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# Executive Orders

## EXECUTIVE ORDER JBE 17-11

Emergency Suspension of Certain  
Insurance Code Provisions—Amended

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721 et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or manmade causes, in order to ensure that preparations of this State will be adequate to deal with such emergencies or disasters and to preserve the lives and property of the people of the State of Louisiana;

WHEREAS, Proclamation No. 111 JBE 2016, issued on August 12, 2016, and continued by Proclamation No. 48 JBE 2017, declared a state of emergency for the State of Louisiana due to the heavy rain and flooding, which continues to threaten the safety and security of the citizens of Louisiana;

WHEREAS, Executive Order No. JBE 16-58, signed August 17, 2016, as amended and renewed by Executive Order Nos. JBE 16-71, signed October 11, 2016, and JBE 17-04, signed February 6, 2017, transferred to the Commissioner of Insurance limited authority to suspend provisions of any regulatory statute of Title 22 of the Louisiana Revised Statutes of 1950 concerning the cancellation, termination, nonrenewal and/or reinstatement provisions of Title 22;

WHEREAS, thousands of Louisiana citizens have suffered damage to their residential, commercial residential or commercial property due to the historic flooding, and many such properties have been severely damaged or destroyed;

WHEREAS, insurers have been working diligently to adjust and pay claims, however, due to a shortage in building materials, contractors, construction workers or delays in claim payments, many policyholders will be unable to repair and/or reconstruct their residential, commercial residential or commercial property within typical time frames;

WHEREAS, the extended time period to repair and/or reconstruct residential, commercial residential or commercial property continues to affect the ability of Louisiana insureds to maintain or obtain personal residential, commercial residential or commercial property insurance for residential property or commercial property and has created an immediate threat to the public health, safety and welfare of Louisiana citizens; and

WHEREAS, the Commissioner has requested and deemed it necessary to extend the time period for which he is extended the authority to suspend provisions of any regulatory statute of Title 22 of the Louisiana Revised Statutes of 1950 concerning the cancellation, termination, nonrenewal and/or reinstatement provisions of Title 22 due to the continued impact of the flooding.

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

SECTION 1: Section 3 of Executive Order JBE 2016-58, signed August 17, 2016, shall be amended as follows:

This Order shall apply retroactively from Friday, August 12, 2016, and shall continue through Monday, August 14, 2017, unless amended, terminated, or rescinded by the Governor prior thereto.

SECTION 2: All other paragraphs, subsections, and sections of Executive Order JBE 2016-58 shall remain in full force and effect.

SECTION 3: This Order is effective upon signature and shall continue in effect through Monday, August 14, 2017, unless amended, terminated, or rescinded by the Governor prior thereto.

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 8th day of May, 2017.

John Bel Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1706#050

## EXECUTIVE ORDER JBE 17-12

Flags at Half-Staff—Honorable Al Ater

WHEREAS, the Honorable Alan Ray Ater, also known as Al Ater, a resident of Ferriday, Louisiana, passed away on May 21, 2017 at the age of 63;

WHEREAS, Al Ater was elected to the Louisiana House of Representatives in 1983. He served two terms before serving as the first assistant to Louisiana Secretary of State Fox McKeithen. After the death of Secretary McKeithen, Al Ater became Louisiana Secretary of State. His advocacy for the citizens of Louisiana will be missed;

WHEREAS, during his tenure as Louisiana Secretary of State, he played a significant role in helping the displaced evacuees of New Orleans vote in the city's election for mayor. He will be remembered for zealously arguing that it was a natural disaster that prevented the community from voting rather than a mere change in address.

WHEREAS, Al Ater was known for his commitment to his state and community especially during the hardships of Hurricane Katrina and its aftermath;

WHEREAS, Before he entered his political career, Al Ater was an alumnus of Huntington High School in Ferriday, Louisiana as well as to Northwestern State University in Natchitoches, Louisiana.

WHEREAS, a father of three children; Whitney Lauren Ater, Thomas Alan Ater and Elliot Andrew Ater, he was a man devoted to his family and the state of Louisiana. Al Ater will be missed tremendously by those who knew him. After a lifetime of dedication to improving the State of Louisiana, the community he loved so dearly will forever be impacted by his service.

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

SECTION 1: As an expression of respect and to honor the Al Ater, the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol on Friday, May 26, 2017.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, May 26, 2017.

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 25th day of May, 2017.

John Bel Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1706#005

#### EXECUTIVE ORDER JBE 17-13

##### Flags at Half-Staff—Honorable Jimmy Martin

WHEREAS, James Paul Martin, better known as Jimmy Martin, passed away on May 21, 2017 at the age of 88;

WHEREAS, before serving five terms in the Louisiana House of Representatives in 1972, he was elected as mayor of Welsh, Louisiana in 1967 and re-elected without opposition in 1971. His commitment to the citizens of Louisiana will be missed;

WHEREAS, a member of Our Lady of Seven Dolors, an usher, a member of East Deanery Serra Club and the Welsh Rotary Club, with a lifelong commitment to working with the Boy Scouts of America, Jimmy Martin actively participated and contributed to the community. Jimmy

Martin received the Silver Beaver Award presented by the Calcasieu area Boy Scouts of America.

WHEREAS, Jimmy Martin was known for his service and commitment to the state and the citizens of his community;

WHEREAS, Before entering his political career, Jimmy Martin was an alumnus of St. Stanislaus in Bay St. Louis, Mississippi, he attended Southwestern Louisiana Institute of Lafayette (ULL) and graduated from Spring Hill College in Mobile, Alabama. He served in the Army during the Korean War before returning to Welsh, Louisiana where he was a field underwriter in the New York Life Insurance company.

WHEREAS, a father to; Paul M. Martin, Claude A. Martin, Andree M. Hainkel (John), and John S. Martin (Robert Mericle) and a grandfather to; Victor P. Martin, Alexandra M. Hainkel, Roth M. Hainkel, and Madilyn E. Martin. As well as a great-grandfather to Olivia A. Hainkel and a husband to Bernadine Fontenot Martin. Jimmy Martin will be missed tremendously by those who knew him. After a lifetime of dedication to improving the State of Louisiana, the community he loved so dearly will forever be impacted by his service.

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

SECTION 1: As an expression of respect and to honor the Jimmy Martin, the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol on Thursday, June 1, 2017.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Thursday, June 1, 2017.

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 31st day of May, 2017.

John Bel Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1706#009

# Policy and Procedure Memoranda

## POLICY AND PROCEDURE MEMORANDA

Office of the Governor  
Division of Administration  
Office of State Procurement

Policy and Procedure Memoranda—State Procurement  
(LAC 4:V.Chapters 13, 17, 23, 47, 49, 51, and 55)

The Division of Administration, in accordance with the provisions of R.S. 39:4, R.S. 39:8, and R.S. 39:1581 hereby repeals the following Policy and Procedure Memoranda: Numbers 37, 43, 57, and 61. These Policy and Procedure Memoranda are out-dated and no longer valid.

The following policies have been revised and approved.

### Title 4

#### ADMINISTRATION

##### Part V. Policy and Procedure Memoranda

##### Chapter 17. Contracts for Maintenance, Equipment, and Services—PPM Number 51

###### §1701. Introduction

A. This Policy and Procedure Memorandum rescinds Policy and Procedure Memorandum Number 51 that was promulgated February 1983.

B. Except as otherwise provided in this Chapter, the Commissioner of Administration, hereinafter referred to as “the commissioner,” shall have the authority and responsibility to promulgate regulations, consistent with this Chapter, governing the procurement, management, and control of any and all supplies, services, and major repairs required to be procured by the state. The commissioner shall consider and decide matters of policy within the provisions of this Chapter, including those referred to him/her by the state chief procurement officer. The commissioner shall have the power to audit and review the implementations of the procurement regulations and requirements of this Chapter.

C. Therefore, pursuant to the above authority, in order to discharge my duty and responsibility as directed by the above quoted Section of the state statutes, it is hereby ordered that all state of Louisiana agencies shall abide by the following rules and regulations, except where specific authority has been delegated, in writing, by the Commissioner of Administration.

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 Procurement, LR 43:1105 (June 2017).

###### §1703. Purpose and Scope

A. The policies and procedures contained herein shall apply to all agencies of the state government as required by the Louisiana Procurement Code, R.S. 39:1551 et seq., the current Executive Order of the Governor for small purchases, and the official rules and regulations of the Procurement Section, Division of Administration, as contained in the *State Procurement Manual*.

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 Procurement, LR 43:1105 (June 2017).

###### §1705. Definitions of Contractual Services

A. Contractual services include all contracts, interagency agreements, or other documents for the maintenance and service of equipment, buildings, or any other facilities and the lease and rental of equipment of any state agency under the jurisdiction of the Division of Administration, as noted in §1703.

B. The following is a listing of contracts referred to in this memorandum. Any other type of contract needs prior approval from the state chief procurement officer.

C. It is emphasized that this directive applies to contractual service for maintenance and contractual agreements for leases and rentals of equipment. Listed below are some commodities that fall into this category:

1. janitorial services;
2. garbage disposal services;
3. water treatment services;
4. office machine maintenance;
5. thermostatic and temperature control;
6. laundry services;
7. pest control services;
8. office equipment;
9. communication equipment;
10. heavy equipment;
11. concession leases;
12. vending; and/or
13. any other category with prior approval of the state chief procurement officer.

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 Procurement, LR 43:1105 (June 2017).

###### §1707. Procedures

A. In accordance with R.S. 39:1561(B), all agencies of the state government are hereby delegated the authority to purchase all contractual services up to their delegation of authority as issued by the state chief procurement officer, as defined above, in accordance with the current Governor’s Executive Order for small purchases and procurement rules and regulations.

B. Agencies are authorized to annually prepay preventive maintenance contracts on equipment only when there exists at least a 10 percent savings over paying on a monthly basis, or a competitive bid is requested that provides for preventive maintenance on a monthly basis and on a prepaid annual basis. A savings of 10 percent or more is required to award on a prepaid annual basis.

C. A sample checklist is attached for use on each contract.

D. One complete copy of each file shall be forwarded to the Procurement Section of the Division of Administration upon completion. These files will consist of:

1. copy of purchase requisition;
2. complete agency purchase order;

3. BA-22 RL for leases or rental of equipment;
4. copy of all bids received;
5. proof of advertisement;
6. tabulation of bids received; and
7. copy of the list of vendors solicited.

E. Please note: no purchase order is to be released until approval has been granted by the state chief procurement officer.

F. Approved copies of the purchase order will be returned to the agency. One copy of the purchase order and the remainder of the file will remain on file in the Division of Administration. Agencies are authorized to handle at agency level, without forwarding to the Procurement Section of the Division of Administration, those files within their delegated purchasing authority.

G. Any questions concerning this matter should be directed to the Procurement Section of the Division of Administration.

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 Procurement, LR 43:1105 (June 2017).

#### **Chapter 47. Attorney Case Handling Guidelines and Billing Procedures—PPM Number 50**

##### **§4701. Goal**

A. This Policy and Procedure Memorandum rescinds Policy and Procedure Memorandum Number 50 that was promulgated September 2014.

B. For executive branch agencies that hire attorneys under professional services contracts controlled by Chapter 17 of Title 39 of the *Louisiana Revised Statutes*, the Commissioner of Administration and the Division of Administration (DOA) expect to work with those agencies to hire and to retain attorneys in an efficient and cost conscious manner consistent with ethical obligations. Nothing contained herein is intended to restrict an agency or its contract counsel's exercise of professional judgment in rendering legal services. Contract counsel bears ultimate responsibility for all work performed pursuant to the contract and/or billed to the file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:258 and R.S. 39:1561 and 1564.C; Act 864 of 2014 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 40:1646 (September 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 43:1106 (June 2017).

##### **§4702. Authorization and Legal Basis**

A.1. R.S. 39:1561 authorizes the commissioner of administration, or his/her designee, to consider and decide all matters of policy relative to professional, personal, consulting and social services, and to audit and review the implementation of regulations, and policy determinations regarding professional, personal, consulting and social services contracts. Unless otherwise specified by law, in accordance with R.S. 39:1564(C), the state chief procurement officer shall, within the limitations of regulations promulgated by the Commissioner of Administration, shall, in part, also:

a. procure or supervise the procurement of professional, consulting and social services needed by the state;

b. establish and maintain programs for the inspection, testing and acceptance of these services; and

c. provide for contractual forms and specifications to be used in the confection of all contracts provided for in this Chapter.

2. Notice is hereby given as to the amendment of the established and implemented existing Policy and Procedure Memorandum No. 50—Attorney Case Handling Guidelines and Billing Procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561 and 1564.C; Act 864 of 2014 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 40:1646 (September 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 43:1106 (June 2017).

##### **§4703. Policy**

A. To control costs, to increase efficiencies and to insure quality and standard billing practices, in addition to all legal requirements, any agency that contracts for attorney services under Title 39 of the *Louisiana Revised Statutes*, shall, by January 1, 2015, institute case handling guidelines and billing procedures to be incorporated by reference into all professional contracts for attorney services entered into.

B. Effective September 20, 2014, all professional contracts entered into for attorney services under Title 39 of the *Louisiana Revised Statutes* after September 20, 2014, and all case handling guidelines and billing procedures in existence or which shall be thereafter instituted, shall include the following minimum requirements which may be referred to by reference by citing PPM 50.

1. Attachment to all Attorney Contracts. These case handling guidelines and billing procedures supplement, but do not replace, an agency's existing attorney case handling and billing procedures, and shall not supersede any rules or regulations in effect for legal contracts. To the extent that these requirements are more stringent than an agency's existing requirements, they shall supersede those requirements.

2. Attorney Rates. Unless justification is provided and approval is received, all attorney billing rates shall conform to the standard rates set by the attorney general.

3. Billing Management. Each contracting agency shall designate in writing the employee authorized to approve work and travel performed pursuant to the contract, and who is responsible for ensuring that attorney case handling guidelines and billing procedures are followed.

4. Budgeting. Within 60 days of entering into a contract for attorney services, the contracting attorney shall prepare a legal budget after assessing the underlying case. If it is anticipated that the budget will exceed the maximum value of the contract, then the agency shall immediately take the necessary steps to increase the contract's maximum value. An agency shall prepare a report when 80 percent of the established budget has been expended which shall project the final cost of the attorney services expected to be provided under the contract.

5. Clerical Work. Clerical work, including work performed by law clerks, paralegals and secretaries shall not be billed unless written justification is submitted and approved.

6. Depositions/Inspections/Hearings on Motions. Unless approved in advance by the contracting agency, only one attorney shall attend and bill for depositions, inspections and hearings on motions.

7. Documentation of Reimbursed Expenses. The contracting attorney must retain and provide all receipts and other documentation of expenses where reimbursement has been preapproved. Advanced court costs by state agencies is not required under the law in most situations. Payment of advanced court costs will not be reimbursed until a lawsuit is completed unless preapproval for the payment of same is obtained.

8. Dual or Overlapping Billing. Billing for work for other clients or for unrelated state matters simultaneously while performing work under the billed contract shall be prohibited. Billing by two approved attorneys simultaneously should be avoided unless or approved by the agency in advance.

9. Duplication of Work. Duplication or repetition of effort among attorneys shall be avoided.

10. Maximum Amount. All contracts for attorney services entered into shall provide for a maximum value which shall not be exceeded through addendum, amendment, or renewal without the contractor and the agency documenting the justification in writing.

11. Minimum Billing Increments. All billing items shall be billed at increments of .10 (six minute increments). No block billing shall be accepted.

12. Non-Conforming Bills. Any bill which does not conform to these billing requirements shall not be paid until such time as it is determined that the non-conforming items have been corrected. Any payment dispute under a contract for attorney services shall be administratively determined pursuant to Chapter 17, Title 39 of the *Louisiana Revised Statutes*.

13. Office Overhead; Copying, Phone Charges, etc. All office overhead, including costs for copying, facsimile, email, internet or phone charges shall not be billed unless an agency has agreed in advance under the terms and conditions of its contract approved by the Office of State Procurement (OSP) to reimburse the actual cost of these items.

14. Record Retention. Daily time sheets maintained by attorney name, caption, and case number shall be utilized. Attorneys are required to maintain any and all bills and supporting documentation, including daily time sheets, for five years. Billing records are subject to audit by DOA, the Inspector General and the Legislative Auditor.

15. Reports. A contracting agency shall not pay for any time charged for preparation of reporting forms or status reports other than those specifically requested or specifically required under the terms and conditions of the contract. Any report that does not contain significant new information or developments with a clear explanation of the impact on the case should not be requested or required by the contracting agency. Automatic periodic reporting in increments of less than three months should be avoided.

16. Research. Legal research per contract shall not exceed five hours without additional approval by the using agency.

17. Routine Matters. Routine scheduling, mail handling, new file set up, calendar maintenance, transcribing, copying, faxing, data entry enclosure letters, simple letters to clerks of court, and other similar routine matters are non-billable.

18. Staffing. Only those attorneys who are directly contracted, and approved staff, may work under the contract. Any staffing changes must be discussed and approved prior to engaging in billable work.

19. Task and Item Billing. Specific task and item billing must occur under every contract for attorney services, even where an attorney is retained by an agency to provide general legal services and advice. Billing for attorney services shall occur, at a minimum, monthly. All billing statements shall reference the contract number under which it is being submitted.

20. Term of Contract. No contract for attorney services shall be longer than three years. Prior to such a contract entering into the third year of its term, however, the attorney and the contracting agency shall provide written justification to continue the contract into the third year. Failure to provide written justification to extend a contract may result in cancellation of the contract.

21. Travel. Travel time shall be preapproved and shall be billed at one-half the agreed upon attorney pay rate. Travel time for a specific task shall not be approved to exceed eight hours per day without written justification. All related travel expenses shall also be preapproved and will be reimbursed in accordance with PPM 49, Louisiana State Travel Rules and Regulations.

22. Trial Preparation and Attendance. Trial preparation and attendance shall be billed only at the regular rate established in the contract. Tasks associated with trial preparation should occur once and only within a reasonable timeframe prior to trial. Unless approved in advance, only one attorney shall bill for trial preparation and for attending trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561 and 1564.C.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 40:1646 (September 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 43:1106 (June 2017).

#### **§4705. Effective Date**

A. This policy shall apply to all new contracts by reference entered into on or after September 20, 2014, and shall remain in existence after January 1, 2015, when the Office of Contractual Review is merged into the Office of State Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561 and 1564.C and Act 864 of 2014 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 40:1647 (September 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 43:1107 (June 2017).

**§4707. Notice to Agencies Regarding Electronic Billing Platforms**

A. The DOA is currently conducting a pilot program regarding a web-based electronic billing platform for the submission and review of attorney bills by executive branch agencies. Until the pilot program is concluded, no executive branch agency at the department level shall pursue or issue a contract for a new electronic billing platform for attorney services, and shall not extend any existing contract for such a platform, without the approval of the Office of State Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561 and 1564.C.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 40:1647 (September 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 43:1108 (June 2017).

**Chapter 49. Fee Schedule for Cooperative Purchasing—PPM Number 54**

**§4901. Authority**

A. Pursuant to R.S. 39:1706, the chief procurement officer for the state of Louisiana may provide personnel and services to public procurement units, and may charge fees to receiving units for same. The chief procurement officer of the state of Louisiana may also charge fees to defray the costs of providing the service of statewide contracts for use by the state of Louisiana’s agencies, parishes, cities, towns, governmental bodies and any other subdivision of the state or public agency, public authority, public educational, health or other institution and to the extent provided by law, any other entity which expends public funds for the acquisition or leasing of supplies, services, major repairs and construction, including any nonprofit corporation operating a charity hospital. Pursuant to R.S. 39:1706(E), the chief procurement officer may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (C) and (D) of R.S. 39:1706.

B. For purposes of this Memorandum, “fees” should be understood to include in its meaning both fees and rebates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4 and R.S. 39:1706(C), (D) and (E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:2063 (October 2015), amended LR 43:1108 (June 2017).

**§4903. Policy**

A. As part of all cooperative contracts it shall be the policy of the Office of State Procurement to provide information and assistance to facilitate their use statewide and to recoup those costs as authorized under R.S. 39:1706(E) by contracting directly with vendors to recover same in the form of a fee from net aggregate sales under the contract. The following fee remittance schedule should be included in all cooperative contracts where services are provided pursuant to R.S. 39:1706(C) and (D) by the Office of State Procurement in support of cooperative purchases.

B. All net sales made by means of the contract shall be included in the base amount (net aggregate sales) against which the fee percentage is multiplied. This includes the sale of goods and services not included as a line item or otherwise referenced in the contract, but which the vendor

sold by means of the contract, or which the vendor has represented to be contractual usage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4 and R.S. 39:1706(C), (D) and (E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:2063 (October 2015), amended LR 43:1108 (June 2017).

**§4905. Fee Schedule and Remittance Schedule**

A. The fee shall be contractual and may be negotiated, and should be a minimum of 1 percent of a vendor’s net aggregate sales under its statewide contract unless agreed to otherwise, or as set forth below.

B. For the subset of statewide contracts whose annual usage by cooperative purchasing units represents 2/3 (66.6 percent) or more of total annual usage, it shall be the standard practice of the Office of State Procurement for the fee to be 2 percent of net aggregate sales. This differentiation reflects that state agencies separately subsidize the cost of contract administration through interagency transfers.

Schedule of Fees	
Category	Fee Percentage
Regular statewide contracts (up to 66.5% cooperative usage)	1.00%
Primarily non-State usage contracts (66.6%+ cooperative usage)	2.00%

C. The fee should be remitted by the vendor to the Office of State Procurement in accordance with the remittance schedule below, unless specified otherwise in the contract.

Remittance Schedule		
Fiscal Quarters	Months	Vendor’s Due Date
Quarter 1	July 1st -September 30th	October 31st
Quarter 2	October 1st -December 31st	January 31st
Quarter 3	January 1st -March 31st	April 30th
Quarter 4	April 1st -June 30th	July 31st
---	---	15 Calendar Days following the termination of the contract for any reason

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4 and R.S. 39:1706(C), (D) and (E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:2063 (October 2015), amended LR 43:1108 (June 2017).

**§4907. Waiver**

A. Nothing in this policy shall prevent the Office of State Procurement from modifying the fee where the best interests of the state are served or from devising and contracting for additional or alternate methods of recouping costs associated with cooperative purchasing opportunities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4 and R.S. 39:1706(C), (D) and (E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:2063 (October 2015), amended LR 43:1108 (June 2017).



**Chapter 51. Professional and Social Services**  
**Categories—PPM Number 55**

**§5101. Authority**

A. Under R.S. 39:1561 the commissioner is granted broad authority and responsibility to consider and decide matters of policy under the Procurement Code. Pursuant to R.S. 39:1556(42) the chief procurement officer for the state of Louisiana may add to the enumerated occupations or services under the categories of “professionals.” Under R.S. 39:1619 the enumerated categories of “social services” are not limited, but may be increased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561, R.S. 39:1556(42), and R.S. 39:1619.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, 41:2762 (December 2015), amended LR 43:1109 (June 2017).

**§5103. Policy**

A. To respond to the needs of state agencies, it shall be the policy of the Office of State Procurement to regularly review and to supplement the professions, occupations and services covered under R.S. 39:1556 (Professional Services) and R.S. 39:1619 (Social Services) in order to ensure that needed services are being procured in the most effective manner possible. Any addition of professional services or social services under this Chapter shall be added to the Tables Appendix in §5109 of this Chapter and shall be published in the *Louisiana Register*. Any contract entered into between an agency and a person providing professional or social services listed herein must fully comply with any and all other requirements under the Procurement Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561, R.S. 39:1556(42), and R.S. 39:1619.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, 41:2762 (December 2015), amended LR 43:1109 (June 2017).

**§5105. Procedures**

A. Professional Services. An agency head may present a request to the state chief procurement officer to classify an independent contractor who has a professed knowledge of a department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, as a professional in addition to those professions listed in R.S. 39:1556(42). Upon a showing that the profession advocated is a vocation founded upon prolonged and specialized intellectual training which enables particular service to be rendered, and that such professed attainments in special knowledge are distinguishable from mere skill, the state chief procurement officer may define, classify and add the profession to a table of professions which are exempt from competitive solicitation.

B. Social Services

1. An agency head may present a request to the state chief procurement officer to enumerate additional services other than those enumerated in R.S. 39:1619 which shall qualify as social services under the following categories:

- a. rehabilitation and health support services;
- b. habilitation and socialization services;
- c. protection for adults and children services;

d. improvement of living conditions and health services; and

e. evaluation, testing, and remedial educational services (for exceptional nonpublic school students with disabilities).

2. Upon a showing that an additional service is needed, is properly within the scope of an agency’s mission to provide, and is substantially similar, comparable or a logical extension of an enumerated service, the state chief procurement officer may define, classify and add the service to the appropriate category of services enumerated under R.S. 39:1619.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561, R.S. 39:1556(42), and R.S. 39:1619.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, 41:2762 (December 2015), amended LR 43:1109 (June 2017).

**§5107. Removal**

A. Once added, nothing in this policy or in these procedures shall prevent the Office of State Procurement from removing a professional or social service from the Tables Appendix if it is deemed in the best interests of the state to do so. Once removed, a professional or social service shall not be restored without following the procedures in §5105 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561, R.S. 39:1556(42), and R.S. 39:1619.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, 41:2762 (December 2015), amended LR 43:1109 (June 2017).

**§5109. Tables Appendix**

A. Professional Services

<b>Table of Professional Services</b>	
<i>The following services shall supplement those listed in R.S. 39:1556(42).</i>	
Service	Effective Date
Licensed chiropractors	January 1, 2017

B. Social Services

<b>Table of Social Services</b>	
<i>The following services shall supplement those listed in R.S. 39:1619.</i>	
Service	Effective Date

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561, R.S. 39:1556(42), and R.S. 39:1619.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:2762 (December 2015), amended LR 43:1109 (June 2017).

Paula Tregre  
 Director

1706#003

**POLICY AND PROCEDURE MEMORANDA**

**Office of the Governor  
Division of Administration**

PPM 49—General Travel Regulations  
(LAC 4:V.Chapter 15)

**Title 4**

**ADMINISTRATION**

**Part V. Policy and Procedure Memoranda**

**Chapter 15. General Travel Regulations—PPM  
Number 49**

**§1501. Authorization and Legal Basis**

A. In accordance with the authority vested in the Commissioner of Administration by Section 231 of Title 39 of the Revised Statutes of 1950 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950-968 as amended, notice is hereby given of the revision of Policy and Procedures Memorandum No. 49, the state general travel regulations, effective July 1, 2017. These amendments are both technical and substantive in nature and are intended to clarify certain portions of the previous regulations or provide for more efficient administration of travel policies. These regulations apply to all state departments, boards and commissions created by the legislature or executive order and operating from funds appropriated, dedicated, or self-sustaining; federal funds; or funds generated from any other source.

Please note that when political subdivisions are required to follow PPM 49 for any pass through money issued by the State of Louisiana, any and all required approvals must be sent to the correct appointing authority, not to the Commissioner of Administration.

B. Legal Basis (R.S. 39:231.B). The Commissioner of Administration, with the approval of the governor, shall, by rule or regulation prescribe the conditions under which each of various forms of transportation may be used by state officers and employees in the discharge of the duties of their respective offices and positions in the state service and the conditions under which allowances will be granted for traveling expenses.

**AUTHORITY NOTE:** Published in accordance with R.S. 39:231.

**HISTORICAL NOTE:** Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1252 (June 2000), LR 27:802 (June 2001), LR 28:1125 (June 2002), LR 29:822 (June 2003), LR 30:1111 (June 2004), LR 31:1183 (June 2005), LR 32:938 (June 2006), LR 33:966 (June 2007), republished LR 33:1314 (July 2007), amended LR 34:1299 (July 2008), LR 35:1192 (July 2009), LR 36:1647 (July 2010), LR 42:981 (July 2016), LR 43:1110 (June 2017).

**§1502. Definitions**

A. For the purposes of this PPM, the following words have the meaning indicated.

*Authorized Persons—*

a. advisors, consultants, contractors and other persons who are called upon to contribute time and services

to the state who are not otherwise required to be reimbursed through a contract for professional, personal, or consulting services;

b. members of boards, commissions, and advisory councils required by federal or state legislation or regulation. Travel allowance levels for all such members and any staff shall be those authorized for state employees unless specific allowances are legislatively provided;

c. the department head or his/her designee is allowed to deem persons as an authorized traveler for official state business only.

**NOTE:** College/University Students must be deemed authorized travelers to be reimbursed for state business purposes. A file must be kept containing all of these approvals.

*Conference/Convention—*an event (other than routine) for a specific purpose and/or objective. Non-routine event can be defined as a seminar, conference, convention, or training. Documentation required is a formal agenda, program, letter of invitation, or registration fee. Participation as an exhibiting vendor in an exhibit /trade show also qualifies as a conference. For a hotel to qualify for conference rate lodging it requires that the hotel is hosting or is in "conjunction with hosting" the meeting. In the event the designated conference hotel(s) have no room available, a department head may approve to pay actual hotel cost not to exceed the conference lodging rates for other hotels located near the conference hotel.

*Controlled Billed Account (CBA)—*credit account issued in an agency's name (no plastic card issued). These accounts are direct liabilities of the state and are paid by each agency. CBA accounts are controlled through an authorized approver(s) to provide a means to purchase airfare, registration, lodging, rental vehicles, pre-paid shuttle service and any other allowable charges outlined in the current state of Louisiana State Liability Travel and CBA Policy. Each department head determines the extent of the account's use.

*Corporate Travel Card—*credit cards issued in a state of Louisiana employee's name to be used for specific, higher cost official business travel expenses. Corporate travel cards are state liability cards, paid by each agency.

*Emergency Travel—*each department shall establish internal procedures for authorizing travel in emergency situations. Approval may be obtained after the fact from the Commissioner of Administration with appropriate documentation, under extraordinary circumstances when PPM 49 regulations cannot be followed but where the best interests of the state requires that travel be undertaken.

*Executive Traveler—*the governor of the state of Louisiana. He/she should sign as the traveler but have his/her chief of staff and director of budget sign for travel authorization and travel expenses.

*Extended Stays—*any assignment made for a period of 31 or more consecutive days at a place other than the official domicile.

*Higher Education Entities—*entities listed under Schedule 19, Higher Education of the General Appropriations Bill.

*Higher Education Entity Head—*president of a university.

*In-State Travel*—all travel within the borders of Louisiana or travel through adjacent states between points within Louisiana when such is the most efficient route.

*International Travel*—all travel to destinations outside the 50 United States, District of Columbia, Puerto Rico, the US Virgin Islands, American Samoa, Guam and Saipan.

*Lowest Logical Airfare*—in general, these types of airfares are non-refundable, penalty tickets. Penalties could include restrictions such as advanced purchase requirements, weekend stays, etc. Prices will increase as seats are sold. When schedule changes are required for lowest logical tickets, penalty fees are added.

*Official Domicile*—every state officer, employee, and authorized person, except those on temporary assignment, shall be assigned an official domicile:

a. except where fixed by law, official domicile of an officer or employee assigned to an office shall be, at a minimum, the city limits in which the office is located. The department head or his designee should determine the extent of any surrounding area to be included, such as parish or region. As a guideline, a radius of at least 30 miles is recommended. The official domicile of an authorized person shall be the city in which the person resides, except when the department head has designated another location (such as the person's workplace);

b. a traveler whose residence is other than the official domicile of his/her office shall not receive travel and subsistence while at his/her official domicile nor shall he/she receive reimbursement for travel to and from his/her residence;

c. the official domicile of a person located in the field shall be the city or town nearest to the area where the majority of work is performed, or such city, town, or area as may be designated by the department head, provided that in all cases such designation must be in the best interest of the agency and not for the convenience of the person;

d. the department head or his/her designee may authorize approval for an employee lodging expenses to be placed on agency CBA or state LaCarte/or travel card within an employee's domicile with proper justification as to why this is necessary and in the best interest of the state.

*Out-of-State Travel*—travel to any of the other 49 states plus District of Columbia, Puerto Rico, the US Virgin Islands, American Samoa, Guam, and Saipan.

*Passport*—a document identifying an individual as a citizen of a specific country and attesting to his or her identity and ability to travel freely.

*Per Diem*—a flat rate paid in lieu of travel reimbursements for people on extended stays only.

*Receipts/Document Requirements*—supporting documentation, including original receipts, must be retained according to record retention laws. It shall be at the discretion of each agency to determine where the receipts/documents will be maintained.

*Routine Travel*—travel required in the course of performing his/her job duties. This does not include non-routine meetings, conferences and out-of-state travel.

*State Employee*—employee below the level of state officer.

*State Officer*—

a. state elected officials;

b. department head as defined by Title 36 of the *Louisiana Revised Statutes*, and the equivalent positions in higher education and the office of elected officials.

*Suburb*—an immediate or adjacent location (overflow of the city) to the higher cost areas which would be within approximately 30 miles of the highest cost area.

*Temporary Assignment*—any assignment made for a period of less than 31 consecutive days at a place other than the official domicile.

*Travel Period*—a period of time between the time of departure and the time of return.

*Travel Routes*—the most direct traveled route must be used by official state travelers.

*Travel Scholarships*—if any type of scholarship for travel is offered/received by a state employee, it is the agency/employee's responsibility to receive/comply with all ethic laws/requirements (see R.S. 42:1123).

*Traveler*—a state officer, state employee, or authorized person performing authorized travel.

*Visa*—a document or, more frequently, a stamp in a passport authorizing the bearer to visit a country for specific purposes and for a specific length of time.

AUTHORITY NOTE: Published in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1252 (June 2000), LR 27:802 (June 2001), LR 28:1125 (June 2002), LR 29:822 (June 2003), LR 30:1111 (June 2004), LR 31:1183 (June 2005), LR 32:938 (June 2006), LR 33:966 (June 2007), republished LR 33:1314 (July 2007), amended LR 34:1299 (July 2008), LR 35:1192 (July 2009), LR 36:1647 (July 2010), LR 43:1110 (June 2017).

### **§1503. General Specifications**

#### **A. Department Policies**

1. Department heads may establish travel regulations within their respective agencies, but such regulations shall not exceed the maximum limitations established by the Commissioner of Administration. Three copies of such regulations shall be submitted for prior review and approval by the Commissioner of Administration. One of the copies shall highlight any exceptions/deviations to PPM-49.

2. Department and agency heads will take whatever action necessary to minimize all travel to carry on the department mission.

3. All high cost expenditures (airfare, lodging, vehicle rentals, and registration) must be placed on the LaCarte purchasing card, travel card or agency CBA programs unless prior approval is granted from the Commissioner of Administration.

4. Contracted Travel Service. The state has contracted for travel agency services which use is mandatory for airfares unless exemptions have been granted by the Division of Administration, Office of State Travel, prior to purchasing airfare tickets. The contracted travel agency has an online booking system which can and should be used by all travelers for booking airfare. Use of the online booking system can drastically reduce the cost paid per transaction and state travelers are strongly encouraged to utilize.

5. Contracted Hotel Services. The state has a contract for hotel services, with HotelPlanner,

NOTE: Travelers will be responsible for adhering to hotel's cancellation policy that is set by the hotel when booking through Hotelplanner. If a traveler does not cancel a hotel stay within the cancellation time frame that is set by the hotel, the traveler will be responsible for payments. No exceptions unless approval is granted from the Commissioner of Administration.

6. Contracted Vehicles Rentals. The state has a contract for all rentals based out of Louisiana through Enterprise Rent-A-Car, which use is mandatory.

a. The state has contracts for all out-of-state rental vehicles which use is mandatory. Travelers shall use Hertz, Enterprise, or National for business travel. These contracts are also applicable to all authorized travelers, and contractors.

7. When a state agency enters into a contract with an out-of-state public entity, the out-of-state public entity may have the authority to conduct any related travel in accordance with their published travel regulations.

8. Authorization to Travel

a. All non-routine travel must be authorized with prior approvals in writing by the head of the department, board, or commission from whose funds the traveler is paid. A file shall be maintained, by the agency, on all approved travel authorizations.

b. Annual travel authorizations are no longer a mandatory requirement of PPM-49 for routine travel, however, an agency can continue to utilize this process if determined to be in your department's best interest and to obtain prior approval for annual routine travel. A prior approved travel authorization is still required for non-routine meetings, conferences and out-of-state travel. No agency/university/board may have a blanket authorization for out of state travel.

c. Executive traveler must sign as the traveler but have his/her chief of staff and director of budget sign for travel authorization and travel expenses.

B. Funds for Travel Expenses

1. Persons traveling on official business will provide themselves with sufficient funds for all routine travel expenses not covered by the corporate travel card, LaCarte purchasing card, if applicable, and/or agency's CBA account. Advance of funds for travel shall be made only for extraordinary travel and should be punctually repaid when submitting the Travel expense form covering the related travel, no later than the fifteenth day of the month following the completion of travel.

2. Exemptions. Cash advance(s) meeting the exception requirement(s) listed below, must have an original receipt to support all expenditures in which a cash advance was given, including meals. At the agency's discretion, cash advances may be allowed for:

a. state employees whose salary is less than \$30,000/year;

b. state employees who accompany and/or are responsible for students or athletes for a group travel advance. Note: In this case and in regards to meals, where there are group travel advancements, a roster with signatures of each group member along with the amount of funds received by each group member, may be substituted for

individual receipts (This exception does not apply when given for just an individual employee's travel which is over a group.);

c. state employees who accompany and/or responsible for client travel;

d. new employees who have not had time to apply for and receive the state's corporate travel card;

e. employees traveling for extended periods, defined as 30 or more consecutive days;

f. employees traveling to remote destinations in foreign countries, such as jungles of Peru or Bolivia;

g. lodging purchase, if hotel will not allow direct bill or charges to agency's CBA and whose salary is less than \$30,000/year;

h. registration for seminars, conferences, and conventions;

i. any ticket booked by a traveler 30 days or more in advance and for which the traveler has been billed, may be reimbursed by the agency to the traveler on a preliminary expense reimbursement request. The traveler should submit the request with a copy of the bill or invoice. Passenger airfare receipts are required for reimbursement;

j. employees who infrequently travel or travelers that incur significant out-of-pocket cash expenditures and whose salary is less than \$30,000/year.

3. Expenses Incurred on State Business. Traveling expenses of travelers shall be limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the agency and must be within the limitations prescribed herein.

4. CBA (controlled billed account) issued in an agency's name, and paid by the agency may be used for airfare, registration, rental cars, prepaid shuttle charges, lodging and any allowable lodging associated charges such as parking and internet charges. Other credit cards issued in the name of the state agency are not to be used without written approval.

5. No Reimbursement when No Cost Incurred by Traveler. This includes but is not limited to reimbursements for any lodging and/or meals furnished at a state institution or other state agency, or furnished by any other party at no cost to the traveler. In no case will a traveler be allowed mileage or transportation when he/she is gratuitously transported by another person.

C. Claims for Reimbursement

1. All claims for reimbursement for travel shall be submitted on the state's Travel Expense Form BA-12, unless exception has been granted by the Commissioner of Administration, and shall include all details provided for on the form. It must be signed by the person claiming reimbursement and approved by his/her immediate supervisor. In all cases the date and hour of departure from and return to domicile must be shown, along with each final destination throughout the trip clearly defined on the form. On the state's Travel Authorization Form GF-4, the second page must be completed with breakdown of the estimated travel expenses. This is necessary for every trip, not just when requesting a travel advance. For every travel authorization request, the "purpose of the trip" for travel must be stated in the space provided on the front of the form.

2. Except where the cost of air transportation, registration, lodging, rental vehicles, shuttle service, and all

other allowable charges outlined in the current state of Louisiana State Liability Travel and CBA Policy are invoiced directly to the agency or charged to a state liability card, any and all expenses incurred on any official trip shall be paid by the traveler and his travel expense form shall show all such expenses in detail so that the total cost of the trip shall be reflected on the travel expense form. If the cost of the expenses listed above are paid directly or charged directly to the agency/department, a notation will be indicated on the travel expense form indicating the date of travel, destination, amount, and the fact that it has been paid by the agency/department. The traveler must provide receipts, for all items charged or billed direct to the agency.

3. In all cases, and under any travel status, cost of meals shall be paid by the traveler and claimed on the travel expense form for reimbursement, and not charged to the state department, unless otherwise authorized by the department head or his designee, allowed under the State Liability Travel, CBA and/or LaCarte Purchasing Card Policy or with written approval from the Office of State Purchasing and Travel. A file must be kept containing all of these special approvals.

4. Claims should be submitted within the month following the travel, but preferably held until a reimbursement of at least \$25 is due. Department heads, at their discretion, may make the 30 day submittal mandatory on a department wide basis.

5. Any person who submits a claim pursuant to these regulations and who willfully makes and subscribes to any claim which he/she does not believe to be true and correct as to every material matter, or who willfully aids or assists in, or procures, counsels or advises the preparation or presentation of a claim, which is fraudulent or is false as to any material matter shall be guilty of official misconduct. Whoever shall receive an allowance or reimbursement by means of a false claim shall be subject to disciplinary action as well as being criminally and civilly liable within the provisions of state law.

6. Agencies are required to reimburse travel in an expeditious manner. In no case shall reimbursements require more than 30 days to process from receipt of complete, proper travel documentation.

AUTHORITY NOTE: Published in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1253 (June 2000), LR 27:803 (June 2001), LR 28:1126 (June 2002), LR 29:823 (June 2003), LR 30:1112 (June 2004), LR 31:1184 (June 2005), LR 33:966 (June 2007), republished LR 33:1315 (July 2007), amended LR 34:1300 (July 2008), republished LR 35:1193 (July 2009), amended LR 36:1648 (July 2010), LR 42:982 (July 2016), LR 43:1111 (June 2017).

#### **§1504. Methods of Transportation**

A. Cost-Effective Transportation. The most cost-effective method of transportation that will accomplish the purpose of the travel shall be selected. Among the factors to be considered should be length of travel time, employee's salary, cost of operation of a vehicle, cost and availability of common carrier services, etc. Common carrier shall be used

for out-of-state travel unless it is documented that utilization of another method of travel is more cost-efficient or practical and approved in accordance with these regulations.

#### **B. Air**

1. Private Owned or Charter Planes. Before travel by privately-owned or by chartered aircraft is authorized for individual's travel by a department head, the traveler shall certify that: at least two hours of working time will be saved by such travel; and no other form of transportation, such as commercial air travel or a state plane, will serve this same purpose.

a. Chartering a privately owned aircraft must be in accordance with the Procurement Code.

b.i. Reimbursement for use of a chartered or un-chartered privately owned aircraft under the above guidelines will be made on the following basis:

(a) at the rate of \$1.15 per mile; or

(b) at the lesser of coach economy airfare.

ii. If there are extenuating circumstances requiring reimbursement for other than listed above, approval must be granted by the Commissioner of Administration.

c. When common carrier services are unavailable and time is at a premium, travel via state aircraft shall be investigated, and such investigation shall be documented and readily available in the department's travel reimbursement files. Optimum utilization will be the responsibility of the department head.

2. Commercial Airlines (receipts required). All state travelers are to purchase commercial airline tickets through the state contracted travel agency (see front cover for contract travel agency contact numbers). This requirement is mandatory unless approval is granted from the Office of State Travel. (In the event travelers seek approval to go outside the travel agency, they shall submit their request through their agency travel program administrator, who will determine if the request should be submitted to the Office of State Travel.)

a. While state contractors are not required to use the state's contracted travel agency when purchasing airfare, it will be the agency's responsibility to monitor cost ensuring that the contractor(s) are purchasing the lowest, most logical airfare.

b. The state always supports purchasing the "best value" ticket. Therefore, once all rates are received, the traveler must compare cost and options to determine which fare would be the "best value" for their trip. To make this determination, the traveler must ask the question: Is there a likelihood my itinerary could change or be cancelled? Depending on the response, the traveler must determine if the costs associated with changing a non-refundable ticket (usually around \$200) would still be the best value.

i. Another factor to assist having a travel agent search the lowest fare is advising the agent if traveler is flexible in either your dates or time of travel. By informing the travel agent of your "window of time" for your departure and return will assist them to search for the best price.

ii. Travelers are to seek airfares allowing an ample amount of lead time prior to departure date. The lead-time should be about 10 to 14 days in advance of travel dates to ensure the lowest fares are available.

NOTE: Cost of a preferred or premium seat is not reimbursable. To avoid these charges or to avoid being bumped, a traveler must check in as early as possible. A traveler should check-in online 24 hours prior to a flight or check-in at the airport several hours prior to departure to obtain a seat assignment. Please be aware that it is a strict airline policy that a traveler must check-in, at a minimum, prior to 30 minutes of departure. The airlines are very strict about this policy. Airline rules typically state that if you don't arrive at least 30 minutes before the schedule departure, you may forfeit your reservation. The earlier you arrive at the gate increases the chances of retaining your original reservation and assurance of a seat on the flight purchased.

c. Commercial air travel will not be reimbursed in excess of lowest logical airfare when it has been determined to be the best value (receipts required). The difference between coach/economy class rates and first class or business class rates will be paid by the traveler. Upgrades at the expense of the state are not permitted, without prior approval of the Commissioner of Administration. If space is not available in less than first or business class air accommodations in time to carry out the purpose of the travel, the traveler will secure a certification from the airline or contracted travel agency indicating this fact. The certification is required for travel reimbursement.

d. The policy regarding airfare penalties is that the state will pay for the airfare and/or penalty incurred for a change in plans or cancellation when the change or cancellation is required by the state or other unavoidable situations approved by the agency's department head. Justification for the change or cancellation by the traveler's department head is required on the travel expense form.

e. When an international flight segment is more than 10 hours in duration, the state will allow the business class rate not to exceed 10 percent of the coach rate. The traveler's itinerary provided by the travel agency must document the flight segment as more than 10 hours and must be attached to the travel expense form.

f. A lost airline ticket is the responsibility of the person to whom the ticket was issued. The airline fee of searching and refunding lost tickets will be charged to the traveler. The difference between the prepaid amount and the amount refunded by the airlines must be paid by the employee.

g. Traveler is to use the lowest logical airfare whether the plane is a prop or a jet.

h. Employees may retain promotional items, including frequent flyer miles, earned on official state travel. However, if an employee makes travel arrangements that favor a preferred airline/supplier to receive promotional items/points and this circumvents purchasing the most economical means of travel, they are in violation of this travel policy. Costs for travel arrangements subject to this violation are non-reimbursable.

i. When making airline reservations for a conference, let the travel agent know that certain airlines have been designated as the official carrier for the conference. In many instances, the conference registration form specifies that certain airlines have been designated as the official carrier offering discount rates, if available. If so, giving this information to our contracted agency could result in them securing that rate for your travel.

j. Tickets which are unused by a traveler should always be monitored by the traveler and the agency. Traveler should ensure that any unused ticket is considered when planning future travel arrangements. Some airlines have a policy which would allow for a name change to another employee within the agency. A view of the latest airline policies regarding unused tickets are available at the State Travel Office's website <http://www.doa.la.gov/Pages/osp/Travel/af-index.aspx>.

i. Ultimately, it is the traveler's responsibility to determine, upon initial notification of an unused ticket and then every 30 days thereafter, if they will be utilizing the unused ticket. If it is determined that the ticket will not be utilized prior to expiration and there is a possibility to transfer the ticket, the traveler must immediately advise the agency travel administrator that the ticket is available for use by another employee, section or agency. The traveler administrator should then act accordingly.

ii. In addition, the department head, at a minimum of three months prior to expiration, must review all unused airfare to determine, based on the traveler's justification, if reimbursement from the traveler must be made to the agency for the amount of the unused ticket. All files must be properly documented.

iii. This may be accomplished with the unused ticket report sent to each agency program administrator each month from the contracted travel agency. This report in conjunction with employee notifications while booking other flights and employee email notifications every 90, 60, 30 and 14 days prior to ticket expiration should be more than sufficient to reduce the loss of reusable airfare.

#### C. Motor Vehicle

1. No vehicle may be operated in violation of state or local laws. No traveler may operate a vehicle without having in his/her possession a valid U.S. driver's license. Safety restraints shall be used by the driver and passengers of vehicles. All accidents, major and minor, shall be reported first to the local police department or appropriate law enforcement agency. In addition, an accident report form, available from the Office of Risk Management (ORM) of the Division of Administration, should be completed as soon as possible and must be returned to ORM, together with names and addresses of principals and witnesses. Any questions about this should be addressed to the Office of Risk Management of the Division of Administration. These reports shall be in addition to reporting the accident to the Department of Public Safety as required by law.

2.a. Operating a state owned vehicle, state-rented vehicle or state-leased vehicle or operating a non-state-owned vehicle for state business while intoxicated as set forth in R.S. 14:98 and 14:98.1 is strictly prohibited, unauthorized, and expressly violates the terms and conditions of use of said vehicle. In the event such operation results in the employee being convicted of, pleading nolo contendere to, or pleading guilty to driving while intoxicated under R.S. 14:98 and 14:98.1, such would constitute evidence of the employee:

- i. violating the terms and conditions of use of said vehicle;
- ii. violating the direction of his/her employer; and

iii. acting beyond the course and scope of his/her employment with the state of Louisiana.

b. Personal use of a state-owned, state-rented or state-leased vehicle is not permitted.

3. No person may be authorized to operate or travel in a state owned or rental vehicle unless that person is a classified or unclassified employee of the state of Louisiana; any duly appointed member of a state board, commission, or advisory council; or any other person who has received specific approval and is deemed as an "authorized traveler" on behalf of the state, from the department head or his designee to operate or travel in a fleet vehicle on official state business. A file must be kept containing all of these approvals.

4. Any persons who are not official state employees must sign an Acknowledgement of non-state employees utilizing state vehicles form, located at the Office of State Travel's website, <http://www.doa.la.gov/osp/Travel/forms/nse-acknowledgement.pdf> prior to riding in or driving a state-owned vehicle or rental vehicle on behalf of the State. Each agency is responsible in ensuring that this along with any other necessary documents and requirements are completed and made part of the travel file prior to travel dates.

5. Students not employed by the state shall not be authorized to drive state-owned or rented vehicles for use on official state business. A student may be deemed as an "authorized traveler" on behalf of the state by the department head or his designee. An authorized traveler can be reimbursed for their travel expenses. The acknowledgement of non-state employees utilizing state vehicles form acknowledging the fact that the state assumes no liability for any loss, injury, or death resulting from said travel must be signed as part of the approval process. A file must be kept containing all of these approvals.

6. Persons operating a state owned, rental or personal vehicle on official state business will be completely responsible for all traffic, driving, and parking violations received. This does not include state-owned or rental vehicle violations, i.e. inspections sticker, as the state and/or rental company would be liable for any cost associated with these types of violations.

#### 7. State-Owned Vehicles

a. Travelers in state-owned automobiles who purchase needed fuel, repairs and equipment while on travel status shall make use of all fleet discount allowances and state bulk purchasing contracts where applicable. Reimbursements require a receipt and only regular unleaded gasoline, or diesel when applicable, should be used. This applies for both state owned vehicles and rental vehicles, as mid-grade, super, plus or premium gasoline is not necessary. If traveler utilizes anything other than regular unleaded gasoline unless vehicle requires diesel, or any other manufactory mandated grade, without justification and prior approval from the agency department head, traveler must reimburse the agency the difference between what was paid and the state average gasoline rates. Each agency/department shall familiarize itself with the existence of the fuel/repair contract(s), terms and conditions as well as location of vendors.

b. State-owned vehicles may be used for out-of-state travel only if permission of the department head has been given prior to departure. If a state-owned vehicle is to be used to travel to a destination more than 500 miles from its usual location, documentation that this is the most cost-effective means of travel should be readily available in the department's travel reimbursement files. When the use of a state-owned vehicle has been approved by the department head for out-of-state travel for the traveler's convenience; the traveler is personally responsible for any other expense in-route to and from their destination, which is inclusive of meals and lodging. If a traveler, at the request of the department, is asked to take his/her personally owned vehicle out-of-state for a purpose that will benefit the agency, then the department head may on a case-by-case basis determine to pay a traveler for all/part of in-route travel expenses.

c. Unauthorized persons should not be transported in state vehicles. Approval of exceptions to this policy may be made by the department head if he determines that the unauthorized person is part of the official state business and the best interest of the state will be served and the passenger (or passenger's guardian) signs an acknowledgement of non-state employees utilizing state vehicles form acknowledging the fact that the state assumes no liability for any loss, injury, or death resulting from said travel.

d. If a state vehicle is needed/requested to be brought to the home of a state employee overnight, then the agency/traveler should ensure it is in accordance with requirements outlined in R.S. 39:361-364.

