

# Rules

## RULE

### Department of Economic Development Office of the Secretary Division of Business Retention and Assistance Services

Small and Emerging Business Development Program  
(LAC 19:II.Chapters 1-13)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Louisiana Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, has amended its existing Rules and Regulations relative to its Small and Emerging Business Development Program, and adopted the following new Rules and Regulations relative to the Small and Emerging Business Development Program.

#### Title 19

#### CORPORATIONS AND BUSINESS

#### Part II. Small and Emerging Business Development Program

#### Chapter 1. General Provisions

#### §101. Statement of Policy

A. In accordance with the provisions of R.S. 51:941-945 and the provisions of the Administrative Procedure Act, R.S. 49:950-970 as amended, the Department of Economic Development's Small and Emerging Business Development Program administers these regulations which are intended to prescribe the procedures for qualifying and certifying Small and Emerging businesses; to provide for bonding and other financial assistance; to provide for technical and managerial assistance; to provide for a business mentor-protégé program; to recognize achievements for Small and Emerging businesses; and to facilitate access to state agency procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:49 (January 1997), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:542 (April 2003).

#### §103. Purpose

A. The purpose and intent of this Chapter is to provide the maximum opportunity for Small and Emerging businesses to become competitive in a non-preferential modern economy. This purpose shall be accomplished by providing a program of assistance and promotion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:542 (April 2003).

#### §105. Definitions

A. When used in these regulations, the following terms shall have meanings as set forth below.

*Certification* C determination that a business qualifies for designation as a Small and Emerging business.

*Program* C the Small and Emerging Business Development Program in the Department of Economic Development.

*Small and Emerging Business (SEB)* C a small business organized for profit and performing a commercially useful function which is at least 60 percent owned and controlled by one or more Small and Emerging Business persons and which has its principal place of business in Louisiana. A nonprofit organization is not a Small and Emerging Business for purposes of this Chapter.

*Small and Emerging Business Person* C a citizen of the United States who has resided in Louisiana for at least one year and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

*Director* C the director of Division of Business Retention and Assistance.

*Firm* C a business that has been certified as Small and Emerging.

*Full-Time* C working in the firm at least 35 hours per week.

*RFPC* request for proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:542 (April 2003).

#### §107. Eligibility Requirements for Certification

A. An SEB is a firm owned and controlled by one or more Small and Emerging Business person(s). Eligibility requirements fall into two categories, one applies to the individual owners and the other to the applicant's firm. In order to continue participation in the program, a firm and its individual owners must continue to meet all eligibility requirements.

B. Small and Emerging Business Person. For purposes of the program, a person who meets all of the criteria in this Section shall be defined as a Small and Emerging Business person.

1. Citizenship. The person is a citizen of the United States.

2. Louisiana Residency. The person has resided in Louisiana for at least one year.

3. Net Worth. The person's net worth may not exceed \$200,000. The market value of the individual owner's personal residence will be excluded from the net worth calculation.

C. Small and Emerging Business

1. Ownership and Control. At least 60 percent of the company must be owned and controlled by one or more Small and Emerging Business persons.

2. Principal Place of Business. The firm's principal place of business must be Louisiana.

3. Lawful Function. The company has been organized for profit to perform a lawful, commercially useful function.

4. Business Net Worth. The business' net worth at the time of application may not exceed \$750,000.

5. Full Time. Managing owners who claim Small and Emerging Business person status must be full-time employees of the applicant firm.

6. Job Creation. An applicant firm anticipates creating new full-time jobs.

D. Requirement for Certification. An application containing an affidavit signed, dated, and notarized attesting to all of the aforesaid eligibility requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:1084 (June 1999), LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:542 (April 2003).

**§109. Control and Management**

A. Description. An applicant firm's management and daily business operations must be controlled by an owner(s) of the applicant firm who has/have been determined to be a Small and Emerging Business person. In order for a Small and Emerging Business person to be found to control the firm, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant firm is seeking program certification.

1. The Small and Emerging Business person(s) upon whom eligibility is based shall control the board of directors of the firm, either in actual numbers of voting directors or through weighted voting. In the case of a two-person board of directors where one individual on the board is a Small and Emerging Business person and one is not, the formers vote must be weighted by share ownership, worth more than one vote to achieve a minimum of 60 percent control, in order for the firm to be eligible for the program. This does not preclude the appointment of nonvoting or honorary directors. All arrangements regarding the structure and voting rights of the board must comply with state law and with the firm's articles of incorporation and/or bylaws.

