

# Emergency Rules

## DECLARATION OF EMERGENCY

Department of Economic Development  
Office of the Secretary

Louisiana Initiative for Veteran and Service-Connected  
Disabled Veteran-Owned Small Entrepreneurships  
Certification Program (The Veteran Initiative)  
(LAC 19:IX.Chapters 1 and 3)

The Department of Economic Development, Office of the Secretary, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and in accordance with R.S. 39:2006, R.S. 39:2171 et. seq. and R.S. 51:931, hereby gives notice of its intent to adopt the following Rules for the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative).

The Department of Economic Development, Office of the Secretary, has found an imminent need to provide rules with regard to the certification of businesses as a "Veteran-owned small entrepreneurship" or "Service-connected disabled veteran-owned small entrepreneurship" pursuant to the mandate of R.S. 39:2006 and R.S. 39:2176, since no such rules exist at this time, and the State needs to provide for the facilitation of the growth and stability of Louisiana's economy by fostering utilization by state interests of the business offerings available for state procurement and public contracts from Louisiana's "Veteran-owned small entrepreneurships" and "Service-connected disabled veteran-owned small entrepreneurships".

This program is intended to encourage business opportunities for veteran-owned small entrepreneurships which may not be benefiting from the business offerings available from State procurement and public contracts; and these Rules prescribe procedures for qualifying and certifying a business as a "Veteran-owned small entrepreneurships" and "Service-connected disabled veteran-owned small entrepreneurships" in order to facilitate their access to State procurement and public contracts, which will expand small business economic development throughout Louisiana. Without these Rules, the State of Louisiana may suffer the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

This Rule, adopted in accordance with the Administrative procedure Act, R.S. 49:950 et seq., shall become effective October 20, 2009 and shall remain in effect for the maximum period allowed under the Act.

## Title 19

### CORPORATIONS AND BUSINESS

#### Part IX. Subpart 1. Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative).

##### Chapter 1. General Provisions

##### §101. Statement of Policy

A. The Department of Economic Development, through its designee or its staff, shall administer these regulations for the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program, which are intended to prescribe the procedures for qualifying and certifying a business as a "veteran-owned small entrepreneurship" or "Service-connected disabled veteran-owned small entrepreneurship" to facilitate access to state procurement and public contracts and encourage business opportunities for small entrepreneurships.

B. Certifications that a business is a "veteran-owned small entrepreneurship" or "service-connected disabled veteran-owned small entrepreneurship" are not to be construed as an entitlement for any business locating or located in Louisiana either to such a certification, to any public contract, or to any proceeds from any state contract; and the Secretary of the Department of Economic Development, the Director, or his or their designee, the SE(VI) Certification Program, or its designee or staff, shall have the discretion to determine whether or not each particular applicant or application meets the criteria for the certification as provided herein; and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of such certification status.

C. In no way whatsoever shall the sex, race, birth, age, religious beliefs, political ideas, or affiliations of a business' owners or officers be considered as a factor in determining whether a business receives certified status.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

##### §103. Purpose

A. The purposes and intent of this program are to provide the maximum opportunity for Small Entrepreneurships to become so certified as "veteran-owned small entrepreneurship" or "service-connected disabled veteran-owned small entrepreneurship" and thereby become eligible to participate in a competitive modern business economy, to facilitate their access to state procurement and public contracts, and encourage business opportunities for such small entrepreneurships. These purposes shall be

accomplished by providing a program for the certification of a business as “veteran-owned small entrepreneurship” or “service-connected disabled veteran-owned small entrepreneurship”.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

### §105. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 39:2171 et. seq., unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

*Applicant*—an individual, firm or business that seeks to be certified as a “Veteran-owned small entrepreneurship” or “Service-connected disabled veteran-owned small entrepreneurship”.

*Certification*—the determination and acknowledgement that a business qualifies for designation as a “veteran-owned small entrepreneurship” or “service-connected disabled veteran-owned small entrepreneurship”.

*Designee*—the person designated by the Secretary or by the Director to act in his absence.

*Director*—the Director of the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative) designated by the Secretary of the Department of Economic Development.

*Firm*—a business that seeks to be or that has been certified as a “veteran-owned small entrepreneurship” or “service-connected disabled veteran-owned small entrepreneurship”.

*Full Time*—employed and working in the firm at least 35 hours per week on a regular basis.

*Program*—the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative) in the Department of Economic Development.