#### 8. Personally Owned Vehicles

a. When two or more persons travel in the same personally owned vehicle, only one charge will be allowed for the expense of the vehicle. The person claiming reimbursement shall report the names of the other passengers.

b. A mileage allowance shall be authorized for travelers approved to use personally-owned vehicles while conducting official state business. Mileage may be reimbursable on the basis of no more than \$0.53 per mile and in accordance with the following.

i. For official in-state business travel:

(a). employee should utilize a state vehicle when available;

(b). employee may rent a vehicle from the State's in-state contract Enterprise-Rent-A-Card if a state vehicle is not available and travel exceeds 100 miles; or

(c). if an employee elects to use his/her personal vehicle, reimbursement may not exceed a maximum of 99 miles per round trip and/or day (day or the return to domicile) at \$0.53 per mile.

Please note that mileage is applicable for round trip (multiple days) and/or round trip (one day).

Example No. 1: If someone leaves Baton Rouge, travels to New Orleans and returns that same day, they are entitled to 99 miles maximum for that day trip if they choose to drive their personal vehicle.

Example No. 2: If someone leaves Baton Rouge, travels to New Orleans, and returns two days later, they are entitled to 99 miles maximum for the entire "trip" if they choose to drive their personal vehicle.

Example No. 3: If someone leaves Baton Rouge, travels to New Orleans then on to Lafayette, Shreveport, Monroe and returns to the office four days later, they are entitled to 99 miles maximum for the entire "trip" if they choose to drive their personal vehicle.

c. Mileage shall be computed by one of the following options:

i. on the basis of odometer readings from point of origin to point of return;

ii. by using a website mileage calculator or a published software package for calculating mileage such as Tripmaker, How Far Is It, Mapquest, etc. Employee is to print the page indicating mileage and attach it with his/her travel expense form.

d. An employee shall never receive any benefit from not living in his/her official domicile. In computing reimbursable mileage, while the employee is on official state travel status, to an authorized travel destination from an employee's residence outside the official domicile, the employee is always to claim the lesser of the miles from their official domicile or from their residence. If an employee is leaving on a non-work day or leaving significantly before or after work hours, the department head may determine to pay the actual mileage from the employee's residence not to exceed a maximum of 99 miles per round trip and/or day at \$0.53 per mile. See example in Subparagraph C.8.b above.

e. The department head or his designee may approve an authorization for routine travel for an employee who must travel in the course of performing his/her duties; this may include domicile travel if such is a regular and necessary part of the employee's duties, but not for attendance to infrequent or irregular meetings, etc., within the city limits where his/her office is located, the employee may be reimbursed for mileage only not to exceed a maximum of 99 miles per round trip and/or day at \$0.53 per mile. See example in Subparagraph C.8.b above.

f. Reimbursements will be allowed on the basis of \$0.53 per mile, not to exceed a maximum of 99 miles per round trip and/or day, to travel between a common carrier/terminal and the employees point of departure, i.e., home, office, etc., whichever is appropriate and in the best interest of the state. See example in Subparagraph C.8.b above.

g. When the use of a privately-owned vehicle has been approved by the department head for out-of-state travel for the travelers convenience, the traveler will be reimbursed for mileage on the basis of \$0.53 per mile only not to exceed a maximum of 99 miles per round trip and/or day. If prior approval for reimbursement of actual mileage is requested and granted by the Commissioner of Administration, the total cost of the mileage reimbursement may never exceed the cost of a rental vehicle or the cost of travel by using the lowest logical airfare obtained at least 14 days prior to the trip departure date, whichever is the lesser of the two. The reimbursement would be limited to one lowest logical airfare quote, not the number of persons traveling in the vehicle. The traveler is personally responsible for any other expenses in-route to and from destination which is inclusive of meals

and lodging. If a traveler, at the request of the department, is asked to take his/her personally owned vehicle out-of-state for a purpose that will benefit the agency, then the department head may on a case-by-case basis determine to pay a traveler for all/part of in-route travel expenses, however, mileage reimbursement over 99 miles would still require prior approval from the Commissioner of Administration's approval. In this case, once approval is obtained from the Commissioner of Administration to exceed 99 miles, then the department head may authorized actual mileage reimbursements. File should be justified accordingly.

h. When a traveler is required to regularly use his/her personally owned vehicle for agency activities, the agency head may request prior authorization from the Commissioner of Administration for a lump sum allowance for transportation or reimbursement for transportation (mileage). Request for lump sum allowance must be accompanied by a detailed account of routine travel listing exact mileage for each such route and justification why a rental vehicle is not feasible. Miscellaneous travel must be justified by at least a three-month travel history to include a complete mileage log for all travel incurred, showing all points traveled to or from and the exact mileage. Request for lump sum allowance shall be granted for periods not to exceed one fiscal year. A centralized file must be kept containing all approvals.

NOTE: Once someone is given a monthly vehicle allowance or lump sum allowance, they are not to be reimbursed for mileage, fuel or rental vehicles. Rental could be allowed only when flying out of state.

i. In all cases, the traveler shall be required to pay all operating expenses for his/her personal vehicle including fuel, repairs, and insurance.

j. The only exemption which would not require the Commissioner of Administration's prior approval for exceeding 99 miles reimbursement and receiving actual mileage reimbursements is for members of boards and commissions, not administration/office personnel, and for students which are traveling on a grant, scholarship, or any other occasion where use of a personal vehicle is the best and/or only method of transportation available. Department head approval is required.

9. Rented Motor Vehicles (Receipts Required). Any rental vehicles not covered in the state's in-state or out-of-state contracts should be bid in accordance with proper purchasing rules and regulations. The state has a contract for all vehicle rentals based out of Louisiana through Enterprise Rent-A-Car, which use is mandatory for business travel. This contract is applicable to all authorized travelers, and contractors. The state has contracts for out-of-state vehicles rentals. Travelers shall use Hertz, Enterprise-Rent-A-Car, or National which use is mandatory for business travel. These contracts are also applicable to all authorized travelers, and contractors.

a. In-State Vehicle Rental. The state has contracted for all rentals based out of Louisiana through Enterprise Rent-A-Car's State Motor Pool Rental Contract, which use is mandatory, for business travel which applies to all state of Louisiana employees and/or authorized travelers, contractors, etc. traveling on official state business.



i. A rental vehicle should be used, if a state owned vehicle is not available, for all travel over 99 miles. All exemptions must be requested and granted by the Commissioner of Administration for reimbursements which exceed 99 miles prior to the trip. Requests for exemption must be accompanied by a detailed explanation as to why a rental is not feasible. If an exemption from the program is granted by the Commissioner of Administration as stated above, then the employee will not be required to rent a vehicle and may receive actual mileage reimbursement up to \$0.53 per mile.

ii. All state contractors, who have entered into a contract with the state of Louisiana on or after March 1, 2013, and whose contracts are required to follow PPM 49 for travel reimbursements, are required to utilize both in-state and out-of-state mandatory contracts awarded by the State.

iii. Although exemptions may be granted, by the Commissioner of Administration, all must adhere to the current mileage reimbursement rate of no more than \$0.53 per mile.

iv. The only exemption which would not require the Commissioner of Administration's prior approval for exceeding 99 miles reimbursement and receiving actual mileage reimbursements is for members of boards and commissions, not administration/office personnel, and for students which are traveling on a grant, scholarship, or any other occasion where use of a personal vehicle is the best and/or only method of transportation available. Department head approval is required. Board and commission members may receive actual mileage reimbursement of no more than \$0.53 per mile.

v. For trips of 100 miles or more, any employee and/or authorized traveler, should use a state owned vehicle or rental from Enterprise Rent-A-Car State Motor Pool Rental Contract, when a state vehicle is not available.

vi. For trips of less than 100 miles employees should utilize a state vehicle when available, may utilize their own vehicle and receive mileage reimbursement not to exceed a maximum of 99 miles per round trip and/or day at \$0.53 per mile or may rent a vehicle from Enterprise Rent-A-Car's State Motor Pool Rental Contract.

vii. Reservations should not be made at an airport location for daily routine travel, as this will add additional unnecessary cost to your rental charges. No travelers may purchase prepaid fuel. If traveler utilizes anything other than regular unleaded gasoline, unless vehicle requires diesel or any other manufactory mandated grade, without justification and prior approval from the agency department head, traveler must reimburse the agency the difference between what was paid and the state average gasoline rate.

b. Payments Rentals through the State Motor Pool Rental Contract may be made using the "LaCarte" purchasing card, an agency's CBA account, an employee's state corporate travel card or by direct bill to the agency. This will be an agency decision as to the form of payment chosen. If direct bill is chosen, agency must set up account billing information with Enterprise. An account may be established by contacting Joseph Rosenfeld at 225-445-7250, joseph.g.rosenfeld@ehi.com.

c. Out-of-State Vehicle Rental. The state has contracted for rental vehicles for domestic and out-of-state

travel, excluding Louisiana and international travel, utilizing the state of Louisiana's out-of-state contracts, which use is mandatory. All state of Louisiana employees and/or authorized travelers, contractors are mandated to use these contracts due to exceptional pricing which includes CDW (Collision Damage Waiver) and \$1,000,000 liability insurance. The state of Louisiana out-of-state participating vendors include Enterprise Rent-A-Car, National Car Rental and Hertz Car Rental Corporation. It is the traveler's discretion which rental company is utilized.

d. All state contractors who have entered into a contract with the state of Louisiana on or after March 1, 2013, and whose contracts are required to follow PPM49 for travel reimbursements, are required to utilize both in-state and out-of-state mandatory contracts awarded by the state.

e. Although exemptions may be granted, by the Commissioner of Administration, all must adhere to the current mileage reimbursement rate of no more than \$0.53 per mile.

f. The only exemption which would not require the Commissioner of Administration's approval for exceeding 99 miles reimbursement and receiving actual mileage reimbursements is for students which are traveling on a grant, scholarship, or any other occasion where use of a personal vehicle is the best and/or only method of transportation available. Department head approval is required.

g. Payments rentals made through the state of Louisiana out-of state contracts may be made using the "LaCarte" purchasing card, an employee's corporate travel card or by direct bill to the agency. This will be an agency decision as to the form of payment chosen. If a direct bill account is chosen for Enterprise and National, you may contact Joseph Rosenfeld at 225-445-7250, joseph.g.rosenfeld@ehi.com and for Hertz, you may contact Tami Vetter at 225-303-5973, tvetter@hertz.com.

h. Approvals. Written approval of the department head or his designee prior to departure is not required for the rental of vehicles, however, if your agency chooses, approval may be made mandatory or handled on an annual basis if duties require frequent rentals. Special approval is required, from the department head or his/her designee, for rental of any vehicle in the "full size" category or above.

i. Vehicle Rental Size

i. Only the cost of a compact or intermediate model is reimbursable, unless:

(a). non-availability is documented; or

(b). the vehicle will be used to transport more than two persons.

NOTE: When a larger vehicle is necessary as stated in 1 or a larger vehicle is necessary due to the number of persons being transported, the vehicle shall be upgraded only to the next smallest size and lowest price necessary to accommodate the number of persons traveling.

ii. A department head or his/her designee may, on a case-by-case basis, authorize a larger size vehicle provided detailed justification is made in the employee's file. Such justification could include, but is not limited to, specific medical requirements when supported by a doctor's recommendation.

j. Personal Use of Rental. Personal use of a rental vehicle, when rented for official state business, is not allowed.

k. Gasoline (Receipts Required). Reimbursements require an original receipt and only regular unleaded gasoline, or diesel when applicable, should be used. This applies for both state-owned vehicles and rental vehicles, as mid-grade, super, plus or premium gasoline is not necessary. An employee should purchase gasoline with the state's fuel card or other approved credit card at reasonable cost from a local gasoline station prior to returning the rental. Pre-paid fuel options, for rental vehicles, are only to be allowed. If traveler utilizes anything other than regular unleaded gasoline, unless vehicle requires diesel or any other manufactory mandated grade, without justification and prior approval from the agency department head, traveler must reimburse the agency the difference between what was paid and the state average gasoline rate. Each agency/department shall familiarize itself with the existence of the fuel/repair contract(s), terms and conditions as well as locations of vendors.

l. Insurance for Vehicle Rentals within the 50 United States. Insurance billed by car rental companies is not reimbursable. All insurance coverage for rental vehicles, other than the state's in-state and out-of-state mandatory contracts, is provided by the Office of Risk Management. Should a collision occur while on official state business, the accident should immediately be reported to the Office of Risk Management and rental company. Any damage involving a third party must be reported to appropriate law enforcement entity to have a police report generated.

i. CDW/damage waiver insurance and \$1 million liability protection coverage is included in the state in-state and out-of-state rental contract pricing.

NOTE: Lost keys and car door unlocking services for rental vehicles are not covered under the damage waiver policy and are very costly. The agency should establish an internal procedure regarding liability of these costs.

ii. No other insurance will be reimbursed when renting, except when renting outside the 50 United States, see §1504.C.3.i There should be no other charges added to the base price, unless the traveler reserves the vehicle at an airport location (which is not allowed for daily routine travel unless prior approval from the Commissioner of Administrator). Reimbursable amounts would then be submitted at the end of the trip on a travel expense form.

m. Insurance for Vehicles Rentals outside the 50 United States (Receipts Required). The Office of Risk Management (ORM) recommends that the appropriate insurance (liability and physical damage) provided through the car rental company be purchased when the traveler is renting a vehicle outside the 50 United States. With the approval of the department head or his/her designee required insurance costs may be reimbursed for travel outside the 50 United States only.

10. The following are insurance packages available by rental vehicle companies which are reimbursable:

a. collision damage waiver (CDW)—should a collision occur while on official state business, the cost of the deductible should be paid by the traveler and submit a

reimbursement claimed on a travel expense form. The accident should also be reported to the Office of Risk Management;

b. loss damage waiver (LDW);

c. auto tow protection (ATP)—\*approval of department head;

d. supplementary liability insurance (SLI)—\*if required by the rental company;

e. theft and/or super theft protection (coverage of contents lost during a theft or fire)—\*if required by the car rental company;

f. vehicle coverage for attempted theft or partial damage due to fire—\*if required by the car rental company.

11. The following are some of the insurance packages available by rental vehicle companies that are not reimbursable:

a. personal accident coverage insurance (PAC);

b. emergency sickness protection (ESP).

12. Navigation equipment (GPS system), rented not purchased, from a rental car company, may only be reimbursed if an employee justifies the need for such equipment and with prior approval of the department head or his designee.

D. Public Ground Transportation. The cost of public ground transportation such as buses, subways, airport shuttle/limousines, and taxis are reimbursable when the expenses are incurred as part of approved state travel. See receipt requirements below.

1. Airport Shuttle/limousines, taxi and all other public transportation where a receipt is available, requires a receipt for reimbursements. A driver's tip for shuttle/limousines and taxis may be given and must not exceed 20 percent of total charge. Amount of tip must be included on receipt received from driver/company.

2. All other forms of public ground transportation, where a receipt is not possible and other than those listed above, are limited to \$10 per day without a receipt, claims in excess of \$10 per day requires a receipt. At the agency's discretion, the department head may implement an agency wide policy requiring receipts for all public transportation request less than \$10 per day.

3. To assist agencies with verification of taxi fares, you may contact the taxi company for an estimate or visit sites such as taxifarefinder.com. An employee should always get approval, prior to a trip, if multiple taxis will be used; as it may be in the agency's best interest to rent a vehicle versus reimbursement of multiple taxi expenses.

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### **§1505. State Issued Travel Credit Cards/CBA Accounts**

A. Use. All high cost expenditures (airfare, lodging, vehicle rentals, and registration) must be placed on the LaCarte purchasing card, travel card or agency CBA programs unless prior approval is granted from the Commissioner of Administration. The State Travel Office contracts for an official state corporate travel card to form one source of payment for travel. If a supervisor recommends an employee be issued a state travel card, the employee should complete an application through their agency travel program administrator. The State Travel Office contracts for an official state corporate travel card to form one source of payment for travel. If a supervisor recommends an employee be issued a state travel card, the employee should complete an application through their agency travel program administrator.

1. The employee's corporate travel card is for official state travel business purposes only. Personal use on the state travel card shall result in disciplinary action.

2. If a hosted conference vendor does not accept credit card payment for registration or lodging expense, the department head may approve for payment(s) to be made by other means. Traveler must submit supporting documentation from vendor stating they do not accept credit card payments. The supporting document must be kept with the travel expense form.

#### **B. Liability**

1. The corporate travel card is the liability of the state. Each monthly statement balance is due in full to the card-issuing bank. The state will have no tolerance to assist those employees who abuse their travel card privileges.

2. The department/agency is responsible for cancellation of corporate travel cards for those employees terminating/retiring from state service.

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### **§1506. Lodging and Meals**

#### **A. Eligibility**

1. Official Domicile/Temporary Assignment. Travelers are eligible to receive reimbursement for travel only when away from "official domicile" or on temporary assignment unless exception is granted in accordance with these regulations. Temporary assignment will be deemed to have ceased after a period of 30 calendar days, and after such period the place of assignment shall be deemed to be his/her official domicile. He/she shall not be allowed travel and subsistence unless permission to extend the 30-day period has been previously secured from the Commissioner of Administration.

2. Extended Stays. For travel assignments approved by the Commissioner of Administration involving duty for extended periods (31 or more consecutive days) at a fixed

location, the reimbursement rates indicated should be adjusted downward whenever possible. Claims for meals and lodging may be reported on a per diem basis supported by lodging receipt. Care should be exercised to prevent allowing rates in excess of those required to meet the necessary authorized subsistence expenses. It is the responsibility of each agency head to authorize only such travel allowances as are justified by the circumstances affecting the travel.

a. The only exemption, for travel of 31 days or more which does not require the Commissioner of Administration's approval, are students, professors or other state employees which are traveling on a grant, scholarship, studying abroad or any other occasion where funds utilized are other than state general funds. Department head approval is required.

#### **3. Single Day Travel**

a. Meals are not eligible for reimbursements on single day travel. This means that when an authorized traveler of the state is in travel status where no overnight stay is required, no meals are eligible for reimbursement. Each department head or their designees are to determine the reasonableness of when an overnight stay is justified.

b. However, the department head will be allowed to authorize single day meal reimbursements on a case-by-case basis or by type(s) of single day travel when it is determined to be in the best interest of the department. In those cases, the department must keep the approvals in the travel file and must be responsible to take appropriate steps to report the reimbursement as wages to the employee.

c. If a department head or his/her designee determines that single day meals will be provided for, they must adhere to the following allowances. To receive any meal reimbursement on single day travel, an employee must be in travel status for a minimum of 12 hours.

i. The maximum allowance for meal reimbursement for single-day travel will be \$42:

(a) breakfast and lunch: (\$22). The 12-hours travel duration must begin at or before 6 a.m.;

(b) lunch: (\$13); requires a 12-hour duration in travel status;

(c) lunch and dinner: (\$42). The 12-hour travel duration must end at or after 8 p.m.

4. Travel with Over-Night Stay (minimum of 12 hours in travel status). Travelers may be reimbursed for meals according to the following schedule:

a. breakfast—when travel begins at/or before 6 a.m. on the first day of travel or extends at/or beyond 9 a.m. on the last day of travel, and for any intervening days;

b. lunch—when travel begins at/or before 10 a.m. on the first day of travel or extends at/or beyond 2 p.m. on the last day of travel, and for any intervening days;

c. dinner—when travel begins at/or before 4 p.m. on the first day of travel or extends at/or beyond 8 p.m. on the last day of travel, and for any intervening days.

5. Alcohol. Reimbursement for alcohol is prohibited.

#### **B. Exceptions**

1. Routine Lodging Overage Allowances (Receipts Required). Department head or his/her designee has the authority to approve actual costs for routine lodging provisions on a case by case basis, not to exceed 50 percent over PPM-49 current listed rates. (Note this authority for

increase in allowance is for lodging only and not for any other area of PPM-49) Justification must be maintained in the file to show that attempts were made with hotels in the area to receive the state/best rate. In areas where the governor has declared an emergency, a department head or his/her designee will have the authority to approve actual routine lodging provisions on a case by case basis not to exceed 75 percent over PPM-49 current listed rates. Each case must be fully documented as to necessity (e.g., proximity to meeting place) and cost effectiveness of alternative options. Documentation must be readily available in the department's travel reimbursement files.

2. Actual Expenses for State Officers (Itemized receipts or other supporting documents are required for each item claimed). State officers and others so authorized by statute (see definition under *state officer*) or individual exception will be reimbursed on an actual expense basis for meals and lodging except in cases where other provisions for reimbursement have been made by statute. Request shall not be extravagant and will be reasonable in relation to the purpose of travel. State officers entitled to actual expense reimbursements are only exempt from meals and lodging rates; they are subject to the time frames and all other requirements as listed in these travel regulations.

C. Meals and Lodging Allowances (meal rates are not a per diem; only the maximum allowed while in travel status)

1. Meal Allowance (includes tax and tips). Receipts are not required for routine meals within these allowances, unless a cash advance was received. See §1503.B.2. Number of meals claimed must be shown on travel expense form. For meal rates, the inclusion of suburbs (see definition of *suburb*) shall be determined by the department head or his/her designee on a case-by-case basis. See tier pricing below. Partial meals such as continental breakfast or airline meals are not considered meals. Note: If a meal is included in a conference schedule, it is part of the registration fee, therefore, an employee cannot request/receive additional reimbursement for that meal. If meals of state officials receiving actual expenses exceed these allowances, itemized receipt are required. See §1506.B.2.

2. Meals with relatives or friends may not be reimbursed unless the host can substantiate costs for providing for the traveler. The reimbursement amount will not automatically be the meal cost for that area, but rather the actual cost of the meal.

Example: The host would have to show proof of the cost of extra food, etc. Cost shall never exceed the allowed meal rate listed for that area.

3. Routine Lodging Allowance. The state has contracted for all hotel expenditures through HotelPlanners contract. Lodging rate, plus tax and any mandatory surcharge. (Receipts are required.) For lodging rates, the inclusion of suburbs (see definition of *suburb*) shall be determined by the department head on a case-by-case basis. Employees should always attempt to use the tax exempt form located on the State Travel website for all in-state lodging. [http://www.doa.la.gov/osp/Travel/forms/hoteltax\\_exemption.pdf](http://www.doa.la.gov/osp/Travel/forms/hoteltax_exemption.pdf) when traveling in-state on official state business, and must be used if hotel expenses are being

charged to employee's state corporate travel card, the LaCarte Card or the agency's CBA account. When two or more employees on official state business share a lodging room, the state will reimburse the actual cost of the room; subject to a maximum amount allowed for an individual traveler times the number of employees.

4. Lodging with relatives or friends may not be reimbursed unless the host can substantiate costs for accommodating the traveler. The amount will not automatically be the lodging cost for that area, but rather the actual cost of accommodations. Example: The host would have to show proof of the cost of extra water, electricity, etc. Cost shall never exceed the allowed routine lodging rate listed for that area. Department head or his/her designee's approval must be provided to allow lodging expenses to be direct billed to an agency.

5. Conference Lodging Allowance. Employees may be allowed lodging rates, plus tax (other than state of Louisiana tax) and any mandatory surcharge. (Receipts are required.) Department head or his/her designee has the authority to approve the actual cost of conference lodging, for a single occupancy standard room, when the traveler is staying at the designated conference hotel. If there are multiple designated conference hotels, the lower cost designated conference hotel should be utilized, if available. In the event the designated conference hotel(s) have no room availability, a department head or his/her designee may approve to pay actual hotel cost not to exceed the conference lodging rates for other hotels in the immediate vicinity of the conference hotel. This allowance does not include agency hosted conference lodging allowances; see §1510 for these allowances. In the event a traveler chooses to stay at a hotel which is not associated with the conference, then the traveler is subject to making reservation and getting reimbursed within the hotel rates that will be allowed in routine lodging only, as listed below.

6. Resort fees are not allowable unless attending a conference and/or if a traveler is staying in a city that all hotels are charging a resort fee.

7. No reimbursements are allowed for functions not relating to a conference, i.e., tours, dances, golf tournaments, etc.

8. If staying at a designated conference hotel or the overflow hotel(s) you may not rent a rental vehicle unless prior approval is granted from the department head. Rental must be for official state business needs with supporting documentation maintained in the file.

TIER I	
Breakfast	\$9
Lunch	\$13
Dinner	\$29
Total	\$51
Lodging Area	Routine Lodging
In-State Cities (except as listed)	\$91
Alexandria/Leesville/Natchitoches	\$97
Baton Rouge-EBR	\$97
Covington/Slidell-St. Tammany	\$91
Lake Charles-Calcasieu	\$91
Lafayette	\$91

TIER II	
Breakfast	\$10
Lunch	\$19
Dinner	\$30
Total	\$59
<b>Lodging Area</b>	
<b>Routine Lodging</b>	
New Orleans – Orleans, St. Bernard, Jefferson and Plaquemines Parishes	\$122
May– September	\$156
October – December	\$156
January - April	
Out-Of-State (Except Cities Listed in Tier III & IV)	\$91

TIER III	
Breakfast	\$12
Lunch	\$17
Dinner	\$32
Total	\$61
<b>Lodging Area</b>	
<b>Routine Lodging</b>	
Austin, TX; Atlanta, GA; Cleveland, OH; Dallas/Fort Worth, TX; Denver, CO; Ft. Lauderdale, FL; Hartford, CT; Houston, TX; Kansas City, MO; Las Vegas Los Angeles, CA; Miami, FL; Minneapolis/St. Paul, MN; Nashville, TN; Oakland, CA; Orlando, FL; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Portland, OR; Sacramento, CA; San Antonio, TX; San Diego, CA; Sedona, AZ; St. Louis, MO; Wilmington, DE; all of Alaska and Hawaii; Puerto Rico; Virgin Island; American Samoa; Guam, Saipan	\$134

TIER IV	
Breakfast	\$13
Lunch	\$19
Dinner	\$36
Total	\$68
<b>Lodging Area</b>	
<b>Routine Lodging</b>	
Baltimore, MD; San Francisco, CA; Seattle, WA; Chicago, IL; Boston, MA	\$212
Alexandria, VA; Arlington, VA; New York City, NY; Washington DC	\$225
International Cities	\$200

AUTHORITY NOTE: Published in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1256 (June 2000), LR 27:807 (June 2001), republished LR 27:1495 (September 2001), LR 28:1130 (June 2002), LR 30:1116 (June 2004) LR 31:1189 (June 2005), LR 32:939 (June 2006), LR 33:967 (June 2007), republished LR 33:1320 (July 2007), amended LR 34:1305 (July 2008), LR 35:1198 (July 2009), LR 36:1654 (July 2010), LR 42:990 (July 2016), LR 43:1119 (June 2017).

**§1507. Parking and Related Parking Expenses**

A. Parking at the Baton Rouge Airport. The state's current contract rate is \$3.50 per day (no receipts required) for parking in the indoor parking garage as well as the outside, fenced parking lot at the Baton Rouge airport. Documentation required to receive the contract price is the airport certificate and a state ID. If the agency does not issue a state ID, the traveler would need a business card and a

driver's license along with the certificate to be eligible for the state contracted rate. Airport certificate may be found on State Travel Office's website at <http://www.doa.la.gov/osp/Travel/parking/BRairport.pdf>.

B. New Orleans Airport Parking. The state's current contract is with Park-N-Fly and the rate, inclusive of all allowable and approved taxes/fees, etc will not exceed \$7 per day and \$42 weekly (no receipts required for parking at Park-N-Fly in New Orleans). Promotional code 0050930 must be used to obtain this rate. For on-line reservations, no other documentation will be required to receive this rate. For all "pay when you exit" employees, a state issued ID or a valid ID with a state business card along with a tax exempt form is required to receive the state contracted rate. At the agency discretion an employee may be paid actual expenses, at another location, up to \$7 per day with a receipt.

C. Travelers using motor vehicles on official state business may be reimbursed for all other parking, including airport parking except as listed in A and B above, ferry fares, and road and bridge tolls. For each transaction over \$5, a receipt is required.

D. Tips for valet parking not to exceed \$2 per day.

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**§1508. Reimbursement for Other Expenses (These charges are while in travel status only.)**

A. The following expenses incidental to travel may be reimbursed.

1. Communications Expenses

a. For Official State Business—all business communication costs may be reimbursed (receipts required).

b. For Domestic Overnight Travel—up to \$3 for personal calls upon arrival at each destination and up to \$3 for personal calls every second night after the first night if the travel extends several days.

c. For International Travel—up to \$10 for personal calls upon arrival at each destination and up to \$10 for personal calls every second night after the first night if the travel extends several days.

d. Internet access charges for official state business from hotels or other travel locations are treated the same as business telephone charges. A department may implement a stricter policy for reimbursement of Internet charges. (Receipts required)

B. Charges for Storage and Handling of State Equipment (Receipts Required)

C. Baggage Tips

1. Hotel Allowances—up to \$3 tip per hotel check-in and \$3 tip per hotel checkout, if applicable.

2. Airport Allowances—up to \$3 tip for airport outbound departure trip and \$3 tip for inbound departure trip.

D. Luggage Allowances (Receipt Required). A department head or his designee may approve reimbursement to a traveler for airline charges for first checked bag for a business trip of 5 days or less and for the second checked bag for a 6-10 day business trip and/or any additional baggage which is business related and required by the department. The traveler must present a receipt to substantiate these charges.

1. Travelers will be reimbursed for excess baggage charges (overweight baggage) only in the following circumstances:

- a. when traveling with heavy or bulky materials or equipment necessary for business;
- b. the excess baggage consists of organization records or property.

NOTE: Traveler should always consider shipping materials to final destination or splitting materials into additional pieces of luggage to avoid the excess baggage charges in order to save their agency costs.

E. Registration Fees at Conferences (Meals that are a designated integral part of the conference may be reimbursed on an actual expense basis with prior approval by the department head.) Note: If a meal is included in a conference schedule, it is part of the registration fee, therefore, an employee cannot request/receive additional reimbursement for that meal.

F. Laundry Services. Employees on travel for more than seven days may be reimbursed with department head or his/her designee's prior approval, up to actual, but reasonable, costs incurred. Receipts are required for reimbursement.

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HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:808 (June 2001), LR 28:1131 (June 2002), LR 30:1118 (June 2004), LR 31:1190 (June 2005), LR 32:941 (June 2006), republished LR 33:1322 (July 2007), amended LR 34:1307 (July 2008), LR 35:1200 (July 2009), LR 36:1656 (July 2010), LR 42:992 (July 2016), LR 43:1121 (June 2017).

### **§1509. Special Meals**

A. Reimbursement designed for those occasions when, as a matter of extraordinary courtesy or necessity, it is appropriate and in the best interest of the state to use public funds for provision of a meal to a person who is not otherwise eligible for such reimbursement and where reimbursement is not available from another source. Requests should be within reason and may include tax and tips. Itemized receipts are required.

1. Visiting dignitaries or executive-level persons from other governmental units, and persons providing identified gratuity services to the state. This explicitly does not include normal visits, meetings, reviews, etc., by federal or local representatives.

2. Extraordinary situations are when state employees are required by their supervisor to work more than a 12-hour weekday or six hours on a weekend (when such are not normal working hours to meet crucial deadlines or to handle emergencies).

B. All special meals must have prior approval from the Commissioner of Administration or, for higher education, the entity head or his designee in order to be reimbursed, unless specific authority for approval has been delegated to a department head for a period not to exceed one fiscal year with the exception in Subsection C, as follows.

C. A department head may authorize a special meal within allowable rates listed under meals, Tier 1, to be served in conjunction with a working meeting of departmental staff. Reasonable tip is allowed if ordered from outside vendor. No tip should ever exceed 20 percent.

D. In such cases, the department will report on a quarterly basis to the Commissioner of Administration all special meal reimbursements made during the previous three months. For higher education, these reports should be sent to the respective institution of higher education management board. These reports must include, for each special meal, the name and title of the person receiving reimbursement, the name and title of each recipient, the cost of each meal and an explanation as to why the meal was in the best interest of the state. Renewal of such delegation will depend upon a review of all special meals authorized and paid during the period. Request to the commissioner for special meal authorization must include, under signature of the department head:

1. name and position/title of the state officer or employee requesting authority to incur expenses and assuming responsibility for such;
2. clear justification of the necessity and appropriateness of the request;
3. names, official titles or affiliations of all persons for whom reimbursement of meal expenses is being requested;
4. statement that allowances for meal reimbursement according to these regulations will be followed unless specific approval is received from the Commissioner of Administration to exceed this reimbursement limitation:

a. all of the following must be reviewed and approved by the department head or his/her designee prior to reimbursement:

- i. detailed breakdown of all expenses incurred, with appropriate receipts(s);
- ii. subtraction of cost of any alcoholic beverages;
- iii. copy of prior written approval from the Commissioner of Administration or, for higher education, the entity head or his/her designee.

AUTHORITY NOTE: Published in accordance with R.S. 39:231.

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### **§1510. Agency-Hosted Conferences (Both In-State and Out-of-State)**

A. State Sponsored Conferences. An agency must solicit three bona fide competitive quotes in accordance with the governor's Executive Order for small purchase.

B. Attendee Verification. All state-sponsored conferences must have a sign-in sheet or some type of attendee acknowledgment for justification of number of meals ordered and charged.

C. Conference Lunch Allowance. Lunch direct-billed to an agency in conjunction with a state-sponsored conference is to be within the following rates plus mandated gratuity.

Lunch In-State excluding New Orleans	\$20
Lunch—New Orleans and Out-of-State	\$25

1. Any other meals such as breakfast and dinner require special approval in accordance with PPM 49, §1509, “Special Meals” and must have prior approval from the Commissioner of Administration or for higher education, the entity head or his/her designee.

D. Conference Refreshment Allowance. Costs for break allowances for meetings, conferences or conventions are to be within the following rates.

a. Refreshments shall not exceed \$4.50 per person, per morning and/or afternoon sessions. A mandated gratuity may be added if refreshments are being catered.

E. Conference Lodging Allowances. Lodging rates may not exceed \$20 above the current listed routine lodging rates listed for the area in which the conference is being held.

AUTHORITY NOTE: Published in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1256 (June 2000), LR 27:807 (June 2001), republished LR 27:1495 (September 2001), LR 28:1130 (June 2002), LR 30:1116 (June 2004), LR 31:1191 (June 2005), LR 32:941 (June 2006), republished LR 33:1323 (July 2007), amended LR 34:1308 (July 2008), LR 35:1201 (July 2009), LR 36:1657 (July 2010), LR 42:993 (July 2016), LR 43:1122 (June 2017).

**§1511. International Travel**

A. International travel must be approved by the Commissioner of Administration or, for higher education, the entity head or his designee prior to departure, unless specific authority for approval has been delegated to a department head. Requests for approval must be accompanied by a detailed account of expected expenditures (such as room rate, date, meals, local transportation, etc.), and an assessment of the adequacy of this source to meet such expenditures without curtailing subsequent travel plans.

B. International travelers will be reimbursed the Tier IV area rates for meals and lodging, unless U.S. State Department rates are requested and authorized by the Commissioner of Administration or, for Higher Education, the entity head or his designee, prior to departure. Itemized receipts are required for reimbursement of meals and lodging claimed at the U.S. state department rates. [http://aoprals.state.gov/web920/per\\_diem.asp](http://aoprals.state.gov/web920/per_diem.asp).

C. It is the agency’s decision, if justification is given, to allow state employees to be reimbursed for a VISA and/or immunizations when the traveler is traveling on behalf of the agency/university on official state business. However, it is not considered best practice for the state to reimburse for a passport, therefore, passport reimbursements must be submitted to the department head for approval along with detailed justification as to why this reimbursement is being requested/approved.

AUTHORITY NOTE: Published in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1258 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 30:1119 (June 2004), LR 31:1192 (June 2005), republished LR 33:1323 (July 2007), amended LR 34:1308 (July 2008), LR 35:1201 (July 2009), LR 36:1657 (July 2010), LR 42:994 (July 2016), LR 43:1123 (June 2017).

**§1512. Waivers**

A. The Commissioner of Administration may waive in writing any provision in these regulations when the best interest of the state will be served. All waivers must obtain prior approvals, except in emergency situations.

AUTHORITY NOTE: Published in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, published LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 6:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 26:1259 (June 2000), LR 27:809 (June 2001), LR 28:1132 (June 2002), LR 30:1119 (June 2004), LR 31:1192 (June 2005), republished LR 33:1323 (July 2007), amended LR 34:1308 (July 2008), republished LR 35:1202 (July 2009), amended LR 36:1657 (July 2010), LR 42:994 (July 2016), LR 43:1123 (June 2017).

Tammy Toups  
Assistant Director

1706#008

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

#### Disproportionate Share Hospital Payments Major Medical Centers (LAC 50:V.2715)

The Department of Health, Bureau of Health Services Financing amends LAC 50:V.2715 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 disproportionate share hospital (DSH) payments in order to re-establish the provisions governing payments to public, non-rural community hospitals (*Louisiana Register*, Volume 40, Number 10). The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions to establish a qualification criteria and DSH payment methodology for major medical centers located in the central and northern areas of Louisiana (*Louisiana Register*, Volume 42, Number 7).

In order to comply with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' (CMS) requirements and the associated approved Medicaid State Plan amendment, the department promulgated an Emergency Rule which amended the provisions of the June 30, 2016 Emergency Rule (*Louisiana Register*, Volume 43, Number 2).

This Emergency Rule is being promulgated in order to continue the provisions of the February 20, 2017 Emergency Rule. This action is being taken to promote the public health and welfare of uninsured individuals, and ensure their continued access to health services by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective June 21, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing DSH payments to major medical centers located in the central and northern areas of the state.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 3. Disproportionate Share Hospital Payments

#### Chapter 27. Qualifying Hospitals

#### §2715. Major Medical Centers Located in Central and Northern Areas of the State

A. Effective for dates of service on or after June 30, 2016, hospitals qualifying for payments as major medical

centers located in the central and northern areas of the state shall meet the following criteria:

1. be a private, non-rural hospital located in Department of Health administrative regions 6, 7, or 8;

2. have at least 200 inpatient beds as reported on the Medicare/Medicaid cost report, Worksheet S-3, column 2, lines 1-18, for the state fiscal year ending June 30, 2015. For qualification purposes, inpatient beds shall exclude nursery and Medicare designated distinct part psychiatric unit beds;

3. does not qualify as a Louisiana low-income academic hospital under the provisions of §3101; and

4. such qualifying hospital (or its affiliate) does have a memorandum of understanding executed on or after June 30, 2016 with Louisiana State University—School of Medicine, the purpose of which is to maintain and improve access to quality care for Medicaid patients in connection with the expansion of Medicaid in the state through the promotion, expansion, and support of graduate medical education and training.

B. Payment Methodology. Effective for dates of service on or after June 30, 2016, each qualifying hospital shall be paid a DSH adjustment payment which is the pro rata amount calculated by dividing their hospital specific allowable uncompensated care costs by the total allowable uncompensated care costs for all hospitals qualifying under this category and multiplying by the funding appropriated by the Louisiana Legislature in the applicable state fiscal year for this category of hospitals.

1. Costs, patient specific data and documentation that qualifying criteria is met shall be submitted in a format specified by the department.

2. Costs and lengths of stay shall be reviewed by the department for reasonableness before payments are made.

3. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit.

4. A pro rata decrease, necessitated by conditions specified in §2501.B.1 above for hospitals described in this Section, will be calculated based on the ratio determined by dividing the hospital's uncompensated costs by the uncompensated costs for all of the qualifying hospitals described in this Section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment.

a. Additional payments shall only be made after finalization of the Centers for Medicare and Medicaid Services' (CMS) mandated DSH audit for the state fiscal year. Payments shall be limited to the aggregate amount recouped from the qualifying hospitals described in this Section, based on these reported audit results. If the hospitals' aggregate amount of underpayments reported per the audit results exceeds the aggregate amount overpaid, the



payment redistribution to underpaid hospitals shall be paid on a pro rata basis calculated using each hospital's amount underpaid, divided by the sum of underpayments for all of the hospitals described in this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

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

Rebekah E. Gee MD, MPH  
Secretary

1706#035

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Inpatient Hospital Services  
Graduate Medical Education  
Supplemental Payments Pool Elimination  
(LAC 50:V.1331)

The Department of Health, Bureau of Health Services Financing amends LAC 50:V.1331 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 to adopt provisions 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).

As a result of a budgetary shortfall in SFY 2017, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to eliminate the total supplemental payments pool for graduate medical education payments to qualifying acute care hospitals (*Louisiana Register*, Volume 43, Number 3). The department subsequently amended the provisions of the March 1, 2017 Emergency Rule in order to clarify these provisions and to correct a technical error (*Louisiana Register*, Volume 43, Number 3). The department has now determined that it is necessary to amend the provisions of the March 2, 2017

Emergency Rule in order to make technical revisions to ensure that these provisions are appropriately formatted in a clear and concise manner in the *Louisiana Administrative Code*. This action is being taken to avoid a budget deficit in the Medical Assistance Program.

Effective June 20, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions of the March 2, 2017 Emergency Rule governing the reimbursement methodology for inpatient hospital services.

### Title 50

## PUBLIC HEALTH—MEDICAL ASSISTANCE

### Part V. Hospital Services

#### Subpart 1. Inpatient Hospital Services

#### Chapter 13. Teaching Hospitals

#### Subchapter B. Reimbursement Methodology

#### §1331. Acute Care Hospitals

A. 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 are defined as graduate medical education, paramedical education, and nursing schools.

2. Qualifying hospitals must have a direct medical education add-on component included in their prospective Medicaid per diem rates as of January 31, 2012 which was carved-out of the per diem rate reported to the MCOs.

3. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days submitted by the medical education costs component included in each hospital's fee-for-service prospective per diem rate. Monthly payment amounts shall be verified by the department semi-annually using reports of MCO covered days generated from encounter data. Payment adjustments or recoupments shall be made as necessary based on the MCO encounter data reported to the department.

B. - F.3. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:877 (May 2008), amended LR 38:2773 (November 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

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

Rebekah E. Gee MD, MPH  
Secretary

1706#034

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Inpatient Hospital Services—High Medicaid Hospitals  
Supplemental Payments Pool Reduction (LAC 50:V.953)

The Department of Health, Bureau of Health Services Financing amends LAC 50:V.953 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.

As a result of a budgetary shortfall in state fiscal year (SFY) 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the total supplemental payments pool for non-rural, non-state hospitals classified as high Medicaid hospitals, and changed the frequency of the payments (*Louisiana Register*, Volume 41, Number 1).

As a result of a budgetary shortfall in SFY 2017, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to reduce the total supplemental payments pool for non-rural, non-state hospitals classified as high Medicaid hospitals (*Louisiana Register*, Volume 43, Number 3). This Emergency Rule is being promulgated in order to continue the provisions of the March 1, 2017 Emergency Rule. This action is being taken to avoid a budget deficit in the Medical Assistance Program.

Effective June 30, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-rural, non-state inpatient hospital services to reduce the high Medicaid supplemental payments pool.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

#### Subpart 1. Inpatient Hospital Services

#### Chapter 9. Non-Rural, Non-State Hospitals

#### Subchapter B. Reimbursement Methodology

#### §953. Acute Care Hospitals

A. - S. ...

T. Effective for dates of service on or after March 1, 2017, supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be annual. The amount appropriated for annual supplemental payments shall be reduced to \$1,000. Each qualifying hospital's annual supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895, 1896

(September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:2161 (July 2011), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), repromulgated LR 40:1939, 1940 (October 2014), LR 41:133 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

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

Rebekah E. Gee MD, MPH  
Secretary

1706#036

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Professional Services Program  
Reimbursement Methodology  
Supplemental Payments  
(LAC 50:IX.15151 and 15153)

The Department of Health, Bureau of Health Services Financing amends LAC 50:IX.15151 and §15153 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 professional services to provide a supplemental payment to physicians and other professional practitioners employed by, or under contract with, non-state owned or operated governmental entities (*Louisiana Register*, Volume 40, Number 3).

The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Professional Services Program to revise the reimbursement methodology for supplemental payments to physicians and other professional service practitioners in order to clarify the qualifying criteria for these payments and to reformat the provisions to ensure they are promulgated in a clear and concise manner in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 43, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 20, 2017 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by encouraging continued provider participation in the Medicaid Program to ensure recipient access to services.

Effective June 21, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing the Professional Services Program to amend the

reimbursement methodology for supplemental payments to physicians and other professional service practitioners.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part IX. Professional Services Program

##### Subpart 15. Reimbursement

#### Chapter 151. Reimbursement Methodology

##### Subchapter F. Supplemental Payments

#### §15151. State-Owned or Operated Professional Services Practices

A. Qualifying Criteria. Effective for dates of service on or after February 20, 2017, in order to qualify to receive supplemental payments, physicians and other eligible professional service practitioners must be:

1. ...
2. enrolled as a Louisiana Medicaid provider; and
3. employed by, or under contract to provide services in affiliation with, a state-owned or operated entity, such as a state-operated hospital or other state entity, including a state academic health system, which:
  - a. has been designated by the bureau as an essential provider. Essential providers include:
    - i. LSU School of Medicine—New Orleans;
    - ii. LSU School of Medicine—Shreveport;
    - iii. LSU School of Dentistry; and
    - iv. LSU state-operated hospitals (Lallie Kemp Regional Medical Center and Villa Feliciana Geriatric Hospital); and
  - b. has furnished satisfactory data to LDH regarding the commercial insurance payments made to its employed physicians and other professional service practitioners.

B. Qualifying Provider Types. For purposes of qualifying for supplemental payments under this Section, services provided by the following professional practitioners will be included:

1. physicians;
2. physician assistants;
3. certified registered nurse practitioners;
4. certified nurse anesthetists;
5. nurse midwives;
6. psychiatrists;
7. psychologists;
8. speech-language pathologists;
9. physical therapists;
10. occupational therapists;
11. podiatrists;
12. optometrists;
13. social workers;
14. dentists;
15. audiologists;
16. chemical dependency counselors;
17. mental health professionals;
18. opticians;
19. nutritionists;
20. paramedics; and
21. doctors of chiropractic.

#### C. Payment Methodology

1. The supplemental payment to each qualifying physician or other eligible professional services practitioner in the practice plan will equal the difference between the Medicaid payments otherwise made to these qualifying providers for professional services and the average amount

that would have been paid at the equivalent community rate. The *community rate* is defined as the average amount that would have been paid by commercial insurers for the same services.

2. The supplemental payments shall be calculated by applying a conversion factor to actual charges for claims paid during a quarter for Medicaid services provided by the state-owned or operated practice plan providers. The commercial payments and respective charges shall be obtained for the state fiscal year preceding the reimbursement year. If this data is not provided satisfactorily to LDH, the default conversion factor shall equal "1". This conversion factor shall be established annually for qualifying physicians/practitioners by:

- a. determining the amount that private commercial insurance companies paid for commercial claims submitted by the state-owned or operated practice plan or entity; and
- b. dividing that amount by the respective charges for these payers.

3. The actual charges for paid Medicaid services shall be multiplied by the conversion factor to determine the maximum allowable Medicaid reimbursement. For eligible non-physician practitioners, the maximum allowable Medicaid reimbursement shall be limited to 80 percent of this amount.

4. The actual base Medicaid payments to the qualifying physicians/practitioners employed by a state-owned or operated entity shall then be subtracted from the maximum Medicaid reimbursable amount to determine the supplemental payment amount.

D. Supplemental payments for services provided by the qualifying state-owned or operated physician practice plan will be implemented through a quarterly supplemental payment to providers, based on specific Medicaid paid claim data.

E. - F. 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 40:544 (March 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

#### §15153. Non-State-Owned or Operated Professional Services Practices

A. Qualifying Criteria. Effective for dates of service on or after February 20, 2017, in order to qualify to receive supplemental payments, physicians and other eligible professional service practitioners must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. employed by, or under contract to provide services at a non-state-owned or operated governmental entity and identified by the non-state owned or operated governmental entity as a physician that is employed by, or under contract to provide services at said entity.

B. Qualifying Provider Types. For purposes of qualifying for supplemental payments under this Section, services provided by the following professional practitioners will be included:

1. physicians;
2. physician assistants;
3. certified registered nurse practitioners;
4. certified nurse anesthetists;

5. nurse midwives;
6. psychiatrists;
7. psychologists;
8. speech-language pathologists;
9. physical therapists;
10. occupational therapists;
11. podiatrists;
12. optometrists;
13. social workers;
14. dentists;
15. audiologists;
16. chemical dependency counselors;
17. mental health professionals;
18. opticians;
19. nutritionists;
20. paramedics; and
21. doctors of chiropractic.

C. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level.

1. For purposes of this Section, the *community rate* shall be defined as the rates paid by commercial payers for the same service.

D. The non-state governmental entity shall periodically furnish satisfactory data for calculating the community rate as requested by LDH.

E. Payment Methodology

1. The supplemental payment amount shall be determined by establishing a Medicare to community rate conversion factor for the physician or physician practice plan.

2. At the end of each quarter, for each Medicaid claim paid during the quarter, a Medicare payment amount will be calculated and the Medicare to community rate conversion factor will be applied to the result.

3. Medicaid payments made for the claims paid during the quarter will then be subtracted from this amount to establish the supplemental payment amount for that quarter.

F. The supplemental payments shall be made on a quarterly basis and the Medicare to community rate conversion factor shall be recalculated periodically as determined by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:544 (March 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

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 Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A

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

Rebekah E. Gee MD, MPH  
Secretary

1706#037

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

#### Recovery Audit Contractor Program (LAC 50:I.Chapter 85)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:I.Chapter 85 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 Patient Protection and Affordable Care Act (PPACA), U.S. Public Law 111-148, and 111-152 directed states to establish a Recovery Audit Contractor (RAC) program to audit payments to Medicaid providers. Act 568 of the 2014 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to implement a recovery audit contractor program. In compliance with the Patient Protection and Affordable Care Act (PPACA) and Act 568, the department promulgated an Emergency Rule which adopted provisions to establish the RAC program (*Louisiana Register*, Volume 40, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2014 Emergency Rule. This action is being taken to avoid federal sanctions.

Effective July 15, 2017, the Department of Health, Bureau of Health Services Financing adopts provisions establishing the Recovery Audit Contractor program.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part I. Administration

#### Subpart 9. Recovery

### Chapter 85. Recovery Audit Contractor

#### §8501. General Provisions

A. Pursuant to the provisions of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148, 111-152, and Act 562 of the Regular Session of the Louisiana Legislature, the Medicaid Program adopts provisions to establish a Recovery Audit Contractor (RAC) program.

B. These provisions do not prohibit or restrict any other audit functions that may be performed by the department or its contractors. This Rule shall only apply to Medicaid RACs as they are defined in applicable federal law.

C. This Rule shall apply to RAC audits that begin on or after November 20, 2014, regardless of dates of claims reviewed.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

### §8503. Definitions

*Adverse Determination*—any decision rendered by the recovery audit contractor that results in a payment to a provider for a claim or service being reduced either partially or completely.

*Department*—Department of Health (LDH) or any of its sections, bureaus, offices, or its contracted designee.

*Provider*—any healthcare entity enrolled with the department as a provider in the Medicaid program.

*Recovery Audit Contractor (RAC)*—a Medicaid recovery audit contractor selected by the department to perform audits for the purpose of ensuring Medicaid program integrity in accordance with the provisions of 42 CFR 455 et seq.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

### §8505. Contractor Functions

A. Notwithstanding any law to the contrary, the RAC shall perform all of the following functions.

1. The RAC shall ensure it is reviewing claims within three years of the date of its initial payment. For purposes of this requirement, the three-year look-back period shall commence from the beginning date of the relevant audit.

2. The RAC shall send a determination letter concluding an audit within 60 days of receipt of all requested materials from a provider.