2. Individuals who are not a Small and Emerging Business person may be involved in the management of an applicant's firm and may be stockholders, partners, officers, and/or directors of such firm. Such individual(s), their spouse(s) or immediate family members who reside in the individual's household may not, however:

a. exercise actual control or have the power to control the applicant or certified firm;

b. be an officer or director, stockholder, or partner of another firm in the same or similar line of business as the applicant or certified firm;

c. receive excessive compensation as directors, officers, or employees from either the applicant or certified firm. Individual compensation from the firm in any form, including dividends, consulting fees, or bonuses, which is paid to a non-disadvantaged owner, his/her spouse or immediate family member residing in the same household will be deemed excessive if it exceeds the compensation received by the Small and Emerging Business person chief executive officer, president, partner, or owner, unless the compensation is for a clearly identifiable skill for which market rates must be paid for the firm to utilize the person's expertise;

d. be former employers of the Small and Emerging Business owner(s) of the applicant or certified firm, unless the program determines that the contemplated relationship between the former employer and the Small and Emerging Business person or applicant firm does not give the former actual control or the potential to control the applicant or certified firm and if such relationship is in the best interest of the certified firm.

B. Non-Small and Emerging Business Person Control. Non-Small and Emerging Business person(s) or entities may not control, or have the power to control, the applicant firm. Examples of activities or arrangements which may disqualify an applicant firm from certification are:

1. a non-Small and Emerging Business person such as an officer or member of the board of directors of the firm, or through stock ownership, has the power to control daily direction of the business affairs of the firm;

2. the non-Small and Emerging Business person or entity provides critical financial or bonding support or licenses to the firm, which directly or indirectly allows the non-Small and Emerging Business person to gain control or direction of the firm;

3. a non-Small and Emerging Business person or entity controls the firm or the individual Small and Emerging Business person(s) through loan arrangements;

4. other contractual relationships exist with non-Small and Emerging Business person or entities, the terms of which would create control over the firm.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:51 (January 1997), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:543 (April 2003).

**§111. Responsibility for Applying**

A. It is the responsibility of any business wishing to participate in the program to complete the required certification process. Failure to provide complete, true, or accurate data may result in rejection of the application.

B. Certification materials will be distributed by SEBD Program upon written or verbal request. Written requests for certification materials should be directed to the SEBD Program office in Baton Rouge.

C. Certification as a SEB 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 as a Small and Emerging Business also does not constitute any determination by SEBD Program or that the firm is responsible or capable of performing any work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:543 (April 2003).

### **§113. Certification Application Procedure**

A. Applicant submits an application containing a signed, dated, and notarized affidavit to the SEBD office.

B. The SEBD Program staff reviews the application and if it is found to be incomplete or further information is needed, the SEBD Program staff will contact applicant. If the applicant does not respond within 15 days, the application will be denied.

C. The director notifies the applicant in writing of the decision whether or not to grant certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:544 (April 2003).

### **§115. Duration of Certification**

A. The maximum amount of time that a firm may be granted certification by the SEBD Program is seven years or when the firm graduates.

B. Retention of the firm in the program depends upon time, the firm's progress toward attainment of its business goals, willingness or ability to cooperate and follow through on recommendations of the SEBD Program staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:544 (April 2003).

### **§117. Reports by Certified Small and Emerging Businesses**

A. Report Form. On forms identified or prescribed by the SEBD Program, certified businesses shall report at times specified by the SEBD Program their financial position and attainment of the business' performance goals. Failure to do so may result in termination from the program.

B. Verification of Eligibility. The SEBD Program may take any reasonable means at any time to confirm a certified firm's eligibility, such as by letter, telephone, contact with other governmental agencies, persons, companies, suppliers, or by either announced or unannounced site inspection.

C. Notification of Changes. To continue participation, a certified firm shall provide the SEBD Program with a written statement of any changes in an address, telephone number, ownership, control, financial status, or major changes in the nature of the operation. Failure to do so may be grounds for termination of eligibility.

D. Evaluation. The SEBD Program, as necessary, shall evaluate the information to determine progress, areas for further improvement, resources needed by the firm, and eligibility for continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:544 (April 2003).

