility of children is anticipated as a result of this proposed rulemaking.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. The family or local governments have no function to perform under this Rule; therefore, the family or local government's ability to perform the function under this Rule is a non-issue.

#### **Poverty Impact Statement**

1. The effect on household income, assets, and financial security. There will be no effect on household income, assets and financial security.

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. There will be no effect on employment and workforce development.

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.

#### **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. effect on the 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

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than Friday, August 29, 2014 by close of business or by 4:30 pm, and should be addressed to Brian R. Warren, Food and Drug Unit, Center for Environmental Health Services, Office of Public Health, CEHS Mail Bin #10, P.O. Box 4489, Baton Rouge, LA 70821-4489, or faxed to (225) 342-7672. If comments are to be shipped or hand-delivered, please deliver to the Bienville Building, 628 North 4th Street, Room 166, Baton Rouge, LA 70802.

#### Public Hearing

DHH-OPH will conduct a public hearing at 9 am on August 29, 2014 in Room 173 of the Bienville Building, 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 6th and North 5th/North and Main Sts. (catercorner 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.

Kathy H. Kliebert  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Registration of Foods, Drugs, Cosmetics, and Prophylactic Devices

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

The Department of Health and Hospitals (DHH), Office of Public Health (OPH) proposes to amend Title 51, Part VI, Chapter 1, Sections 101 and 105 of the Public Health Sanitary Code related to Manufacturing, Processing, Packing, and Holding of Food, Drugs, and Cosmetics.

In Section 101, the proposed rule adds three new definitions relative to product registration. In Section 105, the proposed rule corrects some obsolete program and department references as well as corrects a typographical reference to a nonexistent "Section 1" of R.S. 40:628. Also, the proposed rule codifies the revised fee schedule that indicates OPH shall charge an additional \$7 fee for product registrations in accordance with R.S. 40:628 and R.S. 40:716. The increase changed the current fee from \$20 to \$27 which is the maximum authorized fee.

It is not anticipated that the proposed action will result in any significant implementation costs to local governmental units. The proposed rule changes will result in an estimated cost of \$1,148 to publish the notice of intent and final rule in the *Louisiana Register*. OPH has sufficient funds in its annual operating budget to implement the proposed rule.

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

There are no anticipated effects on revenue collections of local governmental units anticipated as a result of promulgating the proposed rule change. However, the proposed rule gives OPH the authority to increase registration fees for most products from the current level of \$20 capped at \$200 to a

higher level of \$27 capped at \$270, thereby increasing OPH's projected self-generated revenues by approximately \$165,200 per year (4720 companies X 5 products each avg = 23,600 products X increase of \$7 = \$165,200). Under Act 125 of the 2000 1st Extraordinary Session, the Louisiana Legislature established a maximum fee of \$27. With implementation of this proposed rule, OPH is proposing to increase the fee to the maximum amount of \$27 previously approved by the legislature.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will result in an economic cost to those entities in the United States that currently hold or in the future will hold Certificates of Registration issued by the Louisiana DHH OPH. There are 4,720 manufacturing, processing, packing, and holding of food, drugs, and cosmetics establishments that are Louisiana Food and Drug registrants throughout the United States. OPH estimates that each registrant will pay an additional \$7 per registration.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no effects on competition and employment anticipated as a result of these proposed rule changes.

J.T. Lance  
Assistant Secretary  
1407#038

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Natural Resources Office of Coastal Management

Administration of the Fisherman's Gear  
Compensation Fund (LAC 43:I.Chapter 15)

Under the authority of R.S. 49:214.21-49:214.41 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:450 et seq., the Department of Natural Resources, Office of Coastal Management proposes to amend LAC 43:I.Chapter 15 relative to the administration of the Fisherman's Gear Compensation Fund.

The proposed Rule amendment will: change the publishing method to achieve cost savings; improve the public's access to program related information; update incident site reporting methods; ensure that obstruction areas are reported using currently available, commonly used, industry standard navigation methods; better define required claim documentation needed from claimants; and remove extraneous information.

#### Title 43

#### NATURAL RESOURCES

#### Part I. Office of the Secretary

#### Subpart 1. General

#### Chapter 15. Administration of the Fisherman's Gear Compensation Fund

#### §1501. Statutory Authorization and Definitions

A. General. The Fisherman's Gear Compensation Program is designed to compensate commercial fishermen whose fishing gear, equipment, or vessels are damaged by underwater obstructions in the Louisiana coastal zone and claims are subject to the requirements of these guidelines and all guidelines must be complied with.

B. Definitions. As used in these regulations the following terms and phrases shall have the definition ascribed to them.



*Claimant*—any vessel owner who files a claim under the provisions of these regulations and R.S. 56:700.1-700.5.

*Commercial Fisherman*—any citizen of the state of Louisiana who possesses a valid Louisiana residential commercial fishing license and who derives a primary source of his or her income from the harvesting of living marine resources for commercial purposes.

*Department*—the Louisiana Department of Natural Resources and Regulatory Authority means the secretary thereof and the personnel appointed or employed thereby who administer the commercial fishermen's gear compensation fund.

*Fishing Gear*—any licensed marine vessel and any equipment, whether or not attached to a vessel, in which are used in the handling or harvesting of commercial marine resources. Crab traps are expressly excluded from the definition.

*Fund*—the Fisherman's Gear Compensation Fund.

*Hearing Examiner*—the person(s) employed or appointed by the regulatory authority to conduct hearings, take oral and written testimony from claimants and other witnesses, and make recommendations to the regulatory authority on the validity and payment of claims.

*Obstruction*—any object, obstacle, equipment or device located in state water within the geographical boundary of the fund, set forth in R.S. 49:214.24 whether natural or man-made; provided that this definition shall not be applied to obstructions floating on the surface which could be avoided by a reasonably prudent fisherman.

*Primary Source of Income*—that source of revenue earned by a claimant from commercial fishing endeavors which is deemed by the regulatory authority to constitute a fundamental source of such claimant's annual earned income. Annual earned income shall be income earned from all sources reportable on state and federal income tax returns. Any claimant who presents satisfactory proof that at least 50 percent of his or her annual income in the year preceding the year of the claim was earned from commercial fishing endeavors shall be deemed to derive a primary source of his or her income therefrom.

*Satisfactory Proof*—as it relates to demonstrating a primary source of income—a certified copy of state and federal income tax returns together with related financial data. In the case of a claimant being a corporation, a certified copy of the state and federal corporate tax return shall be submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 14:545 (August 1988), LR 21:956 (September 1995), amended by the Office of Coastal Management, LR 40:

### **§1503. Geographic Boundary of Fund**

A. Claims shall be based on damage or loss of fishing gear due to an encounter with an obstruction in state waters located below the northern boundary of the Louisiana coastal zone as set forth in R.S.49:214.24, and depicted on official maps of the state regulatory authority having jurisdiction over coastal zone management, and extending seaward to the limits of Louisiana's territorial jurisdiction.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 11:29 (January 1987), LR 21:956 (September 1995), amended by the Office of Coastal Management, LR 40:

### **§1507. Identification of Area of Obstruction**

A. When an obstruction has been encountered by a claimant from which encounter a claim for damages to the fund is made, the claim shall not be accepted unless accompanied by sufficient information by which to locate the area of the obstruction. Such information shall be conveyed on forms furnished by the department when available, or otherwise in a manner sufficiently clear to be usable by the department in charting the obstruction.

1. No future claim shall be filed by a claimant for an encounter with an obstruction at the same location reported by the fisherman on a previous claim.

B. - B.5. ...

a. Latitude/Longitude Coordinates. Provide coordinates in geographic coordinate system (GCS) North American Datum (NAD) 83 latitude/longitude decimal degrees (e.g., N 29° 50.893, W 89° 20.360) or equivalent;

b. - d. ...

e. distance and direction to floating navigational aids such as buoys. Identify any buoy by name, number, color, type and lightlist number if known;

f. alternate navigation methods may be used if they are available. These include global positioning system (GPS), and similar electronic navigation systems that may be in use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:956 (September 1995), amended by the Office of Coastal Management, LR 40:

### **§1509. Claims—General Form and Content**

A. The Fishermen's Gear Compensation Fund shall be limited to the payment of no more than two claims for damage or loss of fishing gear filed by claimants during a fiscal year applicable to the department (July 1-June 30). Claims must be received by the Program within the period indicated. A single claim may not exceed \$5,000, but in no event shall any payment of a claim exceed the amount of gross income earned by the claimant from fishing endeavors in the year preceding the claim. Claims shall be by affidavit, signed by the claimant on forms furnished by the department when available and shall contain, in addition to the requirements of §1507 herein, the following information:

1. - 5. ...

a. the nature and extent of the damage and loss suffered; a photograph, or series of photographs of vessel damage which must show the claimed damage while still on the vessel, and a photograph, or series of photographs, that show the registration/documentation number and/or name of the vessel; a detailed description of the gear involved and where pertinent, a list of components such as size, type, grade, etc.; In the instance of a total loss of gear, a photograph or series of photographs are required from the place on the vessel where the gear was lost and where the gear would normally be attached, except in the circumstance of a total loss of nets in which the claimant will provide documentation and evidence to support the loss;

b. the amount claimed together with proof of ownership of the gear which was damaged or lost on the obstruction. Proof of ownership must include: paid receipts which are completely filled out including the date, full name, address and telephone of the seller along with the claimant's name and/or address together with proof of payment such as copies of money orders or bank cashier's checks for the gear; affidavits; or other evidence. No receipts paid by "cash" will be accepted for gear purchased after the effective date of this rule. Claimants that made or repaired the damaged gear shall submit a notarized statement that he or she made his or her own gear along with paid receipts for the materials. If all damaged gear was original to the vessel when it was purchased or acquired, a copy of the bill of sale of the boat or subsequent notarized statement to the effect that all gear was original to the boat including date vessel was acquired, full name of seller, and sale price must be included;

c. - e. ...

6. a detailed statement of the efforts made by claimant to identify, locate and collect damages for his loss from the person financially responsible therefore accompanied by copies of all correspondence related thereto;

A.7. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:957 (September 1995), amended by the Office of Coastal Management, LR 40:

#### **§1511. Hearing Examiner; Small Claims; Adjudicatory Hearings**

A. - E. ...

F. The regulatory authority shall publish a monthly report of the number and total dollar amount of the claims filed, the number of claims denied, the number of claims paid and the total dollar amount of the claims paid, and the latitude and longitude coordinate locations of each claim for which it is available, on the Fishermen's Gear Compensation Program website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 16:416 (May 1990), amended by the Office of Coastal Management, LR 40:

#### **§1513. Penalties**

A. The intentional rendering of a financial statement of account, which is known to be false, by anyone who is obliged to render an accounting pursuant to R.S. 56:700.1-700.5, or these regulations, shall be punishable pursuant to the provision of the Louisiana Criminal Code, R.S. 14:70, False Accounting.

B. The filing or depositing, with knowledge or falsity, of any forged or wrongfully altered document, for record in any claim or proceeding before a hearing examiner or other administrator of the fund, shall be punishable pursuant to the provisions of the Louisiana Criminal Code, R.S. 14:133, Filing False Public Records.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.2.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:513 (August 1980), amended by the Office of Coastal Management, LR 40:

#### **§1517. Rules for Labeling Equipment, Tools, Materials, and Containers Used by the Oil and Gas Industry within Louisiana Coastal Waters**

A. - B.4. ...

C. Each incident of items lost overboard shall be reported initially by telephone to the Department of Natural Resources (225) 342-7591 during regular business hours, and also on a standard form to be provided by the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 17:272 (March 1991), amended by the Office of Coastal Management, LR 40:

#### **Family Impact Statement**

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

#### **Poverty Impact Statement**

This proposed Rule has no known impact on poverty as described in R.S. 49:973.

#### **Small Business Statement**

In accordance with R.S. 49:965.6, the Department of Natural Resources Office of Coastal Management has conducted a Regulatory Flexibility Analysis and found that the proposed amending of this Rule will have negligible impact on small businesses.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session.