3. For any records which are requested from a provider, the RAC shall ensure proper identification of which records it is seeking. Information shall include, but is not limited to:

- a. recipient name;
- b. claim number;
- c. medical record number (if known); and
- d. date(s) of service.

B. Pursuant to applicable statute, the RAC program's scope of review shall exclude the following:

1. all claims processed or paid within 90 days of implementation of any Medicaid managed care program that relates to said claims. This shall not preclude review of claims not related to any Medicaid managed care program implementation;

2. claims processed or paid through a capitated Medicaid managed care program. This scope restriction shall not prohibit any audits of per member per month payments from the department to any capitated Medicaid managed care plan utilizing such claims; and

3. medical necessity reviews in which the provider has obtained prior authorization for the service.

C. The RAC shall refer claims it suspects to be fraudulent directly to the department for investigation.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

### §8507. Reimbursement and Recoupment

A. The department has in place, and shall retain, a process to ensure that providers receive or retain the appropriate reimbursement amount for claims within any look-back period in which the RAC determines that services delivered have been improperly billed, but reasonable and necessary. It shall be the provider's responsibility to provide documentation to support and justify any recalculation.

B. The RAC and the department shall not recoup any overpayments identified by the RAC until all informal and formal appeals processes have been completed. For purposes of this Section, a final decision by the Division of Administrative Law shall be the conclusion of all formal appeals processes. This does not prohibit the provider from seeking judicial review and any remedies afforded thereunder.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

### §8509. Provider Notification

A. The RAC shall provide a detailed explanation in writing to a provider for any adverse determination as defined by state statute. This notification shall include, but not be limited to the following:

1. the reason(s) for the adverse determination;
2. the specific medical criteria on which the determination was based, if applicable;
3. an explanation of any provider appeal rights; and
4. an explanation of the appropriate reimbursement determined in accordance with §8507, if applicable.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

### §8511. Records Requests

A. The RAC shall limit records requests to not more than 1 percent of the number of claims filed by the provider for the specific service being reviewed in the previous state fiscal year during a 90-day period. The 1 percent shall be further limited to 200 records. For purposes of this Chapter, each specific service identified for review within the requested time-period will be considered a separate and distinct audit.

B. The provider shall have 45 calendar days to comply with any records request unless an extension is mutually agreed upon. The 45 days shall begin on the date of receipt of any request.

1. *Date of Receipt*—two business days from the date of the request as confirmed by the post office date stamp.

C. If the RAC demonstrates a significant provider error rate relative to an audit of records, the RAC may make a request to the department to initiate an additional records request relative to the issue being reviewed for the purposes of further review and validation.

1. The provider shall be given an opportunity to provide written objections to the secretary or his/her designee of any subsequent records request. Decisions by the

secretary or his/her designee in this area are final and not subject to further appeal or review.

2. This shall not be an adverse determination subject to the Administrative Procedure Act process.

3. A significant provider error rate shall be defined as 25 percent.

4. The RAC shall not make any requests allowed above until the time-period for the informal appeals process has expired.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **§8513. Audits and Records Submission**

A. The RAC shall utilize provider self-audits only if mutually agreed to by the provider and the RAC.

B. If the provider is determined to be a low-risk provider, the RAC shall schedule any on-site audits with advance notice of not less than 10 business days. The RAC shall make a reasonable good-faith effort to establish a mutually agreed-upon date and time, and shall document such efforts.

C. In association with an audit, providers shall be allowed to submit records in electronic format for their convenience. If the RAC requires a provider to produce records in any non-electronic format, the RAC shall make reasonable efforts to reimburse the provider for the reasonable cost of medical records reproduction consistent with 42 CFR 476.78.

1. The cost for medical record production shall be at the current federal rate at the time of reimbursement to the provider. This rate may be updated periodically, but in no circumstance shall it exceed the rate applicable under Louisiana statutes for public records requests.

2. Any costs associated with medical record production may be applied by the RAC as a credit against any overpayment or as a reduction against any underpayment. A tender of this amount shall be deemed a reasonable effort.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **§8515. Appeals Process**

A. A provider shall have a right to an informal and formal appeals process for adverse determinations made by the RAC.

B. The informal appeals process shall be conducted as follows.

1. Beginning on the date of issuance of any initial findings letter by the RAC, there shall be an informal discussion and consultation period. During this period the provider and RAC may communicate regarding any audit determinations.

2. Within 45 calendar days of receipt of written notification of an adverse determination from the RAC, a provider shall have the right to request an informal hearing relative to such determination. The department's Program Integrity Section shall be involved in this hearing. Any such request shall be in writing and the date of receipt shall be deemed to be two days after the date of the adverse determination letter.

3. The informal hearing shall occur within 30 days of receipt of the provider's request.

4. At the informal hearing the provider shall have the right to present information orally and in writing, the right to present documents, and the right to have the department and the RAC address any inquiry the provider may make concerning the reason for the adverse determination. A provider may be represented by an attorney or authorized representative, but any such individual must provide written notice of representation along with the request for informal hearing.

5. The RAC and the Program Integrity Section shall issue a final written decision related to the informal hearing within 15 calendar days of the hearing closure.

C. Within 30 days of issuance of an adverse determination of the RAC, if an informal hearing is not requested or there is a determination pursuant to an informal hearing, a provider may request an administrative appeal of the final decision by requesting a hearing before the Division of Administrative Law. A copy of any request for an administrative appeal shall be filed contemporaneously with the Program Integrity Section. The date of issuance of a final decision or determination pursuant to an informal hearing shall be two days from the date of such decision or determination.

D. The department shall report on its website the number of adverse determinations overturned on informal or formal appeals at the end of the month for the previous month.

E. If the department or the Division of Administrative Law hearing officer finds that the RAC determination was unreasonable, frivolous or without merit, then the RAC shall reimburse the provider for its reasonable costs associated with the appeals process. Reasonable costs include, but are not limited to, cost of reasonable attorney's costs and other reasonable expenses incurred to appeal the RAC's determination. The fact that a decision has been overturned or partially overturned via the appeals process shall not mean the determination was without merit.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

#### **§8517. Penalties and Sanctions**

A. If the department determines that the RAC inappropriately denied a claim(s), the department may impose a penalty or sanction. A claim has been inappropriately denied when the:

1. adverse determination is not substantiated by applicable department policy or guidance and the RAC fails to utilize guidance provided by the department; or

2. RAC fails to follow any programmatic or statutory rules.

B. If more than 25 percent of the RAC's adverse determinations are overturned on informal or formal appeal, the department may impose a monetary penalty up to 10 percent of the cost of the claims to be awarded to the providers of the claims inappropriately determined, or a monetary penalty up to 5 percent of the RAC's total collections to the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

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

Rebekah E. Gee MD, MPH  
Secretary

1706#038

## DECLARATION OF EMERGENCY

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

#### 2016-17 King Mackerel Commercial Season Closure

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use seasonal rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department, by commission action on January 7, 2016, to modify the 2016-17 commercial king mackerel season in Louisiana state waters when he is informed that the season for the Gulf of Mexico has been modified, the secretary hereby declares:

Effective 12:01 p.m, May 26, 2017, the commercial fishery for king mackerel in Louisiana waters, previously re-opened on May 11, 2017, will close and remain closed until 12:01 a.m. on July 1, 2017, at which time the previously established 2017-18 commercial season for the harvest of king mackerel will open. Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fisherman. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel within or without Louisiana waters. Effective with this closure, no person shall possess king mackerel in excess of a daily bag limit within or without Louisiana waters. The prohibition on sale/purchase of king mackerel during the closure does not apply to king mackerel that were legally

harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor provided appropriate records in accordance with R.S. 56:306.5 and 56:306.6 are properly maintained.

The secretary has been notified by National Marine Fisheries Service that the commercial king mackerel season in federal waters of the Gulf of Mexico closed at 12:01 p.m., May 21, 2017 and will re-open at 12:01 a.m. on July 1, 2017 when the previously scheduled 2017-18 commercial season for the harvest of king mackerel is scheduled to open.

Jack Montoucet  
Secretary

1706#004

## DECLARATION OF EMERGENCY

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

#### 2016-17 King Mackerel Commercial Season Re-Opening

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use seasonal rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department, by commission action on January 7, 2016, to modify the 2016-17 commercial king mackerel season in Louisiana state waters when he is informed that the season for the Gulf of Mexico has been modified, the Secretary hereby declares:

Effective 12:01 a.m, May 11, 2017, the commercial fishery for king mackerel in Louisiana waters will re-open and remain open until the established quota for the Western Gulf of Mexico is reached or projected to be reached.

The secretary has been notified by National Marine Fisheries Service that the commercial king mackerel season in federal waters of the Gulf of Mexico will re-open at 12:01 a.m., May 11, 2017.

Jack Montoucet  
Secretary

1706#002

# Rules

## RULE

### Department of Economic Development Office of Business Development

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

This Rule is being promulgated in the *Louisiana Register* as required by R.S. 47:4351 et seq. The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104 has enacted §§501 and 502 and amended and reenacted §§503-537 for the administration of the Industrial Ad Valorem Tax Exemption Program in LAC 13:I.Chapter 5 to implement programmatic changes in alignment with Executive Orders 16-26 and 16-73.

#### Title 13

#### ECONOMIC DEVELOPMENT

#### Part I. Financial Incentive Programs

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

#### §501. Statement of Purpose

##### A. New Rules

1. These rules amend and restate prior rules and upon adoption are to implement two important policies for the industrial property tax exemption. The first is as a competitive incentive for job creation and under compelling circumstances, job retention. The second is to provide for input from local parish and municipal governments, school boards and sheriffs as to the extent of, and other terms and conditions for the industrial tax exemption.

2. On all projects, applicant manufacturers are to demonstrate a genuine commitment to investing in the communities in which they operate, and a genuine commitment to creating and retaining jobs in those communities. These are the expectations for the program's future, and the board will continue to operate it in a way that makes Louisiana competitive with other states in securing good jobs for our citizens while giving local governments a voice in their taxation. These rules are to be interpreted in a manner so as to promote these goals.

B. Applicability of Prior Rules. Just as the board is promoting job growth and economic development and extending fairness to communities, the board is promoting fairness to manufacturers who have acted in accordance with prior rules. Contracts for the industrial property tax exemption and the renewal of the exemption and projects found to be pending as defined by Executive Orders JBE 16-26 and JBE 16-73 are to be treated fairly under the rules that were in place at the time of the contracts and prior to the new rules. Louisiana honors its commitments and the rules governing existing contracts and applications not subject to the new rules are to be interpreted in order to promote

fairness and commitment. Therefore, only those applications with an advance notification form filed after June 24, 2016, are subject to the 2017 rules changes.

##### C. Going Forward

1. Louisiana values its manufacturers and their contributions to its economy. The board's policies going forward are to provide all a seat at the table to determine the best investment outcome for our industries and our communities.

2. All rules in this chapter are intended to align with the above purpose while providing a process that balances accountability with reasonable administrative burden for state and local government and applicants.

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

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, LR 43:1132 (June 2017).

#### §502. Definitions

*Addition to a Manufacturing Establishment—*

1.a. a capital expenditure for property that would meet the standard of a new manufacturing establishment if the addition were treated as a stand-alone establishment;

b. a capital expenditure for property that is directly related to the manufacturing operations of an existing manufacturing establishment; or

c. an installation or physical change made to a manufacturing establishment that increases its value, utility or competitiveness;

2. maintenance capital, environmentally required capital upgrades, and replacement parts, except those replacements required in the rehabilitation or restoration of an establishment, to conserve as nearly, and as long as possible, original condition, shall not qualify as an addition to a manufacturing establishment;

3. expenses associated with the rehabilitation or restoration of an establishment as provided for in §511 shall be included as an addition to a manufacturing establishment.

*Beginning of Construction—*the first day on which foundations are started or, where foundations are unnecessary, the first day on which installations of the manufacturing establishment begins.

*Board—*Board of Commerce and Industry.

*Capital Expenditure—*the cost associated with a new manufacturing establishment or an addition to an existing manufacturing establishment, including the purchasing or improving real property and tangible personal property, whose useful life exceeds one year and which is used in the conduct of business.

*Environmentally Required Capital Upgrades—*upgrades required by any state or federal governmental agency in order to avoid fines, closures or other penalty.

*Establishment—*an economic unit at a single physical location.

*Integral—*required to make whole the product being produced.



*Job*—positions of employment that are:

1. new (not previously existing in the state) or retained;
2. permanent (without specific term);
3. full-time (working 30 or more hours per week);
4. employed directly, by an affiliate or through contract labor;
5. based at the manufacturing establishment;
6. filled by a United States citizen who is domiciled in Louisiana or who becomes domiciled in Louisiana within 60 days of employment; and
7. any others terms of employment as negotiated in the exhibit A or exhibit B.

*LED*—Louisiana Economic Development.

*Local Governmental Entity*—parish governing authority, school board, sheriff, and any municipality in which the manufacturing establishment is or will be located.

*Maintenance Capital*—costs incurred to conserve as nearly as possible the original condition.

*Manufacturer*—a person or business who engages in manufacturing at a manufacturing establishment.

*Manufacturing*—working raw materials by means of mass or custom production, including fabrication, applying manual labor or machinery into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process. The resulting products must be “suitable for use” as manufactured products that are placed into commerce for sale or sold for use as a component of another product to be placed, and placed into commerce for sale.

*Obsolescence*—the inadequacy, disuse, outdated or non-functionality of facilities, infrastructure, equipment or product technologies due to the effects of time, decay, changing market conditions, invention and adoption of new product technologies or changing consumer demands.

*Qualified Disaster*—

1. a disaster which results from:
  - a. an act of terror directed against the United States or any of its allies; or
  - b. any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof), but not including training exercises;
2. any disaster which, with respect to the area in which the property is located, resulted in a subsequent determination by the president of the United States that such area warrants assistance by the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
3. a disaster which is determined by an applicable federal, state, or local authority (as determined by the secretary) to warrant assistance from the federal state or local government or agency of instrumentality thereof; or
4. any other extraordinary event that destroys or renders all or a portion of the manufacturing establishment inoperable.

*Rehabilitation*—the extensive renovation of a building or project that is intended to cure obsolescence or to repurpose a facility.

*Restoration*—repairs to bring a building or structure to at least its original form or an improved condition.

*Secretary*—secretary of Louisiana Economic Development.

*Site*—one or more contiguous parcels of land which are under the control of the manufacturing establishment or which contains certain assets of the manufacturing establishment.

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

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Business Development, LR 43:1132 (June 2017).

### **§503. Advance Notification; Application**

A. An advance notification of intent to apply for tax exemption shall be filed with the LED Office of Business Development (OBD) on the prescribed form prior to the beginning of construction or installation of facilities on all projects for tax exemption except as provided in §505.A and B of these rules. An advance notification fee of \$250 shall be submitted with the form. The advance notification will expire and become void if no application is filed within 12 months of the estimated project ending date stated in the advance notification. The estimated project ending date as stated on the advance notification may be amended by the applicant if the amendment is made prior to the estimated project ending date.

B. All financial incentive programs for a given project shall be filed at the same time and on the same advance notification. The applicable advance notification fee for each program for which the applicant anticipates applying shall be submitted with the advance notification.

C. An application for tax exemption may be filed with OBD on the prescribed form:

1. either concurrent with or after filing the advance notification, but no later than 90 days after the beginning of operations or end of construction, whichever occurs first;
2. the deadline for filing the application may be extended pursuant to §523;
3. an applicant filing an application prior to the beginning of operations or end of construction of the project shall file an annual status report with OBD on the prescribed form by December 31, until the project completion report and affidavit of final cost are filed. If the applicant fails to timely file a status report the board may, after notice to the applicant, terminate the contract.

D. In order to receive the board’s approval, applications with advance notifications filed after June 24, 2016, shall contain both of the following:

1. an exhibit “A” consisting of a fully executed cooperative endeavor agreement between the state, Louisiana Economic Development and the applicant specifying the terms and conditions of the granting of the exemption contract:
  - a. the terms and conditions of the exhibit “A” shall include the following:
    - i. either number of jobs and payroll to be created at the project site or the number of jobs and payroll to be retained at the project site where applicable;
    - ii. the term of the exemption contract which shall be for up to, but no more than five years and may provide for an ad valorem exemption of up to 100 percent and terms for renewal may be included provided that the renewal of the contract shall be for a period up to, but no more than three

years and may provide for an ad valorem tax exemption of up to, but no more than 80 percent;

iii. the percentage of property eligible for the exemption;

iv. any penalty provisions for failure to create the requisite number of jobs or payroll at the project site, including but not limited to, a reduction in term, reduction in percentage of exemption, or termination of the exemption; and

v. a statement of return on investment (ROI) as determined by the secretary;

2. an exhibit "B" consisting of resolutions adopted by the parish governing authority (speaking on behalf of the parish and all parish bodies who are located outside the boundary of the affected municipality, where applicable, who receive a millage), the school board, and any municipality (speaking on behalf of the municipality and all municipal bodies who receive a millage) and a letter from the sheriff approving the project in which the manufacturing establishment is or will be located signifying whether each of these authorities is in favor of the project:

a. exhibit "B" shall include provisions addressing the following:

i. the number of jobs and payroll to be created at the project site required by the local governmental entity for approval of the exemption;

ii. the term of the exemption contract approved by the local governmental entity; and

iii. the percentage of property eligible for the exemption approved by the local governmental entity;

b. failure of the parish governing authority, the school board, or the municipality to issue a resolution or failure of the Sheriff to issue a letter within 120 days of a business' written request for such resolution shall result in an exemption equal to the mathematical average of the term and percentage exemption granted by the other local governing bodies who have issued a resolution or letter:

i. the business shall copy LED on its written request to the parish governing authority, school board and municipality for the required resolutions and its written request to the sheriff for the required letter;

ii. LED shall post a copy of the business' written request to the parish governing authority, school board and municipality for the required resolutions and the business' written request to the sheriff for the required letter on its website no later than three business days after receipt of the request;

c. LED will provide guidance to local governmental entities as to suggested alternatives as it relates parameters for job creation, payroll, percentage of exemption and length of contract;

3. the board shall consider the information collected and the provisions of exhibits "A" and "B" in determining whether to approve the contract for exemption and the renewal thereof;

4. if the terms of exhibit "A" and exhibit "B" as it relates to the term of the exemption, and the percentage of property tax eligible for exemption are not the same, the provisions of exhibit "B" shall prevail.

E.1. Applications which provide for a new manufacturing establishment or which provide for an addition to a

manufacturing establishment with the creation of new jobs or a compelling reason for the retention of existing jobs shall be favored by the board.

2. In determining whether a company has presented a compelling reason for the retention of existing jobs, the following situations may be considered:

a. to prevent relocation to another state or country;

b. to provide an advantage for investment from a company with multi-state operations with an established competitive capital project program;

c. to employ best practice or innovative, state of the art technology for the establishment's industry;

d. to increase maximum capacity or efficiency; or

e. to provide the state a competitive advantage as determined by the secretary or by the board.

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

G. OBD reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the form is incomplete or incorrect, or the correct fee is not submitted. The document may be resubmitted with the correct information and fee.

H. If the application is submitted after the filing deadline, the term of exemption available under an initial contract and renewal thereof shall be reduced by one year for each year or portion thereof that the application is late, up to a maximum reduction up to the maximum remaining term. The board may impose any other penalty for late filing that it deems appropriate.

I. The department will provide a copy of the application and all relative information to the Louisiana Department of Revenue (LDR) for review. LDR may require additional information from the applicant. The department must receive a letter-of-no-objection or a letter-of-approval from the LDR, prior to submitting the application to the board for action.

J. Eligibility of the applicant and the property for the exemption, including whether the activities at the site meet the definition of manufacturing, will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered by the Board of Commerce and Industry. The property exempted may be increased or decreased based upon review of the application, project completion report or affidavit of final cost. An application filed prior to completion of construction may be considered by the board and a contract may be executed based upon the best available estimates, subject to review and approval of the project completion report and affidavit of final cost. If the applicant fails to timely file the project completion report or affidavit of final cost the board may, after notice to the applicant, terminate the contract.

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

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

amended by the Department of Economic Development, Office of Business Development, LR 37:2376 (August 2011), LR 41:2318 (November 2015), LR 43:1133 (June 2017).

#### **§505. Miscellaneous Capital Additions**

A. The renewal of miscellaneous capital addition contracts approved in accordance with JBE 16-26 and 16-73 shall be treated in accordance with prior rules.

B. Miscellaneous capital additions which had pending contractual applications on June 24, 2016, and which provide for new jobs at the completed manufacturing establishment shall be considered by the board.

C. Miscellaneous capital additions which did not have a pending contractual application as of June 24, 2016 or those with pending applications as of June 24, 2016, but do not provide for new jobs, are not eligible for the property tax exemption.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), LR 41:2318 (November 2015), LR 43:1135 (June 2017).

#### **§507. Eligible Property—Buildings and Facilities Used in Manufacturing; Leased Property; Capitalized Materials**

A. The board shall consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the state of Louisiana (subject to the limitations stated in §§517 and 519) and additions to manufacturing establishments within the state of Louisiana. Exemptions are granted to the owners of buildings that house a manufacturing establishment and facilities that are operated specifically in the manufacturing of a product. The board recognizes two categories of ownership:

1. owners who engage in manufacturing at said facilities; and

2. owners who are not engaged in manufacturing at said manufacturing establishment, but who have provided either or both of the following for a predetermined manufacturing establishment:

a. buildings to house a manufacturing establishment;

b. facilities that consist of manufacturing equipment operated specifically in the manufacturing process;

3. owners who are not engaged in manufacturing at the manufacturing establishment are eligible for the exemption only if the manufacturer at the site is obligated to pay the property taxes if the exemption were not granted.

B. Leased property is eligible for the exemption, if the property is used in the manufacturing process, is and remains on the plant site, and the manufacturer is obligated under the lease agreement to pay the property taxes if the exemption were not granted.

C. Capitalized materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the manufacturing establishment. Some examples of these are:

1. ammonia in a freezing plant;
2. solvent in an extraction plant; and

3. catalyst in a manufacturing process.

D. To be eligible for exemption, a manufacturing establishment must be in an operational status and engaged in manufacturing. An owner of a new manufacturing establishment under construction may apply for an exemption with the expectation that the manufacturing establishment will become operational. If the manufacturing establishment fails to become operational or ceases operations without a reasonable expectation of recommencing operations, the facility shall no longer be eligible for exemption and its contract shall be subject to termination under §531.

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

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2377 (August 2011), LR 43:1135 (June 2017).

#### **§509. Integral Parts of the Manufacturing Operation**

A. Property that is an integral part of the manufacturing operation is eligible for the tax exemption. .

B. The following activities are considered to be integral to the manufacturing process:

1. quality control/quality assurance;
2. packaging;
3. transportation of goods on the site during the manufacturing process;
4. other on site essential activities as approved by the secretary and the board.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 43:1135 (June 2017).

#### **§511. Rehabilitation and Restoration of Property**

A. Capital expenditures for the rehabilitation or restoration of an existing establishment may be exempted if it is not maintenance. If replacements or upgrades are made as part of a rehabilitation or restoration to an establishment, only the capital expenditures in excess of original cost shall be eligible for tax exemption. A deduction for the original cost of property to be replaced shall not be made if the project will result in capital additions that exceed \$50,000,000.

B. Exemption may be granted on the costs of rehabilitation or restoration of a partially or completely damaged facility, but only on the amount in excess of the original cost.

C. Original costs deducted from rehabilitation or restoration made or rebuilding shall be clearly documented.

D. A deduction for the original cost of property to be replaced as part of a rehabilitation or restoration, as provided by Subsections A or B, shall not be made if the project is related to the replacement or reconstruction of property after the destruction of or damage to such property, as a result of a qualified disaster.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 43:1135 (June 2017).

### **§513. Relocations**

A. A manufacturing establishment moved from one location in the state to another place within the state shall be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted at the original location.

B. If a manufacturing establishment moves from one location in the state to another location within the state, the company shall be required to seek approval of the parish governing authority, the school board, the Sheriff, and any municipality in which the manufacturing establishment will be located if these local governing authorities are different than those that approved the exemption at the original site.

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

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 29:2633 (December 2003), LR 37:2378 (August 2011), LR 43:1136 (June 2017).

### **§515. Used Equipment**

A. Used equipment is eligible for tax exemption provided no ad valorem property taxes have been paid in Louisiana on said property.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:886 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 43:1136 (June 2017).

### **§517. Ineligible Property**

A. Maintenance capital, environmentally required capital upgrades and new replacements to existing machinery and equipment, except those replacements required in the rehabilitation or restoration of a facility, are not eligible for the tax exemption.

B. If the establishment or addition is on the taxable rolls and property taxes have not been paid, the establishment or addition is not eligible for the exemption unless the assessor and local governmental entity agree in writing to remove the establishment or addition from the taxable rolls should the tax exemption be granted.

C. The board shall not consider for tax exemption any property listed on an application on which ad valorem property taxes have been paid.

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

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2378 (August 2011), LR 43:1136 (June 2017).

### **§519. Land**

A. The land on which a manufacturing establishment is located is not eligible for tax exemption.

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

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 43:1136 (June 2017).

### **§521. Inventories**

A. The following are not eligible for tax exemption:

1. inventories of raw materials used in the course of manufacturing;
2. inventories of work-in-progress or finished products;
3. any other consumable items.

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

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 43:1136 (June 2017).

### **§523. Extension of Time**

A. OBD may grant an extension of up to six months for the filing of an application (§503.B), a project completion report (§525), or an affidavit of final cost (§527), provided the request for extension is received prior to the filing deadline.

B. Additional extensions of time may be granted for good cause.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 43:1136 (June 2017).

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

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

B. The effective date of tax exemption contracts for property located in parishes other than Orleans Parish shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever occurs first. The effective date of tax exemption contracts for property located in Orleans Parish shall be July 31 of the applicable year.

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

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development LR 37:2379 (August 2011), LR 41:2318 (November 2015), LR 43:1136 (June 2017).

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

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

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

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015), LR 43:1137 (June 2017).

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

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

B. Eligibility of the applicant and the property for renewal of the exemption will be reviewed by the board using the same criteria that was used for the initial contract, and based upon the facts and circumstances existing at the time the renewal application is considered. The property exempted for the renewal period may be increased or decreased based upon review of the renewal application. The term of the renewal contract shall be reduced by one year for each calendar month, or portion thereof, that the renewal application is filed late. The board may impose any other penalty for late renewal submission that it deems appropriate.

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

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2379 (August 2011), LR 41:2319 (November 2015), LR 43:1137 (June 2017).

#### **§531. Violation of Rules or Documents; Final Inspection**

A. The board reserves the right, on its own initiative or upon written complaint of an alleged violation of terms of tax exemption rules or documents, to conduct a final inspection. During the final inspection OBD may cause to be made a full investigation on behalf of the board and shall have full authority for such investigation including authority to demand reports or pertinent records and information from the applicant and complainants. Results of the investigation will be presented to the board.

B. All contracts of exemption shall be subject to the final inspection. If a final inspection indicates that the applicant has violated any terms of the contract or rules, or that the exempt facility is not engaged in manufacturing, the board may conduct a hearing to reconsider the contract of exemption, after giving the applicant not less than 60 days notice.

C. If the board determines that there has been a violation of the terms of the contract or the rules, that the property exempted by the contract is not eligible because it is not used in a manufacturing process, or that the facility has not commenced or has ceased manufacturing operations, the board may terminate or otherwise modify the contract.

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

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 43:1137 (June 2017).

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015), LR 43:1137 (June 2017).

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

A. In the event an applicant should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. A fee of \$250 shall be filed with a request to transfer the contract. The board shall consider all such applications for transfer of contracts of exemption

strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change the name of the contracting applicant. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

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

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 41:2319 (November 2015), LR 43:1137 (June 2017).

#### **§537. Reporting to the Parish Assessor**

A. The applicant shall file annually with the assessor of the parish in which the manufacturing establishment is located, a complete taxpayer's report on forms approved by the Louisiana Tax Commission, in order that the exempted property may be separately listed on the assessment rolls.

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

**HISTORICAL NOTE:** Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Economic Development, Office of Business Development, LR 37:2380 (August 2011), LR 43:1138 (June 2017).

Anne G. Villa  
Undersecretary

1706#011

### **RULE**

#### **Department of Environmental Quality Office of the Secretary Legal Division**

##### **Hazardous Waste Authorization**

Resource Conservation and Recovery Act (RCRA)  
(LAC 33:V.108, 109, 309, 517, 537, 705, 1103, 1107, 1109, 1515, 1516, 1529, 1751, 1903, 1907, 2201, 2203, 2207, 2209, 2211, 2216, 2221, 2227, 2231, 2239, 2241, 2243, 2245, 2299, 3001, 3203, 3301, 3511, 4037, 4053, 4071, 4085, 4301, 4399, 4407, 4501, 4513, and 4999)(HW107)

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.108, 109, 309, 517, 537, 705, 1103, 1107, 1109, 1515, 1516, 1529, 1751, 1903, 1907, 2201, 2203, 2207, 2209, 2211, 2216, 2221, 2227, 2231, 2239, 2241, 2243, 2245, 2299, Tables 4 and 12, 3001, 3203, 3301, 3511, 4037, 4053, 4071, 4085, 4301, 4399, 4407, 4501, 4513 and 4999, Appendix F (HW107).

This Rule makes amendments to the regulations to correct errors and make clarifications in regards to certain definitions, notification, permitting, financial assurance, generator waste analysis, recordkeeping, and notice requirements, and required approval by the EPA administrator for certain land disposal restrictions.

This Rule is in response to EPA's review of the state's authorized program. The amendments are necessary to maintain equivalency and authorization for the state's hazardous waste program. The basis and rationale for this Rule are to maintain EPA's authorization of the state's hazardous waste 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 V. Hazardous Waste and Hazardous Materials**

#### **Subpart 1. Department of Environmental Quality— Hazardous Waste**

#### **Chapter 1. General Provisions and Definitions**

#### **§108. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators**

A. - F.3.g. ...

4. notify the department in accordance with LAC 33:V.105.A and comply with LAC 33:V.1105;

5. any and all fees required to be paid by conditionally exempt small quantity generators in accordance with LAC 33:V.5137 must be paid; and

6. shall label or clearly mark each container accumulating acute hazardous waste with the words "Hazardous Waste" or with other words that identify the contents of the container.

G. - G.3.g. ...

4. notify the department in accordance with LAC 33:V.105.A.1 and comply with LAC 33:V.1105;

5. any and all fees required to be paid by conditionally exempt small quantity generators in accordance with LAC 33:V.5137 must be paid; and

6. shall label or clearly mark each container accumulating acute hazardous waste with the words "Hazardous Waste" or with other words that identify the contents of the container.

H. - J. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:706, 716 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 32:606 (April 2006), LR 36:2554 (November 2010), LR 38:774 (March 2012), amended by the Office of the Secretary, Legal Division, LR 43:1138 (June 2017).

#### **§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.

\* \* \*

*Consignee*—the ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

\* \* \*

**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), LR 41:2600 (December 2015), LR 42:565 (April 2016), LR 43:1138 (June 2017).

### **Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits**

#### **§309. Conditions Applicable to All Permits**

Each permit shall include permit conditions necessary to achieve compliance with the Act and these regulations, including each of the applicable requirements specified in LAC 33:V.Subpart 1. In satisfying this provision, the administrative authority may incorporate applicable requirements of LAC 33:V.Subpart 1 directly into the permit or establish other permit conditions that are based on LAC 33:V.Subpart 1. The following conditions apply to all hazardous waste permits. All conditions applicable to permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

A. - L.7.d. ...

8. Manifest Discrepancy Report. If a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee must submit a report including a copy of the manifest to the Office of Environmental Services.

L.9. - M. ...

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 16:220 (March 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2466 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR

31:2453 (October 2005), LR 33:2099 (October 2007), LR 43:1139 (June 2017).

### **Chapter 5. Permit Application Contents**

#### **Subchapter D. Part II General Permit Information Requirements**

#### **§517. Part II Information Requirements (the Formal Permit Application)**

The formal permit application information requirements presented in this Section reflect the standards promulgated in LAC 33:V.Subpart 1. These information requirements are necessary in order to determine compliance with all standards. Responses and exhibits shall be numbered sequentially according to the technical standards. The permit application must describe how the facility will comply with each of the Sections of LAC 33:V.Chapters 15-37 and 41. Information required in the formal permit application shall be submitted to the administrative authority and signed in accordance with requirements in LAC 33:V.509. The description must include appropriate design information (calculations, drawings, specifications, data, etc.) and administrative details (plans, flow charts, decision trees, manpower projections, operating instructions, etc.) to permit the administrative authority to determine the adequacy of the hazardous waste permit application. Certain technical data, such as design drawings, specifications, and engineering studies, shall be certified by a Louisiana registered professional engineer. If a Section does not apply, the permit application must state it does not apply and why it does not apply. This information is to be submitted using the same numbering system and in the same order used in these regulations:

A. - T.4.c. ...

i. delineates the extent of the plume on the topographic map such as required under LAC 33:V.517.B; and

T.4.c.ii. - W. ...

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 10:280 (April 1984), LR 13:433 (August 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), LR 24:1691 (September 1998), LR 25:436 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1465 (August 1999), LR 25:1799 (October 1999), repromulgated LR 26:1608 (August 2000), repromulgated LR 26:2003 (September 2000), amended LR 27:287 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1625 (August 2007), amended by the Office of the Secretary, Legal Division, LR 43:1139 (June 2017).

#### **Subchapter F. Special Forms of Permits**

#### **§537. Permits for Boiler and Industrial Furnaces Burning Hazardous Waste for Recycling Purposes Only (Boilers and industrial furnaces burning hazardous waste for destruction are subject to permit requirements for incinerators.)**

A. - B.2.e.iv. ...

f. Repealed.

- g. - k. ...
- l. Repealed.

B.3. - D.3. ...

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 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:818, 832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2468 (November 2000), LR 27:292 (March 2001), LR 29:320 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2455 (October 2005), LR 33:2101 (October 2007), LR 34:622 (April 2008), LR 34:1012 (June 2008), amended by the Office of the Secretary, Legal Division, LR 43:1139 (June 2017).

## **Chapter 7. Administrative Procedures for Treatment, Storage, and Disposal Facility Permits**

### **Subchapter A. Permits**

#### **§705. Issuance and Effective Date of Permit**

A. ...

B. A final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706) shall become effective upon issuance, unless:

1. - 3. ...

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 14:790 (November 1988), LR 15:181 (March 1989), LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Division, LR 38:2769 (November 2012), amended by the Office of the Secretary, Legal Division, LR 43:1140 (June 2017).

## **Chapter 11. Generators**

### **Subchapter A. General**

#### **§1103. Hazardous Waste Determination**

A person who generates a *solid waste*, as defined in LAC 33:V.109, shall determine if that waste is a hazard.

A. - B.2. ...

C. He shall then determine if the waste is listed as a hazardous waste in LAC 33:V.Chapter 49.

NOTE: Even if the waste is listed, the generator still has an opportunity under LAC 33:V.105.M to demonstrate to the administrative authority that the waste from his particular facility or operation is not a hazardous waste.

D. If the waste is determined to be hazardous, the generator shall refer to other parts of LAC 33:V.Subpart 1 for possible exclusions or prohibitions pertaining to management of his or her specific wastes.

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 15:378 (May 1989), LR 17:658 (July 1991), LR 22:818 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), amended by the Office of the Secretary, Legal Division, LR 43:1140 (June 2017).

## **§1107. The Manifest System**

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

b. the name and active EPA identification number of each transporter;

B.1.c. - G.1.b. ...

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 12:319 (May 1986), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:266, 267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:89 (January 2007), repromulgated LR 33:281 (February 2007), amended LR 33:2101 (October 2007), LR 34:622 (April 2008), LR 38:775 (March 2012), amended by the Office of the Secretary, Legal Division, LR 42:566, LR 43:1140 (June 2017).

## **§1109. Pre-Transport Requirements**

A. - D. ...

E. Accumulation Time

1. A generator who generates 1,000 kg or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in LAC 33:V.4901.B or E in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

a. the waste is placed:

i. in containers and the generator complies with the applicable requirements of LAC 33:V.2103, 2105, 2107, 2109, 2113, 2115, and Chapter 43, Subchapters Q, R, and V; and/or

l.a.ii. - 6. ...

7. A generator who generates greater than 100 kg, but less than 1000 kg, of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

a. the generator complies with the requirements of LAC 33:V.2103, 2105, 2107, 2109, and 2115;

7.b. - 11. ...

12. A generator accumulating F006 waste in accordance with Paragraphs E.10 and 11 of this Section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator shall transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a storage facility and is subject to the requirements of LAC 33:V.Chapters 11, 15-21, 23-29, 31-37, and 43 (except LAC 33:V.4301. E and F) and the permit requirements of LAC 33:V.Chapters 3-7 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the



administrative authority if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the administrative authority on a case-by-case basis.

E.13. - F.2. ...

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 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:293 (March 2001), LR 27:709, 716 (May 2001), LR 27:1014 (July 2001), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 31:1571 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:2102 (October 2007), LR 34:622 (April 2008), LR 36:1235 (June 2010), repromulgated LR 36:1536 (July 2010), amended LR 38:776 (March 2012), amended by the Office of the Secretary, Legal Division, LR 43:1140 (June 2017).

## **Chapter 15. Treatment, Storage, and Disposal Facilities**

### **§1515. Personnel Training**

#### **A. Instruction Program**

1. - 3.f. ...

4. The facility operator shall conduct training sessions at regular intervals for appropriate facility personnel which includes the facility's contingency/emergency response teams, in routine plant operation, plant layout, location of possible hazards, emergency equipment location and operation, the evacuation plan and route, power and waste stream cut-offs, communications equipment and phone numbers of all required contacts, and other critical information and procedures. The facility operator shall afford representatives of local fire and police departments and local emergency response teams, the opportunity to participate in periodic training sessions.

A.5. - E. ...

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 by the Office of the Secretary, Legal Affairs Division, LR 34:993 (June 2008), amended by the Office of the Secretary, Legal Division, LR 43:1141 (June 2017).

### **§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities**

A. - B.2.c. ...

d. within 30 days after the delivery, send a copy of the signed and dated manifest, or a signed and dated copy of

the shipping paper, if the manifest has not been received within 30 days after delivery, to the generator; and

COMMENT: LAC 33:V.1107.D.3 requires the generator to send three copies of the manifest to the facility when hazardous waste is sent in bulk shipment by water.

2.e. - 4. ...

5. If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within 30 days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-0001.

6. A facility shall determine whether the consignment state for a shipment regulates any additional wastes, beyond those regulated federally, as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

C. - K. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:1012 (June 2008), LR 38:777, 789 (March 2012), amended by the Office of the Secretary, Legal Division, LR 42:568 (April 2016), LR 43:1141 (June 2017).

### **§1529. Operating Record and Reporting Requirements**

A. - D.10. ...

E. Additional Reports. In addition to submitting the annual reports and unmanifested waste reports described in LAC 33:V.1516.D and Subsection D of this Section, the owner or operator shall also report to the administrative authority:

1. - 3. ...

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 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1695 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:278 (February 2000), LR 26:2473 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:827 (May 2006), LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:993 (June 2008), LR 34:1895 (September 2008), LR 35:1879 (September 2009), amended by the Office of the Secretary, Legal Division, LR 43:1141 (June 2017).

## **Chapter 17. Air Emission Standards**

### **Subchapter C. Air Emission Standards for Tanks, Surface Impoundments, and Containers**

#### **§1751. Standards: General**

A. - C.4.a. ...

b. the organic hazardous constituents in the waste have been treated by the treatment technology established by the EPA for the waste in LAC 33:V.2227.A or have been removed or destroyed by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b);

C.5. - D.5.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:1702 (September 1998), LR 25:440 (March 1999), amended by the Office of the Secretary, Legal Division, LR 43:1141 (June 2017).

## Chapter 19. Tanks

### §1903. Assessment of Existing Tank System's Integrity

A. For each existing tank system that does not have secondary containment meeting the requirements of LAC 33:V.1907.B-I, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph C of this Section, the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by an independent, qualified professional engineer, in accordance with LAC 33:V.513, that attests to the tank system's integrity by November 20, 1988. Tanks excluded from permitting requirements under LAC 33:V.1109.E.1 must have an assessment as described in this Section by November 20, 1990.

B. - B.5.b. ...

C. Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

D. If, as a result of the assessment conducted in accordance with LAC 33:V.1903.A, a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of LAC 33:V.1913.

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 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 34:994 (June 2008), amended by the Office of the Secretary, Legal Division, LR 43:1142 (June 2017).

### §1907. Containment and Detection of Releases

A. - G.2.c.iv. ...

v. the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and

d. the potential adverse effects of a release on the land surrounding the tank system, taking into account:

i. the patterns of rainfall in the region; and

ii. the current and future uses of the surrounding land.

G.3. - K.2.e. ...

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 13:651 (November 1987), LR 14:790 (November 1988), LR 16:614

(July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), amended by the Office of Environmental Assessment, LR 31:1572 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2107 (October 2007), LR 34:624 (April 2008), LR 34:995 (June 2008), LR 34:1896 (September 2008), LR 36:1235 (June 2010), repromulgated LR 36:1536 (July 2010), amended by the Office of the Secretary, Legal Division, LR 38:2756 (November 2012), amended by the Office of the Secretary, Legal Division, LR 43:1142 (June 2017).

## Chapter 22. Prohibitions on Land Disposal

### Subchapter A. Land Disposal Restrictions

#### §2201. Purpose, Scope, and Applicability

A. - G.2. ...

3. Repealed.

G.4. - I.5.f. ...

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 15:378 (May 1989), amended LR 16:398 (May 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:300 (February 1998), LR 24:666 (April 1998), LR 24:1107 (June 1998), LR 24:1724 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:3117 (December 2005), amended by the Office of the Secretary, Legal Division, LR 43:1142 (June 2017).

#### §2203. Definitions Applicable to This Chapter

A. When used in this Chapter the following terms have the meanings given below.

\* \* \*

*Inorganic Metal-Bearing Waste*—a waste for which the department has established treatment standards for metal hazardous constituents and which does not otherwise contain significant organic or cyanide content as described in LAC 33:V.2207.C.1, and is specifically listed in LAC 33:V.2299, Appendix, Table 5.

\* \* \*

B. ...

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 15:378 (May 1989), amended LR 16:221 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998), LR 25:442 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:280 (February 2000), amended by the Office of the Secretary, Legal Division, LR 43:1142 (June 2017).

#### §2207. Dilution Prohibited as a Substitute for Treatment

A. - B. ...

C. Combustion of the hazardous waste codes listed in LAC 33:V.2299, Appendix, Table 5 is prohibited, unless the waste, at the point of generation, or after any bona fide treatment, such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the

following criteria (unless otherwise specifically prohibited from combustion):

C.1. - D. ...

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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998), LR 25:443 (March 1999), amended by the Office of the Secretary, Legal Division, LR 43:1142 (June 2017).

#### **§2209. Waste-Specific Prohibitions—Wood Preserving Wastes**

A. - B. ...

C. Between September 20, 1998 and May 12, 1999, soil and debris contaminated with F032, F034, F035, and radioactive waste mixed with F032, F034, and F035 may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in 40 CFR 268.5(h)(2).

D. - E. ...

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 15:378 (May 1989), amended LR 17:658 (July 1991), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1725 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1800 (October 1999), amended by the Office of the Secretary, Legal Division 43:1143 (June 2017).

#### **§2211. Waste-Specific Prohibitions—Dioxin-Containing Wastes**

A. - B.3. ...

C. Between the effective date of these regulations and November 8, 1990, wastes which are contaminated soil or debris resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action taken under subtitle C of RCRA may be land disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in 40 CFR 268.5(h)(2) and all other applicable requirements of LAC 33:V.Chapter 15 or Chapter 43.

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 15:378 (May 1989), amended LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1725 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1800 (October 1999), amended by the Office of the Secretary, Legal Division, LR 43:1143 (June 2017).

#### **§2216. Waste-Specific Prohibitions—Toxicity Characteristic Metal Wastes**

A. - C. ...

D. Between April 20, 1999 and May 26, 2000, newly identified characteristic wastes from elemental phosphorus processing, radioactive waste mixed with EPA hazardous waste numbers D004-D011, wastes that are newly identified

(i.e., wastes, soil, or debris identified as hazardous by the toxicity characteristic leaching procedure, but not the extraction procedure) or mixed with newly identified characteristic mineral processing wastes, soil, or debris may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in 40 CFR 268.5(h).

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 25:443 (March 1999), repromulgated LR 25:855 (May 1999), amended by the Office of the Secretary, Legal Division, LR 43:1143 (June 2017).

#### **§2221. Schedule of Wastes Identified or Listed after November 8, 1984**

A. - B. Repealed.

C. - E.2. ...

3. Between March 20, 1995 and September 19, 1996, the wastes included in LAC 33:V.2221.E.2 may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in 40 CFR 268.5(h)(2).

E.4. - F.4. ...

5. Between July 8, 1996, and April 20, 1998, the wastes included in 40 CFR 268.39(a), (c), and (d) may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in 40 CFR 268.5(h)(2).

6. - 7. ...

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 15:378 (May 1989), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998), LR 24:1725 (September 1998), LR 25:444 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:280 (February 2000), amended by the Office of the Secretary, Legal Division, LR 43:1143 (June 2017).

#### **§2227. Treatment Standards Expressed as Specified Technologies**

A. ...

B. Repealed.

NOTE: Persons demonstrating an alternative treatment method must apply to the EPA administrator or designee in accordance with 40 CFR 268.42(b).

C. - D. ...

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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:300 (February 1998), LR 25:445 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2476 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2457 (October 2005), LR 33:2107 (October 2007), amended by the Office of the Secretary, Legal Division, LR 43:1143 (June 2017).

## **§2231. Variance from a Treatment Standard**

A. - F. Repealed.

G. - M. ...

NOTE: Persons obtaining a non-site-specific variance from a treatment standard must submit a petition to the EPA administrator or designee in accordance with 40 CFR 268.44.

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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:445 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2476 (November 2000), LR 27:1015 (July 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2458 (October 2005), LR 33:2108 (October 2007), amended by the Office of the Secretary, Legal Division, LR 43:1144 (June 2017).

## **§2239. Procedures for Case-by-Case Extensions of an Effective Date**

NOTE: Persons obtaining a case-by-case extension of the effective date of any land disposal prohibition must submit a petition to the EPA administrator or designee in accordance with 40 CFR 268.5.

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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1727 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2477 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2458 (October 2005), LR 33:2108 (October 2007), amended by the Office of the Secretary, Legal Division, LR 43:1144 (June 2017).

## **§2241. Exemptions to Allow Land Disposal of a Prohibited Waste except by Deep Well Injection**

NOTE: Persons obtaining an exemption to allow land disposal except by deep well injection of a prohibited hazardous waste in a particular unit or units must submit a petition to the EPA administrator or designee in accordance with 40 CFR 268.6.

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 15:378 (May 1989), amended LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1727 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2477 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2458 (October 2005), LR 33:2109 (October 2007), amended by the Office of the Secretary, Legal Division, LR 43:1144 (June 2017).

## **§2243. Administrative Procedures for Exemptions under LAC 33:V.2271 and No-Alternative Determinations under LAC 33:V.2273**

A. Before making a final decision on the exemption or determination request, the department will provide the

person requesting the exemption or determination and the public, through a newspaper notice in the official state journal and the local newspaper in the affected area, the cost of which will be charged to the person requesting the exemption or determination, the opportunity to submit written comments on the request on the conditions of the exemption or determination, allowing a 45-day comment period. The notices referred to in this Section will be provided in the local newspaper in three separate issues; however, the comment or notice period shall begin with the notice in the official state journal. The administrative authority will also, in response to a request or at his or her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the exemption or determination request. The administrative authority will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments.)

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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 22:22 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1800 (October 1999), LR 26:2478 (November 2000), amended by the Office of the Secretary, Legal Division, LR 43:1144 (June 2017).

## **§2245. Generators' Waste Analysis, Recordkeeping, and Notice Requirements**

A. - K. ...

L. Small quantity generators with tolling agreements pursuant to LAC 33:V.1107.A.4 shall comply with the applicable notification and certification requirements of paragraph (A) of this section for the initial shipment of the waste subject to the agreement. Such generators shall retain an on-site copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of an unresolved enforcement action regarding the regulated activity or as requested by the administrative authority.

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 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266, 267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1728 (September 1998), LR 25:447 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:281 (February 2000), LR 26:2478 (November 2000), LR 27:295 (March 2001), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 33:2109 (October 2007), LR 34:996 (June 2008), amended by the Office of the Secretary, Legal Division, LR 43:1144 (June 2017).

**§2299. Appendix—Tables 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12**

Table 2, Treatment Standards for Hazardous Wastes. ...

Footnote 1.-10. ...

11. For these wastes, the definition of CMBST is limited to:  
(1) combustion units operating under LAC 33:V.Chapter 30,  
(2) combustion units permitted under LAC 33:V.Chapter 31,  
or (3) combustion units operating under LAC 33:V.Chapter  
43.Subchapter N, which have obtained a determination of  
equivalent treatment from EPA under 40 CFR 268.42(b).

Footnote 12. ...

\* \* \*

Table 4, Best Demonstrated Available Technology Land Disposal  
Prohibitions References - Notes. Repealed.

\* \* \*

Table 12, Metal-Bearing Wastes Prohibited From Dilution  
in a Combustion Unit According to LAC 33:V.  
2207.C<sup>1</sup>. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.  
30:2001 et seq. and specifically 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 16:1057 (December 1990),  
amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR  
22:22 (January 1996), LR 22:834 (September 1996), LR 23:566  
(May 1997), LR 24:301 (February 1998), LR 24:670 (April 1998),  
LR 24:1732 (September 1998), LR 25:451 (March 1999), amended  
by the Office of Environmental Assessment, Environmental  
Planning Division, LR 26:282 (February 2000), LR 27:295 (March  
2001), LR 29:322 (March 2003), LR 30:1682 (August 2004),  
amended by the Office of the Secretary, Legal Affairs Division, LR  
32:828 (May 2006), LR 32:1843 (October 2006), LR 34:625 (April  
2008), LR 34:1014 (June 2008), LR 38:777 (March 2012),  
amended by the Office of the Secretary, Legal Division, LR  
39:2487, 2492 (September 2013), amended by the Office of the  
Secretary, Legal Division, LR 43:1145 (June 2017).

**Chapter 30. Hazardous Waste Burned in Boilers and  
Industrial Furnaces**

**§3001. Applicability**

A. - B.2.d. ...

e. the applicable requirements of LAC  
33:V.Chapters 15, 17 (Subchapters B and C), 33, 35, 37, and  
43 (Subchapters A-G, R, and V), 4301.A-D, F, H, and J, and  
4306.

B.3. - H. ...

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 18:1375 (December 1992),  
amended LR 21:266 (March 1995), LR 21:944 (September 1995),  
LR 22:821, 835 (September 1996), amended by the Office of  
Environmental Assessment, Environmental Planning Division, LR  
25:1466 (August 1999), LR 27:297 (March 2001), LR 27:712 (May  
2001), LR 29:323 (March 2003), amended by the Office of the  
Secretary, Legal Affairs Division, LR 32:607 (April 2006), LR  
34:628 (April 2008), LR 34:1014 (June 2008) amended by the  
Office of the Secretary, Legal Division, LR 43:1145 (June 2017).

**Chapter 32. Miscellaneous Units**

**§3203. Environmental Performance Standards**

A miscellaneous unit must be located, designed,  
constructed, operated, maintained, and closed in a manner  
that will ensure protection of human health and the  
environment. Permits for miscellaneous units are to contain

such terms and provisions as necessary to protect human  
health and the environment, including, but not limited to, as  
appropriate, design and operating requirements, detection  
and monitoring requirements, and requirements for  
responses to releases of hazardous waste or hazardous  
constituents from the unit. Permit terms and provisions shall  
include those requirements of LAC 33:V.Chapters 3, 5, 7,  
17, 19, 21, 23, 25, 27, 29, 31, 4301.G, I, 4302, 4303 and  
4305, all other applicable requirements of LAC 33:V.Subpart  
1, and of 40 CFR 63 subpart EEE and 40 CFR 146 that are  
appropriate for the miscellaneous unit being permitted.  
Protection of human health and the environment includes,  
but is not limited to:

A. - C.7. ...

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 16:399 (May 1990), amended by  
the Office of Waste Services, Hazardous Waste Division, LR  
24:1742 (September 1998), amended by the Office of  
Environmental Assessment, Environmental Planning Division, LR  
27:302 (March 2001), amended by the Office of the Secretary,  
Legal Division, LR 43:1145 (June 2017).