### **§119. Deception Relating to Certification of a Small and Emerging Business**

A. Any person found guilty of the crime of deception relating to certification of an SEB as provided in R.S. 51:944 will be discharged from the program and will not be eligible to reapply under the business name involved in the deception or any business with which such individual(s) may be associated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:544 (April 2003).

## **Chapter 3. Developmental Assistance Program**

### **§301. Developmental Assistance**

A. Purpose. The SEBD Program will coordinate technical, managerial, and indirect financial assistance through internal and external resources to assist certified Small and Emerging Businesses in becoming competitive in the market place.

#### **B. Developmental Steps**

1. The certified SEB owner will be required to participate in, and complete a SEBD Program approved entrepreneurial training program. The Small and Emerging Business owner that demonstrates adequate entrepreneurial skills or compelling reasons for not participating may be granted a waiver by the director.

2. Determination of Additional Assistance. In consultation with the business owner, the SEBD Program's staff or its designee will determine areas in which the business owner needs additional assistance.

3. Referral to Additional Resources. The SEBD Program will assist the firm obtain technical and/or managerial assistance from other resources, such as Small Business Development Centers, Procurement Centers, consultants, business networks, professional business associations, educational institutions, and other public agencies.

4. Ongoing Evaluation. In conjunction with the Small and Emerging Business firm and appropriate external resources, the SEBD Program will periodically assess the SEB's progress toward attainment of its business goals. The SEBD Program, in conjunction with the SEB firm, will determine the effectiveness of assistance being administered. If assistance is ineffective, the SEBD Program will investigate and take appropriate action.

5. Graduation from the Program. Upon completion of the Program's seven year term or attainment of the SEB's

programmatic goals, the SEB will graduate from the program. Companies that do not make satisfactory progress and/or exceed the net worth prerequisites for certification will be terminated from the SEBD Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:544 (April 2003).

## **Chapter 5. Mentor-Protégé Program**

### **§501. General Policy**

A. The policy of the state is to implement a Mentor/Protégé program that breaks down barriers and builds capacity of small and emerging businesses, through internal and external practices which include:

1. tone settingCintense and deliberate reinforcement by the governor's office of the state's provision for substantial inclusion of small and emerging businesses in all aspects of purchasing, procurement and contracting;

2. accountabilityCresponsibility of each cabinet member and policy administrator to produce self-imposed and specific outcomes within a specified period of time;

3. partneringCteaming of Small and Emerging Businesses with businesses who have the capability of providing managerial and technical skills, transfer of competence, competitive position and shared opportunity toward the creation of a mutually beneficial relationship with advantages which accrue to all parties;

4. capacity buildingCenhancing the capability of small and emerging businesses to compete for public and private sector contracting and purchasing opportunities;

5. flexibilityCpromoting relationships based on need, relative strengths, capability and agreement of the parties within the boundaries of the program objectives of inclusion, impartiality and mutual understanding;

6. educationCsharing instruction on intent, purpose, scope and procedures of the Mentor/Protégé program with both government personnel at all levels of administration as well as the business community and the general citizenry;

7. monitoringCrequiring the routine measurement and reporting of important indicators of (or related to) outcome oriented results which stems from the continuing quest for accountability of Louisiana state government;

8. reportingCinforming the governor's office of self-imposed outcomes via written and quarterly reports as to the progress of intra-departmental efforts by having the secretary of the department and her/his subordinates assist in the accomplishment of the initiative keep records, and coordinate and link with representatives of the Department of Economic Development; and

9. continuous improvementCapproach to improving the performance of the Mentor/Protégé operation which promotes frequent, regular and possible small incremental improvement steps on an ongoing basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:50 (January 1997), amended LR 26:1573 (August 2000), amended by the Department

of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:545 (April 2003).

### **§503. Incentives for Mentor Participation**

A. Businesses participating as mentors in the Mentor/Protégé Program will be motivated for program participation via program features incorporated in the bid process as well as contracts and or purchase agreements negotiated with the firm. The following features may be instituted by the state of Louisiana to motivate Mentor participation.

1. Preferential Contract Award. The state of Louisiana may institute a system for awarding points to mentor participants which will confer advantages in the bid or selection process for contracting. The evaluation points granted a Mentor/Protégé Program participant will be proportionate to the amount of protégé participation in the project. Evaluation points will be weighted with the same standards as points awarded for quality for product or service; or

2. Performance Incentives. Contracts for goods or services may include a factor for evaluation of performance for the purpose of providing incentives for work performed or deliveries completed ahead of schedule. The incentive for contractors and suppliers who are Mentor/Protégé Program participants shall be not less than 5 percent greater than incentives awarded to firms who are not program participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:545 (April 2003).