*Secretary*—the Secretary of the Department of Economic Development.

*Service-Connected Disabled Veteran-Owned Small Entrepreneurship (SDVSE)*—any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which has not less than fifty-one percent ownership by a veteran of the United States Armed Forces with a state-connected disability, and meets the criteria for certification by the secretary of the department of Economic Development, pursuant to R.S. 39:2176. Service-connected disability will be ascertained with appropriate documents from the United States Department of Veterans Affairs or the Louisiana Department of Veterans Affairs.

*Small Entrepreneurship(SE)*—any business or firm organized for profit, including any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which meets all of the requirements for certification by the Secretary of the Department of Economic Development as specified in R.S. 39:2006 (A).

*Veteran-Owned Small Entrepreneurship (VSE)*—any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which has not less than 51 percent ownership by a veteran of the United States Armed Forces, and meets the criteria for certification by the secretary of the Department of Economic Development, pursuant to R.S. 39:2176.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR

## Chapter 3. Certification

### §301. Eligibility Requirements for Certification

A. Eligibility. An applicant for certification must meet two sets of requirements:

1. An applicant must establish that it is a “service-connected veteran-owned small entrepreneurship” (SDVSE) or a “veteran-owned small entrepreneurship” (VSE), by providing appropriate documentation from the United States Department of Veterans Affairs or the Louisiana Department of Veterans Affairs; and

2. Shall meet all the requirements for a Small Entrepreneurship (SE):

a. independently owned and operated;

b. not dominant in its field of operation, which shall be determined by consideration of the business’s number of employees, volume of business, financial resources, competitive status, and ownership or control of materials, processes, patents, license agreements, facilities, and sales territory; and

c. together with any of its affiliates, has fewer than 50 full-time employees with average annual gross receipts not exceeding \$5,000,000 per year for construction operations and \$3,000,000 per year for non-construction operations, for each of the previous three tax years.

B. Any records, writings, accounts, reports, documents, financial information, tax information, proprietary business information and other materials that are in their nature considered to be confidential and are designated as confidential or proprietary by those firms, businesses or individuals submitting, delivering or transmitting the same, pursuant to request, for the purposes of allowing the SE(VI) Certification Program, or its designee or staff, to investigate and/or examine these firms, businesses or individuals pertaining to its statutory duties, may be considered and maintained as confidential and proprietary information, to the extent permitted under Louisiana Public Records.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR

### §303. Responsibility for Applying

A. It is the responsibility of any individual or business wishing to participate in the program to complete the appropriate written application and required certification process. Failure to provide complete, true, accurate or timely any requested additional supporting information may result in the rejection of the application.

B. Application and certification materials will be distributed by the SE(VI) Certification Program, or its designee or staff, upon written or verbal request. Written or verbal requests for application and certification materials

should be directed to the SE(VI) Certification Program office in the Department of Economic Development in Baton Rouge.

C. Certification as a (SDVSE) or (VSE) also does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification also does not constitute any determination by the SE(VI) Certification Program, its designee or staff, that the firm is a responsible one according to R.S. 39:1505 or R.S. 39:1601, or that the firm is capable of performing any work of any kind.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR

### **§305. Certification Application Procedure**

A. Applicants for certification must submit to the SE(VI) Certification Program office:

1. a written application;
2. supporting financial and other background information;
3. a statement certifying that the applicant meets the eligibility requirements or criteria as specified in R.S. 39:2176(A);
4. an affidavit signed, dated, and notarized attesting to the correctness of the information provided and to the authenticity of all supporting documentation or information provided; and
5. if requested, the applicant must also furnish, within a reasonable time, applicant's most recent financial statements, Federal and State tax returns, a copy of its most recently filed Louisiana Dept. of Labor (LDOL) ES-4 form, and any other appropriate supporting documentation or information as may be requested or required by the SE(VI) Certification Program, or its designee or staff.

B. The SE(VI) Certification Program, through its designee or staff, shall review the application, and if it is found to be incomplete or if further information is needed (such as, for example, applicant's most recent financial statements, Federal and State tax returns, a copy of its most recently filed Louisiana Dept. of Labor (LDOL) ES-4 form, and any other appropriate supporting documentation or information as may be requested or required by the SE(VI) Certification Program, or its designee or staff), the SE(VI) Certification Program designee or staff will contact the applicant business and request such additional information. If the applicant does not respond with the further requested information within 15 days, the application will be denied. If the application is found to be sufficient, or if the application along with the additional information provided is found to be sufficient, a determination shall be made by the SE(VI) Certification Program, or its designee or staff, as to whether or not the applicant business will be certified.