**Chapter 33. Groundwater Protection**

**§3301. Applicability**

A. - G.1. ...

2. it is not necessary to apply the groundwater  
monitoring and corrective action requirements of LAC  
33:V.3303-3321 because alternative requirements will  
protect human health and the environment.

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  
10:280 (April 1984), LR 10:496 (July 1984), LR 16:399 (May  
1990), LR 18:1256 (November 1992), LR 20:1000 (September  
1994), amended by the Office of Waste Services, Hazardous Waste  
Division, LR 25:480 (March 1999), amended by the Office of the  
Secretary, Legal Division, LR 43:1145 (June 2017).

**Chapter 35. Closure and Post-Closure**

**Subchapter A. Closure Requirements**

**§3511. Closure Plan; Amendment of Plan**

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

c. in conducting partial or final closure activities,  
unexpected events require a modification of the approved  
closure plan; or

d. the owner or operator requests the administrative  
authority to apply alternative requirements to a regulated  
unit under LAC 33:V.3301.G, 3501.D, and/or 3701.D.

3. - 4. ...

5. Repealed.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.  
30:2001 et. seq., and specifically 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  
13:433 (August 1987), LR 14:791 (November 1988), LR 16:399  
(May 1990), LR 16:614 (July 1990), LR 17:478 (May 1991), LR  
18:1256 (November 1992), LR 18:1375 (December 1992), LR  
21:266 (March 1995), amended by the Office of Waste Services,  
Hazardous Waste Division, LR 25:480 (March 1999), amended by

the Office of Environmental Assessment, Environmental Planning Division, LR 26:2486 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2465 (October 2005), LR 33:2116 (October 2007), amended by the Office of the Secretary, Legal Division, LR 43:1145 (June 2017).

## **Chapter 40. Used Oil**

### **Subchapter D. Standards for Used Oil Transporter and Transfer Facilities**

#### **§4037. Tracking**

A. Acceptance. Used oil transporters shall keep a record of each used oil shipment accepted for transport. This record shall be in the form of a used oil reuse/recycle manifest. Records for each shipment shall include:

A.1. - D. ...

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 21:266, 267 (March 1995), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Division, LR 43:1146 (June 2017).

### **Subchapter E. Standards for Used Oil Processors and Re-Refiners**

#### **§4053. Tracking**

A. Acceptance. Used oil processors/re-refiners shall keep a record of each used oil shipment accepted for processing/re-refining. These records shall take the form of a used oil reuse/recycle manifest. Records for each shipment shall include the following information:

1. - 6. ...

B. Delivery. Used oil processor/re-refiners shall keep a record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records shall take the form of a used oil reuse/recycle manifest. Records for each shipment shall include the following information:

B.1. - C. ...

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 21:266, 267 (March 1995), amended by the Office of the Secretary, Legal Division, LR 43:1146 (June 2017).

### **Subchapter F. Standards for Used Oil Burners that Burn Off-Specification Used Oil for Energy Recovery**

#### **§4071. Tracking**

A. Acceptance. Used oil burners shall keep a record of each used oil shipment accepted for burning. These records shall take the form of a used oil reuse/recycle manifest. Records for each shipment shall include the following information:

A.1. - B. ...

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 21:266, 267 (March 1995), amended by the Office of the Secretary, Legal Division, LR 43:1146 (June 2017).

## **Subchapter G. Standards for Used Oil Fuel Marketers**

### **§4085. Tracking**

A. Off-Specification Used Oil Delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to that used oil burner. These records shall take the form of a used oil reuse/recycle manifest. Records for each shipment shall include the following information:

A.1. - C. ...

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 21:266, 267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:482 (March 1999), amended by the Office of the Secretary, Legal Division, LR 43:1146 (June 2017).

### **Chapter 43. Interim Status**

#### **§4301. Purpose and Applicability**

A. The purpose of interim status is to allow existing facilities to operate in an appropriate and responsible manner during the period of time required to process and review permit application or until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. Interim status facilities shall, when required by the administrative authority, submit to the Office of Environmental Services a permit application in compliance with the requirements of these regulations. Failure to submit an application is a violation of interim status and will result in revocation of a facility's interim status designation. Once revoked the facility will be treated as an unpermitted facility and appropriate legal action will be taken.

B. Qualifying for Interim Status. Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory requirement to have a RCRA permit shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

1. complied with the requirements of section 3010(a) of RCRA pertaining to notification of hazardous waste activity; and

COMMENT: Some existing facilities may not be required to file a notification under section 3010(a) of RCRA. These facilities may qualify for interim status by meeting paragraph (a)(2) of this section.

2. complied with the requirements of LAC 33:V.Chapter 5, Subchapter A governing submission of part I applications.

C. Except as provided in LAC 33:V.4719, the standards of this Chapter and of LAC 33:V.Chapter 26 apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements for interim status under Section 3005(e) of RCRA and LAC 33:V.501 until either a permit is issued under section 3005 of RCRA or until applicable LAC 33:V.Chapter 43 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by section 3010(a) of RCRA and/or failed to file part A of the permit application as

required by LAC 33:V.303.K and 501.C. These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this Chapter or LAC 33:V.Chapter 49.

COMMENT: As stated in section 3005(a) of RCRA, after the effective date of regulations under that section (i.e., LAC 33:V.Chapters 3, 5, and 7), the treatment, storage, and disposal of hazardous waste is prohibited except in accordance with a permit. Section 3005(e) of RCRA provides for the continued operation of an existing facility that meets certain conditions, until final administrative disposition of the owner's and operator's permit application is made.

D. The requirements of this Chapter do not apply to:

1. a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act;

COMMENT: These LAC 33:V.Chapter 43 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in Subsection C of this Section.

2. the owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

COMMENT The owner or operator of a facility under Paragraphs D.1 and 2 of this Section is subject to the requirements of LAC 33:V.Chapters 11, 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 35, and 37 to the extent they are included in a permit by rule granted to such a person under 40 CFR 122 and by 144.14.

3. a person who treats, stores, or disposes of hazardous waste in a state with a RCRA hazardous waste program authorized under subpart A or B of 40 CFR part 271, except that the requirements of this Chapter will continue to apply:

a. if the authorized state RCRA program does not cover disposal of hazardous waste by means of underground injection; or

b. to a person who treats, stores, or disposes of hazardous waste in a state authorized under subpart A or B of 40 CFR part 271 if the state has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed in accordance with the Hazardous and Solid Waste Act Amendments of 1984. The requirements and prohibitions that are applicable until a state receives authorization to carry them out include all federal program requirements identified in 40 CFR 271.1.j;

4. the owner or operator of a facility permitted, licensed, or registered by the state to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation by LAC 33:V.Subpart 1;

5. the owner and operator of a facility managing recyclable materials described in LAC 33:V.4105.A.1-3, except to the extent they are referred to in LAC 33:V.Chapter 40 or LAC 33:V.4139, 4141, 4143, or 4145;

6. a generator accumulating waste on-site in compliance with LAC 33:V.1109.E, except to the extent the requirements are included in LAC 33:V.1109.E;

7. a farmer disposing of waste pesticides from his own use in compliance with LAC 33:V.1101.D;

8. the owner or operator of a *totally enclosed treatment facility* (as defined in LAC 33:V.109);

9. the owner or operator of an *elementary neutralization unit* or *wastewater treatment unit* (as defined in LAC 33:V.109), provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 high TOC subcategory defined in LAC 33:V.2299.Appendix, Table 2, Treatment Standards for Hazardous Wastes) or reactive (D003) waste to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in LAC 33:V.4321.B;

10. except as provided in Subparagraph D.10.b of this Section;

a. a person engaged in treatment or containment activities during immediate response to any of the following situations:

i. a discharge of a hazardous waste;

ii. an imminent and substantial threat of a discharge of hazardous waste;

iii. a discharge of a material that, when discharged, becomes a hazardous waste; or

iv. an immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an *explosives or munitions emergency response specialist* as defined in LAC 33:V.109;

b. an owner or operator of a facility otherwise regulated by this Chapter shall comply with all applicable requirements of LAC 33:V.Chapter 43, Subchapters C and D;

c. any person who is covered by Subparagraph D.10.b of this Section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this Chapter and 40 CFR 122-124 for those activities; and

d. in the case of an explosives or munitions emergency response, if a federal, state, tribal, or local official acting within the scope of his or her official responsibilities or an explosives or munitions emergency response specialist determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition;

11. a transporter storing manifested shipments of hazardous waste in containers meeting the requirements of LAC 33:V.1109.A at a transfer facility for a period of 10 days or less;

12. the addition of absorbent material to waste in a *container* (as defined in LAC 33:V.109) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container and LAC 33:V.4321.B.1 and LAC 33:V.Chapter 43, Subchapter H are complied with;

13. *universal waste handlers* and *universal waste transporters* (as defined in LAC 33:V.3813) handling the wastes listed below. These handlers are subject to regulation under LAC 33:V.Chapter 38, when handling the following universal wastes:

- a. batteries as described in LAC 33:V.3803;
- b. pesticides as described in LAC 33:V.3805;
- c. mercury-containing equipment as described in LAC 33:V.3807;
- d. lamps as described in LAC 33:V.3809;
- e. electronics as described in LAC 33:V.3810; and
- f. antifreeze as described in LAC 33:V.3811.

E. Facilities having interim status are subject to all applicable federal and state laws and regulations, including these regulations.

F. The requirements of this Chapter apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in LAC 33:V.Chapter 22, and Chapter 22 standards are material conditions or requirements of the LAC 33:V.Chapter 43 interim status standards.

G. Interim status is not available to any facility that has been previously denied a permit for the treatment, storage or disposal of hazardous waste or for which authority to operate has been previously terminated.

H. EPA hazardous waste nos. F020, F021, F022, F023, F026, or F027 shall not be managed at facilities subject to regulation under LAC 33:V.4301-4547 unless:

1. the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;
2. the waste is stored in tanks or containers;
3. the waste is stored or treated in waste piles that meet the requirements of LAC 33:V.2301.C as well as all other applicable requirements of LAC 33:V.Chapter 43, Subchapter K;
4. the waste is burned in incinerators that are certified pursuant to the standards and procedures in LAC 33:V.4522; or
5. the waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in LAC 33:V.4534.

I. *Failure to Qualify for Interim Status*. If the department has reason to believe upon examination of a part I application that it fails to meet the requirements of these regulations, it shall notify the owner or operator in writing of the apparent deficiency. Such notice shall specify the grounds for the department's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to such a notification and to explain or cure the alleged deficiency in his part I application. If, after such notification and opportunity for response, the department determines that the application is deficient, it may take appropriate enforcement action.

J. LAC 33:V.5309 identifies when the requirements of this Chapter apply to the storage of military munitions classified as solid waste under LAC 33:V.5303. The treatment and disposal of hazardous waste military

munitions are subject to the applicable permitting, procedural, and technical standards in LAC 33:V.Chapters 1-37, 41-49, and 53.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 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 13:84 (February 1987), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1743 (September 1998), LR 25:482 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:2498 (November 2000), LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2474 (October 2005), LR 31:3121 (December 2005), LR 32:612 (April 2006), LR 33:2126 (October 2007), LR 34:632 (April 2008), amended by the office of the Secretary, Legal Division, LR 43:1146 (June 2017).

### **Subchapter G. Financial Requirements**

#### **§4399. Definitions of Terms as Used in This Subpart**

A. - A.6.h. ...

7. Repealed.

8. *Current Plugging and Abandonment Cost Estimate*—the most recent of the cost estimates prepared in accordance with 40 CFR 144.62, Office of Conservation financial assurance regulations, or other substantially equivalent state programs.

9. *Substantial Business Relationship*—the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A substantial business relationship must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the administrative authority.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 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 13:433 (August 1987), LR 16:219 (March 1990), LR 18:723 (July 1992), amended by the Office of the Secretary, Legal Division, LR 43:1148 (June 2017).

#### **§4407. Financial Assurance for Post-Closure Care**

An owner or operator of each hazardous waste disposal unit shall establish financial assurance for post-closure care of the facility. He must choose from the options as specified in Subsections A-E of this Section.

A. - A.11. ...

12. The administrative authority will agree to termination of the trust when:

a. an owner or operator substitutes alternate financial assurance as specified in this Section; or

b. the administrative authority releases the owner or operator from the requirements of LAC 33:V.4407.A in accordance with LAC 33:V.4407.H.

B. - H. ...



AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 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 13:433 (August 1987), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1521 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2504 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2479 (October 2005), LR 33:2131 (October 2007), LR 34:1003 (June 2008), amended by the Office of the Secretary, Legal Division, LR 43:1148 (June 2017).

**Subchapter M. Landfills**

**§4501. Closure and Post-Closure**

A. - C.6. ...

D. In addition to the requirements of LAC 33:V.4389, during the post-closure care period, the owner or operator of a hazardous waste landfill shall:

1. - 2. ...

3. maintain and monitor the leak detection system in accordance with LAC 33:V.2503.L.4.d, L.5, and 4502.B and comply with all other applicable leak detection system requirements of LAC 33:V.Chapter 43:1149 (June 2017).

4. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and specifically 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 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1627 (August 2007), amended by the Office of the Secretary, Legal Division, LR 43:1149 (June 2017).

**Subchapter N. Incinerators**

**§4513. Applicability**

A. - B.1. ...

2. The following requirements continue to apply even where the owner or operator has demonstrated compliance with the MACT requirements of 40 CFR part 63, subpart EEE, LAC 33:V.4521 (closure), and the applicable requirements of LAC 33:V.4301.A-D, F, H, and J, 4306, and Chapter 43 (Subchapters A-G, R, and V).

B.3. - C.4. ...

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 15:737 (September 1989), amended LR 16:220 (March 1990), LR 18:1375 (December 1992), LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:303 (March 2001), LR 29:324 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:635 (April 2008), amended by the Office of the Secretary, Legal Division, LR 43:1149 (June 2017).

**Chapter 49. Lists of Hazardous Wastes**

**§4999. Appendices—Appendix A, B, C, D, and E**

\* \* \*

Appendix F, Recording Instructions. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste

Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment, LR 30:2464 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:445 (March 2007), LR 33:825 (May 2007), LR 33:1016 (June 2007), LR 34:73 (January 2008), LR 34:1021 (June 2008), LR 34:1613 (August 2008), amended by the Office of the Secretary, Legal Division, LR 38:2757 (November 2012), LR 40:1692 (September 2014), amended by the Office of the Secretary, Legal Division, LR 43:1149 (June 2017).

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**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Division**

Hazardous Waste Delisting  
Denka Performance Elastomer LLC  
(LAC 33:V.4999)(HW122)

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.4999, Appendix E (HW122).

This Rule is a technical amendment of a hazardous waste delisting of Dynawave Scrubber Effluent, which was approved and promulgated under DuPont/Dow Elastomers LLC on December 20, 1999. This rulemaking will amend the description of the wastes excluded in the Denka Performance Elastomer LLC delisting. In a previous Rule, a name change was completed for a delisting of hazardous waste. As part of public comments, the facility requested a technical change to the description of the wastes excluded. These changes were necessary because EPA has revised the waste codes since the original promulgation in 1999. LDEQ has reviewed the request to amend the waste codes and considers is justified. The basis and rationale for this Rule are to amend waste codes as appropriate. 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 49. Lists of Hazardous Wastes**

**§4999. Appendices—Appendix A, B, C, D, E, and F**

\* \* \*

Appendix E. Wastes Excluded under LAC 33:V.105.M

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

\* \* \*

<b>Table 1—Wastes Excluded</b>
<b>Denka Performance Elastomer LLC, LaPlace, LA</b>
<p>Dynawave Scrubber Effluent is generated through the combustion of organic waste feed streams carrying the listed EPA Hazardous Waste Numbers F001, F002, F003, and F005. The specific hazardous waste streams being combusted and their EPA Hazardous Waste Numbers are: HCl Feed—D001, D002, and D007; Pontchartrain CD Heels—D001, D007, D039, F001, F002, F003, and F005; Waste Organics—D001, D007, and F005; Catalyst Sludge Receiver (CSR) Sludge—D001, D007, and F005; Isom Purge—D001, D002, and F005; Denka Performance Elastomer LLC must implement a sampling program that meets the following conditions for the exclusion to be valid.</p>
<p>(1). Testing</p> <p>Sample collections and analyses, including quality control (QC) procedures, must be performed according to methodologies described in <i>Test Methods for Evaluating Solid Waste, Physical/Chemical Methods</i>, EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110.</p>
<p>(1)(A). Inorganic Testing</p> <p>During the first 12 months of this exclusion, Denka Performance Elastomer LLC must collect and analyze a monthly grab sample of the Dynawave Scrubber Effluent. Denka Performance Elastomer LLC must report to the department the unit operating conditions and analytical data (reported in milligrams per liter) for chromium, nickel, and zinc, including quality control information. If the department and Denka Performance Elastomer LLC concur that the analytical results obtained during the 12 monthly testing periods have been significantly below the delisting levels in condition (3)(A), then Denka Performance Elastomer LLC may replace the inorganic testing required in condition (1)(A) with the inorganic testing required in condition (1)(B). Condition (1)(A) shall remain effective until this concurrence is reached.</p>
<p>(1)(B). Subsequent Inorganic Testing</p> <p>Following concurrence by the department, Denka Performance Elastomer LLC may substitute the following testing conditions for those in condition (1)(A). Denka Performance Elastomer LLC must continue to monitor operating conditions and analyze samples representative of each year of operation. The samples must be grab samples from a randomly chosen operating day during the same month of operation as the previous year's sampling event. These annual representative grab samples must be analyzed for chromium, nickel, and zinc. Denka Performance Elastomer LLC may, at its discretion, analyze any samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.</p>
<p>(1)(C). Organic Testing</p> <p>During the first 30 days of this exclusion, Denka Performance Elastomer LLC must collect a grab sample of the Dynawave Scrubber Effluent and analyze it for the organic constituents listed in condition (3)(B) below. After completing this initial sampling, Denka Performance Elastomer LLC shall sample and analyze for the organic constituents listed in condition (3)(B) on an annual basis.</p>
<p>(1)(D). Dioxins and Furans Testing</p> <p>During the first 30 days of this exclusion, Denka Performance Elastomer LLC must collect a grab sample of the Dynawave Scrubber Effluent and analyze it for the dioxins and furans in condition (3)(C) below. After completing this initial sampling, Denka Performance Elastomer LLC shall sample and analyze for the dioxins and furans in condition (3)(C) once every three years to commence three years after the initial sampling.</p>
<p>(2). Waste Holding and Handling</p> <p>Consequent to this exclusion, the Dynawave Scrubber Effluent becomes, on generation, nonhazardous solid waste and may be managed and disposed of on the Denka Performance Elastomer LLC plant site in any one of three permitted underground deep injection wells. With prior written authorization from the department, alternative disposal methods may be either a Louisiana Pollution Discharge Elimination System/National Pollution Discharge Elimination System (LPDES/NPDES) permitted outfall or a permitted commercial underground deep injection well. This newly delisted waste must always be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in any representative sample equal or exceed any of the delisting levels set in condition (3), the Dynawave Scrubber Effluent must be immediately resampled and reanalyzed for the constituent(s) that exceeded the delisting levels. If the repeat analysis is less than the delisting levels, then Denka Performance Elastomer LLC shall resume the normal sampling and analysis schedule as described in condition (1). If the results of the reanalysis equal or exceed any of the delisting levels, then within 45 days Denka Performance Elastomer LLC shall submit a report to the department that outlines the probable causes</p>

<b>Table 1—Wastes Excluded</b>
<b>Denka Performance Elastomer LLC, LaPlace, LA</b>
<p>for exceeding the constituent level and recommends corrective action measures. The department shall determine the necessary corrective action and shall notify Denka Performance Elastomer LLC of the corrective action needed. Denka Performance Elastomer LLC shall implement the corrective action and resume sampling and analysis for the constituent per the schedule in condition (1). Within 30 days after receiving written notification, Denka Performance Elastomer LLC may appeal the corrective action determined by the department. During the full period of corrective action determination and implementation, the exclusion of the Dynawave Scrubber Effluent shall remain in force unless the department notifies Denka Performance Elastomer LLC in writing of a temporary rescission of the exclusion. Normal sampling and analysis shall continue through this period as long as the exclusion remains in force.</p>
<p>(3). Delisting Levels</p> <p>The following delisting levels have been determined safe by taking into account health-based criteria and limits of detection. Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. Concentrations in the extract must be less than the following levels (all units are milligrams per liter).</p>
<p>(3)(A). Inorganic Constituents</p> <p>Chromium—2.0; Nickel—2.0; Zinc—200.</p>
<p>(3)(B). Organic Constituents</p> <p>Acetone—80; Chlorobenzene—2.0; Chloroform—0.2; Chloroprene—14; Ethylbenzene—14; Methylene Chloride—0.1; Styrene—2.0; Toluene—20; Xylenes—200.</p>
<p>(3)(C). Dioxins and Furans</p> <p>The 15 congeners listed in Section 1.1 of EPA Publication Number SW-846 Method 8290—Monitor only.</p>
<p>(4). Changes in Operating Conditions or Feed Streams</p> <p>If Denka Performance Elastomer LLC either significantly changes the operating conditions specified in the petition or adds any previously unspecified feed streams and either of these actions would justify a Class 3 modification to its combustion permit, Denka Performance Elastomer LLC must notify the department in writing. Following receipt of written acknowledgement by the department, Denka Performance Elastomer LLC must collect a grab sample and analyze it for the full universe of constituents found in 40 CFR Part 264, Appendix IX—Groundwater Monitoring List (LAC 33:V.3325). If the results of the Appendix IX analyses identify no new hazardous constituents, then Denka Performance Elastomer LLC must reinstitute the testing required in condition (1)(A) for a minimum of 12 monthly operating periods. During the full period described in this condition, the delisting of the Dynawave Scrubber Effluent shall remain in force unless a new hazardous constituent is identified or the waste volume exceeds 25,000 cubic yards per year; at this time the delisting petition shall be reopened. Denka Performance Elastomer LLC may eliminate feeding any stream to the combustion unit at any time without affecting the delisting of the Dynawave Scrubber Effluent or the sampling schedule.</p>

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 20:1000 (September 1994), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:944 (September 1995), LR 22:830 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2397 (December 1999), LR 26:2509 (November 2000), LR 29:1084 (July 2003), repromulgated LR 29:1475 (August 2003), amended by the Office of Environmental Assessment, LR 30:2464 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:445 (March 2007), LR 33:825 (May 2007), LR 33:1016 (June 2007), LR 34:73 (January 2008), LR 34:1021 (June 2008), LR 34:1613 (August 2008), amended by the Office of the Secretary, Legal Division, LR 38:2757 (November 2012), LR 40:1692 (September 2014), amended by the Office of the Secretary, Legal Division, LR 42:2179 (December 2016), amended by the Office of the Secretary, Legal Division, LR 43:1149 (June 2017).

**RULE**

**Department of Environmental Quality  
Office of the Secretary  
Legal Division**

Secondary Hazardous Materials  
(LAC 33:V.105, 109, and 322)(HW118)

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, 109, and 322 (HW118).

This Rule requires all secondary hazardous materials (materials that are recycled or re-used in industrial processes) to be managed as if they were already hazardous wastes that have been discarded. It also requires that the uses of secondary hazardous materials as ingredients and the products created with the materials, be evaluated for legitimacy. Any facility that utilizes hazardous secondary materials will be required to conduct an evaluation of its industrial uses and practices for managing hazardous secondary materials. The basis and rationale for this Rule are to meet EPA mandatory adoption requirements. 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.1. - C.6. ...

D. Exclusions

1. Materials that are not Solid Wastes. The following materials are not solid wastes for the purpose of this Subpart:

a.i. - w.vi. ...

x. hazardous secondary material generated and legitimately reclaimed within the United States of America or its territories and under the control of the generator is not a solid waste, provided that the material complies with the following conditions:

i. the hazardous secondary material is generated and reclaimed at the generating facility (for purposes of this

definition, *generating facility* means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or

ii. the hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a *person*, as defined in LAC 33:V.109; and

(a). the generator provides one of the following certifications:

(i). “On behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material.”; or

(ii). “On behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material.” For purposes of this Paragraph, *control* means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different *person* as defined in LAC 33:V.109 shall not be deemed to “control” such facilities;

(b). the generating and receiving facilities must both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records must contain:

(i). the name of the transporter;

(ii). the date of the shipment; and

(iii). the type and quantity of the hazardous secondary material shipped or received under the exclusion;

(iv). these record-keeping requirements may be satisfied by maintaining routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations); or

iii. the hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: “On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process.”; and

(a). the tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer; and

(b). the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor; and

(c). for both the tolling contractor and the tolling manufacturer, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). For purposes of this Paragraph:

(i). *tolling contractor*—a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer;

(ii). *toll manufacturer*—a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor;

iv. the hazardous secondary material is contained as defined in LAC 33:V.109, *contained*. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste;

v. the hazardous secondary material is not speculatively accumulated, as defined in LAC 33:V.109, *accumulated speculatively*;

vi. notice is provided as required by LAC 33:V.105.Q;

vii. the material is not otherwise subject to material-specific management conditions under LAC 33:V.105.D.1 when reclaimed (except as provided for in LAC 33:V.105.R.6.e) and it is not a spent lead-acid battery;

viii. persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all four factors in LAC 33:V.105.R. Documentation shall be maintained for three years after the recycling operation has ceased;

ix. persons operating under this exclusion must meet the requirements of the *Code of Federal Regulations* at 40 CFR 261, subpart M (emergency preparedness and response for management of excluded hazardous secondary materials), July 1, 2015, which are hereby incorporated by reference;

y. hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:

i. the material is not speculatively accumulated, as defined in LAC 33:V.109, *accumulated speculatively*;

ii. the material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer and, while in transport, is not stored for more than

10 days at a transfer facility, as defined in LAC 33:V.109, *transfer facility*, and is packaged according to applicable United States Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

iii. the material is not otherwise subject to material-specific management conditions under LAC 33:V.105.D.1 when reclaimed (except as provided for in LAC 33:V.105.R.6.e), and it is not a spent lead-acid battery;

iv. the reclamation of the material is legitimate, as specified under LAC 33:V.105.R;

v. the hazardous secondary material generator satisfies all of the following conditions:

(a). the material must be *contained* as defined in LAC 33:V.109, *contained*. A hazardous secondary material released to the environment will be considered discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste;

(b). the hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified reclamation facility (or facilities) in the United States of America. A verified reclamation facility is a facility that has been granted a variance under LAC 33:V.105.O.2.d or a reclamation facility where the management of the hazardous secondary materials is addressed under a RCRA part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must have been granted a variance under LAC 33:V.105.O.2.d or the management of the hazardous secondary materials at that facility must be addressed under a RCRA part B permit or interim status standards, and the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator;

(c). the hazardous secondary material generator must maintain at the generating facility for no less than three years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

(i). name of the transporter and date of the shipment;

(ii). name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(iii). the type and quantity of hazardous secondary material in the shipment;

(d). the hazardous secondary material generator must maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business

records (e.g., financial records, bills of lading, copies of U.S. Department of Transportation shipping papers, or electronic confirmations of receipt);

(e). the hazardous secondary material generator must comply with the emergency preparedness and response conditions in 40 CFR 261, subpart M (emergency preparedness and response for management of excluded hazardous secondary materials), July 15, 2015; these requirements are hereby incorporated by reference for this exclusion;

vi. reclaimers of hazardous secondary material excluded from regulation under this exclusion and *intermediate facilities*, as defined in LAC 33:V.109, shall satisfy all of the following conditions:

(a). the reclaimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

(i). name of the transporter and date of the shipment;

(ii). name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(iii). the type and quantity of hazardous secondary material in the shipment; and

(iv). for hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(b). the intermediate facility shall send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator;

(c). the reclaimer and intermediate facility shall send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);

(d). the reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material;

(e). any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any

residuals exhibit a hazardous characteristic according to LAC 33:V.4903, or if they themselves are specifically listed in LAC 33:V.4901, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of this Subpart when disposed or intended for disposal;

(f). the reclaimer and intermediate facility shall provide financial assurance as required under subpart H of 40 CFR part 261, July 2015, which is hereby incorporated by reference;

(g). the reclaimer and intermediate facility have been granted a variance under LAC 33:V.105.O and/or LAC 33:V.105.K, as applicable, or have a RCRA part B permit or interim status standards that address the management of the hazardous secondary materials; and

vii. all persons claiming the exclusion under LAC 33:V.105.D.1.y shall provide notification as required under LAC 33:V.105.Q;

z. hazardous secondary materials that are generated and then transferred to another person for the purpose of remanufacturing are not solid waste, provided there is compliance with the standards and requirements for this conditional exclusion, which are published in the *Code of Federal Regulations* at 40 CFR 261.4(a)(27)-261.4(a)(27)(vi)(F). Additional requirements, as applicable to this exclusion, are located in 40 CFR 261, subpart I (use and management of containers), 40 CFR 261, subpart J (tank systems), 40 CFR 261, subpart AA (air emission standards for process vents), 40 CFR 261, subpart BB (air emission standards for equipment leaks), and 40 CFR 261, subpart CC (air emission standards for tanks and containers), July 1, 2015, and are hereby incorporated by reference for the purposes of this exclusion.

D.2. - J.2. ...

K. Variances from Classification as a Solid Waste, Non-Waste Determinations and/or Variance to be Classified as a Boiler

1. Variance to be Classified as a Boiler. In accordance with the standards and criteria in LAC 33:V.109, *boiler* and the procedures in Paragraph K.2 of this Section, the administrative authority may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of *boiler* contained in LAC 33:V.109 after considering the following criteria:

a. the extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

b. the extent to which the combustion chamber and energy recovery equipment are of integral design; and

c. the efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

d. the extent to which exported energy is utilized; and

e. the extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

f. other factors, as appropriate.

2. Procedures for Variances from Classification as a Solid Waste, or Variances to be Classified as a Boiler, or for Non-waste Determinations. The administrative authority will

use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations:

a. the applicant must apply to the administrative authority for the variance or non-waste determination. The application must address the relevant criteria contained in this Subsection or LAC 33:V.105.O as applicable;

b. the administrative authority will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and/or radio broadcast in the locality where the recycler is located. The administrative authority will accept comment on the tentative decision for 30 days and may also hold a public hearing upon request or at his discretion. The administrative authority will issue a final decision after receipt of comments and after a hearing (if any);

c. in the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in LAC 33:V.105.K or LAC 33:V.105.O upon which a variance or non-waste determination has been based, the applicant shall send a description of the change in circumstances to the administrative authority. The administrative authority may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination;

d. variances and non-waste determinations issued after June 20, 2017 shall be effective for a fixed term not to exceed 10 years. If a facility re-applies for a variance or non-waste determination within 180 days prior to the end of the term, the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the administrative authority; and

e. facilities receiving a variance or non-waste determination issued after June 20, 2017 must provide notification as required by LAC 33:V.105.Q. Facilities that have already been granted a variance or non-waste determination prior to June 20, 2017 by the administrative authority under LAC 33:V.105.K or LAC 33:V.105.O shall continue to operate under the previously granted variance or determination, unless there is a change in the facility's process or materials.

3. Standards and criteria for non-waste determinations are listed below.

a. An applicant may apply to the administrative authority for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in Subparagraphs b or c of this Paragraph, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (e.g., one of the solid waste variances under LAC 33:V.105.O.2.c).

b. The administrative authority may grant a non-waste determination for hazardous secondary material which

is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in LAC 33:V.105.R and on the following criteria:

i. the extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

ii. whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

iii. whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

iv. other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under LAC 33:V.109, *solid waste* and/or LAC 33:V.105.D.1.

c. The administrative authority may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in LAC 33:V.105.R and on the following criteria:

i. whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (e.g., based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

ii. whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

iii. whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (e.g., based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

iv. whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

v. other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under LAC 33:V.109, *solid waste* and/or LAC 33:V.105.D.1.

L. - N.5. ...

O. Variances from Classification as a Solid Waste

1. In accordance with the standards and criteria in Paragraph O.2 and the procedures in LAC 33:V.105.K.2 of this Section, the administrative authority may determine on a case-by-case basis that the following recycled materials are not solid waste(s):

- a. ...
- b. materials that are reclaimed and then reused within the original production process in which they were generated;
- c. ...
- d. hazardous secondary materials that are reclaimed in a continuous industrial process;
- e. hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate; and
- f. hazardous secondary materials that are transferred for reclamation under LAC 33:V.105.D.1.y and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards.

2. Standards and Criteria for Variances from Classification as a Solid Waste

- a. - b.vii. ...
- c. The administrative authority may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in LAC 33:V.105.R and on whether all of the following decision criteria are satisfied:
  - i. whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;
  - ii. whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;
  - iii. whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;
  - iv. whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and
  - v. whether the partially-reclaimed material is handled to minimize loss.

d. The administrative authority may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation under LAC 33:V.105.D.1.y and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status

standards. The administrative authority's decision will be based on the following criteria:

- i. the reclamation facility or intermediate facility shall demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to LAC 33:V.105.R;
- ii. the reclamation facility or intermediate facility shall satisfy the financial assurance as required under subpart H of 40 CFR part 261, July 2015, which is hereby incorporated by reference;
- iii. the reclamation facility or intermediate facility shall not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;
- iv. the intermediate or reclamation facility shall have the equipment and trained personnel needed to safely manage the hazardous secondary material and shall meet emergency preparedness and response requirements under 40 CFR part 261, subpart M, July 2015, which is hereby incorporated by reference;
- v. if residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility shall have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and
- vi. the intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.

P. - P.2. ...

Q. Notification Requirements for Hazardous Secondary Materials

1. Facilities managing hazardous secondary materials under variances or non-waste determinations granted under LAC 33:V.105.O or LAC 33:V.105.K (or the exclusions of LAC 33:V.105.D.1.x, LAC 33:V.105.D.1.y, or LAC 33:V.105.D.1.z), issued after June 20, 2017 must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the administrative authority using hazardous waste activity Form HW-1 that includes the following information:

- a. the name, address, and EPA ID number (if applicable) of the facility;
- b. the name and telephone number of a contact person;
- c. the NAICS code of the facility;

d. the regulation under which the hazardous secondary materials will be managed;

e. when the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

f. a list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

g. for each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

h. the quantity of each hazardous secondary material to be managed annually; and

i. the certification (included in hazardous waste activity Form HW-1) signed and dated by an authorized representative of the facility.

2. If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the administrative authority within 30 days using hazardous waste activity Form HW-1. For purposes of this Section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least one year.

#### R. Legitimate Recycling of Hazardous Secondary Materials

1. Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this Subsection.

2. Factor 1 requires that legitimate recycling shall involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

a. contributes valuable ingredients to a product or intermediate; or

b. replaces a catalyst or carrier in the recycling process; or

c. is the source of a valuable constituent recovered in the recycling process; or

d. is recovered or regenerated by the recycling process; or

e. is used as an effective substitute for a commercial product.

3. Factor 2 requires that the recycling process shall produce a valuable product or intermediate. The product or intermediate is valuable if it is:

a. sold to a third party; or

b. used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

4. Factor 3 requires that the generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material shall be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

5. Factor 4 requires that the product of the recycling process must be comparable to a legitimate product or intermediate:

a. where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

i. the product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals, common acids, common chemicals, or refined petroleum products); or

ii. the hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling); or

b. where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

i. the product of the recycling process does not exhibit a hazardous characteristic as defined in LAC 33:V.4903 that analogous products do not exhibit; and

ii. the concentrations of any hazardous constituents found in LAC 33:V.3105, Table 1 that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents; or

c. if the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per Subparagraphs a or b of this Paragraph, the recycling still may be shown to be legitimate, if it meets the following specified requirements.

i. The person performing the recycling shall conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate.

ii. The recycling can be shown to be legitimate based on: lack of exposure from toxics in the product, or lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the product made using recycled material does not contain levels of hazardous constituents that pose a significant human health or environmental risk; and the documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased.



iii. The person performing the recycling must notify the administrative authority of this activity using hazardous waste activity Form HW-1.

d. The product of the recycling process is comparable to a legitimate product or intermediate if the requirements of LAC 33:V.105.R.5.a, b, or c of this Section are met. Once the requirements of one of these Subparagraphs are met, there is no need to determine whether the requirements of any other of these Subparagraphs are also met.

6. Pre-2008 exclusions and their relationship to the legitimacy factors are described in this Paragraph.

a. All four legitimacy factors of LAC 33:V.105.R apply to the pre-2008 exclusions.

b. Determination of legitimacy is a self-implementing process; documentation is not required for the pre-2008 exclusions, except when the recycling of the hazardous secondary material must be evaluated under LAC 33:V.105.R.5.c.

c. Pre-2008 exclusions are not subject to the notification requirements of LAC 33:V.105.Q unless the hazardous secondary material is unable to meet the technical requirements of LAC 33:V.105.R.5.a or b. Solvent wipes managed under the exclusion at LAC 33:V.105.D.1.w are not subject to notification unless the requirements of the exclusion are not met.

d. The option for a recycling facility to be verified under the exclusion of LAC 33:V.105.D.1.y applies to the recycling of those hazardous secondary materials that would otherwise be regulated as hazardous waste and does not apply to materials already excluded under one or more of the pre-2008 exclusions (except as provided in LAC 33:V.105.R.6.e).

e. If a hazardous secondary material is subject to material-specific or facility-specific management conditions in LAC 33:V.105.D.1 when reclaimed, such a material is not eligible for exclusion under LAC 33:V.105.D.1.x or y (“under control of generator” or “verified recycler” exclusions). The exclusions in LAC 33:V.105.D.1 that are subject to material-specific management conditions when reclaimed and are thus not eligible for exclusion under LAC 33:V.105.D.1.x or y are the following:

i. spent wood preserving solutions (LAC 33:V.105.D.1.i) if recycled on site; shredded circuit boards (LAC 33:V.105.D.1.n);

ii. mineral processing spent materials (LAC 33:V.105.D.1.p);

iii. spent caustic solutions from petroleum refining liquid treating processes (LAC 33:V.105.D.1.s);

iv. cathode ray tubes (LAC 33:V.105.D.1.v);

v. oil-bearing hazardous secondary materials that are generated at a petroleum refinery and recovered oil, (LAC 33:V.105.D.1.l) if reclaimed at a refinery and petrochemical recovered oil from an associated organic chemical manufacturing facility (LAC 33:V.105.D.1.r); and

vi. oil-bearing hazardous secondary materials that are generated at a petroleum refinery and recovered oil (LAC 33:V.105.D.1.l) that are reclaimed at a facility other than a refinery are eligible for exclusion under LAC 33:V.105.D.1.x or y.

7. General information pertaining to solid waste exclusions, materials contained in units, and pre-existing

variances and non-waste determinations are described in this Paragraph.

a. The “contained” standard defined in LAC 33:V.109 does not require a specific type of management unit like a container (i.e., all materials are not required to be stored in containers). This is a performance-based standard. The specific technical requirements depend on the type of material that is being managed.

b. Materials subject to the pre-2008 exclusions do not have to be *contained*, as defined in LAC 33:V.109. However, hazardous secondary materials that have no analogous raw material, even if subject to one or more of the pre-2008 exclusions, shall be contained.

c. If there has been an accidental release from a unit used to manage secondary hazardous materials, it does not create a presumption that the material remaining in the unit is not *contained* as defined in LAC 33:V.109.

d. The new requirements for variances and waste determinations do not supersede any of the pre-2008 solid waste exclusions, or other prior solid waste determinations or variances, including determinations made in letters of interpretation and inspection reports. If a hazardous secondary material has been determined not to be a solid waste for whatever reason, such a determination remains in effect, unless there is a change in process or materials. Facilities that have already been granted a variance or non-waste determination by the department prior to June 20, 2017 shall continue to operate under the conditions of the previously granted variance or determination.

8. Closed-loop recycling, analytical testing requirements, and legitimate recycling under LAC 33:V.105.R.5 are described in this Paragraph.

a. Analytical testing is not generally required to make legitimacy determinations under LAC 33:V.105.R.5. A company may use its knowledge of the material it uses and of the recycling process to make its legitimacy determinations. As with any solid and hazardous waste determination, a person may use knowledge of the materials used, the hazardous secondary material, product, or intermediate he recycles and of the recycling process to make legitimate recycling determinations.

b. Recycling meets legitimacy factor 4 of LAC 33:V.105.R.5 with no analytical testing and/or with no further demonstration of meeting this legitimacy factor required under any one of the following circumstances:

i. the hazardous secondary materials are returned to the original process or processes from which they were generated, such as in concentrating metals in minerals processing;

ii. the recycled product meets widely-recognized commodity specifications and there is no analogous product made from raw materials (such as scrap metal being reclaimed into metal commodities). For specialty products such as specialty batch chemicals or specialty metal alloys, customer specifications would be sufficient;

iii. the recycled product has an analogous product made from virgin materials, but meets widely-recognized commodity specifications which address the hazardous constituents (such as spent solvents being reclaimed into solvent products); or

iv. the person recycling has the necessary knowledge, such as knowledge about the incoming

hazardous secondary material and the recycling process, to be able to demonstrate that the product of recycling does not exhibit a hazardous characteristic and contains hazardous constituents at levels comparable to or lower than those in products made from virgin materials.

c. If the hazardous secondary materials are being returned to the original production process, then there is no analogous product and legitimacy factor 4 of LAC 33:V.105.R.5 is met. The person conducting the recycling does not need to do any further analysis for the purpose of determining compliance with this factor. For example, recycling that takes place under the closed loop recycling exclusion is an example of manufacturing that consistently includes the hazardous secondary material being returned to the original process from which it was generated and that would therefore automatically meet legitimacy factor 4 of LAC 33:V.105.R.5. Materials re-used within an ongoing industrial process are neither disposed of nor abandoned. Another example includes primary metals production where hazardous secondary materials are returned to the production process to ensure that all the valuable metals are extracted from the ore. This would be another process that would meet legitimacy factor 4 of LAC 33:V.105.R.5 with no further analysis needed.

d. If a chemical product made from a hazardous secondary material has an analogous product made from raw materials and does not exhibit a hazardous characteristic that the analogous product does not exhibit, and the concentration of hazardous constituents are comparable to those in analogous products, the fourth legitimacy factor of LAC 33:V.105.R.5 is met. For example, weak acid by-products that are concentrated into stronger acids and undergo extensive QA/QC processes to assure the quality of the concentrated acids.

e. For the purposes of LAC 33:V.105.R.5 widely-recognized commodity standards and specifications include those standards and specifications that are used throughout an industry, and that are widely available to anyone producing the product e.g., in safety data sheets (SDSs), on-line vendor specifications, sales literature, customer specifications, ASTM standards, and others.

f. Valid comparisons for the purpose of LAC 33:V.105.R.5 include, but are not limited to:

i. the hazardous secondary material that is being recycled directly (i.e., without reclamation) as compared to the virgin raw material or ingredient that the hazardous secondary material is replacing;

ii. the hazardous secondary material after reclamation that is being recycled as compared to the virgin raw material or ingredient that the reclaimed hazardous secondary material is replacing;

iii. the product/intermediate that results from recycling the hazardous secondary material as compared to the product/intermediate that results from using the virgin raw material or ingredient that the hazardous secondary material is replacing; or

iv. the product/intermediate that results from recycling the hazardous secondary material as compared to a substitute product/intermediate that is made without the hazardous secondary material by a different company or by the same company at a different site or through a different process.

g. Closed-loop recycling is an example of a manufacturing process where the hazardous secondary material is returned to the original process from which it was generated. The reference in LAC 33:V.105.R.5 to hazardous secondary materials returned to the original process is not limited to closed-loop recycling, nor must the hazardous secondary material be returned to the same unit in which it was generated. For the purposes of LAC 33:V.105.R.5, a hazardous secondary material is returned to the original process if it is returned to the same production process or processes where it was generated; if it is returned to other production processes from which it was derived; if it is returned via closed-loop or open-loop; if it is returned from on-site or off-site; if it is returned from second, third, or later generation use of the hazardous secondary material, product, or intermediate; or if it is returned as part of the long-established recycling of such hazardous secondary material in connection with the manufacturing or use, both on-site and off-site, of a product or intermediate made with the hazardous secondary material. Production process or processes include those activities that tie directly into the manufacturing operation and those activities that are the primary operation at the establishment.

h. Recycling meets legitimacy factor 4 of LAC 33:V.105.R.5 if the hazardous secondary material is returned to the original production process to produce a product.

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), amended by the Office of Secretary, Legal Division, LR 43:1151 (June 2017).

## §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.

\* \* \*

*Accumulated Speculatively*—a material is *accumulated speculatively* if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, (such as where material is stored in batch tanks, continuous-flow tanks, waste piles, or containment buildings), the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under LAC 33:V.105.D.3 are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however. For example, the following materials are either excluded from the definition of solid waste, or are solid wastes, and therefore are not included in any speculative accumulation calculations:

1. scrap metal that is excluded under LAC 33:V.105.D.1.m;
2. commercial chemical products that are not used in a manner constituting disposal (unless they are applied to the land and that is their ordinary use), and are not burned for energy recovery (unless they are themselves fuels) (LAC 33:V.109, *solid waste*, 3);
3. industrial ethyl alcohol that is reclaimed (LAC 33:V.4105.A.1.a);
4. fuels produced from the refining of oil-bearing hazardous waste ( LAC 33:V.4105.A.1.c);
5. wastes from growing and harvesting of agricultural crops (LAC 33:V.105.D.2.b.i);
6. wastes from raising of animals, including animal manures (LAC 33:V.105.D.2.b.ii);
7. mining overburden returned to the mine site (LAC 33:V.105.D.2.c);
8. used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment (LAC 33:V.105.D.2.m);
9. used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products (LAC 33:V.105.D.2.o);
10. materials excluded under closed loop recycling with reclamation (LAC 33:V.105.D.1.h) or closed loop recycling without reclamation (LAC 33:V.109, *solid waste*, 5.a.iii);

11. solvent wipes excluded under LAC 33:V.105.D.1.w.

\* \* \*

*Analogous Product*—a product made of raw materials or made by competing companies with similar specifications for which a hazardous secondary material substitutes.

*Analogous Raw Material*—a material for which a hazardous secondary material substitutes and which serves the same function and has similar physical and chemical properties as the hazardous secondary material.

\* \* \*

*Contained*—held in a unit (including *land-based unit* as defined LAC 33:V.109) that meets the following criteria:

1. the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

2. the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit;

3. the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions;

4. hazardous secondary materials in units that meet the applicable requirements of LAC 33:V.Subpart 1 are presumptively contained.

\* \* \*

*Facility*—

1. all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments or a combination of them); or

2. for the purpose of implementing corrective action under LAC 33:V.3322, all the contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective actions under RCRA section 3008(h);

3. notwithstanding Paragraph 2 of this definition, a remediation waste management site is not a facility that is subject to LAC 33:V.3322, but is subject to corrective action requirements if the site is located within such a facility.

\* \* \*

*Hazardous Secondary Material*—a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under LAC 33:V.Subpart 1.

*Hazardous Secondary Material Generator*—any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this LAC

33:V.Subpart 1, “generating facility” means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. Under LAC 33:V.105.D.1.x (“hazardous secondary materials reclaimed under the control of the generator”), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

\*\*\*

*Intermediate*—(as used in LAC 33:V.105.R) a substance formed as a stage in the manufacture of a desired end-product.

*Intermediate Facility*—any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

\*\*\*

*Land-Based Unit*—an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

\*\*\*

*Pre-2008 Exclusions*—the exclusions from the definition of solid waste and hazardous waste exemptions in effect prior to EPA’s 2008 promulgation of revisions to the definition of solid waste to exclude certain hazardous secondary materials from hazardous waste regulation in 73 *Federal Register* 64668 et seq., October 30, 2008, effective December 29, 2008.

\*\*\*

*Reclaimed Material*—a material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of LAC 33:V.105.D.1.x and LAC 33:V.105.D.1.y, smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in LAC 33:V.3001.D.1-3 of this Subpart, and if the residuals meet the requirements specified in LAC 33:V.3025 (Regulation of Residues).

\*\*\*

*Remanufacturing*—processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

\*\*\*

*Sham Recycling*—a hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in LAC 33:V.105.R.

\*\*\*

*Solid Waste*—

1.a. any discarded material that is not excluded by LAC 33:V.105.D.1 or that is not excluded by a variance or non-waste determination granted under LAC 33:V.105.K or O;

1.b. - 2.c. ...

d. sham recycled as defined under LAC 33:V.109, *sham recycling*

3. - 3.b.ii....

c. *reclaimed*—materials noted with an “\*” in column 3 of Table 1 in this Chapter are solid wastes when reclaimed, except as provided under LAC 33:V.105.D.1.p, or unless they meet the requirements of LAC 33:V.105.D.1.x, LAC 33:V.105.D.1.y, or 261.4(a)(27), as incorporated by reference at LAC 33:V.105.D.1.z. Materials noted with a “---” in column 3 of Table 1 are not solid wastes when reclaimed;

3.d. - 6....

Table 1				
	Use Constituting Disposal	Energy Recovery/ Fuel	Reclamation except as Provided in LAC 33:V. 105.D.1.p for Mineral Processing Secondary Materials, LAC 33:V.105.D.1.x, LAC 33:V.105.D.1.y, or LAC 33:V.105.D.1.z.	Speculative Accumulation
	(1)	(2)	(3)	(4)
Spent Materials	*	*	*	*
Sludges (listed in LAC 33:V.4901)	*	*	*	*
Sludges exhibiting a characteristic of hazardous waste	*	*	.....	*
By-products (listed in LAC 33:V.4901)	*	*	*	*
By-products exhibiting a characteristic of hazardous waste	*	*	.....	*
Commercial chemical products (listed in LAC 33: V.4901.E and F)	*	*	.....	.....
Scrap metal that is not excluded under LAC 33:V.105. D.1.m	*	*	*	*

\*\*\*

*Toll Manufacturer*—(for purposes of LAC 33:V.105.D.1.x) a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

*Tolling Contractor*—(for purposes of LAC 33:V.105.D.1.x) a person who arranges for the production of

a product or intermediate made from specified unused materials through a written contract with a toll manufacturer.

\* \* \*

*Transfer Facility*—any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

**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), LR 41:2600 (December 2015), LR 42:565 (April 2016), LR 43:1159 (June 2017).

**Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits**

**§322. Classification of Permit Modifications**

A. The following is a listing of classifications of permit modifications made at the request of the permittee.

Modifications	Class
A.1. - A.7. ...	
8. Changes to remove permit conditions applicable to a unit excluded under the provisions of LAC 33:V.105.D.1.x, LAC 33:V.105.D.1.y, or LAC 33:V.105.D.1.z.	1 <sup>1</sup>
9. Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of LAC 33:V.105.D.1.x, LAC 33:V.105.D.1.y, or LAC 33:V.105.D.1.z.	1 <sup>1</sup>
B. - O.4. ...	
* * *	

**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 13:433 (August 1987), LR 16:614 (July 1990), LR 17:658 (July

1991), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:815 (September 1996), amended by the Office of the Secretary, LR 24:2245 (December 1998), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:436 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:270 (February 2000), LR 27:292 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 34:620 (April 2008), LR 34:992 (June 2008), amended by the Office of Secretary, Legal Division, LR 43:1161 (June 2017).