### **§505. Incentives for Protégé Participation**

A. Businesses participating as protégés will be eligible for the following program benefits.

1. Subcontracting Opportunities. Protégé firms may be eligible for non-competitive subcontracting opportunities with the state and private sector industries.

2. Technical and Developmental Assistance. Protégé firms will be provided technical and developmental assistance provided by Mentors which is expected to build the capacity of the protégé firm to compete successfully for public and private sector opportunities.

3. Networking. The Department of Economic Development will institute a system of networking protégé firms with potential mentors for the purposes of facilitating successful Mentor/Protégé partnerships. SEB firms participating in the program will be included in the Department of Economic Development's protégé source guide, which lists the firm and its capabilities as a sources of information for mentors in the program. Additionally, networking seminars for the purposes of introducing potential mentors and protégés will be held annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:545 (April 2003).

### **§507. Guidelines for Participation**

A. The Mentor/Protégé Program will be open to participation by any business entity which meets the criteria for participation as outlined below.

1. Mentor Firms:

- a. must be capable of contracting with the state;
- b. must demonstrate their capability to provide managerial or technical skills transfer or capacity building; and
- c. must remain in the program for the period of the developmental assistance as defined in the Mentor/Protégé plan.

2. Protégé Firms:

- a. must be a certified Small and Emerging Business with the state of Louisiana Department of Economic Development;
- b. must be eligible for receipt of government and private contracts;
- c. must graduate from the program within a period not to exceed 7 years or until the firm reaches the threshold of \$750,000 net worth as defined by the SEB certification guidelines.

3. Mentor/Protégé Plan

a. A Mentor/Protégé Plan signed by the respective firms shall be submitted to the Department of Economic Development, Program of Small and Emerging Business Development for approval. The plan shall contain a description of the developmental assistance that is mutually agreed upon and in the best developmental interest of the protégé firm.

b. The Mentor/Protégé plan shall also include information on the mentor's ability to provide developmental assistance, schedule for providing such assistance, and criteria for evaluating the protégé's developmental success. The plan shall include termination provisions complying with notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the department in order to determine the extent of compliance with the terms of the agreement.

c. The submitted Mentor/Protégé Agreement shall be reviewed by an Economic Development Small Business Advisor. The Small Business Advisor may recommend to the director of the Program of Small and Emerging Business Development acceptance of the submitted Agreement if the agreement is in compliance with the program's Mentor/Protégé guidelines.

4. Protégé Selection Selection of the protégé is the responsibility and at the discretion of the mentor. Protégés may be selected from the listing of SEB's provided by the Department of Economic Development, Program of Small and Emerging businesses. A protégé selected from another source or reference must be referred to the Department of Economic Development for certification as an SEB. The protégé must meet the department's guidelines for SEB certification as a condition of the Mentor/Protégé Plan acceptance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of

the Secretary, Division of Business Retention and Assistance Services, LR 29:546 (April 2003).

### **§509. Measurement of Program Success**

A. The overall success of the Mentor/Protégé program will be measured by the extent to which it results in:

1. an increase in the protégé firm's technical and business capability, industrial competitiveness, client base expansion and improved financial stability;
2. an increase in the number and value of contracts, subcontracts and supplier agreements by small and emerging businesses; and
3. the overall enhancement and development of protégé firms as a competitive contractor, subcontractor, or supplier to local, state, federal agencies or commercial markets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 942

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:546 (April 2003).

### **§511. Internal Controls**

A. The Program of Small and Emerging Business Development will manage the program and establish internal controls to achieve the stated program objectives. Controls will include:

1. reviewing and evaluating Mentor/Protégé agreements for goals and objective;
2. reviewing semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the approved agreement;
3. requesting and reviewing periodic reports and any studies or surveys as may be required by the program to determine program effectiveness and impact on the growth, stability and competitive position of Small and Emerging Businesses in the state of Louisiana; and
4. continuous improvement of the program via ongoing and systematic research and development of program features, guidelines and operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 942

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:546 (April 2003).