C. The director, or his designee, shall notify the applicant in writing of the decision whether or not to grant such certification; and if certification is to be granted, a written certification as to such status in appropriate form, as determined by the director or his designee, shall be provided to the applicant business.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

### **§307. Duration of Certification; Graduation Through Growth**

A. The amount of time that a firm may be granted certification by the SE(VI) Certification Program is unlimited until the firm graduates by growing to exceed the eligibility requirements for certification.

B. Retention of the firm in the program depends upon the passing of time, the firm's growth and progress toward successfulness and the attainment of its business goals, its willingness and ability to cooperate with and follow through on recommendations of the SE(VI) Certification Program designee or staff.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

### **§309. Verification of Eligibility; Reports by Certified Small Businesses; Evaluation**

A. Verification of Eligibility. The SE(VI) Certification Program, or its designee or staff, may take any reasonable means at any time to confirm an applicant's eligibility or a certified firm's continued eligibility, such as by investigation, letter, telephone, contact with other governmental and/or state agencies, including but not limited to the Department of Labor, and any other persons, companies, suppliers, or by either announced or unannounced site inspections.

B. Report Form. By letter, or on forms which may be identified or prescribed by the SE(VI) Certification Program, or its designee or staff, certified businesses shall continue to report periodically and at times specified by the SE(VI) Certification Program, or its designee or staff, their financial position and attainment of the business' performance goals. Failure to report or failure to report on a timely basis, as required or requested by the SE(HV) Certification Program, or its designee or staff, may result in the business' termination of its SE certification and from the program.

C. Notification of Changes. To continue participation, a certified firm shall provide the SE(VI) Certification Program, or its designee or staff, with a written statement of any changes in its address, telephone number, ownership, control, financial status, major changes in the nature of the operation, or any other appropriate supporting documentation or information as may be requested or required by the SE(VI) Certification Program, or its designee or staff, including, if requested by the SE(VI) Certification Program, or its designee or staff, updated financial information, Federal and State tax returns, copies of DOL ES-4 Forms, and including an affidavit (signed, dated, and notarized) attesting to the authenticity of all of the aforesaid supporting documentation and attesting to the applicant's eligibility or the certified business' continued eligibility requirements or criteria as specified in R.S. 39:2006A, as it may be amended from time to time. Failure to do so may be grounds for the firm's termination of eligibility and certification, and termination from the program.

D. Evaluation. The SE(VI) Certification Program, or its designee or staff, as necessary, shall evaluate and continue to evaluate the information provided and/or otherwise obtained to determine a business' progress, growth and dominance in its field of operations, number of employees, volume of business, areas of improvement, the firm's financial resources, competitive status, ownerships, status of owners

and officers, and generally the firm's continued eligibility for its continued certification and continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR

**§311. Deception Relating to Certification**

A. Any individual or business found guilty of deception relating to certification will be denied its certification, or have its already approved certification revoked and shall be discharged from the program, and will not be eligible to reapply under the business name involved in the deception or under any business with which such individual(s) or business may be associated or affiliated.

B. In the event an applicant or certified business knowingly files a false statement in its application or in any other filing, the applicant or the certified business and/or its representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant or a certified business and/or its representative is reasonably believed to have filed a false statement in its application or any other filing, the SE(VI) Certification Program, or its designee or staff, is authorized to notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of any state funds to the application for other filing.

C. The SE(VI) Certification Program or its designee or staff shall have and retain the right, and shall have the authority, but not the obligation, to require and/or conduct full investigations, at any time and from time to time, including but not limited to full financial and performance audits of any applicant, certified business or firm, including all relevant accounts, records and documents of the individual or business.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

**§313. Departmental Listing; Availability**

A. The department shall maintain a listing of all certified "veteran-owned small entrepreneurships" or "service-connected disabled veteran-owned small entrepreneurships" which shall be updated monthly. The listing shall be available on the Internet and shall also be available in written form upon written request.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

**§315. Departmental Reporting**

A. The department shall report annually to the Commissioner of Administration with respect to the graduation rates for businesses which grew to exceed the eligibility requirements for certification in the most recently concluded fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 35:

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