Herman Robinson  
General Counsel

1706#014

**RULE**

**Office of the Governor  
Board of Pardons**

**Clemency Consideration Eligibility and  
Application Filing (LAC 22:V.205 and 209)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons has amended its rules in LAC 22:V.205 and 209. The Rule revises application filing procedures. Section 205 provides the application form is available on the board's webpage and further sets out additional documentation that may be submitted with the application. Technical revisions to §209 provide that additional documentation relevant to the application may be submitted after the applicant has placed the required advertisement in the local journal.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part V. Board of Pardons**

**Chapter 2. Clemency**

**§205. Application Filing Procedures**

**A. All Applicants**

1. Every application must be submitted on the form approved by the Board of Pardons which is made available on the board's webpage at [www.doc.la.gov](http://www.doc.la.gov).

2. It is the applicant's responsibility to submit a complete application. The application shall not be processed until it is complete. If any required information does not apply, the response should be "NA".

3. Each answer must be answered fully, truthfully, and accurately. The submission of any false information is grounds for immediate denial of the application.

4. Additional documentation that is relevant to the application may be also be submitted, including letters of support on behalf of the applicant, military DD-214 if applicable, other attachments that the applicant would like to include that are relevant to the application.

5. The application must be filled out completely, signed, dated, and notarized where required.

**B. In addition to the information submitted by application, the following required documents must be attached as they apply to each applicant.**

1. **Incarcerated Applicants.** Any applicant presently confined in any institution must attach a current master prison record and have the signature of a classification officer verifying the conduct of the applicant and a copy of

conduct report. Applicants sentenced to death must attach proof of direct appeal denial.

2. Parolees. Applicants who have completed parole supervision must attach a copy of their parole certificate, a certified judgment and sentence on each conviction for which they are applying for a pardon; a certified statement from the clerk of court that all fines, fees, and court costs (including restitution and probation fees) have been paid in full; a current credit report (current within 90 days of date of application), and proof of residence.

3. Probationers. Applicants who have completed the probationary period must attach a certified copy of sentencing minutes or copy of automatic first offender pardon, a certified judgment and sentence on each conviction for which they are applying for a pardon; a certified statement from the clerk of court that all fines, fees, and court costs (including restitution and probation fees) have been paid in full; a current credit report (current within 90 days of date of application), and proof of residence.

4. First Offender Pardons [R.S. 15:572(B)]. Applicants who have received an automatic first offender pardon must attach a copy of the automatic first offender pardon.

C. No additional information or documents may be submitted until applicant has been notified that he/she will be given a hearing. The Board of Pardons will not be responsible for items submitted prior to notification that a hearing will be granted.

D. Reapplication upon Denial. Any applicant denied by the board shall be notified, in writing, of the reason(s) for the denial and thereafter may file a new application as indicated below.

1. Applicants Sentenced to Life Imprisonment. Any applicant with a life sentence may reapply five years after the initial denial and every five years thereafter. Applicant must also meet the criteria stated in §203.C.2.a-d.

2. Other. Applicants without a life sentence may file a new application two years from date of the letter of denial.

3. Fraudulent Documents or Information. Any fraudulent documents or information submitted by an applicant will result in an automatic denial by the board and no new application will be accepted until four years have elapsed from the date of letter of denial.

4. Governor Granted Clemency. The Office of the Governor will notify an applicant if any clemency is granted. Any otherwise eligible person who has been granted any form of executive clemency by the governor may not reapply for further executive clemency for at least four years from the date that such action became final.

5. Denial/No Action Taken by Governor after Favorable Recommendation. The board shall notify an applicant after its receipt of notification from the governor that the board's favorable recommendation was denied or no action was taken.

a. If the applicant is notified of denial by the governor, the applicant may not reapply for clemency for at least four years from the date of the denial. The application filing procedures in Subsections A-D.3 of this Section shall apply.

b. If the applicant is notified that no action was taken by the governor, the applicant may request reconsideration of the board's favorable recommendation.

Applicant must submit a re-application within one year from the date on the board's notification to the applicant of no action taken by the governor.

i. Upon receipt of the re-application in accordance with this section, the board shall set the matter for an administrative review. At least 30 days prior to the scheduled docket date for administrative review, the board shall give written notice of the date, time, and place to the following:

(a). the district attorney and sheriff of the parish in which the applicant was convicted and, in Orleans Parish, the superintendent of police;

(b). the applicant;

(c). the victim who has been physically or psychologically injured by the applicant (if convicted of that offense), and the victim's spouse or next of kin, unless the injured victim's spouse or next of kin advises the board, in writing, that such notification is not desired;

(d). the spouse or next of kin of a deceased victim when the offender responsible for the death is the applicant (if convicted of that offense), unless the spouse or next of kin advises the board in writing that such notification is not desired;

(e). the Crime Victim Services Bureau of the Department of Public Safety and Corrections; and

(f). any other interested person who has notified the board of pardons, in writing, requesting such notice providing their name and return address.

c. The board shall evaluate the record of the applicant. Action on the re-application may include setting the matter for a clemency hearing, affirming the board's previous favorable recommendation, or denying the re-application.

d. If the applicant does not apply for reconsideration within the one-year period, the application filing procedures in Subsections A-D.3 of this Section shall apply.

E. Notice of Action Taken on Application. After review of application for clemency by the board, applicants shall be notified, in writing, of action taken by the board. Action can include granting a hearing before the board or denial of a hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2255 (August 2013), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:42 (January 2015), amended by the Office of the Governor, Board of Pardons, LR 42:1087 (July 2016), LR 43:1161 (June 2017).

## §209. Hearing Granted

A. After notice to an applicant that a hearing has been granted the applicant must provide the Board of Pardons office with proof of advertisement within 90 days from the date of notice to grant a hearing. Advertisement must be published in the official journal of the parish where the offense occurred. This ad must state:

"I (applicant's name), (DOC number), have applied for clemency for my conviction of (crime). If you have any comments, contact the Board of Pardons (225) 342-5421."

B. At this stage of the process, along with the proof of advertisement published in the local journal, the applicant may submit additional information, (e.g., letters of

recommendation and copies of certificates of achievement and employment/residence agreement).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2256 (August 2013), amended LR 43:1162 (June 2017).

Sheryl M. Ranatza  
Board Chair

1706#053

## RULE

### Office of the Governor Division of Administration Office of Facility Planning and Control

Capital Improvement Projects  
Procedure Manual (LAC 34:III.131)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the provisions of R.S. 39:121, the Division of Administration, Office of Facility Planning and Control has amended LAC *Title 34, Government Contracts, Procurement and Property Control*, Part III, Facility Planning and Control, Chapter 1, Capital Improvement Projects, Section 131, Louisiana Building Code for state-owned buildings. These rule changes are the result of a review by Facility Planning and Control of the editions of the codes specified in R.S. 40:1722 and the most recent editions of these codes. This review has led to the determination that new editions of these codes will provide a higher standard than the currently referenced editions. Facility Planning and Control is, therefore, establishing the appropriate editions of these codes as the standards.

#### Title 34

### GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

#### Part III. Facility Planning and Control

#### Chapter 1. Capital Improvement Projects

#### Subchapter A. Procedure Manual

#### §131. Louisiana Building Code

A. R.S. 40:1722 establishes the Louisiana building code and directs that the following codes be established as the standards as minimum standards for this code. These codes shall be established as constituting the code in the editions indicated:

1. the *Life Safety Code*, standard 101, 2015 edition as published by the National Fire Protection Association;

2. the *International Plumbing Code*, 2015 edition as published by the International Code Council and amended by R.S. 40:1730.28.1;

3. the *International Building Code*, 2015 edition as published by the International Code Council, not including chapter 1, administration, chapter 11, accessibility, and chapter 27, electrical;

4. the *International Mechanical Code*, 2015 edition as published by the International Code Council;

5. the *National Electric Code* (NFPA no. 70), 2014 edition as published by the National Fire Protection Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Department of Facility Planning and Control, LR 8:473 (September 1982), amended by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 11:849 (September 1985), amended by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 33:2649 (December 2007), LR 37:3260 (November 2011), LR 39:86 (January 2013), LR 39:2493 (September 2013), effective on January 1, 2014, LR 43:1163 (June 2017), effective on July 1, 2017.

Mark A. Moses  
Director

1706#007

## RULE

### Office of the Governor Real Estate Commission

Disbursement of Escrow Deposits (LAC 46:LXVII.2901)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Real Estate Commission has amended LAC 46:LXVII.Chapter 29. The Rule provides real estate brokers who have been unable to reach parties of a failed sale to return the escrow deposit monies, the additional option of transferring the funds to the treasurer as unclaimed funds in accordance with the Uniform Unclaimed Property Act of 1997.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXVII. Real Estate

#### Subpart 1. Real Estate

#### Chapter 29. Disbursement of Escrow Deposits

#### §2901. Escrow Disputes

A. - A.4. ...

5. disburse the funds in accordance with the Uniform Unclaimed Property Act of 1997 as set forth in R.S. 9:151 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006), LR 34:2422 (November 2007), LR 37:3007 (October 2011), LR 42:53 (January 2016), LR 43:1163 (June 2017).

Bruce Unangst  
Executive Director

1706#001

## RULE

### Department of Health Board of Examiners of Psychologists

#### Ethical Code of Conduct of Psychologists (LAC 46:LXIII.Chapter 13)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners of Psychologists has adopted LAC 46:LXIII.1301 through 1321.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXIII. Psychologists

#### Subpart 1. General Provisions

#### Chapter 13. Ethical Standards of Psychologists

##### §1301. Preamble

A. Psychologists work to develop a valid and reliable body of scientific knowledge based on research. They may apply that knowledge to human behavior in a variety of contexts. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administration, social interventionists, court mediator, and expert witness. Their goal is to broaden knowledge of behavior and, where appropriate, to apply it pragmatically to improve the condition of both the individual and society. Psychologists respect the central importance of freedom of inquiry and expression in research, teaching, and publication. Psychologists respect and protect human and civil rights, and do not knowingly participate in or condone unfair discriminatory practices. They also strive to help the public in developing informed judgments and choices concerning human behavior. These rules set standards and guidelines are established for the welfare and protection of the individuals and groups with whom psychologists work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 43:1164 (June 2017).

##### §1303. Resolving Ethical Issues

A. Misuse of Psychologists' Work. If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation.

B. Conflicts between Ethics and Law, Regulations, or Other Governing Legal Authority. If psychologists' ethical responsibilities conflict with law, regulations or other governing legal authority, psychologists clarify the nature of the conflict, and take reasonable steps to resolve the conflict consistent with this Chapter. Under no circumstances may this standard be used to justify or defend violating human rights.

C. Conflicts between Ethics and Organizational Demands. If the demands of an organization with which

psychologists are affiliated or for whom they are working are in conflict with this Chapter, psychologists clarify the nature of the conflict, make known their commitment to this Chapter and take reasonable steps to resolve the conflict consistent with this Chapter. Under no circumstances may this standard be used to justify or defend violating human rights.

D. Informal Resolution of Ethical Violations. When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved.

E. Reporting Ethical Violations. If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution under Subsection D of this Section, or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when psychologists have been retained to review the work of another psychologist whose professional conduct is in question.

F. Improper Complaints. Psychologists do not file or encourage the filing of ethics complaints that are made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

G. Unfair Discrimination against Complainants and Respondents. Psychologists do not deny any person employment, advancement, admissions to academic or other programs, tenure, or promotion, based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings or considering other appropriate information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 43:1164 (June 2017).

##### §1305. Competence

###### A. Boundaries of Competence

1. Psychologists provide services, teach and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study or professional experience.

2. Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language or socioeconomic status is essential for effective implementation of their services or research, psychologists have or obtain the training,



experience, consultation or supervision necessary to ensure the competence of their services, or they make appropriate referrals, except in emergencies.

3. Psychologists planning to provide services, teach or conduct research involving populations, areas, techniques or technologies new to them undertake relevant education, training, supervised experience, consultation or study.

4. When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are not denied if they make a reasonable effort to obtain the competence required by using relevant research, training, consultation or study.

5. In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect clients/patients, students, supervisees, research participants, organizational clients and others from harm.

6. When assuming forensic roles, psychologists are or become reasonably familiar with the judicial or administrative rules governing their roles.

B. Providing Services in Emergencies. In emergencies, when psychologists provide services to individuals for whom other mental health services are not available and for which psychologists have not obtained the necessary training, psychologists may provide such services in order to ensure that services are not denied. The services are discontinued as soon as the emergency has ended or appropriate services are available.

C. Maintaining Competence. Psychologists undertake ongoing efforts to develop and maintain their competence.

D. Bases for Scientific and Professional Judgments. Psychologists' work is based upon established scientific and professional knowledge of the discipline.

E. Delegation of Work to Others. Psychologists who delegate work to employees, supervisees or research or teaching assistants or who use the services of others, such as interpreters, take reasonable steps to:

1. avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity;

2. authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training or experience, either independently or with the level of supervision being provided; and

3. see that such persons perform these services competently.

F. Personal Problems and Conflicts

1. Psychologists refrain from initiating an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

2. When psychologists become aware of personal problems that may interfere with their performing

work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance and determine whether they should limit, suspend or terminate their work-related duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 43:1164 (June 2017).

### **§1307. Human Relations**

A. Unfair Discrimination. In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status or any basis proscribed by law.

B. Sexual Harassment. Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologist's activities or roles as a psychologist and that either:

1. is unwelcome, is offensive or creates a hostile workplace or educational environment, and the psychologist knows or is told this; or

2. is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts.

C. Other Harassment. Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language or socioeconomic status.

D. Avoiding Harm. Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

E. Multiple Relationships

1. A multiple relationship occurs when a psychologist is in a professional role with a person, and

a. at the same time is in another role with the same person;

b. at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship; or

c. promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

2. A psychologist shall not enter into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.

3. Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.

4. If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with this Chapter.

5. When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they:

- a. obtain written informed consent from all parties and/or court order; and
- b. clarify role expectations; and
- c. clarify the extent of confidentiality with regard to current roles, and thereafter as changes occur.

F. Conflict of Interest. Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial or other interests or relationships could reasonably be expected to:

1. impair their objectivity, competence or effectiveness in performing their functions as psychologists, or
2. expose the person or organization with whom the professional relationship exists to harm or exploitation.

G. Third-Party Requests for Services. When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality.

H. Exploitative Relationships. Psychologists do not exploit persons over whom they have supervisory, evaluative or other authority such as clients/patients, students, supervisees, research participants and employees.

I. Cooperation with Other Professionals. When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their clients/patients effectively and appropriately.

#### J. Informed Consent

1. When psychologists conduct research or provide assessment, therapy, counseling or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Chapter.

2. For persons who are legally incapable of giving informed consent, psychologists nevertheless:

- a. provide an appropriate explanation;
- b. seek the individual's assent;
- c. consider such persons' preferences and best interests; and
- d. obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law.

3. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual's rights and welfare.

4. When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

5. Psychologists appropriately document written or oral consent, permission, and assent.

#### K. Psychologists Delivering Services to or through Organizations

1. Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about:

- a. the nature and objectives of the services;
- b. the intended recipients;
- c. which of the individuals are clients;
- d. the relationship the psychologist will have with each person and the organization;
- e. the probable uses of services provided and information obtained;
- f. who will have access to the information; and
- g. limits of confidentiality.

2. As soon as feasible, psychologists provide information about the results and conclusions of such services to appropriate persons. If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

L. Interruption of Psychological Services. Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation or retirement or by the client's/patient's relocation or financial limitations.

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HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 43:1165 (June 2017).

### **§1309. Privacy and Confidentiality**

A. Maintaining Confidentiality. Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship.

#### B. Discussing the Limits of Confidentiality

1. Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship:

- a. the relevant limits of confidentiality; and
- b. the foreseeable uses of the information generated through their psychological activities.

2. Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

3. Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.

#### C. Recording

1. Before recording the voices or images of individuals to whom they provide services, psychologists obtain permission from all such persons or their legal representative.

#### D. Minimizing Intrusions on Privacy

1. Psychologists include in written and oral reports and consultations only information germane to the purpose for which the communication is made.

2. Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons who have a legal or legitimate right to such information.

#### E. Disclosures

1. Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient or another legally authorized person on behalf of the client/patient unless prohibited by law.

2. Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to:

- a. provide needed professional services;
- b. obtain appropriate professional consultations;
- c. protect the client/patient, psychologist, or others from harm; or
- d. obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose.

#### F. Consultations

1. When consulting with colleagues psychologists do not disclose confidential information that reasonably could lead to the identification of a client/patient, research participant or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided.

2. When consulting with colleagues psychologists disclose information only to the extent necessary to achieve the purposes of the consultation.

#### G. Use of Confidential Information for Didactic or Other Purposes

1. Psychologists do not disclose in their writings, lectures or other public media, confidential, personally identifiable information concerning their clients/patients, students, research participants, organizational clients or other recipients of their services that they obtained during the course of their work, unless they take reasonable steps to disguise the person or organization, obtain written consent from the person or organization, or there is documented legal authorization for doing so.

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HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 43:1166 (June 2017).

### §1311. Advertising and Other Public Statements

#### A. Avoidance of False or Deceptive Statements

1. Public statements include but are not limited to paid or unpaid advertising, product endorsements, grant applications, licensing applications, other credentialing applications, brochures, printed matter, directory listings, personal resumes or curricula vitae or comments for use in media such as print or electronic transmission, statements in legal proceedings, lectures and public oral presentations and published materials.

2. Psychologists do not knowingly make public statements that are false, deceptive or fraudulent concerning their research, practice or other work activities or those of persons or organizations with which they are affiliated.

3. Psychologists do not make false, deceptive or fraudulent statements concerning:

- a. their training, experience or competence;
- b. their academic degrees;
- c. their credentials;
- d. their institutional or association affiliations;
- e. their services;
- f. the scientific or clinical basis for or results or degree of success of, their services;
- g. their fees; or
- h. their publications or research findings.

4. Psychologists claim degrees as credentials for their health services only if those degrees were earned from a regionally accredited educational institution, or were the basis for psychology licensure by the state in which they practice.

#### B. Statements by Others

1. Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

2. Psychologists do not compensate employees of press, radio, television or other communication media in return for publicity in a news item.

3. A paid advertisement relating to psychologists' activities must be identified or clearly recognizable as such.

C. Descriptions of Workshops and Non-Degree-Granting Educational Programs. To the degree to which they exercise control, psychologists responsible for announcements, catalogs, brochures or advertisements describing workshops, seminars or other non-degree-granting educational programs ensure that they accurately describe the audience for which the program is intended, the educational objectives, the presenters and the fees involved.

D. Media Presentations. When psychologists provide public advice or comment via print, Internet or other electronic transmission, they take precautions to ensure that statements:

1. are based on their professional knowledge, training or experience in accord with appropriate psychological literature and practice;
2. are otherwise consistent with this Chapter; and

3. do not indicate that a professional relationship has been established with the recipient.

E. Testimonials. Psychologists do not solicit testimonials from current therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence.

F. In-Person Solicitation. Psychologists do not engage, directly or through agents, in uninvited in person solicitation of business from actual or potential therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this prohibition does not preclude:

1. attempting to implement appropriate collateral contacts for the purpose of benefiting an already engaged therapy client/patient; or

2. providing disaster or community outreach services.

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HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 43:1167 (June 2017).

### **§1313. Record Keeping and Fees**

A. Documentation of Professional and Scientific Work and Maintenance of Records. Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain and dispose of records and data relating to their professional and scientific work in order to:

1. facilitate provision of services later by them or by other professionals;

2. allow for replication of research design and analyses;

3. meet institutional requirements;

4. ensure accuracy of billing and payments; and

5. ensure compliance with law.

B. Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work

1. Psychologists maintain confidentiality in creating, storing, accessing, transferring and disposing of records under their control, whether these are written, automated or in any other medium.

2. If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

3. Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice.

C. Withholding Records for Nonpayment. Psychologists may not withhold records under their control that are requested and needed for a client's/patient's emergency treatment solely because payment has not been received.

D. Fees and Financial Arrangements

1. As early as is feasible in a professional or scientific relationship, psychologists and recipients of psychological services reach an agreement specifying compensation and billing arrangements.

2. Psychologists' fee practices are consistent with law.

3. Psychologists do not misrepresent their fees.

4. If limitations to services can be anticipated because of limitations in financing, this is discussed with the recipient of services as early as is feasible.

5. If the recipient of services does not pay for services as agreed, and if psychologists intend to use collection agencies or legal measures to collect the fees, psychologists first inform the person that such measures will be taken and provide that person an opportunity to make prompt payment.

E. Barter with Clients/Patients. Barter is the acceptance of goods, services, or other nonmonetary remuneration from clients/patients in return for psychological services. Psychologists ordinarily refrain from accepting goods, services, or other non-monetary remuneration from patients or clients in return for psychological services because such arrangements create inherent potential for conflicts, exploitation, and distortion of the professional relationship. A psychologist may participate in bartering only if:

1. it is not clinically contraindicated; and

2. the resulting arrangement is not exploitative.

F. Accuracy in Reports to Payors and Funding Sources. In their reports to payors for services or sources of research funding, psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided or research conducted, the fees, charges or payments, and where applicable, the identity of the provider, the findings and the diagnosis.

G. Referrals and Fees. When psychologists pay, receive payment from or divide fees with another professional, other than in an employer-employee relationship, the payment to each is based on the services provided (clinical, consultative, administrative or other) and is not based on the referral itself.

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### **§1315. Education and Training**

A. Design of Education and Training Programs. Psychologists responsible for education and training programs take reasonable steps to ensure that the programs are designed to provide the appropriate knowledge and proper experiences, and to meet the requirements for licensure, certification or other goals for which claims are made by the program.

B. Descriptions of Education and Training Programs. Psychologists responsible for education and training programs take reasonable steps to ensure that there is a current and accurate description of the program content (including participation in required course- or program-related counseling, psychotherapy, experiential groups, consulting projects or community service), training goals and objectives, stipends and benefits and requirements that must be met for satisfactory completion of the program. This information must be made readily available to all interested parties.

C. Accuracy in Teaching

1. Psychologists take reasonable steps to ensure that course syllabi are accurate regarding the subject matter to be covered, bases for evaluating progress and the nature of course experiences. This standard does not preclude an

instructor from modifying course content or requirements when the instructor considers it pedagogically necessary or desirable, so long as students are made aware of these modifications in a manner that enables them to fulfill course requirements.

2. When engaged in teaching or training, psychologists present psychological information accurately.

D. Student Disclosure of Personal Information. Psychologists do not require students or supervisees to disclose personal information in course- or program-related activities, either orally or in writing, regarding sexual history, history of abuse and neglect, psychological treatment and relationships with parents, peers and spouses or significant others except if:

1. the program or training facility has clearly identified this requirement in its admissions and program materials; or

2. the information is necessary to evaluate or obtain assistance for students whose personal problems could reasonably be judged to be preventing them from performing their training- or professionally-related activities in a competent manner or posing a threat to the students or others.

E. Mandatory Individual or Group Therapy

1. When individual or group therapy is a program or course requirement, psychologists responsible for that program allow students in undergraduate and graduate programs the option of selecting such therapy from practitioners unaffiliated with the program.

2. Faculty who are or are likely to be responsible for evaluating students' academic performance do not themselves provide that therapy.

F. Assessing Student and Supervisee Performance

1. In academic and supervisory relationships, psychologists establish a timely and specific process for providing feedback to students and supervisees. Information regarding the process is provided to the student at the beginning of supervision.

2. Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

G. Sexual Relationships with Students and Supervisees. Psychologists do not engage in sexual relationships with students or supervisees who are in their department, agency, or training center or over whom psychologists have or are likely to have evaluative authority.

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HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 43:1168 (June 2017).

### **§1317. Research and Publication**

A. Institutional Approval. When institutional approval is required, psychologists provide accurate information about their research proposals and obtain approval prior to conducting the research. They conduct the research in accordance with the approved research protocol.

B. Informed Consent to Research

1. When obtaining informed consent psychologists inform participants about:

a. the purpose of the research, expected duration and procedures;

b. their right to decline to participate and to withdraw from the research once participation has begun;

c. the foreseeable consequences of declining or withdrawing;

d. reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort or adverse effects;

e. any prospective research benefits;

f. limits of confidentiality;

g. incentives for participation;

h. whom to contact for questions about the research and research participants' rights; and

i. they provide opportunity for the prospective participants to ask questions and receive answers.

2. Psychologists conducting intervention research involving the use of experimental treatments clarify to participants at the outset of the research:

a. the experimental nature of the treatment;

b. the services that will or will not be available to the control group(s) if appropriate;

c. the means by which assignment to treatment and control groups will be made;

d. available treatment alternatives if an individual does not wish to participate in the research or wishes to withdraw once a study has begun; and

e. compensation for or monetary costs of participating including, if appropriate, whether reimbursement from the participant or a third-party payor will be sought.

C. Informed Consent for Recording Voices and Images in Research. Psychologists obtain informed consent from research participants prior to recording their voices or images for data collection unless:

1. the research consists solely of naturalistic observations in public places, and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm; or

2. the research design includes deception, and consent for the use of the recording is obtained during debriefing.

D. Client/Patient, Student, and Subordinate Research Participants

1. When psychologists conduct research with clients/patients, students or subordinates as participants, psychologists take steps to protect the prospective participants from adverse consequences of declining or withdrawing from participation.

2. When research participation is a course requirement or an opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

E. Dispensing with Informed Consent for Research. Psychologists may dispense with informed consent only where research would not reasonably be assumed to create distress or harm and involves:

1. the study of normal educational practices, curricula, or classroom management methods conducted in educational settings;

2. only anonymous questionnaires, naturalistic observations or archival research for which disclosure of responses would not place participants at risk of criminal or civil liability or damage their financial standing, employability or reputation, and confidentiality is protected; or

3. the study of factors related to job or organization effectiveness conducted in organizational settings for which there is no risk to participants' employability, and confidentiality is protected; or

4. where otherwise permitted by law or federal or institutional regulations.

#### F. Offering Inducements for Research Participation

1. Psychologists make reasonable efforts to avoid offering excessive or inappropriate financial or other inducements for research participation when such inducements are likely to coerce participation.

2. When offering professional services as an inducement for research participation, psychologists clarify the nature of the services, as well as the risks, obligations and limitations.

#### G. Deception in Research

1. Psychologists do not conduct a study involving deception unless they have determined that the use of deceptive techniques is justified by the study's significant prospective scientific, educational or applied value and that effective nondeceptive alternative procedures are not feasible.

2. Psychologists do not deceive prospective participants about research that is reasonably expected to cause physical pain or severe emotional distress.

3. Psychologists explain any deception that is an integral feature of the design and conduct of an experiment to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the data collection, and permit participants to withdraw their data.

#### H. Debriefing

1. Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and they take reasonable steps to correct any misconceptions that participants may have of which the psychologists are aware.

2. If scientific or humane values justify delaying or withholding this information, psychologists take reasonable measures to reduce the risk of harm.

3. When psychologists become aware that research procedures have harmed a participant, they take reasonable steps to minimize the harm.

#### I. Humane Care and Use of Animals in Research

1. Psychologists acquire, care for, use, and dispose of animals in compliance with current federal, state and local laws and regulations, and with professional standards.

2. Psychologists trained in research methods and experienced in the care of laboratory animals supervise all procedures involving animals and are responsible for ensuring appropriate consideration of their comfort, health and humane treatment.

3. Psychologists ensure that all individuals under their supervision who are using animals have received instruction in research methods and in the care, maintenance and handling of the species being used, to the extent appropriate to their role.

4. Psychologists make reasonable efforts to minimize the discomfort, infection, illness and pain of animal subjects.

5. Psychologists use a procedure subjecting animals to pain, stress or privation only when an alternative procedure is unavailable and the goal is justified by its prospective scientific, educational or applied value.

6. Psychologists perform surgical procedures under appropriate anesthesia and follow techniques to avoid infection and minimize pain during and after surgery.

7. When it is appropriate that an animal's life be terminated, psychologists proceed rapidly, with an effort to minimize pain and in accordance with accepted procedures.

#### J. Reporting Research Results

1. Psychologists do not fabricate data.

2. If psychologists discover significant errors in their published data, they take reasonable steps to correct such errors in a correction, retraction, erratum or other appropriate publication means.

K. Plagiarism. Psychologists do not present portions of another's work or data as their own, even if the other work or data source is cited occasionally.

#### L. Publication Credit

1. Psychologists take responsibility and credit, including authorship credit, only for work they have actually performed or to which they have substantially contributed.

2. Principal authorship and other publication credits accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their relative status. Mere possession of an institutional position, such as department chair, does not justify authorship credit. Minor contributions to the research or to the writing for publications are acknowledged appropriately, such as in footnotes or in an introductory statement.

3. Except under exceptional circumstances, a student is listed as principal author on any multiple-authored article that is substantially based on the student's doctoral dissertation. Faculty advisors discuss publication credit with students as early as feasible and throughout the research and publication process as appropriate.

M. Duplicate Publication of Data. Psychologists do not publish, as original data, data that have been previously published. This does not preclude republishing data when they are accompanied by proper acknowledgment.

#### N. Sharing Research Data for Verification

1. After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release. This does not preclude psychologists from requiring that such individuals or groups be responsible for costs associated with the provision of such information.

2. Psychologists who request data from other psychologists to verify the substantive claims through reanalysis may use shared data only for the declared purpose. Requesting psychologists obtain prior written agreement for all other uses of the data.

O. Reviewers. Psychologists who review material submitted for presentation, publication, grant or research

proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

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### **§1319. Assessment**

#### **A. Bases for Assessments**

1. Psychologists base the opinions contained in their recommendations, reports and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings.

2. Except as noted in this section, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions and appropriately limit the nature and extent of their conclusions or recommendations.

3. When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

#### **B. Use of Assessments**

1. Psychologists administer, adapt, score, interpret or use assessment techniques, interviews, tests or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

2. Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation.

3. Psychologists use assessment methods that are appropriate to an individual's language preference and competence, unless the use of an alternative language is relevant to the assessment issues.

#### **C. Informed Consent in Assessments**

1. Psychologists obtain informed consent for assessments, evaluations or diagnostic services, except when:

a. testing is mandated by law or governmental regulations;

b. informed consent is implied because testing is conducted as a routine educational, institutional or organizational activity (e.g., when participants voluntarily agree to assessment when applying for a job); or

c. one purpose of the testing is to evaluate decisional capacity. Informed consent includes an explanation of the nature and purpose of the assessment, fees, involvement of third parties and limits of confidentiality and sufficient opportunity for the client/patient to ask questions and receive answers.

2. Psychologists inform persons with questionable capacity to consent or for whom testing is mandated by law or governmental regulations about the nature and purpose of the proposed assessment services, using language that is reasonably understandable to the person being assessed.

3. Psychologists using the services of an interpreter obtain informed consent from the client/patient to use that interpreter, ensure that confidentiality of test results and test security are maintained, and include in their recommendations, reports and diagnostic or evaluative statements, including forensic testimony, discussion of any limitations on the data obtained.

#### **D. Release of Test Data**

1. The term test data refers to raw and scaled scores, client/patient responses to test questions or stimuli and psychologists' notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of test data. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law.

2. In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

E. Test Construction. Psychologists who develop tests and other assessment techniques use appropriate psychometric procedures and current scientific or professional knowledge for test design, standardization, validation, reduction or elimination of bias and recommendations for use.

F. Interpreting Assessment Results. When interpreting assessment results, including automated interpretations, psychologists take into account the purpose of the assessment as well as the various test factors, test-taking abilities and other characteristics of the person being assessed, such as situational, personal, linguistic and cultural differences, that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant limitations of their interpretations.

G. Assessment by Unqualified Persons. Psychologists do not promote the use of psychological assessment techniques by unqualified persons, except when such use is conducted for training purposes with appropriate supervision.

#### **H. Obsolete Tests and Outdated Test Results**

1. Psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

2. Psychologists do not base such decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.

#### **I. Test Scoring and Interpretation Services**

1. Psychologists who offer assessment or scoring services to other professionals accurately describe the purpose, norms, validity, reliability and applications of the procedures and any special qualifications applicable to their use.

2. Psychologists select scoring and interpretation services (including automated services) on the basis of evidence of the validity of the program and procedures as well as on other appropriate considerations.

3. Psychologists retain responsibility for the appropriate application, interpretation and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services.

J. Explaining Assessment Results. Regardless of whether the scoring and interpretation are done by psychologists, by employees or assistants or by automated or other outside services, psychologists take reasonable steps to ensure that explanations of results are given to the individual or designated representative unless the nature of the relationship precludes provision of an explanation of results (such as in some organizational consulting, pre-employment or security screenings, and forensic evaluations), and this fact has been clearly explained to the person being assessed in advance.

K. Maintaining Test Security. The term test materials refers to manuals, instruments, protocols and test questions or stimuli and does not include test data as defined in Subsection D of this Section. Release of Test Data. Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this Chapter.

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### **§1321. Therapy**

#### **A. Informed Consent to Therapy**

1. When obtaining informed consent to therapy as required in §1307.J of this Chapter, psychologists inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers.

2. When obtaining informed consent for treatment for which generally recognized techniques and procedures have not been established, psychologists inform their clients/patients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available and the voluntary nature of their participation.

3. When the therapist is a trainee and the legal responsibility for the treatment provided resides with the supervisor, the client/patient, as part of the informed consent procedure, is informed that the therapist is in training and is being supervised and is given the name of the supervisor.

#### **B. Therapy Involving Couples or Families**

1. When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children), they take reasonable steps to clarify at the outset:

- a. which of the individuals are clients/patients; and
- b. the relationship the psychologist will have with each person. This clarification includes the psychologist's role and the probable uses of the services provided or the information obtained.

2. If it becomes apparent that psychologists may be called on to perform potentially conflicting roles (such as family therapist and then witness for one party in divorce proceedings), psychologists take reasonable steps to clarify and modify, or withdraw from, roles appropriately.

C. Group Therapy. When psychologists provide services to several persons in a group setting, they describe at the outset the roles and responsibilities of all parties and the limits of confidentiality.

D. Providing Therapy to those Served by Others. In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential client's/patient's welfare. Psychologists discuss these issues with the client/patient or another legally authorized person on behalf of the client/patient in order to minimize the risk of confusion and conflict, consult with the other service providers when appropriate, and proceed with caution and sensitivity to the therapeutic issues.

E. Sexual Intimacies with Current Therapy Clients/Patients. Psychologists do not engage in sexual intimacies with current therapy clients/patients.

F. Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients. Psychologists do not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients/patients. Psychologists do not terminate therapy to circumvent this standard.

G. Therapy with Former Sexual Partners. Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.

H. Sexual Intimacies with Former Therapy Clients/Patients

1. Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.

2. Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

- a. the amount of time that has passed since therapy terminated;
- b. the nature, duration, and intensity of the therapy;
- c. the circumstances of termination;
- d. the client's/patient's personal history;
- e. the client's/patient's current mental status;
- f. the likelihood of adverse impact on the client/patient; and
- g. any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client/patient.

I. Interruption of Therapy. When entering into employment or contractual relationships, psychologists make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship



ends, with paramount consideration given to the welfare of the client/patient.

**J. Terminating Therapy**

1. Psychologists terminate therapy when it becomes reasonably clear that the client/patient no longer needs the service, is not likely to benefit, or is being harmed by continued service.

2. Psychologists may terminate therapy when threatened or otherwise endangered by the client/patient or another person with whom the client/patient has a relationship.

3. Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pre-termination counseling and suggest alternative service providers as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 43:1172 (June 2017).

Jaime T. Monic  
Executive Director

1706#021

**RULE**

**Department of Health  
Board of Examiners of Psychologists**

Fees (LAC 46:LXIII.601 and 603)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners of Psychologists has amended §§601 and 603 to define fees charged by the board in accordance with the Louisiana licensing law for psychologist, 37:2354 and the Administrative Procedure Act, R.S. 49:968 and 971.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXIII. Psychologists**

**Chapter 6. Fees**

**§601. Licensing Fees**

**A. Licensing Fees**

Licensing Fees	Amount
Application for Licensure	\$200
Application for Provisional Licensure	200
Application for Temporary Registration	125
Jurisprudence Examination Fee	75
Oral Examination (Licensure, specialty change or additional specialty)	250
License Renewal	350
License Renewal Fee for Psychologists Qualifying under R.S. 37:2354(E) for a reduced rate	175
Provisional License Renewal	100
Reinstatement of Lapsed License (Application plus renewal fee)	550
Processing Fees for Paper Renewals	15
License Renewal Extension Request	25

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2354.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 33:648 (April 2007), amended LR 39:311 (February 2013), LR 41:2618 (December 2015), amended the Department of Health, Board of Examiners of Psychologists, LR 43:1173 (June 2017).

**§603. Administrative/Other Fees**

**A. Administrative/Other Fees**

Administrative/Other Fees	Amount
Address List/Labels	\$100
License Verification	15
Disciplinary Action Report	25
Replacement Renewal Certificate	15
Replacement License Certificate	25
Miscellaneous Copy Fee (other records)	\$1 page one, \$0.25 each page thereafter

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2354.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 33:648 (April 2007), amended LR 39:311 (February 2013), LR 41:2618 (December 2015), amended by the Department of Health, Board of Examiners of Psychologists, LR 43:1173 (June 2017).

Jaime T. Monic  
Executive Director

1706#023

**RULE**

**Department of Health  
Board of Examiners of Psychologists**

Supervision of Psychologists and Licensed Specialists in School Psychology (LAC 46:LXIII.703 and 3301)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners of Psychologists has amended LAC 46:LXIII.703 and 3301.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXIII. Psychologists**

**Subpart 1. General Provisions**

**Chapter 7. Supervised Practice Leading toward Licensure**

**§703. Duration and Setting of Supervised Practice**

**A. ...**

1. Postdoctoral supervised practice hours can begin accruing after the date on which all requirements for the doctoral degree are met, with no outstanding points of evaluation, and verified by the degree-granting institution. Verification must occur via submission of a form and process as delineated by the board. Credit shall not be granted for practice that is in connection with the course work practicum experience for which predoctoral graduate credits are granted.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 5:249 (August 1979), amended LR 7:187 (April 1981), LR 13:180 (March 1987), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 29:2075 (October 2003), LR 36:1007 (May 2010), amended by the Department of Health, Board of Examiners of Psychologists, LR 43:1173 (June 2017).

**Subpart 2. Licensed Specialists in School Psychology**  
**Chapter 33. Definition of Applicant for Licensure as a Specialist in School Psychology**

**§3301. Definition**

A. - A.4. ...

5. has completed an internship of at least 1200 hours and nine months in duration, conducted under the supervision of a certified school psychologist in a school setting or by a licensed psychologist in a community setting. Of the 1200 hours, 600 hours shall be completed in a school setting;

6. has completed three years of supervised experience as a certified school psychologist within the public school system. One year of full-time employment or experience, obtained as part of an acceptable internship as defined by the board under §3403 of this Title, may be applied toward the three years of required supervision. Such experience must be obtained within one academic year, in a public school system. Such "academic year" shall be defined by the school calendar in the district of practice;

A.7. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 41:2621 (December 2015), amended by the Department of Health, Board of Examiners of Psychologists, LR 43:1174 (June 2017).

Jaime T. Monic  
Executive Director

1706#022

**RULE**

**Department of Health**  
**Board of Medical Examiners**

Physician Assistants, Licensure  
and Certification; Practice  
(LAC 46:XLV.Chapters 15 and 45)

In accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270 and the Louisiana Physician Assistant Practice Act, R.S. 37:1360.21-1360.38, the board, working with its Physician Assistant (PA) Advisory Committee, has amended its rules governing PAs, LAC 46:XLV.Chapters 15 and 45, to conform them to Act 453 of the 2016 Regular Session of the Louisiana Legislature and to update the rules generally as made necessary by the passage of time.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**  
**Part XLV. Medical Professions**  
**Subpart 2. Licensure and Certification**  
**Chapter 15. Physician Assistants**

**§1503. Definitions**

A. As used in this Chapter, the following terms shall have the meanings specified.

\* \* \*

*Controlled Substance*—for purposes of this definition, any substance designated or that may hereafter be designated as a schedule II, III, IV, or V controlled substance in R.S. 40:964.

\* \* \*

*Physician Assistant (PA)*—a health care professional qualified by academic and clinical education and licensed by the board to provide health care services at the direction and under the supervision of a physician or a group of physicians approved by the board as a supervising physician(s).

\* \* \*

*Protocol or Clinical Practice Guidelines or Clinical Practice Guidelines or Protocols*—a written set of directives or instructions regarding routine medical conditions, to be followed by a physician assistant in patient care activities. If prescriptive authority has been delegated to the physician assistant by the supervising physician the clinical practice guidelines or protocols shall contain each of the components specified by §1521.A.5. The Advisory Committee shall periodically publish and disseminate to supervising physicians and all physician assistants, model forms and examples of clinical practice guidelines and protocols. The supervising physician and physician assistant shall maintain a written copy of such clinical practice guidelines and protocols, which shall be made immediately available for inspection by authorized representatives of the board.

\* \* \*

*Supervision*—responsible direction and control, with the supervising physician assuming responsibility for the services rendered by a physician assistant in the course and scope of the physician assistant's employment, with respect to patients for whose care, or aspect of care, the physician is responsible. Supervision shall not be construed in every case to require the physical presence of the supervising physician. However, the supervising physician and physician assistant must have the capability to be in contact with each other by either telephone or other telecommunications device. Supervision shall exist when the supervising physician responsible for the care, or aspect of care of the patient, gives informed concurrence of the actions of the physician assistant, whether given prior to or after the action, and when a medical treatment plan or action is made in accordance with written clinical practice guidelines or protocols set forth by the supervising physician. Such guidelines or protocols shall require that the physician assistant contact the supervising physician when there is a question or uncertainty as to what should be done in a given case or when an approved protocol does not address the clinical situation presented. The level and method of supervision shall be at the physician and physician assistant

level, shall be documented and reviewed annually, and shall reflect the acuity of the patient care and nature of the procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:109 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1102 (November 1991), LR 22:201 (March 1996), LR 25:27 (January 1999), LR 31:73 (January 2005), LR 34:244 (February 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1174 (June 2017).

#### **§1505. Necessity for License; Registration of Prescriptive Authority**

A.1. - A.2. ...

B. Any person who acts or undertakes to perform the functions of a physician assistant without a current physician assistant license issued under this Chapter, or prescribes medication or medical devices without or beyond registration of such authority approved by the board, shall be deemed to be engaging in the practice of medicine; provided, however, that none of the provisions of this Chapter shall apply to:

1. any physician assistant employed by the federal government while performing duties incidental to that employment;

2. ...

3. any physician assistant student enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, its predecessors or successor; provided, however, that a physician assistant student shall not prescribe legend drugs or medical devices or be eligible for registration of prescriptive authority; and

4. a physician assistant administering medical services in cases of emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:109 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1102 (November 1991), LR 22:201 (March 1996), LR 25:28 (January 1999), LR 31:74 (January 2005), amended by the Department of Health, Board of Medical Examiners, LR 43:1175 (June 2017).

#### **§1507. Qualifications for Licensure**

A. To be eligible for licensure under this Chapter, an applicant shall:

1. - 2. ...

3. demonstrate his competence to provide patient services under the supervision and direction of a supervising physician by:

a. being a graduate of a physician assistant training program accredited by the Committee on Allied Health Education and Accreditation (CAHEA), or its predecessors or successors, including but not limited to the Accreditation Review Commission on Education for the Physician Assistant, and by presenting or causing to be presented to the board satisfactory evidence that the applicant has successfully passed the national certification examination administered by the National Commission on Certificate of Physician Assistants (NCCPA) or its successors, together with satisfactory documentation of current certification; or

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:109 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1102 (November 1991), LR 22:201 (March 1996), LR 25:28 (January 1999), amended by the Department of Health, Board of Medical Examiners, LR 43:1175 (June 2017).

#### **§1508. Qualifications for Registration as Supervising Physician**

A. To be eligible for approval and registration under this Chapter, a proposed primary supervising physician or locum tenens physician shall, as of the date of the application:

1. be licensed to practice medicine in the state of Louisiana; and

A.2. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(b)(6), 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:202 (March 1996), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:29 (January 1999), LR 34:244 (February 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1175 (June 2017).

#### **§1510. Application for Registration as Supervising Physician; Procedure**

A. - A.6. ...

B. A physician seeking to supervise a physician assistant may be required to appear before the board upon his notification to the board of his intention to supervise a physician assistant:

1. upon a first notification to the board of the physician's intention to supervise a physician assistant if the board finds discrepancies in the physician's application; or

B.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:202 (March 1996), amended LR 25:29 (January 1999), LR 34:245 (February 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1175 (June 2017).

#### **§1513. Issuance of License; Registration of Prescriptive Authority; Working Permit; Updating Information**

A.1. - A.2. ...

B. The board may grant a working permit (temporary license), valid and effective for one year but renewable for one additional year, to an applicant who otherwise meets the qualifications, requirements and procedures for licensure, except that the applicant has not yet taken or is awaiting the results of the national certification examination.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:110 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1103 (November 1991), LR 22:203 (March 1996), LR 25:30 (January 1999), LR 31:74 (January 2005), amended by the Department of Health, Board of Medical Examiners, LR 43:1175 (June 2017).

**§1517. Expiration of Licensure; Renewals; Modification; Notification of Intent to Practice**

A. ...

B. Every license issued by the board under this Chapter shall be renewed annually on or before the last day of the month in which the licensee was born, by submitting to the board an application for renewal in a format approved by the board, together with:

1. satisfactory verification of current certification by the National Commission on Certificate of Physician Assistants or its successors; and

2. the applicable fee as provided in Chapter 1 of these rules.

C. A physician assistant licensed in this state, prior to initiating practice, shall submit in a format approved by the board notification of such intent to practice. Such notification may be deemed effective as of the date received by the board, subject to final approval by the board.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1281, 37:1360.23, 37:1360.24.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1104 (November 1991), LR 22:203 (March 1996), LR 24:1498 (August 1998), LR 25:31 (January 1999), LR 30:238 (February 2004), LR 34:245 (February 2008), amended by the Department of Health, Board of Medical Examiners, LR 43:1176 (June 2017).

**§1519. Transfer of Certification**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1104 (November 1991), LR 31:75 (January 2005), LR 34:245 (February 2008); repealed, by the Department of Health, Board of Medical Examiners, LR 43:1176 (June 2017).

**§1521. Qualifications for Physician Assistant Registration of Prescriptive Authority**

A. Legend Drugs/Medical Devices. To be eligible for registration of prescriptive authority for legend drugs or medical devices, or both, a physician assistant shall:

1. ...

2. possess a current license to practice as a physician assistant duly issued by the board;

3. ...

4. - 4.b. Repealed.

5. practice under supervision as specified in clinical practice guidelines or protocols developed by the supervising physician that shall, include a performance plan, as specified in §4512 of these rules.

B. Controlled Substances. To be eligible for prescriptive authority for controlled substances, a physician assistant shall:

1. ...

2. possess a current, unrestricted permit or license to prescribe controlled substances in Louisiana duly issued by

the Board of Pharmacy or its successor, and be currently registered to prescribe controlled substances without restriction as to the schedules delegated by the supervising physician with the Drug Enforcement Administration, United States Department of Justice (DEA);

3. not be deemed ineligible for registration for any of the causes set forth in §1521.C;

4. have completed six months of practice under a supervising physician after graduation from an accredited PA education program satisfying the requirements of this Chapter; and

5. successfully complete an educational activity developed or approved by the board, respecting controlled dangerous substances.

C. - C.4. ...

5. - 7. Repealed.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 1360.23(D) and (F), and 1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 31:75 (January 2005), amended LR 38:3174 (December 2012), LR 41:925 (May 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:1176 (June 2017).

**§1523. Qualifications of Supervising Physician for Registration of Delegation of Prescriptive Authority**

A. Legend Drugs and Medical Devices. To be eligible for approval of registration to delegate authority to prescribe legend drugs or medical devices, or both, to a physician assistant a supervising physician shall:

1. ...

2. Repealed.

3. - 4. ...

B. Controlled Substances. To be eligible for approval of registration to delegate authority to prescribe controlled substances to a physician assistant a supervising physician shall:

1. satisfy the requirements of §1523.A; and

2. possess a current, unrestricted permit or license to prescribe controlled substances duly issued by the Office of Narcotics and Dangerous Drugs, Department of Health, state of Louisiana, and be currently registered to prescribe controlled substances, without restriction, with the Drug Enforcement Administration, United States Department of Justice (DEA);

C. A physician shall be deemed ineligible for registration to delegate authority to prescribe controlled substances to a physician assistant for any of the causes enumerated by R.S. 37:1285(A), or violation of any other provision of the Louisiana Medical Practice Act, R.S. 37:1261 et seq., or the board's rules.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 31:76 (January 2005), amended by the Department of Health, Board of Medical Examiners, LR 43:1176 (June 2017).

**§1527. Supervising Physician Application for Registration of Delegation of Prescriptive Authority; Procedure**

A. Physician application for approval and registration of delegation of prescriptive authority to a physician assistant shall be made upon forms supplied by the board and shall include:

1. ...
2. confirmation that the physician has delegated prescriptive authority to the physician assistant and the nature, extent, and limits thereof as documented in clinical practice guidelines;
3. a description of the manner and circumstances in which the physician assistant has been authorized to utilize prescriptive authority and the geographical location(s) where such activities will be carried out as documented in clinical practice guidelines;

A.4. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 31:77 (January 2005), amended by the Department of Health, Board of Medical Examiners, LR 43:1177 (June 2017).

**§1529. Expiration of Registration of Prescriptive Authority; Renewal; Continuing Education**

A. - B. ...

C. The PA, together with the SP, shall annually verify the accuracy of registration information on file with the board, and confirm compliance with the continuing education requirements prescribed by this Section.

D. Continuing Education. Every physician assistant seeking renewal of registration of prescriptive authority shall obtain such continuing education as is required to maintain current NCCPA certification.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 31:77 (January 2005), amended by the Department of Health, Board of Medical Examiners, LR 43:1177 (June 2017).

**Subpart 3. Practice**

**Chapter 45. Physician Assistants**

**§4505. Services Performed by Physician Assistants**

A. The practice of a physician assistant shall include the performance of medical services that are delegated by the supervising physician and are within the scope of the physician assistant's education, training, and licensure. A physician assistant is considered to be and is deemed the agent of his supervising physician in the performance of all practice-related activities, including but not limited to assisting in surgery and ordering and interpretation of diagnostic and other medical services with appropriate supervision provided. The level and method of supervision shall be at the supervising physician and physician assistant level, shall be documented in clinical practice guidelines, reviewed annually and shall reflect the acuity of patient care and the nature of a procedure.

B. In accordance with a written clinical practice guideline or protocol medical services rendered by a physician assistant may include: screening patients to determine need for medical attention; eliciting patient

histories; reviewing patient records to determine health status; performing physical examinations; recording pertinent patient data; performing developmental screening examinations on children; making preliminary decisions regarding data gathering and appropriate management and treatment of patients being seen for initial evaluation of a problem or follow-up evaluation of a previously diagnosed and stabilized condition; making appropriate referrals; preparing patient summaries; requesting initial laboratory studies; collecting specimens for blood, urine and stool analyses; performing urine analyses, blood counts and other laboratory procedures; identifying normal and abnormal findings on history, physical examinations and laboratory studies; initiating appropriate evaluation and emergency management for emergency situations such as cardiac arrest, respiratory distress, burns and hemorrhage; performing clinical procedures such as venipuncture, intradermal testing, electrocardiography, care and suturing of wounds and lacerations, casting and splinting, control of external hemorrhage, application of dressings and bandages, administration of medications, intravenous fluids, and transfusion of blood or blood components, removal of superficial foreign bodies, cardio-pulmonary resuscitation, audiometry screening, visual screening, aseptic and isolation techniques; providing counseling and instruction regarding common patient problems; monitoring the effectiveness of therapeutic intervention; assisting in surgery; signing for receipt of medical supplies or devices that are delivered to the supervising physician or supervising physician group; and, to the extent delegated by the supervising physician, prescribing legend drugs and controlled substances listed in R.S. 40:964 as schedule II, III, IV and V substances and prescribing medical devices. A physician assistant may inject local anesthetic agents subcutaneously, including digital blocks or apply topical anesthetic agents when delegated to so by a supervising physician. This list is illustrative only, and does not constitute the limits or parameters of the physician assistant's practice.