#### **Public Comment**

All interested persons are invited to submit written comments on the proposed regulation amendment. Persons commenting should reference this proposed regulation by *Administration*. Such comments must be received no later than August 10, 2014, at 4:30 p.m., and should be sent to Jessica Diez, Coastal Resource Scientist, Office of Coastal Management P.O. Box 44487, Baton Rouge, LA 70804-4487 or by email to [jessica.diez@la.gov](mailto:jessica.diez@la.gov). Copies of this proposed regulation can be purchased by contacting OCM at (225) 342-7360, and are available for viewing and copying on the internet at: <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=85&ngid=5>.

#### **Public Hearing**

Requests for a public hearing must be received by 4:30 p.m. August 10, 2014. If determined a public hearing is warranted, the public hearing will be held on August 25, 2014 from 10 a.m. to 12 p.m. in the Griffon Room of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802, so that interested persons may submit oral comments on the proposed amendments.

Keith Lovell  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Administration of the  
Fisherman's Gear Compensation Fund**

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

The proposed rule change will result in a minimal savings to state governmental expenditures. There is no anticipated direct material effect on local governmental expenditures as a result of the proposed rule change. The current rule requires monthly publishing of the number and total dollar amount of claims filed, denied, paid, and the GPS coordinates of the incident site in the Louisiana Register. The proposed rule change will no longer require publishing in the Louisiana Register and all information related to claims will now be available on the Fishermen's Gear Compensation Program website. The rule change will result in approximately \$400 in annual savings for the program. In addition, the proposed rule change makes technical adjustments and codifies the current practice of what claimants must include in submitting claims such as photographs, notarized statements, and receipts.

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

The proposed rule change will have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

The proposed rule change will have no anticipated costs or economic benefits to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The proposed rule change will have no effect on competition and employment.

Keith Lovell  
Assistant Secretary  
1407#029

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

Extending Commercial Facilities and Transfer Stations  
Setbacks under Statewide Order No. 29-B  
(LAC 43:XIX.507)

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43:XIX.507 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The current regulations pertaining to commercial facilities and transfer stations require a setback of 500 feet from a residential, commercial, or public building, church, school or hospital. The amendment is being proposed to increase this distance to 1,500 feet.

**Title 43**

**NATURAL RESOURCES**

**Part XIX. Office of Conservation—General Operations  
Subpart 1. Statewide Order No. 29-B**

**Chapter 5. Off-Site Storage, Treatment and/or  
Disposal of Exploration and Production  
Waste Generated from Drilling and  
Production of Oil and Gas Wells**

**§507. Location Criteria**

A. Commercial facilities and transfer stations may not be located in any area:

1. ...

2. where type A and B facilities and transfer stations, class II disposal wells, storage containers and E and P waste treatment systems and related equipment are located within 500 feet of a residential, commercial, or public building, church, school or hospital or for any proposed new commercial facility or transfer station or modification of an existing commercial facility or transfer station where publication of the notice of intent or date of the permit application filed with the Office of Conservation is dated after the promulgation date of this Rule, where type A and B facilities and transfer stations, class II disposal wells, storage containers and E and P waste treatment systems and related equipment are located within 1,500 feet of a residential, commercial, or public building, church, school or hospital;

A.3. - B. ...

C. Transfer stations are exempt from the location requirement of 1,500 feet from a commercial building.

D. Any encroachment upon applicable location criteria after the date the notice of intent is published or the application is filed, whichever is earlier, shall not be considered a violation of this Section.

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2817 (December 2000), amended LR 27:1901 (November 2001), LR 29:938 (June 2003), LR 40:

**Family Impact Statement**

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

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Small Business Statement**

This Rule has no known impact on small businesses as described in R.S. 49:965.6.

**Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., September 4, 2014, at Office of Conservation, Environmental Division,

P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Environmental Division, 617 North Third St., Room 817, Baton Rouge, LA 70802. Reference Docket No. ENV 2014-08 on all correspondence. All inquiries should be directed to Daniel Henry at the above addresses or by phone to (225) 342-5570. No preamble was prepared.

#### Public Hearing

The commissioner of conservation will conduct a public hearing at 9 a.m., August 28, 2014, in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Extending Commercial Facilities and Transfer Stations Setbacks under Statewide Order No. 29-B

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

There is no anticipated direct material effect on state or local governmental expenditures as a result of the proposed rule change. The proposed rule change extends the setback area associated with commercial facilities and transfer stations from 500 feet to 1,500 feet from residential, commercial or public buildings, churches, schools or hospitals. The facilities and stations handle the off-site storage, treatment and/or disposal of exploration and production waste generated from drilling and production of oil and gas wells.

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

The proposed rule change will have no effect on revenue collections of state or local government units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will only affect the owners of commercial facilities and transfer stations associated with the Exploration and Production (E&P) of oil and gas. There are no anticipated cost increases associated with the rule change and all required documentation will be provided on existing paperwork.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

James H. Welsh  
Commissioner  
1407#031

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Public Safety and Corrections Liquefied Petroleum Gas Commission

#### Classes of Permits (LAC 55:IX.113)

The Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, in accordance with R.S. 40:1846 and with the Administrative Procedure Act., R.S. 49:950 et seq., hereby gives notice of its intent to amend Section 113, "Classes of Permits and Regulations".

This text has been amended to repeal the prohibition against a dealer holding a class VI and a class VI-X permit at the same location.

### Title 55

### PUBLIC SAFETY

#### Part IX. Liquefied Petroleum Gas

#### Chapter 1. General Requirements

#### Subchapter A. New Dealers

#### §113. Classes of Permits and Registrations

A. The commission shall issue upon application the following classes of permits and registrations upon meeting all applicable requirements of §107 and the following:

1. - 7.a....

b. Any current class VI permit holder may convert to a class VI-X permit by filing formal application with the commission and submitting a \$25 filing fee. Presence of the applicant at the commission meeting will be waived. Upon receipt of the application and filing fee, permit shall be issued.

7.c. - 13.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended and promulgated LR 3:315 (July 1977), amended LR 7:633 (December 1981), LR 8:53 (January 1982), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 12:841 (December 1986), LR 15:855 (October 1989), LR 16:1063 (December 1990), LR 19:904 (July 1993), LR 20:1400 (December 1994), LR 21:701 (July 1995), LR 24:461 (March 1998), LR 25:2411 (December 1999), LR 29:2509 (November 2003), LR 33:1141 (June 2007), effective July 1, 2007, LR 38:1259 (May 2012), LR 40:

#### Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule should not have any effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule should not have any effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule should not have any effect on family earnings and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule should not have any effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to perform the Function as Contained in the Proposed Rule. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

#### Poverty Impact Statement

The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or

community asset development as provided in the R.S. 49:973.

The agency has considered economic welfare factors and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on poverty.

#### **Small Business Statement**

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments to Department of Public Safety, Office of Legal Affairs, c/o Paul Schexnayder, Post Office Box 66614, Baton Rouge, LA 70896. Written comments will be accepted through August 15, 2014.

Jill Boudreaux  
Undersecretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Classes of Permits**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will not result in any estimated implementation costs or savings to state or local governmental units. The proposed rule change repeals the prohibition against a dealer holding a Class VI permit (filling of approved cylinders) and a Class VI-X permit (exchange of approved cylinders) at the same location.

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

The proposed rule change may result in an increase in state revenue collections. To the extent a dealer with a Class VI permit wants to add a Class VI-X permit, the dealer files a formal application and submits a \$25 application fee. It is unknown how many dealers will apply for the additional permit.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will not result in any costs to directly affected persons or non-governmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change may have an impact upon competition and employment in the private sector for those dealers with both Class VI and Class VI-X permits at the same location. These dealers will now be able to offer both services more efficiently.

Jill P. Boudreaux  
Undersecretary  
1407#003

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

#### **Aerial Feral Hog Control Permits (LAC 76:V.135)**

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission do hereby advertise their intent to promulgate rules and regulations governing the taking of feral hogs using a helicopter.

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.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part V. Wild Quadrupeds and Wild Birds**

#### **Chapter 1. Wild Quadrupeds**

#### **§135. Aerial Feral Hog Control Permits**

##### **A. Purpose**

1. The purpose of this Section is to establish regulations concerning the use of aircraft to aid in the control of feral hogs. The regulations provide and establish general rules regarding permit requirements, reporting requirements, landowner authorization, and safety training.

##### **B. Definitions**

*Aerial Hog Control Permit*—a permit issued by LDWF to locate, pursue, take, harass, or kill feral hogs by using an aircraft.

*Applicant*—An individual, partnership, or corporation who files an application for an aerial hog control permit.

*Department* or *LDWF*—the Louisiana Department of Wildlife and Fisheries.

*Gunner*—an individual who uses a firearm to shoot or attempt to shoot feral hogs pursuant to an aerial hog control permit.

*Landowner's Authorization*—signed consent from the landowner or the landowner's agent.

*Observer*—any person other than the pilot or gunner who is on board an aircraft while feral hog control measures are being taken pursuant to an aerial hog control permit.

*Permittee*—any individual who has obtained a valid aerial hog control permit.

*Pilot*—an individual who pilots an aircraft to locate, pursue, take, harass, or kill feral hogs pursuant to an aerial hog control permit.

*Possess*—in its different tenses, the act of having in possession or control, keeping, detaining, restraining, holding as owner, or as agent, bailee, or custodian for another.

*Qualified Landowner or Landowner's Authorized Agent*—a person who contracts to be a gunner or observer and who has not:

- a. been convicted of a class II or greater wildlife violation in Louisiana, or the equivalent in another state within the past five years;
- b. been convicted of a felony in Louisiana or another state; or
- c. been convicted of a violation of 16 U.S.C. §§3371-3378 (the Lacey Act).

*Take*—in its different tenses, the attempt or act of hooking, pursuing, netting, capturing, snaring, trapping, shooting, hunting, wounding, or killing by any means or device.

#### C. Permits

1. An aerial feral hog control (AFHC) permit authorizes the permittee to utilize a helicopter to locate, pursue, take, harass, or kill feral hogs.

2. It shall be unlawful for any person to use a helicopter to locate, pursue, take, harass, or kill feral hogs without an AFHC permit.

3. Possession of an AFHC permit does not exempt the permit holder from other local, state, or federal rules, laws, or permit requirements.

4. Permits are not transferrable.

#### D. Permit Requirements

1. Application for an aerial feral hog control (AFHC) permit shall be made on an official application form provided by the department. AFHC permits will be valid for the calendar year in which issued and will expire on December 31 of each year.

2. A permit may be issued in the name of an individual, partnership, or corporation for named pilots to locate, pursue, take, harass, or kill feral hogs by the use of an aircraft.

3. Application for a permit shall include:

- a. name, address, and phone number of applicant;
- b. if applicant is an individual, the birth date, federal aviation administration (FAA) certificate number, and driver's license number of the applicant;
- c. name, address, driver's license number, FAA license number, and date of birth for each individual pilot; and
- d. make, model, color, and registration number of each aircraft to be used.

4. Anyone who has been convicted of a class II or greater wildlife violation in Louisiana, or the equivalent in another state within the past five years, has been convicted of a felony in Louisiana or another state, or been convicted

of a violation of 16 U.S.C. §§3371-3378 (the Lacey Act) shall not be eligible for an AFHC permit.

5. The application must contain a signed waiver statement holding the Department of Wildlife and Fisheries and its employees harmless for liability as a result of issuing an AFHC permit. AFHC permits will only be issued to those applicants who are willing to accept full responsibility and liability for any damages or injuries that occur during or as a result of activities related to the AFHC permit.

#### E. Landowner's Authorization

1. Prior to participation in permitted activities, a permit holder must submit to LDWF a landowner's authorization form (LOA) for each contiguous and non-contiguous piece of property on which feral hog control activities will be performed.

2. A landowner's authorization form will be made on an official application form provided by the department and shall include:

- a. the name, mailing address, driver's license number, and phone number of the landowner;
- b. the name, mailing address, driver's license number, and phone number of the authorized landowner's agent, if applicable;
- c. the name and permit number of the permittee;
- d. a description and specific location of the property, including acreage; and
- e. justification for why feral hogs should be controlled by use of a helicopter.

3. A landowner's authorization for feral hog control will be valid for the duration of the permit, unless:

- a. that permit expires without renewal or is revoked;
- b. the landowner's authorization specifies a time limit; or
- c. the landowner requests in writing to LDWF and the permittee that authorization be withdrawn.

4. A single LOA form may be submitted by a group of landowners or by an association on behalf of such landowners. In the case of a group submission, the landowner's authorization form must have an attached list of participating landowner names, phone numbers, mailing addresses, physical addresses of the properties, and acreages for each participating landowner. The justification for control will be for the entirety of the properties listed on the form.

5. Property outlined in an LOA must exceed 1000 acres to be eligible for feral hog control activities under an AFHC permit.

6. If a LOA is approved by LDWF, a unique control number will be issued to identify the property and LOA in permit activities.

7. AFHC permit activities may not commence on a property until a LOA control number has been assigned by LDWF and received by the permittee.

#### F. Landowner's Authorization to Appoint Subagents

1. A permittee may contract with a qualified landowner or landowner's authorized agent to act as a gunner or observer in the location, pursuit, taking, harassing or killing of feral hogs from a helicopter, provided that the permittee possesses a valid, properly obtained LOA describing the activity.

2. A landowner with a valid LOA number can allow an AFHC permit holder to appoint subagents to act as gunners or observers during permit activities, provided that the landowner or the landowner's authorized agent has completed a landowner's authorization to appoint subagents (LAAS) form. Such forms shall be made on an official application form provided by the department and shall include:

- a. the name, mailing address, and phone number of the landowner;
- b. the name, mailing address, and phone number of the authorized landowner's agent, if applicable;
- c. the name and permit number of the permittee;
- d. LOA number;
- e. physical address of the property referenced by the LOA number;
- f. signatures and dates of agreement to the terms by the landowner or landowner's authorized agent and the permittee; and
- g. time limit for the LAAS, if desired.

3. LAAS forms will be valid for the duration of the permit, unless:

- a. that permit expires without renewal or is revoked;
- b. if the LAAS specifies a time limit; or
- c. if a landowner requests in writing to the permittee that authorization be withdrawn.

4. AFHC permit holders will be responsible for completion of LAAS forms, and will maintain completed LAAS forms in perpetuity.

5. LAAS forms will be made available for inspection upon demand by LDWF personnel.

#### F. General Rules

1. A holder of an AFHC permit is authorized to engage in feral hog control by the use of an aircraft only on land described in the landowner's authorization (LOA).

2. The AFHC permit shall be carried in the aircraft when performing feral hog control activities using an aircraft.

3. The permit is only valid for the taking of feral hogs from a helicopter. Taking any wildlife or animals other than feral hogs is strictly prohibited.

4. A pilot of an aircraft used for feral hog control must maintain a daily flight log and report as detailed below. The daily flight log must be up-to-date and made available for inspection upon demand of LDWF employees.

5. A pilot of an aircraft must possess and maintain a valid pilot's license as required by the FAA.

6. All pilots and permittees must comply with FAA regulations for the specific type of aircraft listed in the permit.

7. The permit holder may only use an aircraft to take feral hogs that are causing verifiable damage to land, structures, crops, water, or livestock, domestic animals, or human life.

8. An AFHC permit holder may only take feral hogs that are located on property outlined in the LOA. It is prohibited to fire shots over property not included in the LOA. It is prohibited to fire upon, haze, harass, or track any animals, including feral hogs, located on property not listed in the LOA.

9. Any activities performed under this permit must occur during daylight hours, from one half hour before official sunrise to one half hour after official sunset.

10. An AFHC permit is not to be used for sport hunting.

11. All observers and gunners must successfully complete a four hour safety training held by the permittee prior to participating in AFHC permit activities. Safety training must include aspects of:

- a. aircraft safety procedures;
- b. target and non-target animal identification;
- c. firearm safety;
- d. emergency procedures.

12. Attendance at a safety training course will allow a gunner or observer to participate in AFHC permit activities for 90 days after successfully completing the class.

13. Permittee must report violations of these regulations by pilots, observers, gunners, or ground personnel during AFHC activities to LDWF within 24 hours of occurrence of the violation.

14. Any unreported violation of AFHC regulations by a pilot, gunner, or observer may result in immediate and permanent loss of this permit and possible criminal prosecution.

#### G. Reporting and Renewal Requirements

1. A report of activities completed under this permit shall be required within 30 days of the end of each calendar quarter. Additionally, a report of activities completed under this permit shall be required when submitting a request for permit renewal or upon termination of the permit. This report shall be completed on official forms provided for this purpose by LDWF, and consist of daily flight log sheets, showing:

- a. name, permit number, and signature of permit holder;
- b. number of feral hogs managed under the permit;
- c. landowner's authorization control number issued by LDWF;
- d. dates of flight;
- e. time of day an authorized flight begins and is completed;
- f. type of management taken by use of aircraft;
- g. name, pilot's license number, and signature of pilot;
- h. name and address of gunner(s) and observer(s);
- i. date that safety training was successfully completed by observer(s) and gunner(s).

2. Application for renewal of an AFHC permit must be submitted to LDWF no later than 45 days prior to expiration of the permit and AFHC permits will not be renewed until all renewal requirements are received.

3. If no flights were taken during the calendar quarter, a negative daily flight log and report must be submitted to LDWF.

H. Penalties for Violation. Unless another penalty is provided by law, violation of these regulations will be a class two violation as defined in title 56 of the *Louisiana Revised Statutes*. In addition, upon conviction for violation of these regulations, the AFHC permit associated with the permittee may be revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:112(B).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:

#### **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**

The proposed rulemaking will have no impact on providers as described in HCR 170 of 2014.

#### **Public Comments**

Interested persons may submit written comments relative to the proposed Rule to Camille Warbington, Post Office Box 98000, Baton Rouge, LA 70898-9000, or cwarbington@wlf.la.gov prior to August 30, 2014.

Billy Broussard  
Chairman

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Aerial Feral Hog Control Permits**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change is expected to have no effect on revenue collections of state or local governmental units.

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

The proposed rule change is expected to have no implementation costs to state or local governmental units.

The proposed rule change creates a free permit that authorizes the use of firearms fired from a helicopter to aid in the control of feral hogs. The proposed rule also describes the requirements to obtain and hold such a permit, to report aerial hog hunting activity, to obtain authorization from affected landowners, and to observe safety regulations.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change would positively affect landowners who allow aerial hog control permit holders to remove nuisance feral hogs from their properties. To the extent that aerial hog control efforts reduce the number of feral hogs and limit the detrimental environmental effects of their foraging, the proposed rule change may also benefit third parties that are negatively affected by feral hog activities, included but not limited to farmers, foresters, homeowners, landowners, and hunters.

The proposed rule change may also positively benefit aerial hog control permit holders who may be able to derive income by charging fees for feral hog control activity.

#### **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  
1407#046

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

Crappie Regulations—Daily Take  
on Bayou D'Arbonne Lake  
(LAC 76:VII.197)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission do hereby advertise their intent to modify the daily take of crappie on Bayou D'Arbonne Lake per Act 334 of the 2013 Louisiana Legislature which repealed Subsection B of Section 197. The daily take will be 50 fish per person and the possession limit will be as established in statute.

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.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

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

#### **Chapter 1. Freshwater Sports and Commercial Fishing**

#### **§197. Crappie Regulations—Daily Take**

##### **A. Poverty Point Reservoir (Richland Parish)**

##### **1. Daily Limit—25 fish per person:**

a. on water possession—same as daily limit per person.

##### **B. - B.1.a. Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:325 and Act 389 of the 2014 Regular Legislative Session.

HISTORICAL NOTE: Promulgated in accordance with Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 30:2339 (October 2004), amended LR 38:2941 (November 2012), amended LR 39:1833 (July 2013), LR 40:

#### **Family Impact Statement**

In accordance with Act No. 1183 of 1999, 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 Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B).



### Provider Impact Statement

This proposed 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 Mike Wood, Director, Inland Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to October 10, 2014.

Billy Broussard  
Chairman

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Crappie Regulations Daily Take on Bayou D'Arbonne Lake

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

The proposed rule change is expected to have no implementation costs to state or local governmental units.

The proposed rule change provides for the Louisiana Wildlife and Fisheries Commission rules to be consistent with statute, which supersedes existing 25 fish per day creel limit for crappie on Bayou D'Arbonne Lake in Union Parish. Pursuant to Act 334 of the 2013 Regular Legislative Session the creel limit in Bayou D'Arbonne Lake is 50 fish per day. In addition Act 389 of the Regular Legislative Session repeals the existing regulation for daily creel limits for crappie on Bayou D'Arbonne Lake.

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

The proposed rule change is expected 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)

The proposed rule change is expected to have no costs or economic benefits to affected persons or non-governmental groups.

#### 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  
1407#050

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

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

Louisiana Fisheries Forward Program (LAC 76:VII.347)

The Wildlife and Fisheries Commission hereby advertises his intent to establish the Louisiana Fisheries Forward Program to increase and elevate professionalism in the commercial crab industry (R.S. 56:305.6). This Notice of Intent shall establish the requirements needed to complete the program, including education in the proper fishing techniques necessary for the health and sustainability of the species; proper techniques for the best capture and presentation of the crabs for marketability; proper instructions regarding the placement, tending, and

maintenance of crab traps to reduce potential conflicts with other user groups; and authorizes the program to include a mandatory apprenticeship program.

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.

### Title 76

### WILDLIFE AND FISHERIES

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

#### Chapter 3. Saltwater Sport and Commercial Fishery §347. Louisiana Fisheries Forward Program

A. The following defines the requirements necessary to complete the program to increase and elevate professionalism in the commercial crab industry pursuant to R.S. 56:305.6. This program shall hereafter be referred to as the Louisiana Fisheries Forward Program.

B. For the purposes of this section, the following will be defined as:

*Applicant*—licensed commercial fishermen attempting to obtain a commercial crab trap gear license through the program.

*Mentor*—a fisherman holding a valid commercial crab trap gear license who mentors an apprentice in completing the apprenticeship path.

*Sponsor*—a fisherman or wholesale/retail seafood dealer holding a valid commercial crab trap gear license who sponsors an apprentice in completing sponsorship path.

#### C. Policy

1. Applicants that do not qualify for a commercial crab trap gear license under provisions defined in R.S. 56:305.6 shall fulfill all the basic requirements and complete one of two field-training paths; the apprenticeship path, or the sponsorship path, to complete the program, and receive a crab trap gear license.

2. Before beginning a training path, an applicant must possess a valid Louisiana commercial fisherman's license. This license number will be used to track participation in the program.

3. The basic requirements and chosen training path shall be completed within one consecutive 12-month period.

4. Applicants who wish to change their mentor or sponsor during the process shall submit a new application containing the new mentor's or sponsor's information along with a written explanation for the change. Applicants shall not lose credit for hours or trips logged under the previous mentor or sponsor provided they are verified pursuant to Paragraphs F.3 and G.3 of this Section.

#### D. Eligibility

1. Any person who has been convicted of a class 3 or greater fisheries violation in the last five years shall not be eligible to participate as an applicant, mentor, or sponsor.

2. Any person choosing to participate as a mentor shall possess a valid commercial crab trap gear license and have documented a minimum of six trip tickets showing crab landings in any two of the previous four years.

3. Any person choosing to participate as a sponsor shall possess a valid commercial crab trap gear license and have documented a minimum of six trip tickets showing crab

landings as a commercial fisherman or wholesale/retail dealer in any two of the previous four years.

#### E. Basic Requirements

1. Each applicant must obtain a Louisiana boater education certificate via the Louisiana boater safety course.

2. Each applicant must complete and receive a certificate in the following Louisiana fisheries forward online courses. The applicant will be required to view 100 percent of the content and score a minimum of 80 percent in order to receive a certificate.

a. Course providing a detailed overview of state and federal statutes governing legal harvest of major seafood commodities, including but not limited to, licensing and permitting, harvest regulations, reporting requirements, and responsible and safe fishing.

b. Course covering the legalities and best management practices of crab fishing, including but not limited to, licensing and permitting requirements, crab harvest regulations, reporting requirements, best handling practices, responsible fishing, and vessel operation.

c. Course covering fundamental financial concepts targeted to Louisiana's commercial fishing industry, including but not limited to, budgeting, cash flow, taxes, insurance, loans, grants, and business plans.

d. Course covering the fundamental concepts for producing high quality seafood, including but not limited to, quality loss, temperature control, icing, chilling, freezing, and proper handling and storage.