C. A physician assistant may prescribe, order and administer drugs to the extent delegated by the SP, except as provided pursuant to R.S. 37:930 relative to anesthetics. Drugs which may be prescribed, ordered, and administered by a PA are those listed in schedules II, III, IV and V of R.S. 40:964 and legend drugs.

D. The activities listed in this Section may be performed in any setting authorized by the supervising physician including but not limited to clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes, other institutional settings, and health manpower shortage areas.

E. A physician assistant shall not:

1. - 2. ...
3. except to the extent delegated by a supervising physician, issue prescriptions for any medication;
4. - 4.b. ...
5. act as or engage in the functions of a physician assistant when the supervising physician and the physician assistant do not have the capability to be in contact with each other by telephone or other telecommunication device;
6. identify himself, hold himself out to the public, or permit any other person to identify him, as "doctor," "medical doctor," "doctor of medicine" or "physician" or render any service to a patient unless the physician assistant

has clearly identified himself as a physician assistant by any method reasonably calculated to advise the patient that the physician assistant is not a physician licensed to practice medicine; or

7. administer local anesthetics perineurally, pericurally, epidurally, intrathecally, or intravenously unless such physician assistant is a certified registered nurse anesthetist and meets the requirements in R.S. 37:930.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), and 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1105 (November 1991), LR 22:204 (March 1996), LR 25:32 (January 1999), LR 31:78 (January 2005), LR 41:925 (May 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:1177 (June 2017).

#### **§4506. Services Performed by Physician Assistants Registered to Prescribe Medication or Medical Devices; Prescription Forms; Prohibitions**

A.1. A physician assistant who is registered with the board pursuant to §§1521 and 1525 of these rules to prescribe medication and/or medical devices may, to the extent delegated by a supervising physician:

A.1.a. - B.5. ...

C. A physician assistant who has been delegated prescriptive authority shall not:

1. - 4. ...

5. issue a prescription or order for any schedule I controlled substance contained or hereinafter included in R.S. 40:964; or

6. ...

D. A PA who has been delegated controlled substance prescriptive authority shall enroll in and periodically accesses the Prescription Monitoring Program (PMP) established by R.S. 40:1001 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), and 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 31:79 (January 2005), amended LR 41:925 (May 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:1178 (June 2017).

#### **§4507. Authority and Limitations of Supervising Physician**

A. The supervising physician (SP) is responsible for the supervision, control, and direction of the physician assistant (PA) and retains responsibility to the patient for the competence and performance of the PA.

B. An SP may delegate medical services identified as core competencies by the National Commission on Certification of Physician Assistants or its successors ("core competencies"), under general *supervision* as defined in §1503.A of this Part.

C. - C.5.b. ...

D. An SP may not serve as a PSP for more than four PAs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), R.S. 37:1360.23(D) and (F), R.S. 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 4:112 (April 1978), amended LR 17:1106 (November 1991), LR 22:205 (March 1996), LR 25:32 (January 1999), LR 34:246 (February 2008), LR 38:1233 (May 2012), amended by the Department of Health, Board of Medical Examiners, LR 43:1178 (June 2017).

#### **§4511. Mutual Obligations and Responsibilities**

A. The physician assistant and supervising physician shall:

1. - 3. ...

4. insure that with respect to patient encounters, all activities, functions, services, treatment measures, medical devices or medication prescribed or delivered to the patient by the physician assistant are properly documented in written form in the patient's record by the physician assistant as evidenced by compliance with the clinical practice guidelines established by the supervising physician and physician assistant;

5. - 5.c. ...

6. maintains a written agreement in compliance with R.S. 37:1360.22(8), that includes a statement that the physician shall exercise supervision over the physician assistant in accordance with R.S. 37:1360.21 et seq.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23(D) and (F), and 37:1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:112 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1106 (November 1991), LR 22:206 (March 1996), LR 25:33 (January 1999), LR 31:79 (January 2005), LR 41:925 (May 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:1178 (June 2017).

#### **§4512. Performance Plan**

A. - C. ...

D. For joint commission-accredited practice sites, the performance plan requirements of §4512.A.2 and §4512.B-C of these rules shall be considered satisfied if the practice site requires chart review as part of its joint commission ongoing professional practice evaluation (OPPE) process for PAs. For a hospital practice site that is joint commission-accredited, but does not require chart review as part of its OPPE process, or that not is joint commission accredited, the PA and his or her SP shall be responsible for meeting the requirements of §4512.A-C of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 37:1360.23, and 37:1360.28.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:925 (May 2015), amended by the Department of Health, Board of Medical Examiners, LR 43:1178 (June 2017).

Keith C. Ferdinand, M.D.  
Interim Executive Director

1706#024

#### **RULE**

**Department of Health  
Bureau of Health Services Financing  
and  
Office of Aging and Adult Services**

Nursing Facilities  
Preadmission Screening and Resident Review  
(LAC 50:II.Chapter 5)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services have amended LAC 50:II.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 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 II. Nursing Facilities**

**Subpart 1. General Provisions**

**Chapter 5. Admissions**

**§503. Medical Certification**

A. ...

1. The following documents are required for all nursing facility admissions:

a. a preadmission screening and resident review (level I PASRR) form completed by a qualified health care professional as defined by OAAS. The level I PASRR form addresses the specific identifiers of MI or ID that indicate that a more in-depth evaluation is needed to determine the need for specialized services. The need for this in-depth assessment does not necessarily mean that the individual cannot be admitted to a nursing facility, only that the need for other services must be determined prior to admission; and

b. a level of care eligibility tool (LOCET) assessment.

NOTE: These documents must not be dated more than 30 days prior to the date of admission. The level I PASRR form must be signed and dated on the date that it is completed.

2. - 3. ...

B. If the information on the level I PASRR does not indicate that the individual may have a diagnosis of MI and/or ID and he/she meets the criteria for nursing facility level of care, OAAS may approve the individual for admission to the nursing facility.

1. Once approval has been obtained, the individual must be admitted to the facility within 30 days of the date of the approval notice. The nursing facility shall submit a completed BHSF Form 148 to the parish Medicaid office and OAAS indicating the anticipated payment source for the nursing facility services.

C. If the information on the level I PASRR indicates that the individual may have a diagnosis of MI and/or ID, and the individual meets the criteria for nursing facility level of care, the individual shall be referred to the Office of Behavioral Health or the Office for Citizens with Developmental Disabilities (the state's mental health and intellectual disability level II authorities) for a level II screening to determine level of services provided by a nursing facility and whether specialized services are needed.

1. - 2. ...

D. Vendor Payment. Medicaid vendor payment shall not begin prior to the date that medical and financial eligibility is established, and shall only begin once the individual is actually admitted to the 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 and the Office of Aging and Adult Services, LR 36:1011 (May 2010),

amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 43:1179 (June 2017).

**§505. Categorical Advance Group Determinations**

A. In order to assure timely and appropriate care for applicants, the level II authority may make an advance group determination by category that takes into account that certain diagnoses, levels of severity of illness or need for a particular service clearly indicates the need for nursing facility admission or that the provision of specialized services is not normally needed. The applicable level II authority may make an advance group determination that nursing facility care is needed for persons in the following categories.

1. Convalescent Care. If an applicant appears to be in need of level II assessment but is hospitalized for a serious illness and needs time to convalesce before a valid level II assessment can be performed, provisions may be made for temporary medical certification for nursing facility care. The maximum period of time that a level II assessment may be delayed is 100 days. The period of convalescence allowed will be consistent with the diagnosis and medical condition of the individual.

2. - 3.c. ...

d. advanced chronic obstructive pulmonary disease;

A.3.e. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:1011 (May 2010), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 43:1179 (June 2017).

**§509. Changes in Level of Care and Status**

A. The nursing facility shall notify the parish Medicaid office via the BHSF Form 148 of the following changes in a resident's circumstances:

1. change in the level of care;
2. transfer to another nursing facility;
3. change in payer source;
4. ...
5. discharge home, death or any other breaks in facility care.

B. The nursing facility must inform the appropriate level II authority if an individual with a diagnosis of MI and/or ID is subject to readmission or interfacility transfer and there has been a substantial change in the individual's condition, or if a level I screen was not completed or was completed incorrectly.

1. - 2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 36:1012 (May 2010), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 43:1179 (June 2017).

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

Rebekah E. Gee MD, MPH  
Secretary

1706#043

## RULE

### Department of Health Bureau of Health Services Financing

#### Pharmacy Benefits Management Program (LAC 50:XXIX.Chapters 1-9)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:XXIX.Chapters 1-9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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 XXIX. Pharmacy

#### Chapter 1. General Provisions

#### §105. Medicaid Pharmacy Benefits Management System Point of Sale—Prospective Drug Utilization Program

A. ...

B. The Louisiana Department of Health reserves the right for ultimate decision making relative to certain drug class information and drug contraindications or interactions.

C. Covered Drug List. The list of covered drugs is managed through multiple mechanisms. Drugs in which the manufacturer entered into the Medicaid Drug Rebate Program with CMS are included in the list of covered drugs. Average acquisition costs, federal upper payment limits (FUL) and usual and customary charges assist in managing costs on the covered drug list. Federal upper limits provide for dispensing of multiple source drugs at established limitations unless the prescribing practitioner specifies that the brand product is medically necessary for a patient. Establishment of co-payments also provides for management.

D. Reimbursement Management. The cost of pharmaceutical care is managed through average acquisition cost (AAC) of the ingredient or through wholesale acquisition cost (WAC) when no AAC is assigned, and compliance with FUL regulations, and the establishment of the professional dispensing fee, drug rebates and copayments. Usual and customary charges are compared to other reimbursement methodologies and the “lesser of” is reimbursed.

E. ...

F. Pharmacy Program Integrity. Program integrity is maintained through the following mechanisms:

1. - 2. ...

3. Surveillance and Utilization Review Systems (SURS) Program processes which provide for on-going review for mis-utilization, abuse and fraud and audits of the pharmacy providers.

G. ...

H. Point-of-Sale Prospective Drug Utilization Review System. This on-line point-of-sale system provides electronic claims management to evaluate and improve drug utilization quality. Information about the patient and the drug will be analyzed through the use of eight therapeutic modules in accordance with the standards of the National Council of Prescription Drug Programs. The purpose of prospective drug utilization review is to reduce in duplication of drug therapy, prevent drug-to-drug interactions, and assure appropriate drug use, dosage and duration. The prospective modules may screen for drug interactions, therapeutic duplication, improper duration of therapy, incorrect dosages, clinical abuse/misuse and age restrictions. Electronic claims submission inform pharmacists of potential drug-related problems and pharmacists document their responses by using interventions codes. By using these codes, pharmacists will document prescription reporting and outcomes of therapy for Medicaid recipients.

I. - I.2. ...

3. - 4. Repealed.

5. Eligibility verification is determined at the point of sale.

6. Pharmacy providers and prescribing providers may obtain assistance with clinical questions from the University of Louisiana at Monroe.

7. Prescribers and pharmacy providers will be required to participate in the educational and intervention features of the Pharmacy Benefits Management System.

J. Recipient Participation. Pharmacy patients are encouraged to take an active role in the treatment or management of their health conditions through participation in patient counseling efforts with their prescribing providers and pharmacists.

K. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, Title XIX of the Social Security Act, and the 1995-96 General Appropriate Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1053 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1180 (June 2017).

#### §107. Prior Authorization

A. The medication must be prescribed by a practitioner who is authorized to prescribe under state law. The national drug code (NDC) must be identified on each pharmacy claim for reimbursement. Prescription drugs considered for payment are subject to rebates from manufacturers as mandated by federal law and regulations.

B. Covered Drugs. Coverage of drugs shall be limited to specific drug products authorized for reimbursement by therapeutic category and listed by generic name, strength/unit, NDC, and brand name. Those drug products subject to mandatory coverage as a result of a rebate



agreement with the federal government will be covered until written notice is received from the Centers for Medicare and Medicaid Services that coverage will be terminated. Providers will be given notice of termination of coverage.

C. Prior Authorization with a Preferred Drug List

1. A prior authorization process is established which utilizes a preferred drug list (PDL) for selected therapeutic classes. Drugs in selected therapeutic classes that are not included on the PDL shall require prescribers to obtain prior authorization. Lists of covered drug products, including those that require prior authorization, will be maintained on the Louisiana Medicaid web site.

2. The prior authorization process provides for a turn-around response by either telephone or other telecommunications device within 24 hours of receipt of a prior authorization request. In emergency situations, providers may dispense at least a 72-hour supply of medication.

3. ...

D. Drugs Excluded from Coverage. As provided by §1927(d)(2) of the Social Security Act, the following drugs are excluded from program coverage:

1. experimental drugs and investigational drugs;
2. drugs used to treat weight loss, except Orlistat;
3. cough and cold preparations, except some prescription antihistamine/decongestant combination products;
4. cosmetic drugs, except Isotretinoin;
5. - 8. ...
9. vaccines covered in other programs, except influenza vaccine; and
10. ...

E. DESI Drugs. Those drugs that are subject to a notice of opportunity for hearing, as prescribed by section 1927(k)(2)(A) of the Social Security Act for which the Food and Drug Administration has proposed to withdraw from the market.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1054 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1180 (June 2017).

**§109. Medicare Part B**

A. The Department of Health, Bureau of Health Services Financing pays the full co-insurance and the Medicare deductible on pharmacy claims for services reimbursed by the Medicaid Program for Medicaid recipients covered by Medicare Part B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1181 (June 2017).

**§111. Copayment**

A. Payment Schedule

1. ...

\*\*\*

2. The pharmacy provider shall collect a copayment from the Medicaid recipient for each drug dispensed by the

provider and covered by Medicaid. The following pharmacy services are exempt from the copayment requirements:

- a. services furnished to pregnant women;
- b. emergency services;
- c. family planning services; and
- d. preventive medications as designated by the U.S. Preventive Services Task Force's A and B recommendations.
- e. Repealed.

B. The following population groups are exempt from copayment requirements:

1. individuals under the age of 21;
2. individuals residing in a long-term care facility;
3. individuals receiving hospice care;
4. Native Americans;
5. women whose basis for Medicaid eligibility is breast or cervical cancer; and
6. waiver recipients.

C. In accordance with federal regulations, the following provisions apply.

1. The provider may not deny services to any eligible individual on account of the individual's inability to pay the copayment amount. However, this service statement does not apply to an individual who is able to pay, nor does an individual's inability to pay eliminate his or her liability for the copayment.

2. Providers shall not waive the recipient copayment liability.

3. Departmental monitoring and auditing will be conducted to determine provider compliance.

4. Violators of this §111 will be subject to a penalty such as suspension from the Medicaid Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 32:1055 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1181 (June 2017).

**§113. Prescription Limit**

A. - B.3. ...

C. The four prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates the following information to the pharmacist in his own handwriting or by telephone or other telecommunications device:

1. ...

2. a valid diagnosis code that is directly related to each drug prescribed that is over the four prescription limit (literal descriptions are not acceptable).

D. - E. ...

F. An acceptable statement and ICD-10-CM, or its successor, diagnosis code are required for each prescription in excess of four per calendar month.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 14:88 (February 1988), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 16: 313 (April 1990), LR 29:2115 (October 2003). Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055

(June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1901 (September 2009), LR 37:3270 (November 2011), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1181 (June 2017).

#### **§115. Drug Coverage Limits**

A. Reimbursement for multi-source prescription drugs shall be limited in accordance with state and federal law and rules pertaining thereto, with the following exception: reimbursement shall be provided for any drug prescribed by a prescribing provider that, in his professional judgment and within the lawful scope of his practice, he considers appropriate for the diagnosis and treatment of the patient with the following limitations.

1. - 3. ...

4. The prescribed drug is not methadone prescribed only for narcotic addiction.

5. - 5.c. ...

6. The prescribed drug is not a cosmetic drug, anorexic, cough and cold preparation, or selected nonprescription drug.

7. The prescribed drug is not an experimental or investigational drug which are generally labeled:

Caution—limited by federal law to investigational use, unless a specific exception has been granted by the federal government.

8. The prescribed drug is not an immunosuppressant drug prescribed and billed to Medicare within one year from the date of the transplant for a Title XIX recipient who has Medicare Part B coverage.

9. The prescribed drug is not an immunosuppressant drug covered by Medicare Part B which is prescribed for a nontransplant patient with Medicare Part B coverage and identified in the Title XIX provider manual as subject to special billing procedures. Payment shall be made only when billing requirements are met. Requirements may include provision of a physician statement (or copy) verifying the diagnosis attached to each claim submitted.

#### **B. Drug Listing**

1. The bureau's fiscal intermediary or agent will provide coverage information on any specific drug. Providers should contact the fiscal intermediary's or agent's provider/pharmacy relations unit when a specific coverage question arises.

2. The Title XIX provider manual shall include a listing of examples of prescribed medications and/or supplies which are not payable under pharmaceutical services of the Medicaid Program.

C. Erectile Dysfunction Drugs. Prescription drugs for the treatment of sexual or erectile dysfunction shall not be covered or reimbursed under the Medicaid Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006), LR 32:2083 (November 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1182 (June 2017).

#### **§117. Time Limits**

A. Filling Prescriptions. Prescriptions for drugs covered by Medicaid other than a controlled substance shall expire one year after the date prescribed by a licensed prescriber.

These prescriptions shall not be refilled more than 11 times in one year. A prescription for a controlled dangerous substance listed in schedule II shall expire 90 days after the date written, and no refills are allowed. A prescription for a controlled dangerous substance listed in schedule III, IV or V shall expire six months after the date written. Expired prescriptions shall not be refillable or renewable. Payment shall be made for prescriptions refilled for controlled substances in schedule III, IV and V not more than five times or more than six months after issue date and only to the extent indicated by the prescriber on the original prescription, and is restricted by state and federal statutes.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1056 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:368 (February 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1182 (June 2017).

#### **§119. Maximum Quantity**

A. - C. ...

D. Payment will not be made for narcotics other than opioid agonists/antagonists prescribed only for narcotic addiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1056 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1182 (June 2017).

### **Chapter 3. Lock-In Program**

#### **§303. Recipient Placement in the Lock-In Mechanism**

A. Potential lock-in recipients will be identified through review of various reports or by referral from other interested parties. Department of Health designee(s) who are medical professionals examine data for a consistent pattern of misuse/overuse of program benefits by a recipient. Contact with involved providers may be initiated for additional information. The medical professionals render a recommendation to place a recipient in the Physician/Pharmacy Lock-In Program or Pharmacy-Only Lock-In Program. The decision making authority rests solely with the Department of Health, Bureau of Health Services Financing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3268 (November 2011), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1182 (June 2017).

#### **§307. Notification Directives**

A. - A.4. ...

B. The department's contract designee shall be responsible for the following:

1. initiate contact with the recipient in instances when the recipient fails to contact the department, or its contractor;

2. conduct a telephone interview when warranted with the recipient regarding the Lock-In Program and the recipient's rights and responsibilities;

3. ...

4. notify Lock-In providers of their selection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3268 (November 2011), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1182 (June 2017).

### **§309. Restrictions**

A. Recipients shall be prohibited from choosing physicians and pharmacists who overprescribe or oversupply drugs. When the agency cannot approve a recipient's choice of provider(s), the Lock-In recipient shall be required to make another selection.

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3269 (November 2011), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1183 (June 2017).

### **§311. Appeals**

A. Administration Reconsideration. A recipient may request an administrative reconsideration of the department's determination to place the recipient in the Lock-In Program. An administrative reconsideration is an informal telephone discussion among the Bureau of Health Services Financing staff, the LDH contract designee, and the recipient. An explanation of the reason for recommending the recipient to be placed in the Lock-In Program will be provided to the recipient. An administrative reconsideration is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal under the provisions of the Administrative Procedure Act. The designated official shall have the authority to affirm the decision, to revoke the decision, to affirm part or revoke in part, or to request additional information from either the department or the recipient.

B. Administrative Appeal Process. Upon notification of LDH's determination to place the Medicaid recipient into the Lock-In Program, the recipient shall have the right to appeal such action by submitting a written request to the Division of Administrative Law within 30 days of said notification. If an appeal is timely made, the decision to Lock-In is stayed pending the hearing of the appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3269 (November 2011), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1183 (June 2017).

### **§313. Changing Lock-In Providers**

A. Recipients may change lock-in providers every year without cause. With good cause, they may change lock-in providers only with the bureau's approval. Recipients may change providers for the following "good cause" reasons:

1. - 2. ...

3. the Lock-In provider(s) request(s) that the recipient be transferred; or

4. the Lock-In provider(s) stop(s) participating in the Medicaid Program and does not accept Medicaid as reimbursement for services.

a. The recipient may still receive other program services available through Medicaid such as hospital, transportation, etc., which are not controlled or restricted by placing a recipient in Lock-In for pharmacy and physician services. No recipient on Lock-In status shall be denied the service of a physician or pharmacist on an emergency basis within program regulations. In instances in which a recipient is referred by his Lock-In physician to another enrolled Medicaid physician who is accepting Medicaid recipients, reimbursement shall be made to the physician to whom the recipient was referred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3269 (November 2011), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1183 (June 2017).

## **Chapter 5. Narcotics and Controlled Substances**

### **§501. Schedule II Narcotic Analgesic Prescriptions**

A. Schedule II narcotic analgesic prescriptions covered under the Louisiana Medicaid Program shall be filled within 90 days of the date prescribed by a physician or other prescribing practitioner. Also, in accordance with guidance from the drug enforcement agency, the prescriber has the ability to issue multiple prescriptions for the same schedule II medication to the same patient on the same day. All prescriptions must be dated and signed on the date issued. The prescriber may issue dispensing instruction, e.g., "do not dispense until a specified date."

B. Payment will not be made for narcotics other than opioid agonists/antagonists prescribed only for narcotic addiction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1183 (June 2017).

## **Chapter 7. Parenteral Nutrition Therapy**

### **§703. Medical Necessity**

A. The department's published medical necessity criteria must be met.

B. - J.7. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 32:1058 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1183 (June 2017).

#### **§705. Exclusionary Criteria**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1060 (June 2006), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:1184 (June 2017).

#### **§707. Prior Authorization**

A. Parenteral nutrition therapy may be approved by the Prior Authorization Unit (PAU) at periodic intervals not to exceed six months.

A.1. - B.6. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1060 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1184 (June 2017).

#### **§709. Intradialytic Parenteral Nutrition**

A. *Intradialytic parenteral nutrition therapy* (IDPN) is parenteral nutrition therapy provided to a recipient with end stage renal disease (ESRD) while the recipient is being dialyzed. IPDN may be approved by the Prior Authorization Unit at periodic intervals not to exceed six months.

B. - D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1184 (June 2017).

#### **§711. Additional Documentation**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006), repealed by the Department of Health, Bureau of Health Services Financing, LR 43:1184 (June 2017).

#### **§713. Equipment and Supplies**

A. ...

A.1. - D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1184 (June 2017).

### **Chapter 9. Methods of Payment**

#### **Subchapter A. General Provisions**

##### **§901. Definitions**

*Average Acquisition Cost (AAC)*—the average of net payments that pharmacists made to purchase a drug product, after taking into account such items as purchasing allowances, discounts and rebates as determined through the collection and review of pharmacy invoices and other

information deemed necessary by the Medicaid Program, and in accordance with applicable state and federal law.

*Average Wholesale Price*—Repealed.

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*Professional Dispensing Fee*—the fee paid by the Medicaid Program to reimburse for the professional services provided by a pharmacist when dispensing a prescription. Per legislative mandate, the provider fee assessed for each prescription filled in the state of Louisiana, or shipped into the state of Louisiana, will be reimbursed separately.

*Single Source Drug*—a drug mandated or sold by one manufacturer or labeler.

*Usual and Customary Charge*—a pharmacy's charge to the general public that reflects all advertised savings, discounts, special promotions or other programs, including membership-based discounts initiated to reduce prices for product costs available to the general public a special population or an inclusive category of customers.

*Wholesale Acquisition Cost (WAC)*—the manufacturer's published catalog price for a drug product to wholesalers as reported to Medicaid by one or more national compendia on a weekly basis.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1061 (June 2006), amended LR 34:87 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1558 (July 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1184 (June 2017).

#### **Subchapter C. Estimated Acquisition Cost**

##### **§935. Estimated Acquisition Cost Formula**

A. *Estimated acquisition cost* (EAC) is the average acquisition cost of the drug dispensed. If there is not an AAC available, the EAC is equal to the wholesale acquisition cost, as reported in the drug pricing compendia utilized by the department's fiscal intermediary/pharmacy benefits manager (PBM).

B. - B.4.c. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1184 (June 2017).

#### **Subchapter D. Maximum Allowable Costs**

##### **§945. Reimbursement Methodology**

A. Maximum Pharmaceutical Price Schedule

1. The maximum payment by the agency for a prescription shall be no more than the cost of the drug established by the state plus the established professional dispensing fee.

2. Repealed.

B. Payment will be made for medications in accordance with the payment procedures for any fee-for-service (FFS) Medicaid eligible person. On a periodic basis as ingredient costs change, the department will post a link on its website containing average acquisition cost of drugs.

C. - D. ...

E. Payment will be made to providers only for medications furnished to persons eligible for medical vendor payments on a prescription written by a practitioner who is authorized to prescribe in Louisiana and is enrolled in FFS Medicaid.

F. Payments will be made only for the drugs covered under Louisiana Medicaid's Pharmacy Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1184 (June 2017).

#### **§947. Payments to Dispensing Physician**

A. Payment will be made for medications dispensed by a physician on a continuing basis only when his main office is more than five miles from a facility which dispenses drugs.

1. Under the above circumstances, vendor payments (when the treating prescriber dispenses his own medications and bills Medical Assistance Program under his own name will be made on the same basis as a pharmacist as specified in §945.A.1-2.

B. A prescriber who has a sub-office in an area more than five miles from a pharmacy or other facility dispensing medications will not be paid for medications he dispenses if his main office is within five miles of a pharmacy or other facility dispensing medications.

C. When a prescriber bills Medicaid for medications he dispenses, he shall certify that he himself, or a pharmacist, dispensed the medications and he shall maintain the same records as required of the pharmacist.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1185 (June 2017).

#### **§949. Cost Limits**

A. Brand Drugs. The department shall make payments for single source drugs (brand drugs) based on the lower of:

1. average acquisition cost (AAC):

a. if no AAC is available, use the wholesale acquisition cost (WAC) plus the professional dispensing fee; or

b. Repealed.

2. the provider's usual and customary charges to the general public not to exceed the department's "maximum payment allowed."

a. For purposes of these provisions, *general public* is defined as all other non-Medicaid prescriptions, including:

- i. third-party insurance;
- ii. pharmacy benefit management; or
- iii. cash.

3. - 3.c. Repealed.

B. Generic Drugs. The department shall make payments for multiple source drugs (generic drugs), other than drugs subject to "physician certifications", based on the lower of:

1. AAC:

a. if no AAC is available, use the WAC plus the professional dispensing fee;

2. federal upper payment limits plus the professional dispensing fee; or

3. the provider's usual and customary charges to the general public not to exceed the department's "maximum payment allowed."

a. For purposes of these provisions, *general public* is defined as all other non-Medicaid prescriptions, including:

- i. third-party insurance;
- ii. pharmacy benefit management; or
- iii. cash.

C. Federal Upper Payment Limits for Multiple Source Drugs

1. Except for drugs subject to "physician certification", the Medicaid Program shall utilize listings established by the Centers for Medicare and Medicaid Services (CMS) that identify and set upper limits for multiple source drugs that meet the following requirements.

a. All of the formulations of the drug approved by the Food and Drug Administration (FDA) have been evaluated as therapeutically equivalent in the most current edition of their publication, *Approved Drug Products with Therapeutic Equivalence Evaluations* (including supplements or in successor publications).

b. At least three suppliers list the drug, which has been classified by the FDA as category "A" in the aforementioned publication based on listings contained in current editions (or updates) of published compendia of cost information for drugs available for sale nationally.

2. Medicaid shall utilize the maximum acquisition cost established by CMS in determining multiple source drug cost.

3. The Medicaid Program shall provide pharmacists who participate in Medicaid reimbursement with updated lists reflecting:

a. the multiple source drugs subject to federal multiple source drug cost requirements;

b. the maximum reimbursement amount per unit; and

c. the date such costs shall become effective.

4. Repealed.

D. Physician Certifications

1. Limits on payments for multiple source drugs shall not be applicable when the prescriber certifies in his own handwriting that a specified brand name drug is medically necessary for the care and treatment of a recipient. Such certification may be written directly on the prescription or on a separate sheet which is dated and attached to the prescription. A standard phrase in the prescriber's handwriting, such as "brand necessary" will be acceptable.

2 - 2.c. ...

E. 340B Purchased Drugs. The department shall make payments for drugs that are purchased by a covered entity through the 340B program at the actual acquisition cost which can be no more than the 340B ceiling price plus the professional dispensing fee. Drugs that 340B-covered entities purchase outside of the 340B program shall not be reimbursed by Medicaid. 340B contract pharmacies are not permitted to bill 340B stock to Medicaid.

1. - 2. Repealed.

F. Fee-For-Service Drugs. Drugs acquired at federal supply schedule (FSS) and at nominal price shall not be reimbursed by Medicaid.

G. Indian Health Service All-Inclusive Encounter Rate. Pharmacy services provided by the Indian Health Service (IHS) shall be included in the encounter rate. No individual pharmacy claims shall be reimbursed to IHS providers.

H. Mail Order, Long-Term Care and Specialty Pharmacy. Drugs dispensed by mail order, long-term care and/or specialty pharmacies (drugs not distributed by a retail community pharmacy) will be reimbursed using the brand/generic drug reimbursement methodology.

I. Physician Administered Drugs. Physician-administered drugs will be reimbursed based on the applicable fee schedule posted on the Louisiana Medicaid website.

J. Clotting Factor. Pharmacy claims for clotting factor will be reimbursed using the brand/generic drug reimbursement methodology.

K. Investigational or Experimental Drugs. Investigational or experimental drugs shall not be reimbursed by Medicaid.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1185 (June 2017).

#### **Subchapter E. 340B Program**

##### **§961. Definitions**

*Actual Acquisition Cost*—the covered entity's net payment made to purchase a drug product.

*Contract Pharmacy*—a pharmacy under contract with a covered entity that lacks its own pharmacy whereby the contract pharmacy is authorized to dispense 340B-discounted drugs on behalf of the covered entity in accordance with 1996 Health Resources and Services Administration (HRSA) guidelines (61 FR 43549, August 23, 1996). Contract pharmacies are not allowed to bill Medicaid for pharmacy claims.

*Covered Entity*—a provider or program that meets the eligibility criteria for participating in the 340B Program as set forth in section 340B(a)(4) of the Public Health Service Act. Covered entities include eligible disproportionate share hospitals that are owned by, or under contract with, state or local government, community health centers, migrant health centers, health centers for public housing, health centers for the homeless, AIDS drug assistance programs and other AIDS clinics and programs, black lung clinics, hemophilia treatment centers, native Hawaiian health centers, urban Indian clinics/638 tribal centers, 340s school-based programs, Title X family planning clinics, sexually-transmitted disease clinics and tuberculosis clinics.

*Dispensing Fee*—Repealed.

*Estimated Acquisition Cost (EAC)*—the average acquisition cost of the drug dispensed. If there is not an AAC available, the EAC is equal to the wholesale acquisition cost, as reported in the drug pricing compendia utilized by the department's fiscal intermediary.

\* \* \*

*Professional Dispensing Fee*—the fee paid by Medicaid for the professional services provided by a pharmacist when dispensing a prescription. Per legislative mandate, the \$0.10

provider fee assessed for each prescription filled in the state of Louisiana will be paid separately.

*Wholesale Acquisition Cost (WAC)*—the manufacturer's published catalog price for a drug product to wholesalers as reported to Medicaid by one or more national compendia on a weekly basis.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1186 (June 2017).

##### **§963. Reimbursement**

A. Self-administered drugs that are purchased by a covered entity through the 340B program and dispensed to patients who are covered by Medicaid shall be billed to Medicaid at actual acquisition cost (can be no more than the 340B ceiling price) unless the covered entity has implemented the Medicaid carve-out option, in which case 340B drugs should not be billed to Medicaid. All other drugs shall be billed in accordance with existing Louisiana Medicaid reimbursement methodologies. Indian Health Service, tribal and urban Indian pharmacy claims will be reimbursed in the encounter rate.

B. Contract Pharmacies. Contract pharmacies are not allowed to bill 340B drugs to Medicaid; therefore, they should carve out.

C. Professional Dispensing Fees. The covered entity will be reimbursed at the appropriate ingredient cost plus the maximum allowable professional dispensing fee or the usual and customary charge, whichever is less.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1066 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1186 (June 2017).

#### **Subchapter F. Antihemophilia Drugs**

##### **§971. Reimbursement**

A. Anti-hemophilia drugs purchased by a covered entity through the 340B program and dispensed to Medicaid recipients shall be billed to Medicaid at actual acquisition cost and the professional dispensing fee.

B. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amended LR 34:881 (May 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1186 (June 2017).

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

Rebekah E. Gee MD, MPH  
Secretary

1706#044

**RULE**

**Department of Public Safety and Corrections  
Corrections Services**

Offender Mail and Publications (LAC 22:I.313)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has amended the contents of §313, Offender Mail and Publications.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 3. Adult Services**

**§313. Offender Mail and Publications**

A. - E. ...

\*\*\*

*Nudity*—pictorial depiction of genitalia or female breasts (with the nipple or areola exposed).

\*\*\*

F. - H. ...

1. Offenders shall not be allowed to receive or possess photographs or digital or other images that interfere with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution, or maintenance of an environment free of sexual harassment), or to prevent the commission of a crime or to protect the interests of crime victims. This includes photographs, digital or other images which expose the genitals, genital area (including pubic hair), anal area or female breasts (or breasts which are designed to imitate female breasts). These areas must be covered with garments which cannot be seen through.

H.2. - I.1.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A), *Guajardo v. Esteile*, 580 F.2d 748 (5th Cir.1978).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 5:4 (January 1979), amended LR 10:803 (October 1984), LR 11:360 (April 1985), amended by the Department of Public Safety and Corrections, Corrections Services, LR 33:851 (May 2007), LR 38:830 (March 2012), LR 39:2281 (August 2013), LR 41:2665 (December 2015), LR 43:1187 (June 2017).

James M. LeBlanc  
Secretary

1706#025

**RULE**

**Department of the Treasury  
Board of Trustees of the  
School Employees' Retirement System**

Limitation on Benefits (LAC 58:VII.401)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 11:2225(B), the Board of Trustees of the School Employees' Retirement System has adopted

Subparagraph h to the definition of *415 safe-harbor compensation* under §401.F of Chapter 4 of Part VII, included in Title 58, Retirement, of the *Louisiana Administrative Code*. The Rule has been adopted to clarify that the definition of *415 safe-harbor compensation* includes differential wage payments. A preamble to this action has not been prepared.

**Title 58**

**RETIREMENT**

**Part VII. School Employees' Retirement System**

**Chapter 4. Internal Revenue Code Provisions**

**§401. Limitation on Benefits**

A. - F. ...

\*\*\*

*415 Safe-Harbor Compensation*—

a. - g. ...

h. For limitation years beginning after December 31, 2008, compensation shall also include any differential wage payments as defined in code section 3401(h) which:

i. is made by the employer to an individual with respect to any period during which an individual is performing service in the uniformed services (as defined in chapter 43 of title 38, *United States Code*) while on active duty for a period of more than 30 days; and

ii. represents all or a portion of the remuneration such individual would have received from the employer if he or she was performing services for the employer.

\*\*\*

G. - G.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2225(B).

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees' Retirement System, LR 38:3241 (December 2012), amended by the Department of the Treasury, Board of Trustees of the School Employees' Retirement System, LR 43:1187 (June 2017).

Charles P. Bujol  
Executive Director

1706#013

**RULE**

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

Sharks and Sawfishes—Harvest Regulations  
(LAC 76:VII.357)

The Wildlife and Fisheries Commission has amended a Rule (LAC 76:VII.357) modifying existing commercial shark harvest regulations. The changes increase the daily possession limit of commercially harvested sharks from the large coastal species group to match the established default federal possession limit of 45 and to establish Secretarial authority to modify those commercial possession limits within a defined range (0-55) if notified by the National Marine Fisheries Service that an in-season change has been implemented. Authority for amendment of this Rule is included in the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:6(25)(a), 56:320.2, 56:326.1, and 56:326.3 to the Wildlife and Fisheries Commission.

**Title 76**

**WILDLIFE AND FISHERIES**

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

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

**§357. Sharks and Sawfishes—Harvest Regulations**

A. - H.1. ...

2. Persons possessing a commercial state shark permit but no federal shark permit shall not possess on any one day, or on any trip, or land from any trip, or sell, barter, trade, or exchange in excess 45 sharks from the large coastal species group, taken from Louisiana state waters. Persons possessing a commercial state shark permit shall not possess any sandbar sharks unless they also have in their name and in possession a valid federal shark research permit under 50 CFR 635.32(1). If the department is notified that the National Marine Fisheries Service has made an in-season adjustment to the daily federal possession limit, the secretary

of the department is authorized to adjust the daily possession limit of sharks from the large coastal species group. Such an adjustment of the daily possession limit shall not exceed 55 sharks from the large coastal species group.

H.3. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 325.2(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:543 (March 1999), amended LR 27:2267 (December 2001), LR 30:1507 (July 2004), LR 35:705 (April 2009), LR 39:1062 (April 2013), LR 43:1188 (June 2017).

Bart R. Yakupzack  
Chairman

1706#012



# Notices of Intent

## NOTICE OF INTENT

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

Safe Haven Relinquishment (LAC 67:V.1505)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:V.1505, Safe Haven Relinquishment.

Pursuant to *Louisiana Children's Code* articles 1060 and 1161, the amendment is necessary to promulgate the official safe haven symbol for use in identifying designated emergency care facilities to the public and that DCFS will transmit the symbol electronically to any designated emergency care facility upon their request. Prevent Child Abuse Louisiana and DCFS will provide toll-free lines for the public to inquire about safe haven relinquishment. Parents who have relinquished a child may contact DCFS to inquire about their parental rights or provide medical information. The amendment also updates department titles.

#### Title 67

#### SOCIAL SERVICES

#### Part V. Child Welfare

#### Subpart 3. Child Protective Services

#### Chapter 15. Conducting Investigations in Families

#### §1505. Safe Haven Relinquishment

A. The DCFS establishes procedures for implementation of title XI, safe haven relinquishment, chapter 13, safe haven relinquishment, of the *Louisiana Children's Code*, as a collaborative effort with community agencies.

1. Prevent Child Abuse Louisiana and DCFS will provide toll-free lines for the public to inquire about safe haven relinquishment information, procedures and designated emergency care facilities. Parents who have relinquished an infant may contact the DCFS through the toll free hotline at 1-855-452-5437 or Prevent Child Abuse Louisiana at 1-800-244-5373 to inquire about their parental rights or anonymously provide medical information.

2. DCFS, the Department of Health, and community agencies will collaborate to identify facilities meeting the legal definition of a designated emergency care facility, develop and distribute the written notification to such facilities regarding the provisions of the statute, develop and distribute written information and training materials for facilities to use for the instruction of their staff designated to receive relinquished infants and interview parents, develop and distribute information materials to use to increase public awareness regarding safe haven relinquishment, and develop and distribute the notification to hospitals of the requirements of the medical evaluation and testing of a relinquished infant.

3. DCFS will work with community agencies to develop and distribute the card for designated emergency care facilities to give to relinquishing parents as required by article 1152.

4. The following image shall constitute the official safe haven symbol for use in identifying designated emergency care facilities to the public.

### SAFE BABY SITE



a. The text and image shall be black and the background either white or a shade of yellow typically used for traffic warning signs indicating the necessity of caution. The Department of Children and Family Services will transmit the symbol electronically to any designated emergency care facility upon their request.

B. The initial agency response to notification of a safe haven relinquishment will be within the DCFS Child Protective Services Program.

1. A report that an infant has been relinquished at a designated emergency care facility will be accepted as a report of a safe haven relinquishment and immediately assigned to a child welfare worker. The worker will respond to secure the safety of the infant and obtain immediate medical care if the infant is at a location other than a medical facility able to provide the infant with immediate medical care, unless medical care has already been secured by the emergency care facility.

2. The worker will contact the appropriate court with juvenile jurisdiction and request an instant order placing the infant in the custody of DCFS as a child in need of care.

3. The worker will contact local law enforcement agencies to request their assistance to determine if the relinquished infant may have been reported missing. The agency will also contact the national registry for missing and exploited children to determine if the infant has been reported missing to that registry.

C. Any relinquishing or non-relinquishing parent of a Safe Haven infant contacting the DCFS will be asked to voluntarily provide information as well as be informed of their rights as per article 1152.

D. Once the infant has received the required medical examination and testing and any other necessary medical care, and has been discharged from the medical facility providing emergency and/or other medical care, the DCFS will place the infant in the foster/adoptive home that can best provide for his needs. Efforts for the continuance of custody as a child in need of care and the procedure for a termination of parental rights will begin immediately and proceed in accordance with the provisions of titles VI, child in need of care, and XI, safe haven relinquishment. The infant will

receive services through the DCFS foster care and adoption programs until the parental rights are terminated and an adoption is finalized or the mother and/or father establish parental rights.

**AUTHORITY NOTE:** Promulgated in accordance with Article 1149 et seq., of the Louisiana Children's Code, Title XI, Surrender of Parental Rights.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Community Services, LR 26:2196 (September 2000), amended LR 26:2826 (December 2000), LR 30:1703 (August 2004), amended by the Department of Children and Family Services, Child Welfare Division, LR 43:

#### **Family Impact Statement**

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

The proposed Rule is not anticipated to have an impact on poverty as defined by R.S. 49:973.

#### **Small Business Analysis**

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### **Provider Impact Statement**

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

#### **Public Comments**

All interested persons may submit written comments through July 25, 2017 to Rhenda Hodnett, Assistant Secretary of Child Welfare, Department of Children and Family Services, P.O. Box 3118, Baton Rouge, LA 70821.

#### **Public Hearing**

A public hearing on the proposed Rule will be held on July 25, 2017 at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA beginning at 10 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Unit or Division of Administrative Law at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Marketa Garner Walters  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Safe Haven Relinquishment**

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

This rule proposes to amend LAC 67: Part V, Subpart 3, Chapter 15, Safe Haven Relinquishment, Section 1505. In accordance with Act 84 of 2016, the proposed rule is necessary to promulgate the official Safe Haven symbol. The symbol will be used in identifying designated emergency care facilities to the public. DCFS will transmit the official symbol electronically to any designated emergency care facility upon their request. DCFS and Prevent Child Abuse Louisiana, a non-profit organization, will provide toll-free lines for the public to inquire about the Safe Haven relinquishment process. Parents

who have relinquished a child may contact DCFS to inquire about their parental rights or provide medical information. Also the rule makes technical corrections to update titles within the department.

The only cost associated with the proposed rule is the cost of publishing rulemaking. It is anticipated that \$1,917 (\$1,917 State General Funds and \$0 Federal Funds) will be expended in FY 16-17 for the state's administrative expenses for promulgation of this proposed rule and the final rule. This is a one-time cost that is routinely included in the department's annual operating budget.

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

Implementation of this proposed rule 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)**

Implementation of this proposed rule will have no cost or economic benefit to directly affected persons or non-governmental groups.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule will not have an impact on competition and employment for low-income families.

Rhenda Hodnett  
Assistant Secretary  
1706#030

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Children and Family Services Licensing Section**

#### **Residential Homes—Type IV (LAC 67:V.Chapter 71)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:V, Subpart 8, Residential Licensing, Chapter 71, §§7107, 7109, 7111, and 7117.

The department considers amendment of §§7107, 7109, 7111, and 7117 necessary to revise the child residential licensing standards to correctly identify referenced regulations and Section numbers.

This action was made effective by an Emergency Rule dated and effective March 31, 2017.

#### **Title 67**

#### **SOCIAL SERVICES**

#### **Part V. Child Welfare**

#### **Subpart 8. Residential Licensing**

#### **Chapter 71. Residential Homes—Type IV §7107. Licensing Requirements**

##### **A. - F.3.c. ...**

d. All staff/children of residents'/resident's information shall be updated under the new ownership as required in LAC 67:V.7111.A.2.c, A.5, A.7, B.2, and B.4.b-g prior to or on the last day services are provided by the existing owner.

e. If all information in Paragraph F.3 of this Section is not received prior to or on the last day services are provided by the existing owner, the new owner shall not operate until a license is issued. The new owner is not authorized to provide services until the licensure process is

completed in accordance with Paragraph F.3 of this Section.

F.3.f. - L.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S.46:1401 et seq., and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:807 (April 2010), amended LR 36:843 (April 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:1463 (July 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:977, 984 (April 2012), amended by the Department of Children and Family Services, Licensing Section, LR 43:249 (February 2017), LR 43:

#### **§7109. Critical Violations/Fines**

A. In accordance with R.S. 46:1430, when a provider is cited for violations in the following areas, the department may at its discretion elect to impose sanctions, revoke a license, or both:

1. §7107.A.5, §7111.A.2.c.ii, §7111.A.5.b, or §7111.B.2.a.ii—criminal background check;
2. §7107.A.6, §7111.A.2.c.iii, §7111.A.5.c, or §7111.B.2.a.x—state central registry disclosure;
3. §7111.A.9.a.i-v, vii, ix, or x—staffing ratios;
4. §7117.F.19—motor vehicle checks;
5. §7111.D.1.a or b—critical incident reporting; and/or
6. §7111.A.9.a.vi, §7111.A.9.a.xi, §7111.A.9.a.xiii-xv, §7111.A.4.c, §7123.B.5, or §7123.B.6—supervision.

B. - H.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Licensing Section, LR 43:258 (February 2017), amended LR 43:

#### **§7111. Provider Requirements**

A. - A.5.b. ...

c. Contractors hired to perform work which involves contact with residents or children of residents, shall be required to have documentation of a state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of the individual receiving notice of a justified (valid) determination of child abuse or neglect. All requirements in §7111.B.2.a.x.(a)-(c) shall be followed.

6. - 7.b.xxiv. ...

xxv. use of specialized services identified in §7117.D.6.

7.c. - 8.a.xx. ...

xxi. use of specialized services identified in §7117.D.6; and

a.xxii. - c. ...

d. All direct care staff shall have documentation of current certification in adult CPR and first aid. Effective August 1, 2016, if residents or children of residents under the age of 10 are accepted into the program, then staff shall also obtain a certificate in infant/child CPR. No staff member shall be left unsupervised with residents or children of residents until he/she has completed all required training. Online-only training is not acceptable.

A.8.e. - J.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:811 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:979, 984 (April 2012), LR 42:221 (February 2016), amended by the Department of Children and Family Services, Licensing Section, LR 43:261 (February 2017), LR 43:

#### **§7117. Provider Services**

A. - F.18. ...

19. A visual inspection of the vehicle is required to ensure that no child of a resident or resident under 10 years of age is left in the vehicle. A staff person shall physically walk through the vehicle and inspect all seat surfaces, under all seats, and in all enclosed spaces and recesses in the vehicle's interior. For field trips, staff shall inspect the vehicle and conduct a face-to-name count prior to leaving the facility for the destination, when destination is reached, before departing destination for return to facility, and upon return to facility. For all other transportation, the staff shall inspect the vehicle at the completion of each trip prior to the staff person exiting the vehicle. The staff conducting the visual inspection when a child of a resident or resident under 10 years of age is transported shall document the time of the visual inspection and sign his or her full name, indicating that no child of a resident or resident under 10 years of age was left in the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:823 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:985 (April 2012), amended by the Department of Children and Family Services, Licensing Section, LR 43:278 (February 2017), LR 43:

#### **Family Impact Statement**

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

#### **Small Business Analysis**

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### **Provider Impact Statement**

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

#### **Public Comments**

All interested persons may submit written comments through, July 25, 2017, to Rhenda Hodnett, Assistant Secretary of Child Welfare, Department of Children and Family Services, P.O. Box 3118, Baton Rouge, LA, 70821.

#### **Public Hearing**

A public hearing on the proposed Rule will be held on July 25, 2017 at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said

hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Marketa Garner Walters  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Residential Homes—Type IV**

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

This rule proposes to amend LAC Title 67, Part V, Subpart 8, Chapter 71—Residential Homes, Type IV, Sections 7107, 7109, 7111, and 7117. The proposed rule makes technical corrections to correctly identify referenced regulations and section numbers.

The only cost of this proposed rule is the cost of publishing rulemaking, which is estimated to be approximately \$2,343 (\$773 State General Funds and \$1,570 Federal Funds) in FY 16-17. This is a one-time cost that is routinely included in the department’s annual operating budget.

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

Implementation of this rule will have no effect on state or local revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule will have no impact to directly affected persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated impact on competition and employment as a result of the proposed rule change.

Rhenda Hodnett  
Assistant Secretary  
1706#031

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary  
Legal Division**

**Prevention of Significant Deterioration (PSD) Permits  
(LAC 33:III.509)(AQ371ft)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.509 (AQ371ft).

This Rule is identical to federal regulations found in 81 FR 71629, 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).

LAC 33:III.509.W.4 requires the public to be given “adequate notice of the rescission” of a prevention of significant deterioration (PSD) permit. This rule will specify that the department must provide such notice with 60 days of the rescission.

The federal PSD program requires notice of the rescission of a PSD permit to be provided with 60 days of the rescission. 40 CFR 52.21(w)(4) reads:

If the Administrator rescinds a permit under this paragraph, the Administrator shall post a notice of the rescission determination on a public Web site identified by the Administrator within 60 days of the rescission.

The basis and rationale for this Rule are to amend LAC 33:III.509.W.4 to require that notice of the rescission of a PSD permit be provided within 60 days of the rescission. 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**

**§509. Prevention of Significant Deterioration**

A. - W.3. ...

4. If the administrative authority rescinds a permit under this Subsection, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission on the department’s website within 60 days of the rescission shall be considered adequate notice.

X. - AA.15.b. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:1148 (April 2011), repromulgated LR 37:1389 (May 2011), amended LR 37:1570 (June 2011), repromulgated LR 37:2146 (July 2011), amended by the Office of the Secretary, Legal Division, LR 38:3163 (December 2012), LR 39:1280 (May 2013), LR 42:402 (March 2016), LR 42:564 (April 2016), LR 43:926 (May 2017), LR 43:

**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 AQ371ft. Such comments must be received no later than July 26, 2017, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to [deidra.johnson@la.gov](mailto: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 AQ371ft. 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 July 26, 2017, 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 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson  
General Counsel

1706#017

### NOTICE OF INTENT

#### Department of Environmental Quality Office of the Secretary Legal Division

#### Regulatory Permit for Oil and Gas Well Testing (LAC 33:III.307)(AQ346)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.307 (AQ346).

This revision to the Section, Regulatory Permit for Oil and Gas Well Testing, will allow well testing equipment to be utilized for longer than 10 operating days. The Section, Regulatory Permit for Oil and Gas Well Testing, currently limits operation of temporary separators, tanks, meters, and fluid-handling equipment to 10 operating days (LAC 33:III.307.E). The revision will allow well testing equipment to be utilized for longer periods such that additional testing events can be authorized by the regulatory permit process. The basis and rationale for this Rule are to allow well testing

equipment to be utilized for longer than 10 operating days such that additional testing events can be authorized by the regulatory permit process. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part III. Air

#### Chapter 3. Regulatory Permits

#### §307. Regulatory Permit for Oil and Gas Well Testing

A. - D. ...

E. Operation of temporary separators, tanks, meters, and fluid-handling equipment in excess of the following time periods shall not be authorized by this regulatory permit and must be approved separately by the administrative authority:

1. for horizontally-drilled wells completed with or without hydraulic fracturing, 60 days; and
2. for vertically-drilled wells, 10 days.

F. - G. ...

H. Definitions

*Horizontally-Drilled Well*—a well that is turned horizontally at depth, providing access to oil and gas reserves at a wide range of angles.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:457 (March 2009), amended by the Office of the Secretary, Legal Division, LR 43:

#### 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 AQ346. Such comments must be received no later than August 2, 2017, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to [deidra.johnson@la.gov](mailto:deidra.johnson@la.gov). Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ346. These proposed regulations are available on the internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

#### Public Hearing

A public hearing will be held on July 26, 2017, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given

below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson  
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regulatory Permit for  
Oil and Gas Well Testing**

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

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule.

The proposed rule change will allow well testing equipment to be utilized for longer than 10 operating days allowing for additional testing events, to the extent such extension is authorized by the regulatory permit process.

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

No increase or decrease in revenues to state or local governmental units will be realized. The fee collected will be equivalent to, and in place of, that which would have been required had a permit been applied for and processed pursuant to LAC 33:III.501, or if another approval mechanism (e.g., a variance) had been employed to authorize air emissions from the well testing event.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

Owners or operators needing to conduct a well test will be affected by the proposed action. There will be no increase in costs to applicants seeking coverage under this regulatory permit. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to "submit a written notification in lieu of submission of a permit application." However, this notification form will be specifically tailored to the activity addressed by the regulatory permit (i.e., oil and gas well testing events) and used in place of the traditional, more generic permit application documents, possibly resulting in economic benefits to applicants

Owners or operators will also have the ability to utilize well testing equipment for an extended period of time under the proposed rule change, resulting in economic benefits.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson  
General Counsel  
1706#019

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary  
Legal Division**

**Regulatory Permit for Storage Vessels  
(LAC 33:III.321)(AQ348)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.321 (AQ348).

This Rule will establish a regulatory permit for storage vessels, which can be used to authorize air emissions resulting from the storage of volatile organic liquids in tanks, reservoirs, containers, etc. Authorization to construct and use a storage vessel will become effective only upon notification by the department that the application required by the regulatory permit has been determined complete. R.S. 30:2054(B)(9)(a) allows LDEQ to develop regulatory permits for certain sources of air emissions provided the conditions in R.S. 30:2054(B)(9)(b) are satisfied. A regulatory permit is a permit that is incorporated into the regulations in the form of a rule.

Pursuant to R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019, promulgation of rules and regulations (i.e., the Administrative Procedure Act, R.S. 49:950 et seq.). The basis and rationale for this Rule are to establish a regulatory permit for storage vessels. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 3. Regulatory Permits**

**§321. Regulatory Permit for Storage Vessels**

**A. Applicability**

1. This regulatory permit authorizes the construction and use of storage vessels, subject to the requirements established herein, upon notification by the department that the application (i.e., notification form) submitted in accordance with Subsection G of this Section has been determined to be complete.

2. This regulatory permit shall not apply to storage vessels:

a. deemed insignificant in accordance with item A.2, A.3, A.8, A.10, B.31, B.39, or B.44 of the insignificant activities list in LAC 33:III.501.B.5;

b. that utilize a closed vent system and control device to comply with an applicable requirement, except that storage vessels employing carbon adsorbers solely to mitigate odors shall be allowed;

c. capable of maintaining working pressures sufficient at all times under normal operating conditions to prevent vapor or gas loss to the atmosphere; or

d. subject to federal regulations not identified in Subsection D of this Section.

3. This regulatory permit shall not be used to authorize a storage vessel that, when considering potential emissions from it and potential emissions from the remainder of the stationary source, would result in the creation of a major source of criteria pollutants, hazardous air pollutants, or toxic air pollutants.

#### B. Definitions

*Storage Vessel*—any tank, reservoir, or container used for the storage of volatile organic compounds. Storage vessels do not include:

a. process tanks as defined in 40 CFR 60.111b; and

b. vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships.

#### C. Emission Limitations, Monitoring, Recordkeeping, and Reporting

1. Emission limitations for the storage vessel shall be established by the application (i.e., notification form) submitted in accordance with Subsection G of this Section.

a. The limitations shall be enforceable by the department.

b. If actual emissions exceed these limitations for any reason other than as described in LAC 33:III.501.C.12, the permittee shall notify the Office of Environmental Compliance in accordance with Louisiana general condition XI of LAC 33:III.537.A. For part 70 sources, the reports required by Paragraph C.3 of this Section shall satisfy this requirement.

2. The permittee shall monitor and record the throughput of the storage vessel during each calendar month. Records shall be retained as described in Louisiana general condition X of LAC 33:III.537.A.

3. The permittee shall address each storage vessel located at a part 70 source in the submittals required by part 70 general conditions K, M, and R of LAC 33:III.535.A. Deviations from the terms and conditions of this regulatory permit, including the standards identified in Subsection D of this Section, shall not be considered violations of the stationary source's part 70 permit.

D. Storage Vessel Standards. The permittee shall comply with the provisions of the following federal and state regulations pertaining to storage vessels, as applicable:

1. LAC 33:III.2103;

2. 40 CFR 60, subpart Kb;

3. 40 CFR 61, subpart FF; and

4. 40 CFR 63, subparts G, R, U, CC, JJJ, PPP, FFFF, HHHHH, BBBB, CCCCC, VVVVVV, and HHHHHH.

E. Floating Roofs. The intent of this Subsection is to avoid having a vapor space between the floating roof and the stored liquid for extended periods.

1. An internal or external floating roof shall be floating on the liquid surface at all times except:

a. when it must rest on the leg supports during the initial fill;

b. after the storage vessel has been completely emptied and degassed; or

c. when the storage vessel is completely emptied before being subsequently refilled.

2. When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as practical.

3. Storage vessels where liquid is left on walls, as bottom clingage, or in pools due to floor irregularities are considered completely empty.

F. Emissions Inventory. Each stationary source subject to LAC 33:III.919 shall include emissions from each storage vessel authorized by this regulatory permit in its annual emissions inventory.

#### G. Notification Requirements

1. Written notification describing the storage vessel shall be submitted to the Office of Environmental Services using the appropriate form provided by the department.

2. A separate notification shall be submitted for each storage vessel.

H. Fees. Fees for this regulatory permit shall be as prescribed by fee number 1670 of LAC 33:III.223, Table 1. Applicable surcharges as described in LAC 33:III.211.A shall also be assessed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 43:

#### **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 AQ348. Such comments must be received no later than August 2, 2017, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to [deidra.johnson@la.gov](mailto:deidra.johnson@la.gov). Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ348. These proposed regulations are available on the internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

#### **Public Hearing**

A public hearing will be held on July 26, 2017, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson  
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Regulatory Permit for Storage Vessels**

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

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule.

The proposed rule will establish a regulatory permit for storage vessels, which can be used to authorize air emissions resulting from the storage of volatile organic liquids in tanks, reservoirs, containers, etc. This proposed rule will help to streamline the permitting process for owners of additional storage vessels.

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

No increase or decrease in revenues to state or local governmental units will be realized. The fee collected will be equivalent to, and in place of, that which would have been required had a permit or permit modification been applied for pursuant to LAC 33:III.501.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Owners or operators needing to construct and use storage vessels at a facility requiring an air permit will be affected by the proposed action. However, there will be no increase in costs to applicants seeking coverage under this regulatory permit. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to "submit a written notification ... in lieu of submission of a permit application." However, this notification form will be specifically tailored to the source addressed by the regulatory permit (i.e., storage vessels) and used in place of the traditional, more generic permit application documents.

Use of a notification form specifically tailored to storage vessels should also facilitate the department's review of such documents. Thus, a final decision on proposed projects should be reached more expeditiously, possibly resulting in economic benefits to applicants.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson  
General Counsel  
1706#018

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Racing Commission**

Receiving Barn (LAC 35:III.5708)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 4:148, notice is hereby given that the Racing Commission proposes to publish and adopt LAC 35:III.5708 by notice of intent. This Rule specifies the Racing Commission's authority to regulate receiving barn parameters, use, and occupancy.

**Title 35**

**HORSE RACING**

**Part III. Personnel, Registration and Licensing  
Chapter 57. Associations' Duties and Obligations  
§5708. Receiving Barn**

A. The association shall provide a receiving barn, which shall be a separate barn.

B. The stall size and number of stalls of the receiving barn shall be approved by the commission.

C. The receiving barn shall be restricted to horses that are entered and shipping in to run in a scheduled race, or shipping in/out for morning work and go.

D. No full-time or temporary stabling shall be allowed during an approved race meet and the receiving barn shall not be used as a quarantine facility by the association, unless otherwise approved by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 43:

**Family Impact Statement**

This proposed Rule has no known impact on family formation, stability, and/or 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.

**Provider Impact Statement**

This proposed Rule has no known impact on providers of services for individuals with developmental disabilities.

**Public Comments**

The domicile office of the Louisiana State Racing Commission is open from 8 a.m. to 4:30 p.m., and interested parties may contact Charles A. Gardiner III, Executive Director, or Larry Munster, Assistant Executive Director, at (504) 483-4000 (holidays and weekends excluded), or by fax (504) 483-4898, for more information. All interested persons may submit written comments relative to this proposed Rule for a period up to 20 days exclusive of weekends and state holidays from the date of this publication to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Charles A. Gardiner III  
Executive Director



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Receiving Barn**

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

The proposed rule will not result in any costs or savings to state or local governmental units.

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

The proposed rule will not affect revenue collections for state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule will impact the four licensed racing associations in Louisiana by requiring them to designate one separate barn to be a receiving barn, which shall be restricted to horses shipping in for morning work and go's or races that day or night. There shall not be long term or permanent stabling allowed in the receiving barn. Furthermore, the associations will be required to seek approval from the Commission for size and number of stalls in the receiving barn. The licensed associations could incur additional costs with the requirement of a separate barn to be designated as a receiving barn.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no effect on competition and employment as a result of the proposed administrative rule change.

Charles A. Gardiner III  
Executive Director  
1706#029

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Behavior Analyst Board**

Continuing Education—Licensed Behavior Analysts and  
State-Certified Assistant Behavior Analysts  
(LAC 46:VIII.Chapter 8)

This amended Rule establishes the requirements for each licensed behavior analyst and state-certified assistant behavior analyst to complete continuing education hours within biennial reporting periods beginning in December 2016. Continuing education is an ongoing process consisting of learning activities that increase professional development.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part VIII. Behavior Analysts**

**Chapter 8. Continuing Education Requirements for  
Licensed Behavior Analysts and State-  
Certified Assistant Behavior Analysts**

**§803. Requirements**

A. For the reporting periods that begin December 2016 and henceforth, 32 credits of continuing professional development will be required in the biennial reporting period for licensed behavior analysts and 20 credits for state-certified assistant behavior analysts. Certificants/licensees should not repeat a continuing education event in order to obtain additional continuing credits. The hours must conform to the distribution listed below.

B. ...

C. Certificants/licensees can accumulate continuing professional development credits in seven categories:

1. academic:

a. completion of graduate-level college or university courses. Course content must be entirely behavior analytic. Courses must be from a United States or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial or national accrediting body, or approved by the board;

b. one academic semester credit is equivalent to 15 hours of continuing education and one academic quarter credit is equivalent to 10 hours of continuing education. Any portion or all of the required number of hours of continuing education may be applied from this category during any two-year certification/licensure period;

c. required documentation is a course syllabus and official transcript;

2. traditional approved events:

a. completion of events sponsored by providers approved by the Behavior Analyst Certification Board (BACB). Any portion or all of the total required number of hours of continuing education may be applied from this category during any two-year certification/licensure period;

b. required documentation is a certificate or letter from the approved continuing education (ACE) provider;

3. non-approved events:

a. completion or instruction of a seminar, colloquium, presentation, conference event, workshop or symposium not approved by the BACB, only if they relate directly to the practice of behavior analysis. A maximum of 25 percent of the total required number of hours of continuing education may be applied from this category during any two-year certification/licensure period;

b. required documentation is an attestation signed and dated by the certificant/licensee;

c. approval of these events is at the discretion of the board;

4. instruction of continuing education events:

a. instruction by the certificant/licensee of category 1 or 2 continuing education events, on a one-time basis for each event, provided that the certificant/licensee was present for the complete event. A maximum of 50 percent of the total required number of hours of continuing education may come from this category during any two-year certification/licensure period;

b. required documentation is a letter from the department chair on letterhead from the university at which a course was taught or a letter from the approved continuing education (ACE) provider's coordinator;

5. BACB events:

a. credentialing events or activities initiated and pre-approved for CEU by the BACB;

b. a maximum of 25 percent of the total required number of hours of continuing education may come from this category during any two-year certification/licensure reporting period;

c. required documentation is a copy of the email sent from the BACB to the certificant/licensee which states participant has completed the BACB event/activity as well as shows the number of CEUs earned for completion. It is important that the date in which the email was received is

displayed, as the CEUs are only valid towards the reporting period in which they were received;

6. passing BACB exam:

a. passing, during the second year of the applicant's certification/licensure period, the BACB examination appropriate to the type of renewal. LBA's may only take the BCBA examination; SCABA's may only take the BCaBA examination for continuing education credit. Passing the appropriate examination shall satisfy the continuing education requirement for the current certification/licensure period;

b. required documentation is a verification letter of passing score from the BACB;

7. scholarly activities:

a. publication of an ABA article in a peer-reviewed journal or service as reviewer or action editor of an ABA article for a peer reviewed journal. A maximum of 25 percent of the total required number of hours of continuing education may come from this category during any two-year certification/licensure period. The credit will only be applied to the reporting period when the article was published or reviewed:

i. one publication = 8 hrs.;

ii. one review = 1 hr.;

b. required documentation is a final publication listing certificant/licensee as author, editorial decision letter (for action editor activity), or letter of attestation from action editor (for reviewer activity).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3713.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 42:1514 (September 2016), amended LR 43:

**§805. Extensions/Exemptions**

A. Certificants/licensees on extended active military service outside the state of Louisiana during the applicable reporting period and who do not engage in delivering behavior analysis services within the state of Louisiana may be granted an extension or an exemption if the board receives a timely confirmation of such status.

B. Certificants/licensees who are unable to fulfill the requirement because of illness or other personal hardship may be granted an extension or an exemption if timely confirmation of such status is received by the board.

C. Behavior analysts or state-certified assistant behavior analysts are exempt from continuing professional development requirements for the remainder of the year for which their license or certification is initially granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3713.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 42:1514 (September 2016), amended LR 43:

**§807. Noncompliance**

A. ...

B. Failure to fulfill the requirements of the continuing professional development rule shall cause the certificate/license to lapse pursuant to §401 of this Part.

C. If the certificant/licensee fails to meet continuing professional development requirements by the appropriate date, the certificate/license shall be regarded as lapsed at the close of business December 31 of the year for which the certificant/licensee is seeking renewal.

D. The Behavior Analyst Board shall serve written notice of noncompliance on a certificant/licensee determined to be in noncompliance. The notice will invite the certificant/licensee to request a hearing with the board or its representative to claim an exemption or to show compliance. All hearings shall be requested by the certificant/licensee and scheduled by the board in compliance with any time limitations of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3713.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 42:1515 (September 2016), amended LR 43:

**§809. Reinstatement**

A. For a period of two years from the date of lapse of the certificate/license, the certificate/license may be renewed, at the approval of the board, upon proof of fulfilling all continuing professional development requirements applicable through the date of reinstatement and upon payment of all fees due under R.S. 37:3714.

B. After a period of two years from the date of lapse of the certificate/license, the certificant/licensee may be renewed, at the approval of the board, if all applicable requirements have been met, along with payment of a fee equivalent to the application fee and renewal fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3713-3714.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 42:1515 (September 2016), amended LR 43:

**Family Impact Statement**

The Behavior Analyst Board hereby issues this Family Impact Statement as set forth in R.S. 49:972. The proposed amended Rule and adoption of the amended rule related to continuing education is being implemented to guarantee the licensing authority can safeguard the public welfare of this state and will have no known foreseeable impact 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 personality responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed rule.

**Poverty Impact Statement**

The proposed Rule amends LAC 46:VIII.Chapter 8. The proposed amended Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

**Provider Impact Statement**

The proposed amended Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. Specifically, there is no known or foreseeable effect on: the staffing level

requirements or qualifications required to provide the same level of service; the total direct or indirect cost to the providers to provide the same level of service; or the overall ability of the provider to provide the same level of service.

**Public Comments**

Interested persons may submit written comments to Rhonda Boe, Executive Director, 8706 Jefferson Highway, Suite B, Baton Rouge, LA 70809. All comments must be submitted by 12 p.m. on July 10, 2017.

Rhonda Boe  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Continuing Education  
Licensed Behavior Analysts and**

**State-Certified Assistant Behavior Analysts**

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

Other than the publication fee associated with the proposed rule changes, which are estimated to cost the Louisiana Behavior Analyst Board \$450 in FY 17, it is not anticipated that the board will incur any other costs or savings as a result of promulgation of the proposed rule. The proposed rule change makes technical updates and clarifies that a licensed behavior analyst and state certified assistant behavior analyst may not repeat an education event in order to obtain additional continuing education credits. The proposed rule change also establishes that Behavior Analyst Certification Board (BACB) initiated and pre-approved activities/ events may count towards a maximum of 25% of the total required number of continuing education hours needed for licensure/certification as a behavior analyst or assistant behavior analyst.

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

The proposed rule change will not impact state or local governmental revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

The proposed rule updates guidelines for acceptable continuing education. There are no anticipated additional economic costs/benefits to behavior analysts, as this proposed rule amendment does not change the number of continuing education hours required for licensure/certification.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

Individuals performing behavior analysis services will be responsible for adhering to all guidelines for acceptable continuing education, including documentation, and will be subjected to random audits conducted by the board. Individuals failing to meet proper requirements and/or provide necessary documentation may be unable to continue to work in the field of behavior analysis or may endanger their licensure status.

Rhonda Boe  
Executive Director  
1706#047

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Board of Dentistry**

Fees and Costs; Anesthesia/Analgesia  
Administration; and Continuing Education  
(LAC 46:XXXIII.122, 128, 301, 411, and 1511)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health, Board of Dentistry intends to amend LAC 46:XXXIII.122, 128, 301, 411, and 1511.

The current rules of the Louisiana State Board of Dentistry only recognizes nine of the American Dental Association's approved areas of specialties. The changes to LAC 46:XXXIII.122 and 301 will now allow the board to recognize any specialty of area of dentistry for which a dentist has completed an accredited, two-year full-time residency.

The changes to LAC 46:XXXIII.128 will allow dentists licensed in another state but not licensed in Louisiana to participate in "hands-on" continuing education courses in Louisiana as long as the patient on whom the work is being done is not charged a fee.

The Louisiana State Board of dentistry is changing LAC 46:XXXIII.411 to set the amount the exact fee of a preapproval of advertisements because the amount was never set in the rule, there was just a range listed in R.S. 37:795.

Finally, LAC 46:XXXIII.1511 currently sets forth certain requirements in order to perform different levels of sedation in a dental office. The level of sedation that currently reads "moderate sedation with parenteral drugs" is changed to read simply "moderate sedation" to make it clear that the requirements apply to all moderate sedation, not just moderate sedation with parenteral drugs.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXIII. Dental Health Profession**

**Chapter 1. General Provisions**

**§122. Scopes of Practice**

A. The board approves of the following specialties:

- 1. - 7. ...
- 8. prosthodontics;
- 9. oral and maxillofacial radiology;
- 10. any other area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full-time years and which program is accredited by an accreditation agency that is recognized by the United States Department of Education.

B. - C. ...

1. The board finds that terms implying that a dentist is a specialist in some field of dentistry are terms of art

indicating that the dentist has completed an accredited post-doctoral educational program in that field of at least two years. Therefore, a licensed dentist seeking specialty recognition must have successfully completed a post-doctoral program in a specialty area of dentistry consisting of at least two full-time years and which is accredited by an accreditation agency that is recognized by the United States Department of Education.

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1114 (June 1998), amended LR 28:1776 (August 2002), LR 28:2512 (December 2002), amended by the Department of Health, Board of Dentistry, LR 43:

### **§128. Provisional Licensure for Dental Healthcare Workers Providing Gratuitous Services**

A. - A.3. ...

B. The Board of Dentistry may grant a provisional license not to exceed 60 days in duration for any dentist or dental hygienist who is in good standing in the state of their licensure and who wishes to provide gratuitous services to patients as part of a continuing education course in which the dental healthcare provider is enrolled as a participant and which services are provided as part of the continuing education course provided:

1. the applicant is verified by the board to be in good standing in the state of licensure where the applicant is licensed;

2. the applicant provides satisfactory documentation to the board that the dental healthcare provider is assigned to provide gratuitous services as part of a continuing education course that meets the requirements of LAC XXXIII.1615;

3. the applicant agrees to render services on a gratuitous basis with no revenue of any kind to be derived whatsoever from the provision of dental services within the state of Louisiana, except that the provider of the continuing education course may accept payment from the dental healthcare provider for the continuing education course.

C. The board may renew this provisional license for no more than an additional 60 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(6) and (8) and R.S. 49:953(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 32:1227 (July 2006), amended by the Department of Health, Board of Dentistry, LR 43:

## **Chapter 3. Dentists**

### **§301. Advertising and Soliciting by Dentists**

A. - B. ...

C. Approved Specialties. The board approves only the following specialties:

1. - 7. ...

8. prosthodontics;

9. oral and maxillofacial radiology;

10. any other area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full time years and which program is accredited by an accreditation agency that is recognized by the United States Department of Education.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Dentistry, December 1970, amended 1971, amended and promulgated LR 13:179 (March 1987), amended by Department of Health and Hospitals, Board of Dentistry, LR 15:966 (November 1989), LR 18:739 (July 1992), LR 20:657 (June 1994), LR 21:567 (June 1995), LR 22:23 (January 1996), LR 22:1215 (December 1996), repromulgated LR 23:199 (February 1997), amended LR 23:1524 (November 1997), LR 25:509 (March 1999), LR 25:1476 (August 1999), LR 26:690 (April 2000), LR 27:1890 (November 2001), LR 28:1776 (August 2002), LR 28:2512 (December 2002), LR 30:2305 (October 2004), LR 32:243 (February 2006), LR 37:2150 (July 2011), amended by the Department of Health, Board of Dentistry, LR 43:

## **Chapter 4. Fees and Costs**

### **Subchapter B. General Fees and Costs**

#### **§411. Miscellaneous Fees and Costs**

A. - A.9. ...

10. unbound copy of Dental Practice Act—\$25;

11. preapproval of advertising—\$150 per advertisement or per page of a website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 19:207 (February 1993), LR 28:1778 (August 2002), amended by the Department of Health, Board of Dentistry, LR 43:

## **Chapter 15. Anesthesia/Analgesia Administration**

### **§1511. Required Facilities, Personnel and Equipment for Sedation Procedures**

A. - B. ...

1. The authorized dentist must ensure that every patient receiving nitrous oxide inhalation analgesia, moderate sedation, deep sedation, or general anesthesia is constantly attended.

2. Direct supervision by the authorized dentist is required when nitrous oxide inhalation analgesia, moderate sedation, deep sedation, or general anesthesia is being administered.

3. ...

4. When moderate sedation is being administered one auxiliary who is currently certified in basic life support must be available to assist the dentist in an emergency.

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:55 (January 2016), amended by the Department of Health, Board of Dentistry, LR 43:

#### **Family Impact Statement**

There will be no family impact in regard to issues set forth in R.S. 49:972.

#### **Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973. In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

**Provider Impact Statement**

The proposed rulemaking should not have any know or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect of the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

**Public Comments**

Interested persons may submit written comments on these proposed Rule changes to Arthur Hickham, Jr., Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 20 days of the date of the publication of this notice.

**Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be in writing and received by the board within 20 days of the date of the publication of this notice.

Arthur Hickham, Jr.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Fees and Costs; Anesthesia/Analgesia  
Administration; and Continuing Education**

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

The proposed rule change is estimated to cost the Board of Dentistry \$500 for the publication of the notice. It is not anticipated that any other state or local governmental units will incur costs or savings as a result of this rule change. In addition to technical updates, the proposed rule (1) recognizes any specialty area of dentistry for which a dentist has completed an accredited, two-year full time residency, (2) allows dentists and hygienists licensed in another state to be granted a 60-day provisional license to practice in the state of Louisiana to provide gratuitous services as a part of a continuing education course, and (3) sets the fee of preapproval for advertisements or per page of a website to \$150.

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

In current practice, the board charges \$150 for preapproval of advertisements or per page of a website. The proposed rule change codifies current practice. Therefore, there is no estimated effect on revenue collections by the board through promulgation of the proposed rule changes.

To the extent that dentists and hygienists licensed in another state complete continuing education hours at a public higher education institution in Louisiana, the institution may receive an indeterminable amount of additional revenue.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change is anticipated to have a benefit to dentists and hygienists licensed in another state that want to

take a continuing education course in which gratuitous services are performed. This rule change provides these dentists and hygienists can be granted a 60-day provisional license.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes should not impact competition or employment.

Arthur F. Hickman, Jr.  
Executive Director  
1706#028

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

Abortion Facilities  
Licensing Standards  
(LAC 48:I.4431)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.4431 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2175.1 et seq. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed and replaced the provisions governing the licensing standards for abortion facilities in order to incorporate the changes imposed by legislation, and further revise and clarify those provisions (*Louisiana Register*, Volume 41, Number 4).

Act 97 of the 2016 Regular Session of the Louisiana Legislature increased the time period required for certain pre-operative services. Act 563 of the 2016 Regular Session of the Louisiana Legislature provides that at least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of certain printed information, including resources, programs and services for pregnant women who have a diagnosis of fetal genetic abnormality, and given printed information about resources, programs and services for infants and children born with disabilities, as well as other related matters. Act 593 of the 2016 Regular Session of the Louisiana Legislature provides for the disposal, by interment or cremation, of fetal remains and designates procedures for giving patients options for arrangements. The department promulgated an Emergency Rule which amended the provisions governing outpatient abortion clinics in order to comply with the provisions of Acts 97, 563 and 593 (*Louisiana Register*, Volume 42, Number 12). This proposed Rule is being promulgated in order to continue the provisions of the December 3, 2016 Emergency Rule.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 44. Abortion Facilities**

**Subchapter C. Pre-Operative, Intra-Operative, and Post-Operative Procedures**

**§4431. Screening and Pre-Operative Services**

A. - E.1. ...

## 2. Requirements

a. Except as provided in Subparagraph b below, at least 72 hours prior to the pregnant woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the pregnant woman, the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the following requirements:

i. perform an obstetric ultrasound on the pregnant woman, offer to simultaneously display the screen which depicts the active ultrasound images so that the pregnant woman may view them and make audible the fetal heartbeat, if present, in a quality consistent with current medical practice. Nothing in this Section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the fetal heart monitor, or from not viewing the images displayed on the ultrasound screen;

ii. provide a simultaneous and objectively accurate oral explanation of what the ultrasound is depicting, in a manner understandable to a layperson, which shall include the presence and location of the unborn child within the uterus and the number of unborn children depicted, the dimensions of the unborn child, and the presence of cardiac activity if present and viewable, along with the opportunity for the pregnant woman to ask questions;

iii. offer the pregnant woman the option of requesting an ultrasound photograph or print of her unborn child of a quality consistent with current standard medical practice that accurately portrays, to the extent feasible, the body of the unborn child including limbs, if present and viewable;

iv. from a form that shall be produced and made available by the department, staff will orally read the statement on the form to the pregnant woman in the ultrasound examination room prior to beginning the ultrasound examination, and obtain from the pregnant woman a copy of a completed, signed, and dated form; and

v. retain copies of the election form and certification prescribed above. The certification shall be placed in the medical file of the woman and shall be kept by the outpatient abortion facility for a period of not less than seven years. If the woman is a minor, the certification shall be placed in the medical file of the minor and kept for at least ten years from the time the minor reaches the age of majority. The woman's medical files shall be kept confidential as provided by law.

b. If the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion or a qualified person who is the physician's agent shall comply with all of the requirements of §4431.E.2.a at least 24 hours prior to the woman having any part of an abortion performed or induced.

c. - e. Repealed.

E.3. - G.1. ...

a. Except as provided in Subparagraph b below, at least 72 hours before the abortion the physician who is to perform the abortion or the referring physician shall provide informed consent to the pregnant woman seeking an

abortion, pursuant to all laws, rules and regulations regarding informed consent. The informed consent shall be communicated both orally and in-person, and in writing, and shall be provided in a private room. Documentation of all such informed consent provided shall be maintained in the patient's medical record.

b. If the woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion or the referring physician shall comply with all of the requirements of §4431.G.1 at least 24 hours prior to the abortion.

1.c. - 3. ...

a. Except as provided in Subparagraph b below, at least 72 hours before a scheduled abortion the physician who is to perform the abortion, the referring physician, or a qualified person shall inform the pregnant woman seeking an abortion, orally and in-person that:

i. - iv. ...

b. If the woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, then the physician who is to perform the abortion the referring physician, or a qualified person shall comply with all of the requirements of §4431.G.3 at least 24 hours prior to the abortion.

4. ...

a. At least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of the printed materials, pursuant to any applicable state laws, rules, and regulations, by the physician who is to perform the abortion, the referring physician, or a qualified person. These printed materials shall include any printed materials necessary for a voluntary and informed consent, pursuant to R.S. 40:1061.17. However, if the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of the printed materials at least 24 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c).

i. - NOTE. Repealed.

b. At least 72 hours before the abortion, the pregnant woman or minor female considering an abortion shall be given a copy of the department's *Point of Rescue* pamphlet and any other materials described in R.S. 40:1061.16 by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of medical emergency defined by applicable state laws. However, if the pregnant woman or minor female considering an abortion certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of these printed materials at least 72 hours prior to an elective abortion procedure by the physician who is to perform the abortion or

a qualified person as defined in R.S. 40:1061.17(B)(4)(c), except in the case of medical emergency defined by applicable state laws.

i. The physician or qualified person shall provide to the woman, or minor female seeking an abortion, such printed materials individually and in a private room for the purpose of ensuring that she has an adequate opportunity to ask questions and discuss her individual circumstances.

ii. The physician or qualified person shall obtain the signature of the woman or minor female seeking an abortion on a form certifying that the printed materials were given to the woman or minor female.

iii. In the case of a minor female considering an abortion, if a parent accompanies the minor female to the appointment, the physician or qualified person shall provide to the parent copies of the same materials given to the female.

iv. The signed certification form shall be kept within the medical record of the woman or minor female for a period of at least seven years.

c. At least 72 hours before the abortion, the pregnant woman seeking an abortion shall be given a copy of a printed informational document including resources, programs and services for pregnant women who have a diagnosis of fetal genetic abnormality and resources, programs and services for infants and children born with disabilities. However, if the pregnant woman certifies in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy, she shall be given a copy of these printed materials at least 24 hours prior to an elective abortion procedure by the physician who is to perform the abortion or a qualified person as defined in R.S. 40:1061.17(B)(4)(c).

d. If the pregnant woman seeking an abortion is unable to read the materials, the materials shall be read to her. If the pregnant woman seeking an abortion asks questions concerning any of the information or materials, answers shall be provided to her in her own language.

NOTE: The provisions of this Section requiring a physician or qualified person to provide required printed materials to a woman considering an abortion shall become effective 30 days after the department publishes a notice of the availability of such materials.

5. ...

a. Prior to the abortion, the outpatient abortion facility shall ensure the pregnant woman seeking an abortion has certified, in writing on a form provided by the department that the information and materials required were provided at least 72 hours prior to the abortion, or at least 24 hours prior to the abortion in the case of a woman who has given prior certification in writing that she currently lives 150 miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy. This form shall be maintained in the woman's medical record.

b. ...

c. The pregnant woman seeking an abortion is not required to pay any amount for the abortion procedures until the 72-hour period has expired, or until expiration of the 24-hour period applicable in the case of a woman who has given prior certification in writing that she currently lives 150

miles or more from the nearest licensed outpatient abortion facility that is willing and able to perform the abortion at the particular woman's stage of pregnancy.

6. - 7.b. ...

#### 8. Disposition of Fetal Remains

a. Each physician who performs or induces an abortion which does not result in a live birth shall ensure that the remains of the fetus are disposed of by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq., and the provisions of LAC 51:XXVI.102 of the *Sanitary Code*.

b. Prior to an abortion, the physician shall orally and in writing inform the pregnant woman seeking an abortion in the licensed abortion facility that the pregnant woman has the following options:

i. the option to make arrangements for the disposition and/or disposal of fetal remains by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.; or

ii. the option to have the outpatient abortion facility/physician make the arrangements for the disposition and/or disposal of fetal remains by interment or cremation, in accordance with the provisions of R.S. 8:651 et seq.

c. The pregnant woman shall sign a consent form attesting that she has been informed of these options, and shall indicate on the form whether she wants to make arrangements for the disposition of fetal remains or whether she wants the facility to make arrangements for the disposition and/or disposal of fetal remains.

d. The requirements of §4431.G.8 regarding dispositions of fetal remains, shall not apply to abortions induced by the administration of medications when the evacuation of any human remains occurs at a later time and not in the presence of the inducing physician or at the facility in which the physician administered the inducing medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2175.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:700 (April 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

#### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by ensuring that outpatient abortion facilities protect the health and safety of the patients receiving services.

#### Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule may have an adverse impact on small businesses, as described in R.S. 49:965.2 et

seq, if the requirements of these licensing changes increases the financial burden on providers. With the resources available to the department, a regulatory flexibility analysis has been prepared in order to consider methods to minimize the potential adverse impact on small businesses. The department has determined that there is no less intrusive or less costly alternative methods of achieving the intended purpose since the changes result from legislative mandates.

**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 may have an impact on the staffing level requirements or qualifications required to provide the same level of service and may result in nominal direct or indirect cost to the provider to provide the same level of service. These provisions may also negatively impact the provider’s ability to provide the same level of service as described in HCR 170.

**Public Comments**

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, July 27, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Abortion Facilities Licensing Standards**

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 16-17. It is anticipated that \$1,512(SGF) will be expended in FY 16-17 for the state’s administrative expense for the promulgation of this proposed rule and the final rule
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections since the licensing fees, in the same amounts, will continue to be collected.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
 

This proposed Rule continues the provisions of the December 3, 2016 Emergency Rule which amended the provisions governing the licensing standards for outpatient

abortion facilities in order to comply with the provisions of Acts 97, 563 and 593 of the 2016 Regular Session of the Louisiana Legislature which increased the time period for pre-operative services, mandated the distribution of printed information about services for pregnant women, and established provisions for the disposal of fetal remains. It is anticipated that the implementation of this proposed rule may result in nominal economic costs to abortion facility providers for FY 16-17, FY 17-18 and FY 18-19 with regard to staffing requirements, but may be beneficial by providing clear and concise licensing standards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Cecile Castello Health Standards Section Director 1706#039	Evan Brasseaux Staff Director Legislative Fiscal Office
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**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

Pharmacy Benefits Management Program  
Managed Care Supplemental Rebates  
(LAC 50:XXIX.1103)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:XXIX.1103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing promulgated a Rule which amended the provisions governing the Pharmacy Benefits Management Program in order to establish provisions for the Medicaid Program’s participation in The Optimal PDL Solution (TOP\$) State Supplemental Rebate Agreement Program and assure compliance with the technical requirements of R.S. 49:953 (*Louisiana Register*, Volume 43, Number 5).

The department has now determined that it is necessary to amend the provisions governing the TOP\$ State Supplemental Rebate Agreement Program in order to include pharmacy utilization of managed care organizations (MCOs) that participate in the Healthy Louisiana (formerly Bayou Health) Program and implement a single state managed preferred drug list for selected therapeutic classes to maximize supplemental rebates on MCO utilization.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXIX. Pharmacy  
Chapter 11. State Supplemental Rebate Agreement Program**

**§1103. Managed Care Organization Utilization**

A. Effective for dates on or after October 1, 2017, the TOP\$ State Supplemental Rebate Agreement Program shall include pharmacy utilization of managed care organizations (MCOs) that participate in the Healthy Louisiana Program for state supplemental drug rebates on selected therapeutic classes.



1. The Healthy Louisiana Program's contracts with the participating MCOs shall:

a. allow inclusion of the pharmacy utilization data for supplemental rebate purposes; and

b. mandate that each participating MCO shall align their respective formulary(ies) and/or preferred drug list (PDL) on selected therapeutic classes, as applicable, to the fee-for-service (FFS) preferred drug list and adopt FFS prior authorization criteria for the non-preferred agents.

B. The Department of Health shall implement a single state-managed PDL for selected therapeutic classes for all participating MCOs in order to maximize the supplemental and federal rebates on MCO utilization.

C. Supplemental rebates on MCO utilization shall be excluded from best price or average manufacturer price (AMP) calculations.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

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

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, July 27, 2017 at 9:30 a.m. in Room 118, Bienville

Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Pharmacy Benefits Management Program—Managed Care Supplemental Rebates**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will result in estimated state general fund costs of \$216 for FY 16-17 and programmatic savings of \$4,997,340 for FY 17-18 and \$21,158,895 for FY 18-19. The estimated savings includes increased revenue of \$580,139 for FY 17-18 and \$3,327,725 for FY 18-19 from the Medicaid Assistance Trust Fund premium taxes. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 16-17 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 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19 for the projected non-expansion population, and a blended FMAP rate of 94.5 percent in FY 17-18 and 93.5 percent in FY 18-19 for the projected expansion population.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by \$216 for FY 16-17 and reduce federal revenue collections by approximately \$14,139,268 for FY 17-18 and \$53,291,638 for FY 18-19. It is anticipated that \$216 will be expended in FY 16-17 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 63.34 percent in FY 17-18 and FY 18-19 and a blended FMAP rate of 94.5 percent in FY 17-18 and 93.5 percent in FY 18-19 for the projected expansion population.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing the TOP\$ State Supplemental Rebate Agreement Program in order to include pharmacy utilization of managed care organizations (MCOs) that participate in the Healthy Louisiana (formerly Bayou Health) Program, and to implement a single state managed preferred drug list for selected therapeutic classes to maximize supplemental rebates on MCO utilization. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the pharmacy benefits management program by approximately \$18,556,470 for FY 17-18 and \$71,122,808 for FY 18-19.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Jen Steele  
Medicaid Director  
1706#040

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

Professional Services Program  
Enhanced Federal Medical Assistance  
Percentage Rate for Preventive Services  
(LAC 50:IX.15101)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15101 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.

Section 4106(b) of the Patient Protection and Affordable Care Act (P.L. No. 111-148), hereafter referred to as the Affordable Care Act (ACA), established a one percentage point increase in the federal medical assistance percentage (FMAP) rate applied to Medicaid-covered expenditures for specified adult vaccines and clinical preventive services provided on a fee-for-service or managed care basis to states that provide coverage without cost sharing. In compliance with the requirements of the ACA, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing reimbursement for professional services in the Medical Assistance Program in order to establish provisions governing the enhanced FMAP for the coverage of those specified preventive services (*Louisiana Register*, Volume 43, Number 5). This proposed Rule is being promulgated in order to continue the provisions of the May 15, 2017 Emergency Rule.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part IX. Professional Services Program

#### Subpart 15. Reimbursement

#### Chapter 151. Reimbursement Methodology

#### Subchapter A. General Provisions

#### §15101. Enhanced Federal Medical Assistance

#### Percentage Rate for Preventive Services

A. Effective for dates of service on or after May 15, 2017, the federal medical assistance percentage (FMAP) rate received by the department for specified adult vaccines and clinical preventive services shall increase one percentage point of the rate on file as of May 14, 2017.

1. Services covered by this increase are those assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF) and approved vaccines and their administration as recommended by the Advisory Committee on Immunization Practices (ACIP).

2. The increased FMAP rate applies to these qualifying services whether the services are provided on a fee-for-service (FFS) or managed care basis.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and

Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, July 27, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Professional Services Program Enhanced Federal Medical Assistance Percentage Rate for Preventive Services

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

It is anticipated that implementation of this proposed rule will result in estimated state general fund costs of approximately \$22,003 for FY 16-17, \$116,884 for FY 17-18 and \$115,223 for FY 18-19;. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 16-17 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 increase federal revenue collections by approximately

\$73,924 for FY 16-17, \$454,428 for FY 17-18 and \$458,972 for FY 18-19. It is anticipated that \$216 will be expended in FY 16-17 for the federal administrative 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 May 15, 2017 Emergency Rule which amended the provisions governing reimbursement for professional services in the Medical Assistance Program in order to establish provisions governing the enhanced one percent Federal Medical Assistance Percentage rate applied to Medicaid-covered expenditures which is established in the Affordable Care Act for the state's provision of specified preventive services on a fee-for-service or managed care basis without cost sharing. It is anticipated that implementation of this proposed rule will increase expenditures in the Professional Services Program by approximately \$95,495 for FY 16-17, \$571,312 for FY 17-18 and \$574,195 for FY 18-19 due to more individuals being covered; however, there may be a potential indeterminable savings associated with reduced physician visits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele  
Medicaid Director  
1706#041

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

Professional Services Program  
Reimbursement Methodology  
State-Owned or Operated Professional Services Practices  
(LAC 50:IX.15110 and 15113)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15110 and amend §15113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing provides reimbursement under the Medicaid State Plan to physicians and other professional services practitioners for services rendered to Medicaid-covered recipients.

The department promulgated an Emergency Rule which amended the provisions governing the Professional Services Program in order to revise the reimbursement methodology for services rendered by physicians and other professional services practitioners employed by, or under contract to provide services in affiliation with a state-owned or operated entity (*Louisiana Register*, Volume 43, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 1, 2017 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part IX. Professional Services Program**

**Subpart 15. Reimbursement**

**Chapter 151. Reimbursement Methodology**

**Subchapter A. General Provisions**

**§15110. State-Owned or Operated Professional Services Practices**

A. Qualifying Criteria. Effective for dates of service on or after May 1, 2017, in order to qualify to receive payments for services rendered to Medicaid recipients under these provisions, physicians and other eligible professional service practitioners must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. employed by, or under contract to provide services

in affiliation with, a state-owned or operated entity, such as a state-operated hospital or other state entity, including a state academic health system, which:

a. has been designated by the department as an essential provider. Essential providers include:

- i. LSU School of Medicine—New Orleans;
- ii. LSU School of Medicine—Shreveport; and
- iii. LSU state-operated hospitals (Lallie Kemp

Regional Medical Center and Villa Feliciana Geriatric Hospital).

B. Payment Methodology. Effective for dates of service on or after May 1, 2017, payments shall be made in the amount of the billed charges for services rendered by physicians and other eligible professional service practitioners who qualify under the provisions of §15110.A.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

**Subchapter B. Physician Services**

**§15113. Reimbursement Methodology**

A. - M. ...

N. Effective for dates of service on or after May 1, 2017, physicians, who qualify under the provisions of §15110 for services rendered in affiliation with a state-owned or operated entity that has been designated as an essential provider, shall receive payment in the amount of the billed charges for qualifying services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1252 (June 2010), amended LR 36:2282 (October 2010), LR 37:904 (March 2011), LR 39:3300, 3301 (December 2013), LR 41:541 (March 2015), LR 41:1119 (June 2015), LR 41:1291 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

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

### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will ensure continued access to by Medicaid recipients to services rendered by physicians and other professional services practitioners affiliated with state-owned or operated professional services practices.

### Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it reduces the financial burden for families of Medicaid recipients who are in need of access to services rendered by physicians and other professional services practitioners affiliated with state-owned or operated professional services practices.

### Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and may reduce the total direct and indirect cost to the provider to provide the same level of service and enhance the provider's ability to provide the same level of service since this proposed Rule increases the payment to providers for the same services they already render.

### Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for 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 Thursday, July 27, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Professional Services Program Reimbursement Methodology—State-Owned or Operated Professional Services Practices

#### 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 fund costs of approximately

\$270 for FY 16-17, \$99,222,685 for FY 17-18 and \$91,291,650 for FY 18-19. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 16-17 for the state's administrative expense for promulgation of this proposed rule and the final rule. The state match shall be funded through an intergovernmental transfer of funds from the qualifying professional services providers. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19.

#### 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 \$270 for FY 16-17, \$171,433,847 for FY 17-18 and \$163,926,830 for FY 18-19. It is anticipated that \$270 will be expended in FY 16-17 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 63.34 percent in FY 17-18 and 64.23 in FY 18-19.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the May 1, 2017 Emergency Rule which amended the provisions governing the Professional Services Program in order to revise the reimbursement methodology for services rendered by physicians and other professional services practitioners employed by, or under contract to provide services in affiliation with a state-owned or operated entity. It is anticipated that implementation of this proposed rule will increase programmatic expenditures for the Professional Services Program by approximately \$270,656,532 for FY 17-18 and \$255,218,480 for FY 18-19.

#### 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.

Jen Steele  
Medicaid Director  
1706#042

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Emergency Response Network

LERN Destination Protocol: Stroke (LAC 48:I.19303)

Notice is hereby given that the Department of Health, Louisiana Emergency Response Network Board, has exercised the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and intends to promulgate LAC 48:I.19303, rules and regulations for LERN Destination Protocol: Stroke, amending and replacing the previous protocol set forth in LAC 48:I.19301.

Pursuant to Act 248 of the 2004 Regular Session of the Louisiana Legislature, the Louisiana Emergency Response Network and Louisiana Emergency Response Network Board were created within the Department of Health. The Louisiana Emergency Response Network Board is authorized by R.S. 40:2846(A) to adopt rules and regulations to carry into effect the provisions of R.S. 40:2841 et seq. Pursuant to R.S. 40:2841, the legislative purpose of the

Louisiana Emergency Response Network is to safeguard the public health, safety and welfare of the people of this state against unnecessary trauma and time-sensitive related deaths and incidents of morbidity due to trauma.

R.S. 9:2798.5 authorizes the board to promulgate protocols for the transport of trauma and time-sensitive ill patients. The Rule provides protocols for transportation of stroke patients, and is designated as LAC 48:I.19303.

**Title 48**  
**PUBLIC HEALTH—GENERAL**  
**Part I. General Administration**

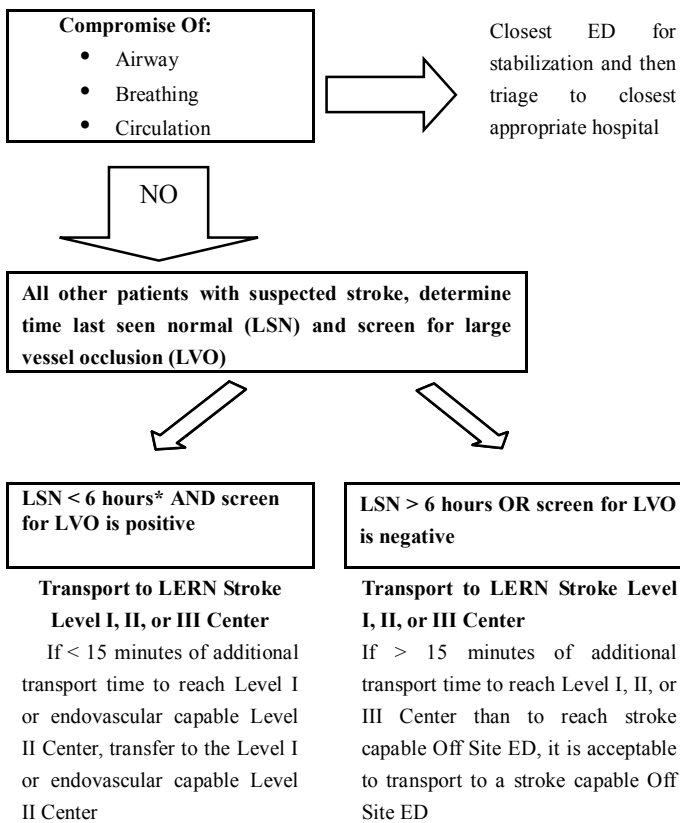
**Subpart 15. Emergency Response Network**  
**Chapter 193. Stroke Protocols**

**§19303. LERN Destination Protocol: Stroke**

A. On April 21, 2017, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated “LERN Designation Protocol: Stroke”, amending and replacing the previous “LERN Designation Protocol: Stroke” adopted on November 21, 2013 and set out in Section 19301, as follows.

**LERN Destination Protocol: Stroke**  
**LERN Call Center: (866)320-8293**

The following protocol applies to patients with suspected stroke:



\* The LSN < 6hrs should include patients without a definite time of LSN, but who could reasonably be assumed to be within 6 hrs of onset, including patients who wake-up with stroke symptoms.

**Guiding Principles:**

- Time is the critical variable in acute stroke care
- Protocols that include pre-hospital notification while en route by EMS should be used for patients with suspected acute stroke to facilitate initial destination efficiency.
- Treatment with intravenous tPA is the only FDA approved medication therapy for hyperacute stroke.
- EMS should identify the geographically closest hospital capable of providing tPA treatment.
- Transfer patient to the nearest hospital equipped to provide tPA treatment.
- Secondary transfer to facilities equipped to provide tertiary care and interventional treatments should not prevent administration of tPA to appropriate patients.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

**HISTORICAL NOTE:** Promulgated by the Department of Health, Emergency Response Network, LR 43:

**Family Impact Statement**

1. What effect will these rules have on the stability of the family? The proposed Rule will not affect the stability of the family.
2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.
3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.
4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.
5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.
6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the proposed Rule will have no impact.

**Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

**Small Business Analysis**

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

**Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana

Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and no increase on direct or indirect cost. The proposed Rule 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 relative to the proposed Rule until 4:30 p.m., Monday, July 10, 2017 to Paige Hargrove, Louisiana Emergency Response Network, 14141 Airline Hwy., Suite B, Building 1, Baton Rouge, LA 70817, or via email to [paige.hargrove@la.gov](mailto:paige.hargrove@la.gov).

William Freeman, MD  
Chair

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: LERN Destination Protocol: Stroke

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

This proposed rule amends LAC Title 48, Part I, Chapter 193 – Stroke Protocols, Section 19303 – Destination Protocol: Stroke. The Louisiana Emergency Response Network (LERN) Board is authorized to adopt protocols for the transport of trauma and time sensitive ill patients. The proposed rule amends the existing destination protocol for a stroke to include screening for large vessel occlusion (LVO) by emergency medical services (EMS) and the appropriate destination for those patients who screen positive for LVO.

Other than the cost to publish in the State Register, which is estimated to be \$852.00 in FY16-17 and \$319.50 in FY 17-18, it is not anticipated that the proposed rule will result in any costs or savings to LERN or any state or local governmental unit.

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

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

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Victims of stroke are directly affected by this proposed rule. The new screening protocol performed by EMS will result in stroke victims being routed to the nearest trauma center within a timely manner to receive appropriate endovascular treatment. The benefits to stroke victims are the chance to live a life without the severe stroke deficits – paralysis, immobility, nursing home confinement or death. The proposed rule does not preclude patient choice.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule amends the previously promulgated Stroke Pre-Hospital Destination Protocol. The stroke system is a voluntary system. This rule does not restrict any hospital from pursuing stroke center certification or from attesting to meeting the LERN Board approved stroke requirements. Hospitals may seek to expand access to endovascular capability as a result of this rule. The proposed rule will have no effect on employment.

Paige Hargrove  
Executive Director  
1706#033

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Insurance Office of the Commissioner

#### Regulation 32—Group and Individual Coordination of Benefits (LAC 37:XIII.Chapter 3)

The Department of Insurance, pursuant to the authority of the *Louisiana Insurance Code*, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend and promulgate Regulation 32, group and individual coordination of benefits. The purpose of the regulation is to establish a uniform order of benefit determination for plans to pay claims.

The purpose for amending Regulation 32 is for the Department of Insurance to provide clarification in the implementation of calculating the benefits reserve for the benefit of consumers as provided for in this regulation.

### Title 37

### INSURANCE

#### Part XIII. Regulations

#### Chapter 3. Regulation 32—Coordination of Benefits

##### §301. Purpose and Applicability

A. The purpose of this regulation is to:

1. establish a uniform order of benefit determination under which plans pay claims;
2. reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that, pursuant to rules established by this regulation, do not have to pay their benefits first; and
3. provide greater efficiency in the processing of claims when a person is covered under more than one plan.

B. This regulation applies to all plans which includes all accident and health products and health maintenance organization products that are issued on or after the effective date of this regulation. The effective date of this regulation is upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.2014.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 17:67 (January 1991), amended LR 20:52 (January 1994), LR 23:415 (April 1997), LR 41:1095 (July 2016), LR 43:

##### §303. Definitions

A. As used in this regulation, these words and terms have the following meanings, unless the context clearly indicates otherwise.