#### F. Apprenticeship Path

1. To initiate the apprenticeship training path the applicant and applicant's mentor must complete and submit an application to the department. The application shall state the intent to participate in apprenticeship training and include the social security number, name, address, state issued photo identification, and commercial fishing license of both the applicant and the applicant's mentor.

2. The applicant shall complete a minimum of 200 hours of apprenticeship training related to crab fishing under supervision of the applicant's designated mentor. Training hours shall be recorded daily on training log forms provided by the department. Copies of the training logs shall be submitted to the department on a quarterly basis. A minimum of 100 hours of training shall be performed and logged on days when the applicant's mentor has harvested and reported trip ticket sales of crabs. Any previous work or training experience in the crab fishery conducted prior to the date the apprenticeship is initiated shall not count toward the applicant's total required hours.

3. Upon completion, the applicant and mentor must complete and submit a notarized affidavit signed by both the applicant and the mentor and include the original signed training log forms. The affidavit shall be provided by the department and indicate the completion of the apprenticeship, affirm the accuracy of the associated log forms, and include the name, address, and commercial fishing license of both the applicant and the mentor.

#### G. Sponsorship Path

1. To initiate the sponsorship training path the applicant and applicant's sponsor must complete and submit

an application to the department. The application shall state the intent to participate in sponsorship training and include the social security number, name, address, state issued photo identification, and commercial fishing license of both the applicant and the applicant's sponsor.

2. The applicant shall actively fish crabs under the sponsor's crab trap gear license and report trip ticket sales of crabs using the applicant's name and commercial fisherman's license number. The applicant must complete a minimum of 20 crab fishing trips evidenced by trip tickets. Any trips or landings conducted prior to the date the sponsorship is initiated shall not count toward the applicant's total required crab fishing trips.

3. Upon completion, the applicant and sponsor must complete and submit a second notarized affidavit signed by both the applicant and the sponsor and include copies of the trip tickets used to evidence the required crab fishing trips. The affidavit shall be provided by the department and indicate the completion of the sponsorship, affirm the accuracy of the associated trip tickets, and include the name, address, and commercial fishing license of both the applicant and the mentor.

#### H. Optional Training

1. Applicants may substitute attendance at certain department approved meetings or educational events for required apprenticeship hours and sponsorship trips. Eligible meetings and events include, Louisiana crab task force meetings, crab dock days, and annual Louisiana fisheries summits. Additional meetings and events may be deemed eligible by the department.

a. Each hour of meeting attendance shall substitute for one hour of the apprenticeship requirement. Every 10 hours of meeting attendance shall substitute for one fishing trip of the sponsorship requirement.

b. A maximum 50 hours or 5 fishing trips may be substituted.

2. Attendance at meetings or educational events shall be documented by a designated department employee or agent. The applicant shall sign in upon arrival, present a photo ID and provide their commercial license number. Upon departure, the applicant shall sign out.

a. Applicants who sign in prior to the start of an event and sign out after the conclusion of an event shall receive substitution credit hours equal only to the length of the event. Applicants shall not receive extra credit hours for arriving early or staying late at an event.

b. Applicants who fail to sign out shall not receive credit hours for attending an event.

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

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:

#### **Family Impact Statement**

In accordance with Act No. 1183 of 1999, 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. Jason Froeba, Office of Fisheries, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to Monday, September 1, 2014.

Billy Broussard  
Chairman

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Louisiana Fisheries Forward Program

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

The proposed rule change is expected to have a recurring increase in costs of approximately \$10,000 per year to the Louisiana Department of Wildlife and Fisheries to oversee the education and training of certain commercial fishermen who seek to obtain a commercial crab trap license.

The proposed rule establishes a set of requirements for education and training for commercial fishermen wishing to obtain a commercial crab gear license in Louisiana in compliance with Act 540 of the 2014 Regular Legislative Session. These requirements are intended only for new entrants into the commercial crab harvesting sector. Individuals who have held a commercial crab gear license for two of the past four years (specifically 2011, 2012, 2013, and 2014) are exempt from these training and education requirements.

Education requirements include the completion of a Louisiana Boater Safety Course and a series of online courses related to commercial fishing regulations, finance and business management, and best practices for quality seafood production.

Training requirements allow for two different systems of training and skills development: the apprentice training path and the sponsorship path. Under each path, an applicant (the individual wishing to obtain a crab gear license) would be required to work in cooperation with an individual who is currently working in some capacity within the commercial crab sector.

Under the apprenticeship training path, an applicant would be required to complete 200 hours under the supervision of a mentor (a commercial fishermen with a crab gear license). A minimum of 100 hours must be performed on days when the applicant's mentor has harvested and reported trip ticket sales of crabs.

Under the sponsorship path, an applicant would be required to complete 20 commercial crab fishing trips in connection with a sponsor, a commercial fisherman or wholesale/retail seafood dealer with a commercial crab trap gear license. The applicant must actively fish crabs under the sponsor's crab trap gear license using the applicant's name and the sponsor's commercial fishing license number.

The proposed rule also describes the application procedure and the procedure for verifying compliance with the training and education requirements.

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

The proposed rule change may result in a minor increase in revenue collections to the Louisiana Department of Wildlife and Fisheries if some commercial crab harvesters take the online boating education course as required under the proposed regulations that may not have taken the course otherwise. This number is expected to be relatively small since most potential new commercial crab harvesters would probably take the boating education course anyway under the current regulations.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule is expected to have a direct effect on individuals who wish to obtain a commercial crab gear license who have not held a commercial crab gear license in any two years between 2011 and 2014. Act 540 of the 2014 Regular Legislative Session provided that these individuals could not obtain a commercial crab gear license without undergoing the described education and training requirements. The proposed online courses, which may be taken at no cost to the applicant, are expected to take about four hours to complete.

Boating education courses, which would be made mandatory under the proposed rule, normally last six to eight hours. There is no fee to take boating education courses taken in classes taught by LDWF personnel throughout the state. Those who take the course online must pay a \$25 fee upon the successful completion of the class. However, it is likely that many applicants would not need to take the boating safety education course specifically in connection to the crab gear application process because they would probably have already completed the course to be compliant with the existing boating regulations. All persons born after January 1, 1984, must complete a boating education course and carry proof of completion to operate a motorboat in excess of 10 horsepower.

Additional costs to applicants include the potential loss of earnings from crab harvesting during the 200 hours of apprentice training or the 20 trips of sponsorship training. These costs may be conceptualized as the difference between the expected income that applicants could have earned if they harvested crabs independently and the payments that they might receive from their sponsors or mentors during their training trips. Data is not available to quantify the potential loss of earnings because there is no historical record for a program of this nature. Further, payments from sponsors or mentors to applicants are likely to vary, dependent upon the voluntary agreement between the parties.

The proposed rule is also expected to have a direct effect on the commercial fishermen and seafood dealers who opt to serve as mentors or sponsors. In addition to the cost of submitting affidavits and quarterly logs, they would experience the cost of supervising or managing the applicants acting under their tutelage. These costs could vary significantly, depending upon the effort which the sponsor or mentor voluntarily chooses to dedicate to the task.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change may reduce the number of commercial fishermen who harvest crabs commercially because it places additional training and education requirements for potential participants who have not held a commercial crab trap license in any two of the previous four years.

Bryan McClinton  
Undersecretary  
1407#048

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Louisiana Wild Seafood Certification Program  
(LAC 76:I.703)

The Wildlife and Fisheries Commission hereby advertises his intent to establish rules and regulations to change the renewal date for participants in the Louisiana Wild Seafood Certification Program (R.S. 56:578.15). The proposed changes to the Louisiana Wild Seafood Certification Program allow for increased convenience for participants of the voluntary program. The seafood certification program strives to increase consumer confidence and increase demand for Louisiana seafood. The primary mission with this origin based certification program is to build a unified brand that will attract not only consumers but also food service and seafood distribution buyers who want to be sure they are sourcing the best tasting seafood in the world: Louisiana seafood.

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.

#### Title 76

### WILDLIFE AND FISHERIES

#### Part I. Wildlife and Fisheries Commission and Agencies Thereunder

#### Chapter 7. Louisiana Wild Seafood Certification Program

#### §703. Application and Permitting Process

A. - C.4. ...

D. Permits are valid for 1 year and expire 12 months from the date of permit approval.

E. - G. ...

H. Applications for the LWSCP shall be accepted at any time of the year. Applicants must show proof of having acquired all necessary licenses and permits. All information requested must be provided before the application is processed and a permit issued.

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15, R.S. 56:23, and 56:301.4.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of the Secretary, LR 38:2000 (August 2012), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:

#### 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. Jason Froeba, Office of Fisheries, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to Monday, September 1, 2014.

Billy Broussard  
Chairman

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Louisiana Wild Seafood Certification Program

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

The proposed rule change is expected to have no implementation costs to state or local governmental units.

The proposed rule change alters the term of validity for a Louisiana Wild Seafood Certification permit. Currently the term for permits runs from January 1 through December 31 of a calendar year. Under the proposed rule change, permits can be obtained on any date of the year and will expire one year later.

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

The proposed rule change is expected 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)

The proposed rule change will benefit potential participants in the Louisiana Wild Seafood Certification program by making the permit renewal process more convenient. Under the proposed rule change, participants might renew their permits at a time of their choosing rather than at year's end which falls in the midst of the holiday season, a potentially busy time for many participants.

#### 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  
1407#049

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Possession of Potentially Dangerous Wild Quadrupeds, Big  
Exotic Cats, and Non-Human Primates (LAC 76:V.115)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission does hereby advertise their intent to amend the rules and regulations governing the possession of potentially dangerous quadrupeds, big exotic cats, and non-human primates.

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.

#### Title 76

### WILDLIFE AND FISHERIES

#### Part V. Wild Quadrupeds and Wild Birds

#### Chapter 1. Wild Quadrupeds

#### §115. Possession of Potentially Dangerous Wild Quadrupeds, Big Exotic Cats, and Non-Human Primates

A. This commission finds that possession of certain potentially dangerous quadrupeds, big exotic cats, and non-human primates poses significant hazards to public safety and health, is detrimental to the welfare of the animals, and may have negative impacts on conservation and recovery of some threatened and endangered species.

1. The size and strength of such animals in concert with their natural and unpredictable and/or predatory nature can result in severe injury or death when an attack upon a human occurs. Often such attacks are unprovoked and a person other than the owner, often a child, is the victim. Furthermore, there is no approved rabies vaccine for such animals, so even minor scratches and injuries inflicted upon humans or other animals could be deadly.

2. Responsible possession of these potentially dangerous wild quadrupeds, big exotic cats, and non-human primates necessitates that they be confined in secure facilities. Prolonged confinement is by its nature stressful to these animals and proper long-term care by experienced persons is essential to the health and welfare of these animals and to society.

3. Certain of these animals are listed as endangered species and others are so similar in appearance to endangered subspecies as to make practical distinction difficult. This similarity of appearance may provide a means to market illegally obtained endangered animals and can limit the effective enforcement of endangered species laws.

B. This commission regulation prohibits importation and private possession, and otherwise regulates certain wild quadrupeds, big exotic cats, and non-human primates as provided herein.

C.1. Except as provided herein, it shall be unlawful to import into, possess, purchase or sell within the state of Louisiana, by any means whatsoever including but not limited to transactions conducted via the internet, any of the following species or its subspecies of live wild quadrupeds, big exotic cats, or non-human primates, domesticated or otherwise (hereinafter "listed animals"):

- a. black bear (*Ursus americanus*);
- b. grizzly bear (*Ursus arctos*);
- c. polar bear (*Ursus maritimus*);
- d. red wolf (*Canis rufus*);
- e. gray wolf (*Canis lupus*);
- f. wolf dog hybrid (*Canis lupus* or *Canis rufus x Canis familiaris*);
- g. all non-human primates;
- h. the following big exotic cats:
  - i. tigers;
  - ii. lions;

- iii. leopards (including, but not limited to snow leopard and clouded leopard);
- iv. jaguars;
- v. cheetahs;
- vi. cougars or mountain lions (*Felis concolor*);
- vii. all subspecies of the above listed exotic cats;
- viii. hybrids resulting from cross breeding of the above listed exotic cats.

2. Holders of a potentially dangerous wild quadruped permit allowing possession of any listed animal, where the permit is valid on the effective date of this regulation, will be "grandfathered" and the permit will be renewed annually until existing permitted captive animals expire, or are legally transferred out of state, or are transferred to a suitable facility. No additional listed animals may be acquired by any means whatsoever, including breeding.

D.1. Wolf-Dog Hybrids. The prohibition against wolf-dog hybrids expired January 1, 1997. Persons are cautioned that local ordinances or other state regulations may prohibit possession of these animals. Any animal which appears indistinguishable from a wolf, or is in any way represented to be a wolf shall be considered to be a wolf in the absence of bona fide documentation to the contrary.

E. Exempted Entities. The following organizations and entities shall be exempt from this regulation, including permitting:

1. zoos accredited or certified by the American Zoo and Aquarium Association (AZA) and the Zoo of Acadiana so long as it meets the American Zoo and Aquarium Association standards for enclosures;

2. research facilities as defined in the Animal Welfare Act as found in the *United States Code* title 7, chapter 54, §2132(e), including but not limited to the University of Louisiana at Lafayette Primate Center, the Tulane National Primate Research Center, and Chimp Haven, Inc., located in Shreveport, LA; and

3. any person transporting any listed animal through the state if the transit time is not more than 24 hours and the animal is at all times maintained within a confinement sufficient to prevent escape and contact with the public. Exhibiting the listed animal, in any manner, is prohibited;

4. circuses, limited to those temporarily in this state, offering varied performances by live animals, clowns, and acrobats for public entertainment, and which are incorporated class C licensees under chapter I of title 9 of the *Code of Federal Regulations*. Notwithstanding the above, circuses do not include entertainment that includes any listed animal in any type of wrestling, photography opportunity with a patron, or an activity in which any listed animal and a patron are in close contact with each other;

5. Louisiana colleges or universities, for possession of a big exotic cat of the species traditionally kept by that college or university as a school mascot, after proper documentation to the department that the college or university has consistently over the years possessed a big exotic cat as its mascot.

F. Permitted Entities. The following organizations and entities may be exempted from this regulation after applying for and receiving a permit from the department to possess any listed animal under the following conditions:

1. other zoos and educational institutions not covered under Paragraphs E.1-2 above. The secretary shall determine whether to issue a permit and any conditions for the permit on a case by case basis. A zoo, for purposes of this subsection, is defined as a publicly or municipally owned permanent institution which owns and maintains multiple species of wildlife, under the direction of at least one full-time professional staff member who possesses an appropriate body of knowledge and experience in zoological park management, provides its animals with appropriate care, exhibits the animals to the public on a regular basis, and has as its primary mission the exhibition, conservation, and preservation of animals in an educational and scientific manner:

a. any entity that has submitted to the department on or before July 1, 2014 an application as an other zoo or educational institution under this subsection shall not be required to be publicly or municipally owned. Should a permit be granted under this exception, future permits shall be likewise exempted, provided that a permit had been issued for the immediately preceding year;

2. animal sanctuaries accredited or certified by the American Zoo and Aquarium Association (AZA). Permitted sanctuaries are prohibited from exhibiting, breeding, or selling any listed animal. Listed animals must be surgically sterilized or separately housed to prevent breeding. Listed animals must be housed in such a manner as to prevent public contact and in compliance with the enclosure rules provided herein in Subsection I. Permitted animal sanctuaries are prohibited from transporting these animals to any public building or place where they may come into contact with the public including, but not limited to schools, hospitals, malls, private residences, or other commercial or retail establishments.

#### G. Non-Human Primates

1. As provided below, the following individuals may be exempted from this regulation after applying for and receiving a permit from the department to possess a non-human primate. The permit will be for one year and must be renewed annually under the following conditions:

a. an individual who legally possesses one or more non-human primates immediately prior to the effective date of this regulation and who can prove legal ownership is authorized to keep those non-human primates but is prohibited from acquiring any additional non-human primates by any means whatsoever, including breeding;

b. the individuals listed in this Subsection must annually apply for and receive a permit from the department. The permit application shall include:

i. the name, address, telephone number, and date of birth of applicant;

ii. a description of each non-human primate applicant possesses, including the scientific name, sex, age, color, weight, and any distinguishing marks;

iii. a photograph of each non-human primate and its permanent enclosure;

iv. the physical location where the non-human primate is to be kept;

v. proof of legal ownership. (Proof of legal ownership includes original purchase documents, veterinary records, or other documentation, acceptable to the department demonstrating ownership);

vi. the microchip or tattoo number of each non-human primate;

vii. a health certificate signed by a licensed veterinarian within one year prior to the date of the application stating that the animal is free of all symptoms of contagious and/or infectious diseases at the time of the examination and that all appropriate tests and preventative measures have been performed as deemed necessary by the veterinarian;

viii. a signed release statement, on a form provided by the department, agreeing to abide by permit terms and to cooperate with LDWF personnel;

ix. a signed agreement, on a form provided by the department, indemnifying and holding harmless the state, department, and other applicable public agencies and employees, including agents, contractors, and the general public from any claims for damages resulting from the non-human primate(s);

x. a signed agreement that the permittee will be responsible for any and all costs associated with the escape, capture, and disposition of the non-human primate(s).

c. The department shall only accept applications for possession of non-human primates from individuals who have not previously possessed a permit until June 30, 2015. Thereafter, permits will only be issued for the possession of non-human primates to those individuals who were permitted in the immediately preceding year and who meet all applicable requirements of this section.

2. Permittee must allow inspections of premises by Department of Wildlife and Fisheries employees for purposes of enforcing these regulations. Inspections may be unannounced, and may include, but are not limited to, pens, stalls, holding facilities, records, and examination of animals necessary to determine species identification, sex, age, health, and/or implanted microchip number.

3. Permit holders must house their non-human primates in such a manner as to prevent public contact and are prohibited from transporting their non-human primate to any public building or place where the public may come into contact with the non-human primate, including, but not limited to schools, hospitals or malls.

4. Permit holders must have their non-human primates examined annually by a licensed veterinarian to insure that the animal is free of all symptoms of contagious and/or infectious diseases at the time of examination and all appropriate tests and preventative measures have been performed as deemed necessary by the veterinarian.

5. Permit holders are required to report any escapes to the department within 24 hours of discovery of the escape.

6. Permit holders are required to submit any changes to the permit information provided in the permit application within 30 days of the date those changes take effect or the permit will be considered invalid.

H. Big Exotic Cats. An individual who legally possesses one or more exotic cats listed in Subparagraph C.1.h. above on August 15, 2006 (the effective date of Act 715 of the Regular Session of 2006) and who can prove legal ownership is authorized to keep those exotic cats under the following conditions.

1. Only those exotic cats legally possessed on August 15, 2006 will be permitted. Additional exotic cats cannot be acquired by any means whatsoever, including breeding.

2. The individuals listed in this Subsection must annually apply for and receive a permit from the department. The permit application shall be on a form provided by the department and require:

a. the name, address, telephone number, driver's license number, and date of birth of applicant;

b. a description of each exotic cat applicant possesses, including the scientific name, sex, age, color, weight, and any distinguishing marks;

c. one or more photographs of each exotic cat and its permanent enclosure;

d. the physical location where each exotic cat is to be kept;

e. proof of legal ownership of the exotic cat on August 15, 2006. Proof of legal ownership includes original purchase documents, veterinary records, or other documentation, acceptable to the department, demonstrating ownership;

f. the microchip number of each exotic cat;

g. a health certificate signed by a licensed veterinarian within one year prior to the date of the application. The certificate shall include the name, address, and license number of the examining veterinarian;

h. a written plan for the quick and safe recapture or destruction of an escaped exotic cat listed in the permit. This plan must also be filed with the local sheriff's department, and police department if applicable;

i. statement that permittee has legal authority to possess weapons and/or other equipment necessary to carry out the plan provided in Subparagraph H.2.h;

j. signed agreement, on a form provided by the department, indemnifying and holding harmless the state, department, and other applicable public agencies and employees, including agents, contractors, and the general public from any claims for damages resulting from the permitted exotic cat(s);

k. signed agreement that the permittee will be responsible for any and all costs associated with the escape, capture, and disposition of a permitted exotic cat;

l. proof of liability insurance from an A-rated or higher insurance company in the amount of \$100,000 for each exotic cat, up to a maximum of \$1,000,000, valid and effective continuously for the entire permit term. The policy shall specifically include a provision requiring notice from the carrier to the secretary of the department a minimum of 30 days prior to cancellation of the policy.

3. Permitted exotic cats must be prevented from breeding by separate housing or sterilization. Sterilization records must be kept on the premises and available for inspection by the department.

4. Permittee or designee must live on the premises. Designee must have the ability to carry out all requirements of the permittee.

5. Permittee must allow inspections of premises by Department of Wildlife and Fisheries employees for purposes of enforcing these regulations. Inspections may be unannounced, and may include, but are not limited to, pens, stalls, holding facilities, records, and examination of animals necessary to determine species identification, sex, age, health, and/or implanted microchip number.

6. A weapon capable of destroying the animal(s), and a long range delivery method for chemical immobilization

shall be kept on the premises at all times. Additionally, the applicant shall provide a signed statement from a licensed veterinarian identifying a designated veterinarian who will be on-call and available at all times to deliver chemical immobilization in the event of an escape.

7. Clearly legible signs, approved by the department, shall be posted and displayed at each possible entrance onto the premises where the permitted exotic cat is located. The signs shall clearly state "Danger, Wild Animal On Premises" with letters of a size and font easily readable from 30 feet away.

8. Each permitted exotic cat must be implanted with a microchip by or under the supervision of a licensed veterinarian.

9. Each permitted exotic cat must remain in its enclosure on the property listed in the permit at all times and cannot be removed from the enclosure for any reason. However, the exotic cat may be removed for proper medical care for medical emergencies or medical procedures, but only under the direction of a licensed veterinarian.

10. Permittee must notify the department, the local sheriff's department, and police department if applicable, immediately upon discovery that the permitted exotic cat is no longer in its enclosure.

11. Permittee must notify the department prior to any disposition of a permitted exotic cat, including transportation out-of-state. The department reserves the right to supervise and accompany any such disposition.

12. Permitted exotic cats must be kept in a sanitary and safe condition and may not be kept in a manner that results in the maltreatment or neglect of the exotic cat. This includes, but is not limited to:

a. drinking water must be provided in clean containers, pools must be cleaned as needed to ensure good water quality, enclosures must have adequate surface water drainage, and hard floor surfaces must be regularly scrubbed and disinfected;

b. food must be unspoiled and not contaminated, and be of a type and quantity sufficient to meet the nutritional requirements of the permitted exotic cat;

c. fecal and food waste must be removed from enclosures daily and disposed of in a manner that prevents noxious odors and insect and other pests;

d. sufficient shaded areas must be available for each exotic cat that is maintained in an enclosure, regardless of group rank or status.

13. In addition to complying with this regulation, permittee must comply with any and all applicable federal, other state, or local law, rule, regulation, ordinance, permit, or other permission. Failure to comply with any such law, rule, regulation, ordinance, permit, or other permission constitutes a violation of this regulation.