*Allowable Expense*—a health care service or expense including deductibles, coinsurance, or copayments that is covered in full or in part by any of the plans covering the person, except as set forth below or where a statute requires a different definition. This means that an expense or service or a portion of an expense or service that is not covered by any of the plans is not an allowable expense.

a. The following are examples of expenses or services that are and are not an allowable expense.

i. If a covered person is confined in a private hospital room, the difference between the cost of a semi-private room in the hospital and the private room, (unless the patient's stay in the private hospital room is medically necessary in terms of generally accepted medical practice, or

one of the plans routinely provides coverage for private hospital rooms), is not an allowable expense.

ii. If a person is covered by two or more plans that compute their benefit payments on the basis of usual and customary fees, any amount in excess of the highest of the usual and customary fee for a specified benefit is not an allowable expense.

iii. If a person is covered by two or more plans that provide benefits or services on the basis of negotiated fees, any amount in excess of the highest of the negotiated fees is not an allowable expense.

iv. If a person is covered by one plan that calculates its benefits or services on the basis of usual and customary fees and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's payment arrangement shall be the allowable expense for all plans.

b. The definition of *allowable expense* may exclude certain types of coverage or benefits such as dental care, vision care, prescription drug, or hearing aids. A plan that limits the application of COB to certain coverages or benefits may limit the definition of allowable expenses in its contract to services or expenses that are similar to the services or expenses that it provides. When COB is restricted to specific coverages or benefits in a contract, the definition of *allowable expense* shall include similar services or expenses to which COB applies.

c. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered an allowable expense and a benefit paid.

d. The amount of the reduction may be excluded from allowable expense when a covered person's benefits are reduced under a primary plan:

i. because the covered person does not comply with the plan provisions concerning second surgical opinions or pre-certification of admissions or services; or

ii. because the covered person has a lower benefit because he or she did not use a preferred provider.

e. If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan shall pay or provide benefits as if it were primary when a covered person uses a nonpanel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.2014.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 17:67 (January 1991), amended LR 20:52 (January 1994), LR 23:415 (April 1997), LR 42:1095 (July 2016), LR 43:

### **§305. Use of Model COB Contract Provision**

A. Appendix A, Appendix B contain model COB provisions that shall be used in group and individual contracts or subscriber agreements. That use is subject to the provisions of Subsections B, C, and D of this Section and to the provisions of §307.

B. Appendix B is a plain language description of the COB process that explains to the covered person how insurers will implement coordination of benefits. It is not intended to replace or change the provisions that are set forth in the contract. Its purpose is to explain the process by which the two (or more) plans will pay for or provide benefits, how

the benefit reserve is accrued and how the covered person may use the benefit reserve.

C. The COB provision contained in Appendix A and the plain language explanation in Appendix B do not have to use the specific words and format shown in §321, Appendix A, or §323, Appendix B. Changes may be made to fit the language and style of the rest of the group contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred and that indemnify. No substantive changes are permitted.

D. A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

1. another plan exists and the covered person did not enroll in that plan;

2. a person is or could have been covered under another plan, except with respect to Part B of Medicare; or

3. a person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

E. No plan may contain a provision that its benefits are "always excess" or "always secondary," except in accord with the rules permitted by this regulation.

F. Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider. In most instances, COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a provider in one of the closed panel plans because the other closed panel plan (the one whose providers were not used) has no liability. However, COB may occur during the claim determination period or plan year when the covered person receives emergency services that would have been covered by both plans. Then the secondary plan shall use the benefit reserve to pay any unpaid allowable expense.

G. A simple statement advising consumers that they can request a copy in either paper form or electronic form of Appendix C., that provides an explanation for secondary plans on the purpose and use of the benefit reserve and how secondary plans calculate claims, shall be added in the coordination of benefit section or provision found in group and individual policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.2014.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 17:67 (January 1991), amended LR 20:52 (January 1994), LR 23:415 (April 1997), LR 42:1097 (July 2016), LR 43:

### **§309. Procedure to be Followed by Secondary Plan**

A. When a plan is secondary, it shall reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period or plan year are not more than 100 percent of total allowable expenses as provided for in §303 A.(a.-e.). The secondary plan shall calculate its savings by subtracting the allowable expense amount as provided for in §303A.(a-e) that it paid as a secondary plan from the allowable expense amount provided for §303A.(a.-e.) that it would have paid had it been primary. These savings shall be recorded as a benefit reserve for the covered person and shall be used by the secondary plan to pay any allowable expenses, not otherwise paid, that are incurred by the covered person during the claim determination period. (See Appendix C, Explanation for Secondary Plans on the

Purpose and Use of the Benefit Reserve.) As each claim is submitted, the secondary plan must:

1. determine its obligation, pursuant to its contract;
2. determine whether a benefit reserve has been recorded for the covered person; and
3. determine whether there are any unpaid allowable expenses during that claim determination period.

B. If there is a benefit reserve, the secondary plan shall use the covered person's recorded benefit reserve to pay up to 100 percent of total allowable expenses as provided for in §303A.(a.-e.) incurred during the claim determination period. At the end of the claim determination period the benefit reserve returns to zero. A new benefit reserve must be created for each new claim determination period.

C. The benefits of the secondary plan shall be reduced when the sum of the benefits that would be payable for the allowable expenses as provided for in §303A.(a.-e.) under the secondary plan in the absence of this COB provision and the benefits that would be payable for the allowable expenses as provided for in §303A.(a.-e.) under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not a claim is made, exceeds the allowable expenses in a claim determination period. In that case, the benefits of the secondary plan shall be reduced so that they and the benefits payable under the other plans do not total more than the allowable expenses as provided for in §303A.(a.-e.).

1. When the benefits of a plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of the plan.

2. The requirements of §309.C.1 do not apply if the plan provides only one benefit, or may be altered to suit the coverage provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.2014.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 17:67 (January 1991), amended LR 20:52 (January 1994), LR 23:415 (April 1997), LR 42:1099 (July 2016), LR 43:

### §311. Notice to Covered Persons

A. Plan shall in its explanation of benefits provided to covered persons, include the following language. "If you are covered by more than one health benefit plan, you should file all your claims with each plan." Additionally, notice to obtain a copy of Appendix C, as provided for in LAC 37:XIII.305.G, shall be added as part of the coordination of benefit section or provision found in an insurance contract or subscriber agreement. Appendix C will also be available on the Department of Insurance's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 17:67 (January 1991), amended LR 20:52 (January 1994), LR 23:415 (April 1997), LR 42:1100 (July 2016), LR 43:

### §319. Effective Date for Existing Contracts (Formerly §315)

A. A contract that provides health care benefits and that was issued before the effective date of this regulation shall be brought into compliance with this regulation, by:

1. the next anniversary date or renewal date of the contract; or

2. the expiration of any applicable collectively bargained contract pursuant to which it was written.

B. This amended regulation is applicable to every group and individual contract or subscriber agreement that provides health care benefits and that is issued on or after the effective date of this regulation. The effective date of this regulation shall be upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.2014.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 17:67 (January 1991), amended LR 20:52 (January 1994), LR 23:415 (April 1997), LR 42:1100 (July 2016), LR 43:

## §321. Appendix A—Model COB Contract Provisions (Formerly §317)

### A. Model COB Contract Provisions

#### COORDINATION OF THIS CONTRACT'S BENEFITS WITH OTHER BENEFITS

The Coordination of Benefits (COB) provision applies when a person has health care coverage under more than one Plan. Plan is defined below.

The order of benefit determination rules govern the order in which each Plan will pay a claim for benefits. The Plan that pays first is called the Primary plan. The Primary plan must pay benefits in accordance with its policy terms without regard to the possibility that another Plan may cover some expenses. The Plan that pays after the Primary plan is the Secondary plan. The Secondary plan may reduce the benefits it pays so that payments from all Plans do not exceed 100% of the total Allowable expense as provided for in §303A.(a.-e.) of Regulation 32.

#### DEFINITIONS

\* \* \*

D. Allowable expense is a health care service or expense, including deductibles, coinsurance and copayments, that is covered in full or at least in part by any Plan covering the person. When a Plan provides benefits in the form of services, the reasonable cash value of each service will be considered an Allowable expense and a benefit paid. An expense or service that is not covered by any Plan covering the person is not an Allowable expense.

The following are examples of expenses that are and are not an Allowable expenses:

(1) The difference between the cost of a semi-private hospital room and a private hospital room is not an Allowable expense, unless one of the Plans provides coverage for private hospital room expenses.

(2) If a person is covered by 2 or more Plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology, any amount in excess of the highest reimbursement amount for a specific benefit is not an Allowable expense.

(3) If a person is covered by 2 or more Plans that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an Allowable expense.

(4) If a person is covered by one Plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology and another Plan that provides its benefits or services on the basis of negotiated fees, the Primary plan's payment arrangement shall be the Allowable expense for all Plans.

(5) The amount of any benefit reduction by the Primary plan because a covered person has failed to comply with the Plan provisions is not an Allowable expense. Examples of these types of plan provisions include second surgical opinions, precertification of admissions, and preferred provider arrangements.



E. Closed panel plan is a Plan that provides health care benefits to covered persons primarily in the form of services through a panel of providers that have contracted with or are employed by the Plan, and that excludes coverage for services provided by other providers, except in cases of emergency or referral by a panel member.

F. Custodial parent is the parent awarded custody by a court decree or, in the absence of a court decree, is the parent with whom the child resides more than one half of the calendar year excluding any temporary visitation.

**ORDER OF BENEFIT DETERMINATION RULES**

When a person is covered by two or more Plans, the rules for determining the order of benefit payments are as follows:

\* \* \*

**EFFECT ON THE BENEFITS OF THIS PLAN**

\* \* \*

**C. Effect on the Benefits of This Plan**

1. When this plan is secondary, it may reduce its benefits so that the total benefits paid or provided by all plans during a plan year or claim determination period are not more than 100 percent of total allowable expenses. The difference between the benefit payments that this plan would have paid had it been the primary plan, and the benefit payments that it actually paid or provided shall be recorded as a benefit reserve for the covered person and used by this plan to pay any allowable expenses, not otherwise paid during the claim determination period. As each claim is submitted, this plan will:

- a. determine its obligation to pay or provide benefits under its contract;
- b. determine whether a benefit reserve has been recorded for the covered person; and
- c. determine whether there are any unpaid allowable expenses during that claims determination period.

2. If there is a benefit reserve, the secondary plan will use the covered person's benefit reserve to pay up to 100 percent of total allowable expenses incurred during the claim determination period. At the end of the claims determination period, the benefit reserve returns to zero. A new benefit reserve must be created for each new claim determination period.

3. If a covered person is enrolled in two or more closed panel plans, and if for any reason, including the provision of service by a nonpanel provider, benefits are not payable by one closed panel plan, COB shall not apply between that plan and other closed panel plans.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3.2014.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 17:67 (January 1991), amended LR 20:52 (January 1994), LR 23:415 (April 1997), LR 42:1101 (July 2016), LR 43:

**§323. Appendix B—Consumer Explanatory Booklet Coordination of Benefits (Formerly §319)**

**A. Consumer Explanatory Booklet Coordination of Benefits**

**COORDINATION OF BENEFITS**

**IMPORTANT NOTICE**

This is a summary of only a few of the provisions of your health plan to help you understand coordination of benefits, which can be very complicated. This is not a complete description of all of the coordination rules and procedures, and does not change or replace the language contained in your insurance contract, which determines your benefits.

\* \* \*

**When This Plan is Primary**

\* \* \*

**Other Situations**

We will be primary when any other provisions of state or federal law require us to be.

**How We Pay Claims When We Are Primary**

When we are the primary plan, we will pay the benefits in accordance with the terms of your contract, just as if you had no other health care coverage under any other plan.

**How We Pay Claims When We Are Secondary**

We will be secondary whenever the rules do not require us to be primary.

**How We Pay Claims When We Are Secondary**

When we are the secondary plan, we do not pay until after the primary plan has paid its benefits. We will then pay part or all of the allowable expenses left unpaid, as explained below. An "allowable expense" is a health care service or expense covered by one of the plans, including copayments, coinsurance and deductibles.

• If there is a difference between the amount the plans allow, we will base our payment on the higher amount. However, if the primary plan has a contract with the provider, our combined payments will not be more than the contract calls for. Health maintenance organizations (HMOs) and preferred provider organizations (PPOs) usually have contracts with their providers.

• We will determine our payment by subtracting the amount the primary plan paid from the amount we would have paid if we had been primary. We will use any savings to pay the balance of any unpaid allowable expenses covered by either plan.

• If the primary plan covers similar kinds of health care expenses, but allows expenses that we do not cover, we will pay for those items as long as there is a balance in your benefit reserve, as explained below.

• We will not pay an amount the primary plan did not cover because you did not follow its rules and procedures. For example, if your plan has reduced its benefit because you did not obtain pre-certification, as required by that plan, we will not pay the amount of the reduction, because it is not an allowable expense.

**Benefit Reserve**

• When we are secondary we often will pay less than we would have paid if we had been primary. Each time we "save" by paying less, we will put that savings into a benefit reserve. Each family member covered by this plan has a separate benefit reserve. We use the benefit reserve to pay allowable expenses that are covered only partially by both plans. To obtain a reimbursement, you must show us what the primary plan has paid so we can calculate the savings. To make sure you receive the full benefit or coordination, you should submit all claims to each of your plans. Savings can build up in your reserve for one year. At the end of the year any balance is erased, and a fresh benefit reserve begins for each person the next year as soon as there are savings on their claims.

**Questions about Coordination of Benefits?**

Contact Your State Insurance Department

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3.2014.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 17:67 (January 1991), amended LR 20:52 (January 1994), LR 23:415 (April 1997), LR 42:1103 (July 2016), LR 43:

**§325. Appendix C—Explanation for Secondary Plans on the Purpose and Use of the Benefit Reserve**

**A. Explanation for Secondary Plans on the Purpose and Use of the Benefit Reserve**

**COORDINATION OF BENEFITS**

The purpose of coordination of benefits is to ensure that a covered person does not receive more than 100% of the total allowable expenses. Any plan that has been determined to be the secondary plan in accordance with this model regulation is permitted to reduce its benefits so that the total benefits paid by all plans during a claim determination period (a period of time not less than 12 months, usually a calendar year or contract year) are not more than the total allowable expenses.

The secondary plan usually saves money on claims due to the other plan paying first. The amount saved by the secondary plan must be used to pay allowable expenses which would not otherwise have been paid. To do this, secondary plans must establish a benefit reserve account for each covered person. The secondary plan puts the money saved on claims for the covered person into the benefit reserve account. This money is to be used to pay any portion of an allowable expense incurred by the covered person during a claim determination period by using the following procedure:

- **First**, as each claim is received, the secondary plan determines how much it would have paid if it had been the primary plan.
- **Second**, the secondary plan subtracts this amount from what it paid on the claim.
- **Third**, the difference (or savings) between what the secondary plan paid and what it would have paid if it had been the primary plan is then placed in the benefit reserve account established for the covered person.
- **Lastly**, as subsequent claims are submitted for the covered person, the secondary plan reviews previous claims and determines its obligation to pay for allowable expenses on those claims and pays on those claims to the extent savings are available in the covered person's benefit reserve account. This includes claims that were previously applied to either plan's deductible, coinsurance or copayment. For example, if the first claim incurred by the covered person was applied to both plans' deductibles and the second claim incurred by a covered person was payable at 100% by both plans, the secondary plan must use the savings realized from the second claim to pay toward the first claim.

The procedure outlined above is illustrated in the various claim examples that follow. For all of the examples, Plan A is the primary plan and Plan B is the secondary plan. Both plans have an 80 percent/20 percent coinsurance requirement. For illustrative purposes, Plan A has a \$25 deductible and Plan B has a \$100 deductible. Claims are assumed to have occurred in the same claim determination period and in consecutive order.

Examples:

Claim Number 1 Actual Charge = \$100	
Plan A \$100 -25 Deductible \$75 80 percent \$60 Payable	Plan B \$100 -100 Deductible \$0 Payable
Plan A must pay \$60. Plan B makes no payment because it would have no liability under the terms of the policy if it had been primary. No money is available from the benefit reserve account.	
Claim Number 2 Actual Charge = \$5300	
Plan A \$5300 -0 Deductible \$5300 80 percent \$4240 Payable	Plan B \$5300 -0 Deductible \$5300 80 percent \$4240 Payable
The deductible on both plans was calculated in Claim #1. Deductibles will not apply from this claim forward. Plan A must pay \$4240. Plan B must pay the difference between the actual charge and the amount paid by Plan A (\$1060). Plan B must now establish a benefit reserve account. This amount, the savings, is calculated by subtracting the amount it paid from the amount it would have paid if primary (\$4240-\$1060=\$3180). Now Plan B must go back to Claim #1 and pay the \$40 balance of that claim out of the benefit reserve account, leaving a balance in that account of \$3140.	

Claim #3 Actual Charge = \$110	
Plan A \$110 80 percent \$88 Payable	Plan B \$110 80 percent \$88 Payable
Plan A pays \$88. Plan B pays the difference of the actual charge and the amount paid by Plan A (\$22). Plan B would have paid \$88 if primary, but only paid \$22, so the balance of the savings of \$66 goes into the benefit reserve account, which now totals \$3206. Plan B does not have to go back to any other prior claims to pay any incurred, but unpaid, allowable expenses, because there are none outstanding. So, the balance in the benefit reserve account remains unchanged at \$3206.	
Claim #4 Actual Charge = \$1500	
Plan A \$1300 RVS 80 percent \$1040 Payable	Plan B \$1100 RVS 80 percent \$880 Payable
The insured is liable for the difference between the actual charge and the highest amount under the relative value schedule (RSV) reimbursement methodology (\$200). Plan A pays \$1040. Plan B pays the difference between the highest RSV amount and the amount paid by Plan A (\$1300-\$1040=\$260). The benefit reserve account is increased by the difference between what Plan B would have paid if primary and the amount actually paid by Plan B (\$880-\$260=\$620), for a new balance of \$3826.	
Claim #5 Actual Charge = \$2295 for 51 visits	
This claim involves spinal manipulation. Plan A provides up to 26 visits per year on an 80 percent/20 percent basis. Total actual charge of \$45 per visit is within RSV limits.	
Plan A \$1170 RSV for 26 visits 80 percent \$936 Payable	Plan B has no coverage for spinal manipulation. However, because Plan A has coverage under its policy, the claim is considered an allowable expense for the 26 visits. Plan B must pay the 20% coinsurance (\$234) amount for the 26 visits from the benefit reserve account, leaving a final balance of \$3592. The remaining amount of \$1125 for the additional 25 visits is not payable by either Plan A or Plan B because it is not considered an allowable expense under Plan A. Plan A pays benefits for only 26 visits per year. Again, Plan B has no coverage for spinal manipulation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:3.2014.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 43:

**Family Impact Statement**

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education

and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

#### **Poverty Impact Statement**

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

#### **Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills

necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

#### **Provider Impact Statement**

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

#### **Public Comments**

In addition, all interested persons are invited to submit written comments on the proposed Rule. Such comments must be received no later than July 20, 2017 by close of business or by 4:30p.m., and should be addressed to Claire Lemoine, Louisiana Department of Insurance and may be mailed to P.O. Box 94214, Baton Rouge, LA 70804, emailed to [clemoine@ldi.la.gov](mailto:clemoine@ldi.la.gov), or faxed to (225) 342-1632. If comments are to be shipped or hand-delivered, please deliver to Poydras Building, 1702 North Third Street, Baton Rouge, LA 70804.

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Regulation 32—Group and Individual Coordination of Benefits**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will not result in costs or savings to the state or local governmental units. The purpose for amending Regulation 32 is for the Louisiana Department of Insurance (LDI) to establish a uniform order of benefit determination under which plans pay claims; to reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that do not have to pay their benefits first; and to provide greater efficiency in the processing of claims when a person is covered under more than one plan. Furthermore, the proposed rule change will assist consumers by providing clarification on the methodology for calculating the benefit reserve as provided for in this regulation. The benefit reserve is an account established by the secondary plan insurer on behalf of the individual. The amount saved by the secondary plan as a result of a primary plan paying first is held in the benefit reserve. These savings must be used to pay allowable expenses that would not otherwise have been paid. This regulation applies to all accident and health products and health maintenance organization products that are issued on or after the effective date of this regulation.

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

The proposed changes to Regulation 32 will have no impact on state or local governmental revenues.

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

The proposed changes to Regulation 32 may provide greater efficiency in the processing of claims when a person is covered under more than one plan. The amended regulation includes an Appendix C which clarifies the explanation for secondary plans calculation of benefits and the use of the benefit reserve to pay claims.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed changes to Regulation 32 will have no impact upon competition and employment in the state.

Denise Gardner  
Deputy Commissioner  
1706#051

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

**Rule 3—Advertisements of Accident and  
Sickness Insurance (LAC 37:XI.Chapter 13)**

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., gives notice of its intent to amend Rule Number 3—Advertisements of Accident and Sickness Insurance. The purpose of amending this rule is to remove the requirement under LAC 37:XI.Chapter 31, Rule Number 3 that insurers file a certificate of compliance in regards to advertisements.

**Title 37  
INSURANCE  
Part XI. Rules**

**Chapter 13. Rule Number 3—Advertisements of  
Accident and Sickness Insurance**

**§1301. Purpose**

A. The purpose of these rules is to assure truthful and adequate disclosure of all material and relevant information in the advertising of accident and sickness insurance. This purpose is intended to be accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct in the advertising of accident and sickness insurance in a manner which prevents unfair competition among insurers and is conducive to the accurate presentation and description to the insurance buying public of a policy of such insurance offered through various advertising media. This rule is being amended to remove the requirement that insurers file a certificate of compliance in regards to advertisements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, November 1, 1973, amended by the Department of Insurance, Office of the Commissioner, LR 43:

**§1333. Enforcement Procedures**

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, November 1, 1973, amended by the Department of Insurance, Office of the Commissioner, LR 43:

**§1337. Effective Date**

A. This rule shall become effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, November 1, 1973, amended by the Department of Insurance, Office of the Commissioner, LR 43:

**Family Impact Statement**

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

**Poverty Impact Statement**

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

### Small Business Analysis

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

### Provider Impact Statement

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

### Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments must be received no later than July 20, 2017, by 4:30 p.m. and should be addressed to Ryan Boyle, Louisiana Department of Insurance, and may be mailed to P.O. Box 94214, Baton Rouge, LA 70804-9214, faxed to (225) 342-1632, or emailed to rboyle@ldi.la.gov. If comments are to be shipped or hand-delivered, please deliver to Poydras Building, 1702 North Third Street, Baton Rouge, LA 70802.

James J. Donelon  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Rule 3—Advertisements of Accident and Sickness Insurance

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

The proposed rule change will not result in costs or savings to the state or local governmental units. The purpose of amending Rule 3 is to remove the requirement that insurers file a certificate of compliance with their annual statement regarding advertisements of Accident and Sickness Insurance. Each insurer will continue to be required to maintain a complete file containing every advertisement. These advertisements are subject to regular or periodic inspection by the Louisiana Department of Insurance (LDI).

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

The proposed rule change will have no impact on state or local governmental revenues.

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

The proposed rule change will not impose any 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 impact upon competition and employment in the state.

Denise Gardner  
Deputy Commissioner  
1706#049

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Insurance Office of the Commissioner

Rule 3A—Advertisement of Medicare  
Supplement Insurance (LAC 37:XI.Chapter 1)

The Department of Insurance, pursuant to the authority of the *Louisiana Insurance Code*, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend Rule Number 3A—Advertisement of Medicare Supplement Insurance. The purpose of amending this Rule is to remove the requirement under LAC 37:XI.Chapter 1, Rule Number 3A, that insurers file a certificate of compliance in regards to advertisements.

### Title 37

### INSURANCE

#### Part XI. Rules

#### Chapter 1. Rule Number 3A—Advertisement of Medicare Supplement Insurance

#### §101. Purpose

A. - D. ...

E. The purpose of this rule is to provide prospective purchasers with clear and unambiguous statements in the advertisements of Medicare supplement insurance; to assure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as Medicare supplement insurance. This purpose is intended to be accomplished by the establishment of guidelines and permissible and impermissible standards of conduct in the advertising of Medicare supplement insurance in a manner which prevents unfair, deceptive, and misleading advertising and is conducive to accurate presentation and description to the insurance-buying public through the advertising media and material used by the insurance agents and companies. This

rule is being amended to remove the requirement that insurers file a certificate of compliance in regards to advertisements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991), amended by the Department of Insurance, Office of the Commissioner, LR 43:

### **§131. Enforcement Procedures**

A. - A.1. ...

B. - B.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991), amended by the Department of Insurance, Office of the Commissioner, LR 43:

### **§135. Effective Date**

A. This rule shall be effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991), amended by the Department of Insurance, Office of the Commissioner, LR 43:

#### **Family Impact Statement**

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

#### **Poverty Impact Statement**

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

#### **Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

#### **Provider Impact Statement**

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

### Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments must be received no later than July 20, 2017, by 4:30 p.m. and should be addressed to Ryan Boyle, Louisiana Department of Insurance, and may be mailed to P.O. Box 94214, Baton Rouge, LA 70804-9214, faxed to (225) 342-1632, or emailed to rboyle@ldi.la.gov. If comments are to be shipped or hand-delivered, please deliver to Poydras Building, 1702 North Third Street, Baton Rouge, LA 70802.

James J. Donelon  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Rule 3A—Advertisement of Medicare Supplement Insurance

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

The proposed rule change will not result in costs or savings to the state or local governmental units. The purpose of amending Rule 3A is to remove the requirement that insurers file a certificate of compliance with their annual statement regarding advertisements of Medicare Supplement Insurance. Each insurer will continue to be required to maintain a complete file containing every advertisement. These advertisements will continue to be filed and approved by the Louisiana Department of Insurance (LDI).

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

The proposed rule change will have no impact on state or local governmental revenues.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will not impose any 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 impact upon competition and employment in the state.

Denise Gardner  
Deputy Commissioner  
1706#048

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of State Business Services Division

#### Military Personnel Powers of Attorney (LAC 19:V.101)

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under the authority of R.S. 9:3865 and R.S. 36:742, the Department of State is proposing to repeal LAC 19:V.101 which required the department to adopt a uniform statutory power of attorney form for military personnel. During the 1995 Regular Legislative Session, Act 1131 repealed the provisions of R.S.

9:3865 and amended R.S. 9:3862 to provide an illustrative and suggestive power of attorney form to be used by military personnel or other eligible persons who reside or own immovable property in the state.

### Title 19

### CORPORATION AND BUSINESS

#### Part V. Secretary of State

#### Chapter 1. Domestic Corporations

#### §101. Uniform Statutory Form Power of Attorney for Military Personnel

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 19:3865 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, LR 17:1227 (December 1991), repealed by the Department of State, Business Services Division, LR 43:

#### Family Impact Statement

The proposed Rule cited in LAC 19:V.101 regarding power of attorney for military personnel should not have any known or foreseeable impact on any family as defined by R.S. 49:927 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed amendments to the Rule.

#### Poverty Impact Statement

The proposed Rule cited in LAC 19:V.101 regarding power of attorney for military personnel should not have any known or foreseeable impact on poverty as defined by R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### Small Business Analysis

The proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

#### Provider Impact Statement

The proposed Rule does not have any known or unforeseeable impact on providers as defined by HCR 170

of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### Public Comments

Interested persons may submit written comments to Steve Hawkland, Deputy General Counsel, Legal Division, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. He will be responsible for responding to inquiries regarding the proposed amendments to various sections of the Rule. The deadline for the Department of State to receive written comments is 4:30 p.m. on July 25, 2017 after the public hearing.

#### Public Hearing

A public hearing on the proposed Rule is scheduled for July 24, 2017 at 2:30 p.m. in the auditorium at the State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time, all interested persons will be afforded the opportunity to submit data, views, or arguments either orally or in writing.

Tom Schedler  
Secretary of State

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: **Military Personnel Powers of Attorney**

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

The proposed rule change will not result in any costs or savings to state or local governmental units. The proposed rule change repeals provisions associated with a Uniform Statutory Form Power of Attorney for Military Personnel. LA R.S. 9:3865, the enabling statute requiring the form to be promulgated by rule, was repealed by Act 1131 of 1995. The same act placed the form into statute (LA R.S. 9:3862), rendering its place in the administrative rules redundant.

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

The proposed rule change will not affect revenue collections for state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will not result in any costs or benefits for directly affected persons or non-governmental entities.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Joe R. Salter  
Undersecretary  
1706#026

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of State Elections Division

#### Voting Technology (LAC 31:I.Chapter 8)

Under the provisions of the Administrative Procedures Act (R.S. 49:950 et seq.), R.S. 18:21, and R.S. 36:742, the secretary of state proposes to adopt rules regarding the conduct of private elections in Louisiana and the production and sale of maps of precincts and election jurisdictions in Louisiana.

### Title 31 ELECTIONS

#### Part I. Election Process

#### Chapter 8. Voting Technology

#### Subchapter A. Private Elections

#### §801. Type of Election

A. The following are the different types of private elections which may be conducted utilizing the department's staff:

1. primary school, middle school, and high school elections. Examples include: the Reader's Choice elections; student government officers' elections, and homecoming elections. This type of private election would be considered an educational election with the purpose of informing students interested in voter registration and voting and would be done on a gratuitous basis with no charge for services or expenses by the department;

2. disability organization elections. An example would be an election for officers of a disability organization. This type of private election would be an outreach event and would be done on a gratuitous basis with no charge for services or expenses by the department;

3. private entity or organization elections. Examples include officers for a private entity or organization such as: a union or other association; university student government officers; and political party elections for convention delegates. Private elections would be conducted on a reimbursement basis for services and expenses as provided for herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:21 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 43:

#### §803. Private Elections Manual

A. Due to the department's primary function of conducting state elections, department staff may not be available to conduct private elections. The department shall develop and adopt a private elections manual providing procedural information on private elections, including but not limited to:

1. ballot format guidelines;
2. calendar of available dates for private elections;
3. deadlines for requesting and contracting for a private election; and
4. cost estimate information and sample contract.



B. Upon the request for a private election, a listing of all available recommended services and expenses for a particular private election and the associated costs, if any, will be estimated by the department and given to the requestor for the signing of a contract.

C. All private elections must have a signed contract, dated and returned to the department by the deadline set forth by the department. A signed contract evidences acceptance of the department's recommended services and expenses for a private election and associated costs, if any. The acceptable method of delivery of the contract is Federal Express or hand delivery to the Department of State, Elections Division, Elections Operations Section, Twelve United Plaza Building, 8585 Archives Blvd., Suite 110, Baton Rouge, LA 70809-2414.

D. Payment of private elections, if any, must be made at the time of the delivery of the contract to the department. The acceptable methods of payment for the department's services and expenses, shall be by certified check or money order made payable to the Department of State.

E. If drayage services are required for a private election, payment for such services must be included with the signed and dated contract prior to the deadline set forth by the department. The acceptable method of payment shall be by separate check made payable to the drayage contractor.

F. If paper ballots are required for a private election, payment for such expense must be included with the signed and dated contract prior to the deadline set forth by the department. The acceptable method of payment shall be by separate check made payable to the ballot printing contractor.

G. Cancellations will be accepted up to two weeks prior to a private election with a 50 percent refund for department services and 100 percent refund of drayage services. No refund for ballot printing expenses will be issued unless the ballots have not been printed. Any cancellation thereafter will not be refunded.

H. All private election funds received shall be deposited into the Voting Technology Fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:21 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 43:

#### **§805. Department Election Expenses**

A. The cost estimate of a private election in §801.A.3 may include:

1. \$100 for one race or more races on the same ballot style;
2. \$100 for each additional ballot style; and
3. \$100 per voting unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:21 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 43:

#### **Subchapter B. Maps of Precincts and Election Jurisdictions**

##### **§809. Maps of Precincts and Election Jurisdictions**

A. The secretary of state may produce and sell electronic images mapping precincts and election jurisdictions in Louisiana. The fee for the digital file shall be \$1 per precinct. The acceptable methods of payment are by credit card or certified check or money order made payable to the Department of State. Payment may be made online, by mail,

or in-person to the Department of State, Elections Division, Registration Section, 8585 Archives Blvd., P.O. Box 94125, Baton Rouge, LA 70804-9125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:21 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 43:

##### **Family Impact Statement**

The proposed Rule cited in LAC 31:I.Chapter 8 regarding private election costs and maps of precincts and election jurisdictions should not have any known or foreseeable impact on any family as defined by R.S. 49:927 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed amendments to the Rule.

##### **Poverty Impact Statement**

The proposed Rule cited in LAC 31:I.Chapter 8 regarding private election costs and maps of precincts and election jurisdictions should not have any known or foreseeable impact on poverty as defined by R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

##### **Small Business Analysis**

The proposed Rule is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

##### **Provider Impact Statement**

The proposed Rule does not have any known or unforeseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

##### **Public Comments**

Interested persons may submit written comments to Lani Durio, Attorney, Legal Division, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be

responsible for responding to inquiries regarding the proposed adoption of LAC 31:I.Chapter 8. The deadline for the Department of State to receive written comments is 4:30 p.m. on July 25, 2017 after the public hearing.

**Public Hearing**

A public hearing on the proposed Rule is scheduled for July 24, 2017 at 2 p.m. in the auditorium at the State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time, all interested persons will be afforded the opportunity to submit data, views, or arguments either orally or in writing.

Tom Schedler  
Secretary of State

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Voting Technology**

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

The proposed rules may increase expenditures for the Secretary of State by a marginal amount. Included in the proposed rules are provisions requiring the department to develop a manual outlining procedural information for private elections, as well as provisions regarding the execution of contracts between the department and entities seeking to hold private elections. The Secretary of State indicates that these aforementioned provisions associated with development of a private elections manual and the execution of private elections contracts will be absorbed utilizing existing resources and budget authority.

Provisions in the proposed rules associated with the sale of precinct maps may increase expenditures for the Secretary of State by a marginal amount as a result of selling the maps that will be offset through fees (See Part II).

Provisions associated with conducting private elections in the proposed rules will not alter expenditures for the Secretary of State, as the department currently provides this service. However, these expenditures will be offset as a result of the department being able to levy fees associated with holding the private election (See Part II).

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

The proposed rules will increase revenues for the statutorily dedicated Voting Technology Fund within the Secretary of State by an indeterminable amount as a result of entities paying fees for the department to conduct private elections and for precinct maps.

The fees for private elections are new fees and were not previously collected by the department. Entities wishing to hold private elections would pay \$100 for one or more races on the same ballot style, \$100 for each additional ballot style, and \$100 for each voting unit. The \$1 per precinct fee for the precinct maps are also new fees. While the department will be collecting these new revenues, it is unknown as to the demand for conducting private elections, and the associated revenue increase is indeterminable. Similarly, the demand for the precinct maps is unknown, and therefore the revenue increase associated with precinct map sales is indeterminable. For reference, the Secretary of State reports that only three parishes can produce the electronic precinct maps. To the extent more parishes produce maps, demand may increase and the department may realize increased revenues.

The proposed rules will not affect revenue collections of local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rules will result in costs for persons seeking to hold private elections using the Secretary of State's voting equipment and for persons seeking to purchase precinct maps from the department. The costs to the aforementioned parties are indeterminable because the demand for such services is unknown. However, the costs will be consistent with the fee schedules for private elections and the \$1 per precinct map fee outlined in Part II.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rules will not affect competition and employment.

Joe R. Salter  
Undersecretary  
1706#027

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

### Department of Environmental Quality Office of the Secretary Legal Division

#### State Implementation Plan for Regional Haze Program Electrical Generating Units BART

Under the authority of the Louisiana Environmental Quality Act, R. S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Services, Air Permits Division, will submit a proposed revision to the state implementation plan (SIP) for the Regional Haze Program as required under the Clean Air Act, part C, section 169, and 40 CFR part 51.308. *Regional haze* is defined as visibility impairment caused by the cumulative air pollutant emissions from numerous sources over a wide geographic area. (1706Pot1)

On July 3, 2012, the Environmental Protection Agency (EPA) made final a partial limited approval and partial disapproval of the original SIP submitted on June 13, 2008. This revision answers the requirements for the electrical generating unit (EGU) at the Entergy Gulf States Louisiana, Roy S. Nelson facility, located in Westlake, Calcasieu Parish, Louisiana, which was addressed under the best available retrofit technology (BART) section and that is subject to the EPA partial disapproval.

All interested persons are invited to submit written comments concerning the SIP revision no later than 4:30 p.m., Wednesday, July 26, 2017, to Vivian H. Aucoin, Office of Environmental Services, P.O. Box 4313, Baton Rouge, LA 70821-4314, fax (225) 219-3482, or e-mail at [vivian.aucoin@la.gov](mailto:vivian.aucoin@la.gov). A public hearing will be held upon request. The deadline for requesting a public hearing is Friday, July 7, 2017.

A copy of the proposal may be viewed on the Louisiana Department of Environmental Quality website, or at LDEQ headquarters at 602 North Fifth Street, Baton Rouge, LA 70802.

Herman Robinson  
General Counsel

1706#020

## POTPOURRI

### Department of Health Bureau of Health Services Financing

#### 2018 First Quarter Hospital Stabilization Assessment

In compliance with the House Concurrent Resolution (HCR) 51 of the 2016 Regular Session, the Department of Health, Bureau of Health Services Financing amended the provisions governing provider fees to establish hospital

assessment fees and related matters (*Louisiana Register*, Volume 42, Number 11).

House Concurrent Resolution 8 of the 2017 Regular Session of the Louisiana Legislature enacted an annual hospital stabilization formula and directed the Department of Health to calculate, levy and collect an assessment for each assessed hospital.

The Department of Health shall calculate, levy and collect a hospital stabilization assessment in accordance with HCR 8. For the quarter beginning July 1, 2017 through September 30, 2017, the quarterly assessment amount to all hospitals will be \$12,453,469. This amounts to 0.109555 percent of total inpatient and outpatient hospital net patient revenue of the assessed hospitals.

Rebekah E. Gee MD, MPH  
Secretary

1706#045

## POTPOURRI

### Department of Health Bureau of Health Services Financing

#### Public Hearing—Substantive Changes to Proposed Rule Ambulatory Surgical Centers—Licensing Standards (LAC 48:I.4503, 4567, 4569 and 4573)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Health, Bureau of Health Services Financing published a Notice of Intent in the February 20, 2017 edition of the *Louisiana Register* (LR 43:429-455) to repeal and replace LAC 48:I.Chapter 45 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2131-2141. This Notice of Intent proposed to repeal and replace the licensing standards governing ambulatory surgical centers in order to: 1) clarify the existing provisions; 2) provide for inactivation of the provider license in the event of specific qualifying events or circumstances; 3) establish provisions which allow ambulatory surgical centers to enter into use agreements; and 4) ensure consistency with other licensing rules, regulations and processes.

The department conducted a public hearing on this Notice of Intent on March 30, 2017 to solicit comments and testimony on the proposed Rule. As a result of the comments received, the department now proposes to amend the provisions in §4503 and §§4567, 4569 and 4573 of the proposed Rule to further clarify these provisions.

Taken together, all of these revisions will closely align the proposed Rule with the department's original intent and the concerns brought forth during the comment period for the Notice of Intent as originally published. No fiscal or economic impact will result from the amendments proposed in this notice.

**Title 48**  
**PUBLIC HEALTH—GENERAL**  
**Part I. General Administration**  
**Subpart 3. Licensing and Certification**

**Chapter 45. Ambulatory Surgical Center**

**Subchapter A. General Provisions**

**§4503. Definitions**

\* \* \*

*Ambulatory Surgical Center (ASC)*—a distinct entity that is wholly separate and clearly distinguishable from any other healthcare facility or office-based physician's practice. An ASC shall be composed of operating room(s) and/or procedure room(s) with an organized medical staff of physicians and permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures. An ASC provides continuous physician and professional nursing services to patients whenever a patient is in the ASC, but does not provide services or accommodations for patients to stay overnight.

1. - 2. ...

3. An ASC that enters into a use agreement with another entity/individual shall have separate, designated hours of operation.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

**Subchapter E. Facility Responsibilities**

**§4567. Staffing Requirements**

A. - A.3. ...

B. Administrator/Director

1. Each ASC shall have a qualified administrator/director who is an on-site employee responsible for the day-to-day management, supervision and operation of the ASC.

B.2. - E.3. ...

4. A personnel file shall be maintained within the ASC on every employee, including contracted employees and personnel providing services under a use agreement. Policies and procedures shall be developed to determine the contents of each personnel file. At a minimum, all personnel files shall include the following:

a. - e. ...

f. criminal background checks for UAPs, prior to offer of direct or contract employment after the effective date of this Rule, as applicable and in accordance with state law. The criminal background check shall be conducted by the Louisiana State Police or its authorized agent; and

g. any other screenings required of new applicants by state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

**§4569. Medical Records**

A. - H. ...

I. The following data shall be documented and included as part of each patient's basic medical record:

1. - 15. ...

16. anesthesia record to include, but not limited to:

a. - b. ...

c. person administering the anesthesia; and

d. post-anesthesia report;

I.17. - R.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

**§4573. Quality Assurance and Performance**

**Improvement**

A. The governing body shall ensure that there is an implemented, maintained, effective, written, data-driven and ongoing program designed to assess and improve the quality of patient care. This program shall include all services, provided directly or through contract, and those services provided under a use agreement, where applicable.

B. - J.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

**Public Comments**

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to [MedicaidPolicy@la.gov](mailto:MedicaidPolicy@la.gov). Ms. Castello is responsible for responding to inquiries regarding these substantive amendments to the proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

**Public Hearing**

A public hearing on these substantive changes to the proposed Rule is scheduled for Thursday, July 27, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

1706#046

**POTPOURRI**

**Department of Insurance**  
**Office of Health, Life and Annuity Insurance**

Annual HIPAA Assessment Rate

Pursuant to Louisiana Revised Statute 22:1071(D)(2), the annual HIPAA assessment rate has been determined by the Department of Insurance to be .00015 percent.

James J. Donelon  
Commissioner

1706#006

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
Shoreline Southeast LLC	Bastian Bay	L	4100 RB sua; LL and E Fee	009	29729
Shoreline Southeast LLC	Bastian Bay	L	LL and E Fee	014	31047
Shoreline Southeast LLC	Bayou Postillion	L	Williams INC SWD	001	67163
Shoreline Southeast LLC	Point Au Fer	L	Mary A Smyth Nelson et al	009	68493
Shoreline Southeast LLC	Point Au Fer	L	vua;sl 649 Nelson LL and E	001	75412
Shoreline Southeast LLC	Lake Raccourci	L	LR CIB 21 A1 ra su;sl 1450	006	112699
Shoreline Southeast LLC	Lake Raccourci	L	sl 1450	006-D	135461
Shoreline Southeast LLC	Lake Raccourci	L	LR SP 7A ra nvu ; sl 1450	003	150877
Shoreline Southeast LLC	Lake Raccourci	L	LR CIB 32A 8 ra su; sl 1450	003D	150878
Shoreline Southeast LLC	Lake Raccourci	L	LR CIB 32A 4A ra su; sl 1450	003-T	150879
Shoreline Southeast LLC	Pecan Lake, South	L	vua; Miami Corp T	001	159264
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	033	159879
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	033-D	161239
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation T	001-D	161366
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation swd	034	165497
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	034-D	168038
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	035	168389
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	037	191392
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	039	206283
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	039-D	206284
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	041	206838
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation swd	042	207646
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	042-D	207647
Shoreline Southeast LLC	Pecan Lake, South	L	BIG 3-3 ra vue; Miami Corp	043	207674
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	043-D	207675
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation swd	044	207723
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	048	215074
Shoreline Southeast LLC	Bastian Bay	L	U DISC 12 ra sua; LL and E Co	001	215367

Operator	Field	District	Well Name	Well Number	Serial Number
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	049	215465
Shoreline Southeast LLC	Bastian Bay	L	LL and E Co	001-D	215826
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	053	217331
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	053-D	217698
Shoreline Southeast LLC	Magnolia	L	Bradish Johnson Co ltd	001	217782
Shoreline Southeast LLC	Magnolia	L	Bradish Johnson Co ltd swd	002	217819
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	055	218441
Shoreline Southeast LLC	Point Au Fer	L	vuc;ST Nelson et al	014	218533
Shoreline Southeast LLC	Magnolia	L	Bradish Johnson Co ltd	003	218972
Shoreline Southeast LLC	Lake Raccourci	L	sl 1450	001	221461
Shoreline Southeast LLC	Lake Raccourci	L	sl 1450	002	221566
Shoreline Southeast LLC	Lake Raccourci	L	sl 1450	001-D	222051
Shoreline Southeast LLC	Topsy	L	hby 4 ra sua; Hayes Lumber Co	001-ALT	222107
Shoreline Southeast LLC	Lake Raccourci	L	lr CIB 32A 8 ra su;sl 1451	001	223020
Shoreline Southeast LLC	Point Au Fer	L	vuc; Mary A Smyth Nelson et al	015	223028
Shoreline Southeast LLC	Lake Raccourci	L	lr SP 7 ra su; sl 1450	007	223044
Shoreline Southeast LLC	Lake Raccourci	L	sl 1451	002	223234
Shoreline Southeast LLC	Fenton, West	L	hby ra sua; Rice Acres Inc	001	223253
Shoreline Southeast LLC	Lake Raccourci	L	sl 1451	3	223283
Shoreline Southeast LLC	Indian Village	L	7900 ra sua; Ja Bel est 21	001	223327
Shoreline Southeast LLC	Roanoke	L	hby ra sua; Helen H Thomas et al	001	223360
Shoreline Southeast LLC	Lake Raccourci	L	sl 1451	001-D	223434
Shoreline Southeast LLC	Lake Raccourci	L	sl 1450	8	223435
Shoreline Southeast LLC	Fenton, North	L	hby ra sub; Walker LA prop	001	223504
Shoreline Southeast LLC	Lake Raccourci	L	sl 1451	005	223509
Shoreline Southeast LLC	Fenton, West	L	L nod B ra sua; Hayes lbr Co 11	1	223592
Shoreline Southeast LLC	Bayou Postillion	L	Williams Land Company 27	001	225881
Shoreline Southeast LLC	Lake Raccourci	L	Tex L-5 ra sua; sl 4534 LL and E	001	226016
Shoreline Southeast LLC	Topsy	L	hby 4 ra sua; Hayes Minerals 29	001	226044
Shoreline Southeast LLC	Bayou Postillion	L	Williams Land Company 27	001-D	226473
Shoreline Southeast LLC	Wright	L	MT 4 RB sua; Hannah Hardee	001	227608
Shoreline Southeast LLC	Bayou Postillion	L	Williams Land Company 27	002	228470
Shoreline Southeast LLC	Intra-coastal City	L	K-O rb sua; Exxon Mobil	001	228882

Operator	Field	District	Well Name	Well Number	Serial Number
Shoreline Southeast LLC	Clovelly	L	Allain-Lebreton	003	228898
Shoreline Southeast LLC	Intracoastal City	L	vua; sl 16995	001-D	229486
Shoreline Southeast LLC	Fenton, North	L	vua; Adams 31	001	230137
Shoreline Southeast LLC	Intracoastal City	L	vua; sl 16995	002	230531
Shoreline Southeast LLC	Wright	L	MT 4 RB sua; Hannah Hardee	002-ALT	231561
Shoreline Southeast LLC	Intracoastal City	L	vua; sl 16995	003	231777
Shoreline Southeast LLC	Point Au Fer	L	vuc; sl 649	001	231997
Shoreline Southeast LLC	Intracoastal City	L	vua; sl 16995	003-D	232537
Shoreline Southeast LLC	Intracoastal City	L	sl 16995 swd	004	236553
Shoreline Southeast LLC	Clovelly	L	Allain-Lebreton	001	236970
Shoreline Southeast LLC	Clovelly	L	Allain-Lebreton	002	238353
Shoreline Southeast LLC	Bully Camp	L	Exxon Fee	001	240424
Shoreline Southeast LLC	Erath	L	Cris R 21000 ra sua; Moss et al	001	241320
Shoreline Southeast LLC	Grand Lake	L	Plan ra sua; sl 19938	001	242886
Shoreline Southeast LLC	Leleux	L	13400 ra sua; C J Hanks	001	242950
Shoreline Southeast LLC	Grand Lake	L	Plan ra sua; sl 19938	002-ALT	243850
Shoreline Southeast LLC	Grand Lake	L	sl 19965	001	243961
Shoreline Southeast LLC	Clovelly	L	Allain-Lebreton	004	245803
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	057	246998
Shoreline Southeast LLC	Pecan Lake, South	L	Miami Corporation	057-D	247271
Shoreline Southeast LLC	Lake Raccourci	L	sl 1450 swd	001	972797
Shoreline Southeast LLC	Wright	L	Hannah Hardee swd	001	973325
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	018	51565
Shoreline Offshore LLC	Rabbit Island	L	ris 20 RB su; sl 340	020	54685
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	021	56357
Shoreline Offshore LLC	Rabbit Island	L	ris 10000 A RL su; sl 340 RI	027	72426
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	043	103618
Shoreline Offshore LLC	Rabbit Island	L	ris 20 ra su; sl 340	051	112112
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	060	115446
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island swd	060D	115723
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	077	118151
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	077D	118894
Shoreline Offshore LLC	Rabbit Island	L	ris 20 ra su; sl 340	093	121842
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	095	123027
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	083	123888
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	093D	125777

Operator	Field	District	Well Name	Well Number	Serial Number
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	098	128173
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	020D	128875
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	107	138935
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	162	140336
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	161	140489
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	172	141853
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	175	143078
Shoreline Offshore LLC	Rabbit Island	L	ris 20 ra su; sl 340	165	154380
Shoreline Offshore LLC	Rabbit Island	L	vua; sl 340 Rabbit Island	185	161784
Shoreline Offshore LLC	Rabbit Island	L	ris 14A RD; sl 340	166	168624
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	203	176038
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	005	218167
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island da	215	218660
Shoreline Offshore LLC	Rabbit Island	L	ris 9700 rh su; sl 340	216	219650
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island da	009	220809
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	217	222750
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	218	230038
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island da	001	230555
Shoreline Offshore LLC	Rabbit Island	L	vua; sl 340 Rabbit Island da	003	231392
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	011	232146
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	012	232147
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	014	232149
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island da	017	232376
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island da	219	232528
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island da	006	232926
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	223	234068
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	222	234309
Shoreline Offshore LLC	Rabbit Island	L	9700 ra vua; sl 340	224	234329
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	015	234751
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	231	235686
Shoreline Offshore LLC	Rabbit Island	L	sl 340 Rabbit Island	027-D	248399
Century Exploration N.O. LLC	Breton Sound Block 53	L	sl 3770	001	88824
Century Exploration N.O. LLC	Breton Sound Block 53	L	sl 3770	001-D	90409
Century Exploration N.O. LLC	Breton Sound Block 53	L	sl 4772	001	125092

Operator	Field	District	Well Name	Well Number	Serial Number
Century Exploration N.O. LLC	Breton Sound Block 53	L	sl 3770	007	159079
Century Exploration N.O. LLC	Breton Sound Block 53	L	sl 3770	008	159752
Century Exploration N.O. LLC	Breton Sound Block 33	L	vu2; sl 14217	003	216597
Century Exploration N.O. LLC	Breton Sound Block 35	L	vu1; sl 14561	002	219489
Century Exploration N.O. LLC	Breton Sound Block 33	L	vu2; sl 14216	002	221850
Century Exploration N.O. LLC	Breton Sound Block 35	L	sl 14561	001	226623

Operator	Field	District	Well Name	Well Number	Serial Number
Century Exploration N.O. LLC	Breton Sound Block 33	L	vu2; sl 14216	001	228013
Century Exploration N.O. LLC	Breton Sound Block 53	L	sl 17861	001	228780
Century Exploration N.O. LLC	Breton Sound Block 53	L	sl 18549	001	233610
Lanford and Backus	Alabama Bend	S	Green	001	47242
United Gas Pub Serv Co	Richland	M	LA Petroleum Co	001	45

Richard P. Ieyoub  
Commissioner

1706#010

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