I. Enclosure Requirements. Minimum pen/enclosure requirements are as follows:

1. bears:

a. single animal: 25 feet long x 12 feet wide x 10 feet high, covered roof;

b. pair: 30 feet long x 15 feet wide x 10 feet high, covered roof;

c. materials: chain link 9 gauge minimum;

d. safety perimeter rail;

e. pool: 6 feet x 4 feet x 18 inches deep with facilities for spraying or wetting bear(s);

2. wolf:

a. 15 feet long x 8 feet wide x 6 feet high per animal, covered roof;

b. secluded den area: 4 feet x 4 feet for each animal;

c. materials: chain link wire or equivalent;

d. safety perimeter rail;

3. big exotic cats:

a. enclosures shall be constructed and covered at the top with nine gauge steel chain link or equivalent, with tension bars and metal clamps;

b. enclosures must be well braced and securely fastened to the floor or ground and shall utilize metal clamps or braces of equivalent strength as that proscribed for cage construction;

c. enclosures shall be secured by at least two sets of doors, so that the first door must be closed before the second door is opened. The inside door to the animal enclosure must open in. These doors must remain locked at all times when unattended. The doors must be designed so that the frame, hasps and locks are of sufficient strength to restrain the exotic cat;

d. a perimeter fence of at least 8 feet in height (secondary barrier) and located a minimum of 5 feet from the enclosure sufficient to prevent unauthorized entry or direct physical contact with the exotic cat;

e. the mesh size and/or distance between bars for all enclosures and fences shall be sufficiently small to prevent escape and/or direct physical contact with the exotic cat;

f. enclosures shall include a den area or other connected housing unit in which the exotic cat may be secured for the safe servicing and cleaning of the remaining enclosure. This area shall be constructed with steel, reinforced cinder block, or concrete sufficient to withstand damage from high winds, hard rains, hail, and other natural phenomenon.

J. Penalty for Violation. Unless another penalty is provided by law, violation of these regulations will be a class two violation as defined in title 56 of the *Louisiana Revised Statutes*. In addition, upon conviction for violation of these regulations, any license/permit may be revoked and the quadrupeds or other animals seized in connection with the violation will be forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(31), R.S. 56:115, R.S. 56:171, and R.S. 56:1904(F).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:1356 (December 1995), amended LR 32:647 (April 2006), LR 33:1153 (June 2007), amended by House Concurrent Resolution 6 of the 2012 Regular Legislative Session, LR 38:1459 (June 2012), LR 40:

### 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 amendments until 4:30 p.m., 30 August, 2014 to Camille Warbington, Wildlife Permits Coordinator, P.O. Box 98000, Baton Rouge, LA 70898, or via email to cwarbington@wlf.la.gov.

Bryan McClinton  
Undersecretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Possession of Potentially Dangerous Wild Quadrupeds, Big Exotic Cats, and Non-Human Primates

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

The proposed rule change is expected to have no effect on implementation costs to state or local governmental units.

The proposed rule change clarifies the definition of a zoo.

The proposed rule change provides an exception to the ban on possessing listed animals to entities that are not zoos or animal sanctuaries but which have applied for a permit by the date on which these regulations become effective.

The proposed rule change removes an exemption from non-human primate permit requirements for physically-challenged individuals who employ non-human primates as helper animals.

The proposed rules change alters the requirements for applying for and maintaining a non-human primate permit. The proposed rules change states the LDWF shall accept non-human primate applications for previously unpermitted non-human primates through December 31, 2014.

The proposed rules change amends various requirements for possessing and housing exotic big cats.

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

The proposed rule change is expected 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)

Entities that currently possess exotic big cats may benefit from the proposed rule change that grant certain exemptions from bans on possessing those animals.

The proposed rule change removing the exemption from non-human primate permit requirements for physically-challenged individuals who employ non-human primates as helper animals is unlikely to affect any individuals in Louisiana. To the knowledge of the LDWF, nobody in the state has applied for such an exemption.

### 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  
1407#047

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office





LAC Title	Part #.Section #	Action	Location:		LAC Title	Part #.Section #	Action	Location:	
			Month	LR 40 Page#				Month	LR 40 Page#
50	XXIX.123,991	Amended	Jan.	82	70	I. Chapter 15	Amended	May	1011
	XXIX.993	Adopted	Jan.	82					
51	IX.Chapter 3	Amended	May	1009	73	I.1703	Amended	June	1116
	XXIII.4513,4523	Amended	May	1008					
55	I.1575	Amended	Feb.	370	76	I.Chapter 7 I.704	Amended	April	804
	I.Chapter 19	Amended	April	797					
	I.2103,2107,2109,2117	Amended	June	1111					
	I.2106	Adopted	June	1111					
	III.Chapter 1	Amended	Jan.	90					
55	VII.321	Amended	June	1114	76	III.320 III.329 VII.110 VII.113 VII.125 VII.131 VII.149 VII.159 VII.183 VII.191 VII.335 VII.335 VII.361 VII.367 VII.375 VII.377 VII.379 VII.701 VII.907	Repealed	Jan.	94
	VII.323	Amended	June	1112					
	VII.331	Adopted	June	1113					
	VII.505,509	Amended	June	1113					
	VII.Chapter 31	Amended	June	1114					
61	I.1401	Amended	Jan.	91	76	IX.Chapter 1 XIX.113 XIX.115	Repealed	Mar.	548
	III.2505	Adopted	April	801					
	V.101,304,703,907,1103,1307,1503,2503	Amended	Mar.	528					
	V.3101	Amended	Mar.	528					
67	III.5124	Adopted	Jan.	49	76	IX.Chapter 1 XIX.113 XIX.115	Adopted	Feb.	373
	III.5599	Adopted	April	759					
	III.7302-7305,7311,7315,7317	Amended	Feb.	243					
	III.7331-7335	Amended	Feb.	243					
	III.7355-7365,7371	Amended	Feb.	253					
	III.7372	Adopted	Feb.	253					
	III.7385	Repealed	Feb.	253					
	VII.Chapter 19	Repealed	Jan.	84					

# Potpourri

## POTPOURRI

### Department of Health and Hospitals Board of Veterinary Medicine

#### Fall/Winter Examination Dates

The Louisiana Board of Veterinary Medicine will administer the state board examination (SBE) for licensure to practice veterinary medicine on the first Tuesday of every month. Deadline to apply for the SBE is the third Friday prior to the examination date desired. SBE dates are subject to change due to office closure (i.e. holiday, weather).

The board will accept applications to take the North American veterinary licensing examination (NAVLE) which will be administered through the National Board of Veterinary Medical Examiners (NBVME), formerly the National Board Examination Committee (NBEC), as follows.

Test Window Date	Deadline To Apply
November 17 through December 13, 2014	August 1, 2014
April 13 through April 25, 2015	January 3, 2015

The board will also accept applications to take the veterinary technician national examination (VTNE) which will be administered through American Association of Veterinary State Boards (AAVSB), for state registration of veterinary technicians as follows.

Test Date	Deadline To Apply
November 15-December 15, 2014	October 15, 2014
March 15-April 15, 2015	February 15, 2015
July 15-August 15, 2015	June 15, 2015

Applications for all examinations must be received on or before the deadline. No late application will be accepted. Requests for special accommodations must be made as early as possible for review and acceptance. Applications and information may be obtained from the board office at 263 Third Street, Suite 104, Baton Rouge, LA 70801 and by request via telephone at (225) 342-2176 or by e-mail at [admin@lsbvm.org](mailto:admin@lsbvm.org); application forms and information are also available on the website at [www.lsbvm.org](http://www.lsbvm.org).

Wendy D. Parrish  
Executive Director

1407#002

## 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
Kansas and Gulf Co.	Wildcat-No La Shreveport Dist	S	Nelson	002	14523
Aspen Oil and Gas LLC	Larto Lake	M	5200 Ra Sue; Missiana Frne	013	226370
James M. Robbins	Brushy Bayou	S	T G Rambin	001	92317
A & F Operators	Caddo Pine Island	S	Crystal Oil and Refg Co	C-1	44500
Triangle Oil of Hosston	Caddo Pine Island	S	Collins C	001	22907
Triangle Oil of Hosston	Caddo Pine Island	S	Thigpen-Harding	001	26261
Triangle Oil of Hosston	Caddo Pine Island	S	Thigpen-Harding	002	26416
Triangle Oil of Hosston	Caddo Pine Island	S	Ramsey 2	001	26936
Triangle Oil of Hosston	Caddo Pine Island	S	Ramsey 2	002	34366
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	003	34465
Triangle Oil of Hosston	Caddo Pine Island	S	Thigpen-Harding	003	35066
Triangle Oil of Hosston	Caddo Pine Island	S	Dorrity A	004	35105
Triangle Oil of Hosston	Caddo Pine Island	S	Dorrity A	003	35217

Operator	Field	District	Well Name	Well Number	Serial Number
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	005	35464
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	006	35597
Triangle Oil of Hosston	Caddo Pine Island	S	Ramsey 2	003	35629
Triangle Oil of Hosston	Caddo Pine Island	S	Ramsey 2	004	39117
Triangle Oil of Hosston	Caddo Pine Island	S	Thigpen-Harding	005	39519
Triangle Oil of Hosston	Caddo Pine Island	S	Thigpen-Harding	004	39520
Triangle Oil of Hosston	Caddo Pine Island	S	Whatley	002	39736
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	010	40552
Triangle Oil of Hosston	Caddo Pine Island	S	Hardy	001	41695
Triangle Oil of Hosston	Caddo Pine Island	S	Loyd Napier	002	43802
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	011	45634
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	012	45715
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	014	45777
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	013	45844
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	015	45927
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	016	45971
Triangle Oil of Hosston	Caddo Pine Island	S	Herndon	002	48834
Triangle Oil of Hosston	Caddo Pine Island	S	Glassell	001	50494
Triangle Oil of Hosston	Caddo Pine Island	S	Glassell	003	50814
Triangle Oil of Hosston	Caddo Pine Island	S	Dorrity A	007	51428
Triangle Oil of Hosston	Caddo Pine Island	S	Bradford A	001	51765
Triangle Oil of Hosston	Caddo Pine Island	S	Glassell	002	51823
Triangle Oil of Hosston	Caddo Pine Island	S	Glassell	004	52063
Triangle Oil of Hosston	Caddo Pine Island	S	Thigpen-Harding	006	52561

Operator	Field	District	Well Name	Well Number	Serial Number
Triangle Oil of Hosston	Caddo Pine Island	S	Herndon	003	52835
Triangle Oil of Hosston	Caddo Pine Island	S	Dorrity A	001	52990
Triangle Oil of Hosston	Caddo Pine Island	S	Loyd Napier	003	53180
Triangle Oil of Hosston	Caddo Pine Island	S	Loyd Napier	004	53181
Triangle Oil of Hosston	Caddo Pine Island	S	Dorrity	001	53229
Triangle Oil of Hosston	Caddo Pine Island	S	Dorrity A	002	53370
Triangle Oil of Hosston	Caddo Pine Island	S	Bradford	001	53532
Triangle Oil of Hosston	Caddo Pine Island	S	Glassell	005	53852
Triangle Oil of Hosston	Caddo Pine Island	S	Glassell	006	53853
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co SWD	017	53934
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	001	54330
Triangle Oil of Hosston	Caddo Pine Island	S	L J Mathieu	001	54426
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	016	54448
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	017	54449
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	002	54522
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	018	54639
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	019	54640
Triangle Oil of Hosston	Caddo Pine Island	S	Bradford A	002	54642
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	004	54716
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	005	54868
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	003	54871
Triangle Oil of Hosston	Caddo Pine Island	S	L J Mathieu	002	54941
Triangle Oil of Hosston	Caddo Pine Island	S	Hardy	003	55019
Triangle Oil of Hosston	Caddo Pine Island	S	Thigpen-Harding	007	55027

Operator	Field	District	Well Name	Well Number	Serial Number
Triangle Oil of Hosston	Caddo Pine Island	S	Thigpen-Harding	008	55096
Triangle Oil of Hosston	Caddo Pine Island	S	Herndon	004	55339
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	018	55817
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	006	55841
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	007	55842
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	021	56193
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	020	56194
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil Co	025	56222
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	009	56225
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	008	56226
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	010	57506
Triangle Oil of Hosston	Caddo Pine Island	S	Herndon	005	58249
Triangle Oil of Hosston	Caddo Pine Island	S	Dorrity A	005	58969
Triangle Oil of Hosston	Caddo Pine Island	S	Lambert	001	59710
Triangle Oil of Hosston	Caddo Pine Island	S	Dorrity A	006	59787
Triangle Oil of Hosston	Caddo Pine Island	S	Loyd Napier	005	61729
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	011	61797
Triangle Oil of Hosston	Caddo Pine Island	S	Loyd Napier	007	61835
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	013	62004
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	014	62005
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	012	62006
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil	015	63859
Triangle Oil of Hosston	Caddo Pine Island	S	Loyd Napier	006	67801
Triangle Oil of Hosston	Caddo Pine Island	S	Herndon	006	96376

Operator	Field	District	Well Name	Well Number	Serial Number
Triangle Oil of Hosston	Caddo Pine Island	S	Bradford	002	100333
Triangle Oil of Hosston	Caddo Pine Island	S	Bradford	003	100334
Triangle Oil of Hosston	Caddo Pine Island	S	Bradford	004	100335
Triangle Oil of Hosston	Caddo Pine Island	S	Bradford	005	100336
Triangle Oil Of Hosston	Caddo Pine Island	S	Bradford A	003	115095
Triangle Oil of Hosston	Caddo Pine Island	S	Bradford A	004	123587
Triangle Oil of Hosston	Caddo Pine Island	S	Herndon	001	150953
Triangle Oil of Hosston	Caddo Pine Island	S	Homestead Oil Company	001	166225
Triangle Oil of Hosston	Caddo Pine Island	S	Homestead Oil Company	002	166226
Triangle Oil of Hosston	Caddo Pine Island	S	Surrey Oil SWD	020	235864
Triangle Oil of Hosston	Caddo Pine Island	S	Whately	001	990135
Triangle Oil of Hosston	Caddo Pine Island	S	Herndon SWD	001	990608
Benchmark Operating Co. LLC	Fort Jessup	S	R H Evans	001	231566
Benchmark Operating Co. LLC	Fort Jessup	S	J Hoagland	001	234051
Benchmark Operating Co. LLC	Fort Jessup	S	T L Delatin SWD	001	235325
Benchmark Operating Co. LLC	Fort Jessup	S	J Hoagland	003	235349
Benchmark Operating Co. LLC	Fort Jessup	S	J Hoagland	002	236723
Benchmark Operating Co. LLC	Fort Jessup	S	J Hoagland	004	241772

James H. Welsh  
Commissioner

1407#032

**POTPOURRI**

**Department of Natural Resources  
Office of the Secretary  
Fishermen's Gear Compensation Fund**

**Underwater Obstruction—Latitude/Longitude Coordinates**

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 6 claims in the amount of \$21,303.87 were received for payment during the period June 1, 2014-June 30, 2014.

There were 6 paid and 0 denied.

Latitude/longitude coordinates, in degree decimal minutes, of reported underwater obstructions are:

29 05.306	89 00.796	Plaquemines
29 09.360	90 05.660	Lafourche
29 24.338	89 58.193	Lafourche
29 44.629	89 26.850	Saint Bernard
29 49.968	89 40.873	Saint Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-9388.

Stephen Chustz  
Secretary

1407#028

**POTPOURRI**

**Department of Natural Resources  
Office of Conservation  
Engineering-Regulatory Division**

**Advanced Notice of Rulemaking and Solicitation of  
Comments on Financial Security for the Plug and  
Abandonment of Oil and Gas Wells and Determinations of  
Future Utility (LAC 43:XIX.Subpart 1)**

As recommendations of a 2014 Performance Audit the Department of Natural Resources, Office of Conservation is requesting comments on the following enumerated issues regarding Financial Security for the Plug and Abandonment of Oil and Gas Wells and Determinations of Future Utility, LAC 43:XIX.Subpart 1.

Written comments concerning the proposed revisions are due no later than 4:30 p.m., August 20, 2014, and should be submitted to Brent Campbell, Office of Conservation, Engineering-Regulatory Division, P.O. Box 94275 Capitol Station, Baton Rouge, LA 70804-9275 or by fax to (225) 242-3663. Persons commenting should reference this document as CON ENG 14-01.

1. Revise current regulations to require that all operators, without exception, provide financial security or some type of financial assurance on newly permitted wells or wells with amended permits.

2. Revise current regulations to increase the amount of financial security to be more reflective of the costs to properly plug and remediate orphaned well sites. In addition, implement a process to periodically review and adjust

financial security amounts to ensure they are reflective of the costs to plug and remediate orphan well sites.

3. Revise current regulations to require a specific timeframe for how long an inactive well can remain in future utility status, including how often and under what circumstances extensions will be granted.

4. Revise current regulations to require additional financial security or charging a yearly fee for wells in future utility status because the longer a well is in this status, the higher the likelihood it will be abandoned.

James H. Welsh  
Commissioner

1407#030

**POTPOURRI**

**Department of Public Safety and Corrections  
Oil Spill Coordinator's Office**

**Deepwater Horizon Oil Spill; Final Programmatic and Phase  
III Early Restoration Plan and Final Early Restoration  
Programmatic Environmental Impact Statement**

**Action:**

Notice of availability of final plan

**Summary:**

In accordance with the Oil Pollution Act of 1990 (OPA), the Louisiana Oil Spill Prevention and Response Act (OSPR), and the National Environmental Policy Act (NEPA), notice is hereby given that the federal Deepwater Horizon natural resource trustee agencies and the State Deepwater Horizon natural resource trustee agencies for Louisiana, Mississippi, Alabama, and Florida (participating trustees) have prepared a final programmatic and phase III early restoration plan and final early restoration programmatic environmental impact statement (final phase III ERP/PEIS or plan). This notice announces the availability of the final phase III ERP/PEIS. The Texas natural resource trustee agencies are not joining in the issuance of the final phase III ERP/PEIS at this time.

The final phase III ERP/PEIS considers programmatic alternatives comprised of early restoration project types that would restore natural resources, ecological services, and recreation use services injured or lost as a result of the Deepwater Horizon oil spill (hereinafter "the spill"). The participating trustees additionally propose 44 specific early restoration projects for implementation that are consistent with the proposed early restoration program alternatives. The participating trustees have developed restoration alternatives and projects to utilize funds for early restoration being provided under the framework for early restoration addressing injuries resulting from the Deepwater Horizon oil spill (framework agreement) discussed below. The final phase III ERP/PEIS evaluates these programmatic restoration alternatives and projects under criteria set forth in the NRDA regulations and the framework agreement. The final phase III ERP/PEIS also evaluates the environmental consequences of the restoration alternatives and projects under NEPA. The purpose of this notice is to inform the public of the availability of the final phase III ERP/PEIS, which occurred on June 26, 2014.

This notice of availability also serves as notice that the Trustees intend to use components of existing restoration projects, as further described in the final phase III ERP/PEIS and required by 15 C.F.R. §990.56 (b)(3). In those instances, the projects were previously developed with public review and comment and are subject to current public review and comment, are adequate to partially compensate the environment and public as part of the trustees' ongoing early restoration efforts, address resources that have been identified by Trustees as being injured by the spill, and are reasonably scalable for early restoration purposes.

**Addresses:**

Obtaining the Document: You may download the final phase III ERP/PEIS at <http://losco-dwh.com/>. Alternatively, you may request a CD of the document (see For Further Information Contact). You may also review copies of the document at the public facilities listed at <http://losco-dwh.com/>.

**For Further Information Contact:**

Karolien Debusschere at [Karolien.Debusschere@la.gov](mailto:Karolien.Debusschere@la.gov)

**Supplementary Information:**

**Introduction**

On or about April 20, 2010, the mobile offshore drilling unit Deepwater Horizon, which was being used to drill a well for BP Exploration and Production, Inc. (BP) in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire and subsequent sinking in the Gulf of Mexico, resulting in discharges of oil and other substances from the rig and from the wellhead on the seafloor. An unprecedented volume of oil and other discharges were released from the well into the Gulf of Mexico over a period of approximately three months. In addition, well over one million gallons of dispersants were applied to the waters of the spill area in an attempt to minimize impacts from spilled oil. An undetermined amount of natural gas was also released to the environment as a result of the spill. Affected resources include ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas.

The state and federal natural resource trustees (trustees) are conducting the natural resource damage assessment for the spill under OPA, 33 U.S.C. §2701 et seq. Pursuant to OPA, federal and state agencies and Indian tribes may act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time restoration is complete.

The trustees are:

- United States 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 United States Department of Commerce;

- United States Department of Agriculture (USDA);
- United States Environmental Protection Agency (EPA);
- Louisiana Coastal Protection and Restoration Authority, Louisiana Oil Spill Coordinator's Office, Louisiana Department of Environmental Quality, Louisiana Department of Wildlife and Fisheries, and Louisiana Department of Natural Resources;
- Mississippi Department of Environmental Quality;
- Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- Florida Department of Environmental Protection and Florida Fish and Wildlife Conservation Commission; and
- Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The United States Department of Defense (DOD) is a trustee but, to date has not become a signatory to the framework agreement.

**Background**

On April 20, 2011, BP agreed to provide up to \$1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the Spill. This early restoration agreement, entitled "Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill" (framework agreement), represents a preliminary step toward the restoration of injured natural resources. The framework agreement is intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. The framework agreement provides a mechanism through which the trustees and BP can work together "to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable" prior to the completion of the natural resource damage assessment process or full resolution of the trustees' natural resource damages claim.

The trustees have actively solicited public input on restoration project ideas through a variety of mechanisms, including public meetings, electronic communication, and creation of a trustee-wide public website and database to share information and receive public project submissions. Their key objective in pursuing early restoration is to secure tangible recovery of natural resources and natural resource services for the public's benefit while the longer-term process of fully assessing injury and damages is still underway. The trustees released, after public review of a draft, a phase I early restoration plan/environmental assessment in April 2012, which included eight early restoration projects. Subsequently, the trustees released, after public review of a draft, a phase II early restoration plan/environmental review in December 2012, which included an additional two projects. These two plans are available at <http://losco-dwh.com/>.

The trustees considered hundreds of projects leading to the identification of a potential 28 future early restoration

projects announced in the *Federal Register* on May 6, 2013 (78 FR 26319-26323). On June 4, 2013, the trustees announced their intent to prepare a programmatic environmental impact statement (PEIS) under OPA and NEPA to evaluate the environmental consequences of early restoration project types, as well as to propose a phase III early restoration plan to address injuries from the spill that would include the 28 early restoration projects announced in the May 2013 notice and an additional 16 projects. In accordance with NEPA, the trustees conducted scoping to identify the concerns of the affected public, federal agencies, states, and Indian tribes and involve the public in the decision making process. A scoping process reduces paperwork and delay by ensuring that important issues are considered early in the decision making process. To gather public input, the trustees hosted six public meetings. The trustees also accepted written comments electronically and via U.S. mail during the scoping period.

A notice of availability for the draft programmatic and phase III early restoration plan and draft early restoration programmatic environmental impact statement (draft phase III ERP/PEIS) was published in the *Federal Register* on December 6, 2013 (78 FR 73555), and in the *Louisiana Register* on November 20, 2014 (Vol. 39, No. 11 *La. Register* 3181-3183 (November 2013)) and December 20, 2014 (Vol. 39, No. 12 *La. Register* 3409-3411 (December 2014)). The draft phase III ERP/PEIS considered programmatic alternatives for early restoration and proposed 44 early restoration projects in phase III of early restoration consistent with the project types included in the proposed programmatic alternative. The trustees provided the public with 75 days to review and comment on the draft phase III ERP/PEIS. During that review period, the Trustees also held public meetings in Mobile, Alabama, Long Beach, Mississippi, Belle Chasse, Thibodaux, and Lake Charles, Louisiana, Port Arthur, Galveston, and Corpus Christi, Texas, and Pensacola, Florida to facilitate public comment on the draft phase III ERP/PEIS. The trustees considered the public comments received on the draft phase III ERP/PEIS, which informed the Trustees' analyses of programmatic alternatives and specific early restoration projects in the phase III ERP/PEIS. A summary of the public comments received and the Trustees' responses to those comments are addressed in Chapter 13 of the final phase III ERP/PEIS.

#### **Overview of the Phase III ERP/PEIS**

The final phase III ERP/PEIS is being released in accordance with OPA, the NRDA regulations found at 15 C.F.R. §990, and NEPA.

The final phase III ERP/PEIS proposes early restoration programmatic alternatives and evaluates the potential environmental and cumulative effects of those alternatives. The final phase III ERP/PEIS groups 12 project types into two categories: 1) Contribute to Restoring Habitats and Living Coastal and Marine Resources, and 2) Contribute to Providing and Enhancing Recreational Opportunities. These categories provide the basis for defining the list of four proposed alternatives included in the document:

- Alternative 1: No Action (No Additional Early Restoration);

- Alternative 2: Contribute to Restoring Habitats and Living Coastal and Marine Resources;
- Alternative 3: Contribute to Providing and Enhancing Recreational Opportunities; and
- Alternative 4: (Preferred Alternative) Contribute to Restoring Habitats and Living Coastal and Marine Resources and Recreational Opportunities.

The participating trustees propose to select 44 projects as described in the final phase III ERP/PEIS, totaling an estimated cost of approximately \$627 million. The proposed restoration projects are intended to continue the process of using early restoration funding to restore natural resources, ecological services, and recreational use services injured or lost as a result of the spill. The participating trustees considered both ecological and recreational use restoration projects to restore injuries caused by the spill, addressing both the physical and biological environment, as well as the relationship people have with the environment. The projects proposed in phase III are not intended to, and do not, fully address all injuries caused by the spill or provide the extent of restoration needed to make the public and the environment whole. The trustees anticipate that additional early restoration projects will be proposed as the early restoration process continues.

#### **Next Step**

In accordance with NEPA, a federal agency must prepare a concise public Record of Decision (ROD) at the time the agency makes a decision in cases involving an EIS. 40 C.F.R. §1505.2. Accordingly, the Trustees will prepare a ROD for the final Phase III ERP/PEIS that provides and explains the Trustees' decisions regarding the selection of a programmatic early restoration alternative and specific early restoration projects. The Trustees will issue the ROD no earlier than 30 days after the Environmental Protection Agency publishes a notice in the *Federal Register* announcing the availability of the Final Phase III ERP/PEIS. 40 C.F.R. §1506.10. Upon finalization of the final Phase III ERP/PEIS and the ROD, agreement with BP regarding these projects will be completed, and approved projects will then proceed to implementation, pending compliance with all applicable state and federal laws.

#### **Administrative Record**

The documents comprising the administrative record can be viewed electronically at the following location:

<http://losco-dwh.com/AdminRecord.aspx>; or

<http://www.doi.gov/deepwaterhorizon>.

#### **Authority**

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. § 2701 *et seq.*), the implementing Natural Resource Damage Assessment regulations found at 15 C.F.R. Part 990, the Louisiana Oil Spill Prevention and Response Act (La. R.S. §§30:2451-2496 (2010)), and the implementing Natural Resource Damage Assessment regulations found at La. Admin. Code 43:101 *et seq.*

Brian Wynne  
Coordinator

1407#036



## POTPOURRI

### Department of Public Safety and Corrections Oil Spill Coordinator's Office

Lake Grande Ecaille, Mosquito Bay, and  
Little Lake Oil Spills Final Restoration Plan

#### Action:

Notice of availability of a final restoration plan (FRP) for LOSCO NRDA case files #LA1998\_0922\_0000 [Lake Grande Ecaille 1998], #LA2001\_0405\_1002 [Mosquito Bay 2001], and #LA2002\_0406\_1000 [Little Lake 2002].

#### Agencies:

Louisiana Oil Spill Coordinator's Office, Department of Public Safety and Corrections (LOSCO); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); Louisiana Department of Wildlife and Fisheries (LDWF); National Oceanic and Atmospheric Administration (NOAA); and the U.S. Fish and Wildlife Service (USFWS).

#### Authorities:

The Oil Pollution Act of 1990 (OPA) (33 USC §§ 2701 et seq.) and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA) (*La. Rev. Stat.* §§30:2451 et seq.) are the principal federal and state statutes, respectively, authorizing federal and state agencies and tribal officials to act as natural resource trustees for the recovery of damages for injuries to trust resources and services resulting from oil spill incidents in Louisiana. In accordance with OPA and OSPRA, natural resource trustees conducted natural resource damage assessments (NRDA) for each of the following three incidents: (1) the unauthorized discharge of crude oil into the waters of Lake Grande Ecaille, Plaquemines Parish, Louisiana, on September 22, 1998, for which Equinox Oil Company, Inc. was identified as the Responsible Party (RP) and Elysium Energy, L.L.C. became the successor-in-interest; (2) the unauthorized discharge of natural gas condensate into Mosquito Bay on Point Au Fer Island, Terrebonne Parish, Louisiana, on April 5, 2001, for which Transcontinental Gas Pipe Line Corporation, L.L.C. (Transco) was identified as the RP; and (3) the unauthorized discharge of crude oil from a pipeline into the coastal waters of Little Lake, Lafourche Parish, Louisiana, on April 6, 2002, in which BP Oil Pipeline Company (BP) was identified as the RP.

#### Summary:

Pursuant to *Louisiana Administrative Code* 43:XXIX, Chapter 1, notice is hereby given that a document entitled, "Final Restoration Plan for the Lake Grande Ecaille, Mosquito Bay, and Little Lake Oil Spill Incidents" will become available to the public on or about July 20, 2014. The FRP presents the natural resource trustees' ("trustees") plan to restore, replace, or acquire natural resources or services equivalent to those lost, as a basis for compensating the public for the injuries to natural resources resulting from the incidents. The selected restoration alternative is designed to create coastal herbaceous wetlands, including brackish marsh, near Lake Hermitage, Louisiana.

Execution of the FRP by the Trustees shall provide the basis for compensating the public for injuries to natural resources and services resulting from the Lake Grande Ecaille, Mosquito Bay, and Little Lake incidents. Public

notice of the FRP is consistent with all state and federal laws and regulations that apply to the NRDA process, including OPA and its corresponding regulations, Section 2480 of the OSPRA, *La. Rev. Stat.* §§30:2451 et seq.; and the regulations for NRDA under OSPRA, *Louisiana Administrative Code* 43:XXIX, Chapter 1.

Interested members of the public are invited to view the FRP via the internet at <http://www.losco.state.la.us> ("News Flash, Current News: Final Restoration Plan for the Lake Grande Ecaille, Mosquito Bay, and Little Lake Oil Spill Incidents Available") or by requesting a copy of the document from Charles Armbruster at the address provided below:

Louisiana Oil Spill Coordinator's Office  
Department of Public Safety and Corrections  
P.O. Box 66614  
Baton Rouge, LA 70896  
(225) 925-6606  
[charles.armbruster@la.gov]

The public was given an opportunity to review and comment on the draft restoration plan (DRP) during the public comment period, which extended from May 20, 2014 through June 22, 2014. The trustees did not receive comments during the public comment period and have prepared the FRP to identify the restoration alternative selected for implementation.

#### Supplementary Information—Lake Grande Ecaille:

Following the September 22, 1998 oil discharge in Lake Grande Ecaille, the trustees began the process of assessing injuries to natural resources and services affected by the incident. On April 20, 1999, the Trustees published a "Notice of Intent to Conduct Restoration Planning" in the *Louisiana Register* (Vol. 25, No. 4, pp.812-813). On July 20, 2005, the Trustees published a notice of availability of a draft damage assessment and restoration plan/environmental assessment (DARP/EA) (*Louisiana Register*, Vol. 31, No. 7, pp. 1918-1919) that presented their assessment of injuries to natural resources and services attributable to the incident and their plan to restore, replace or acquire natural resources or services equivalent to those lost. The public was given an opportunity to review and comment on the draft DARP/EA during the public comment period, which extended from July 20, 2005 through August 22, 2005. The trustees did not receive comments during the public comment period and finalized the DARP/EA by publishing a notice of availability for the final DARP/EA in the November 20, 2005 *Louisiana Register* (Vol. 31, No. 11, p. 2999). The preferred restoration alternative identified in the final DARP/EA was intended to be implemented by the Trustees using funds provided by the RP's successor in interest (Elysium Energy, L.L.C.) as part of the Equinox settlement agreement executed on January 5, 2006 and lodged within the United States Bankruptcy Court for the Eastern District of Louisiana. On October 20, 2007, the Trustees published a notice of availability for a draft addendum to the final DARP/EA in the *Louisiana Register* (Vol. 33, No. 10, p. 2294). The trustees prepared the draft addendum to the DARP/EA to notify the public of a proposed change to the preferred compensatory restoration alternative and to provide an opportunity for the public to comment on the proposed change. The trustees reevaluated

the feasibility of the proposed project following publication of the draft addendum, and, due to additional information, did not finalize the draft addendum.

**Supplementary Information—Mosquito Bay:**

Following the April 5, 2001 discharge of natural gas condensate into Mosquito Bay, the trustees began the process of assessing injuries to natural resources and services affected by the incident. On November 20, 2002, the trustees published a notice of intent to conduct restoration planning in the *Louisiana Register* (Vol. 28, No. 11, pp. 2452-2453). On July 20, 2005, the trustees published a notice of availability of a draft DARP/EA in the *Louisiana Register* (Vol. 31, No. 07, pp. 1919-1920) that presented their assessment of injuries to natural resources and services attributable to the incident and their plan to restore, replace, or acquire natural resources or services equivalent to those lost, as a basis for compensating the public for the injuries resulting from the incident. The public was given an opportunity to review and comment on the draft DARP/EA during the public comment period, which extended from July 20, 2005 through August 20, 2005. The trustees did not receive any comments on the Draft DARP/EA and published a notice of availability of a final DARP/EA in the *Louisiana Register* (Vol. 31, No. 10, p. 2657) on October 20, 2005, which selected the "Canal Filling Southwest of Mosquito Island Marsh Creation" project for implementation by Transco. In June 2010, prior to the implementation of the marsh creation project, Transco decided to settle their NRDA liability for cash, in lieu of implementing the project. Before settling the case, the trustees compiled a draft addendum to the final DARP/EA to: 1) identify a revised preferred restoration alternative, which will be implemented by the trustees, as a basis for the cash settlement; 2) provide an analysis for scaling the preferred restoration alternative to the injured resources; and 3) identify the methodology used for estimating the costs of implementing the preferred restoration alternative. The public was given an opportunity to review and comment on the draft settlement agreement and the draft addendum to the final DARP/EA during the public comment period, which extended from April 20, 2010 through May 20, 2010 (*Louisiana Register*, Vol. 36, No. 4, pp. 904-905). The Trustees did not receive comments during

the public comment period and executed the final settlement agreement. The notice of availability was published in the *Louisiana Register* (Vol. 36, No. 09, pp. 2136-2137) on September 20, 2010. The trustees have held the settlement funds until an appropriate project could be identified.

**Supplementary Information—Little Lake:**

Following the April 6, 2002 discharge of crude oil into Little Lake, the trustees began the process of assessing injuries to natural resources and services affected by the incident. On November 20, 2002, the trustees published a Notice of Intent in the *Louisiana Register* (Vol. 28, No. 11, pp. 2450-2452) to conduct restoration planning for the incident in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of the incident. In November 2011, BP settled their NRDA liability for cash, in lieu of implementing a project. Before settling the case, the trustees compiled a draft damage assessment and preliminary restoration plan (DAPRP) to: 1) identify a preferred restoration alternative, which will be implemented by the trustees, as a basis for the cash settlement; 2) provide an analysis for scaling the preferred restoration alternative to the injured resources; and 3) identify the methodology used for estimating the costs of implementing the preferred restoration alternative. Notice of the draft DAPRP and settlement agreement was published in the *Louisiana Register* on June 20, 2011 (Vol. 37, No. 06, pp. 2034-2035). The trustees did not receive comments during the public comment period and executed the final settlement agreement in November 2011. The trustees have held the settlement funds until an appropriate project could be identified. The final settlement agreement, and other documents referenced for Little Lake, Lake Grande Ecaille, and Mosquito Bay, are part of the administrative record for each incident. Arrangements for viewing these documents can be made by contacting LOSCO at the address above.

Brian Wynne  
Oil Spill Coordinator

1407#035

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