### **§513. Non-Performance**

A. The Mentor/Protégé Agreement is considered a binding agreement between the parties and the state. Mentors who compete for contract award or purchasing activity and receive evaluation points as program participants are bound, in accordance with the terms of the state contract or purchase order, to fulfill the responsibilities outlined in the approved Mentor/Protégé Agreement as a condition of successful contracting or purchase activity. Protégé who are selected for program participation are bound, in accordance with the terms of their agreement with the Department of Economic Development for continued participation in the program. Failure of the parties to meet the terms of the agreement is considered a violation of contract with liabilities as outlined below.

B. Failure of the mentor to meet the terms of the Mentor/Protégé Agreement will be considered a default of state contract or purchasing agreement.

C. Failure of the protégé to meet the terms of the Mentor/Protégé Agreement will result in exclusion from future participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:546 (April 2003).

#### **§515. Conflict Resolution**

A. The state will institute a system for independent arbitration for the resolution of conflicts between mentors and protégé as program participants and/or between program participants and the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1575 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:547 (April 2003).

### **Chapter 7. Recognition Program**

#### **§701. Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended by Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:547 (April 2003).

### **Chapter 9. Small Business Bonding Program**

#### **§901. Small Business Bonding Assistance**

A. Program Activities Louisiana Contractors Accreditation Institute (LCAI)

1. Eligibility. All SEB construction contractors who are certified by the Small and Emerging Business Development Program, Department of Economic Development, are eligible to attend the institute. However, other contracting businesses will be invited to attend the institute but they will not be able to receive bond guarantee assistance until they have been certified by the SEBD Program.

2. Standards and Procedures for Determining Course Content. The staff of Bonding Assistance Program (BAP) will once a year, or as budget permits, consult with the heads of the construction schools in Louisiana approved by the Board of Regents and Department of Education to ensure that current course content adequately prepares the students to run their construction firms in a businesslike manner.

3. Attendance. Attendance is open to only certified or potentially certified small and emerging business construction contractors. However, contractors must register for the institute he or she wishes to attend. Each contractor who successfully completes the LCAI will be issued a certificate of accreditation.

4. Accreditation without Institute Attendance. An SEB firm may request to be accredited without attendance. The staff of the BAP will conduct a review of the firm. If the

contractor can present evidence he conducts business within standards set by Best Practices, an accreditation may be issued to the firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended LR 24:430 (March 1998), LR 26:1575 (August 2000), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:547 (April 2003).

#### **§903. Direct Bonding Assistance**

A. Direct Bonding Assistance. All certified Small and Emerging construction businesses that have been accredited by the LCAI and all other certified SEBs (non-construction) may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or \$200,000 on any single project. All obligations whether contractual or financial will require the approval of the undersecretary.

B. Application Process

1. A Small Business Bonding Program applicant requesting a bond guaranty is first required to contact a surety company interested in insuring such a bond contingent on SEBD approval. The aforesaid surety will contact SEBD to discern eligibility requirements and submit a formal application on behalf of the business concern.

2. Application for surety bond guarantee assistance including contractor or business underwriting data as prescribed by surety companies shall be submitted by agent to the staff of the Bonding Assistance Program (BAP) and surety company.

3. Manager of BAP or designee will:

a. determine and document that business is eligible to participate in program;

b. secure proof that project has been awarded to contractor or business, in the case of performance and payment bonds;

c. determine worthiness of the project based on advice and input from surety company.

d. make recommendations to the BRAS director as required.

C. Surety Companies

1. Criteria for Eligibility and Continuation in the Program. A surety company must have a certificate of authority from and its rates approved by the Department of Insurance, and appear in the most current edition of the *U.S. Treasury Circular 570*.

a. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/Letters of Credit (LC) to a participating surety where the administration finds any of the following:

i. fraud or misrepresentation in any of the sureties business dealings, BAP-related or not;

ii. imprudent underwriting standards;

iii. excessive losses (as compared to other participating sureties);

iv. failure of a surety to consent to BAP audit;

v. evidence of discriminatory practices; and

vi. consideration of other relevant factors.

b. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/LC to a participating surety where the Department of Economic

Development finds that the surety has failed to adhere to prudent underwriting standards or other practices relative to those of other sureties participating in the BAP. Any surety that has been denied participation in the program may file an appeal, in writing, delivered by certified mail to the secretary of the Department of Economic Development, who will review the adverse action and will render the final decision for the department. Appeals must be received no later than 30 days from the issuance of the director's decision.

2. Subsuretyship. A lead or primary surety must be designated by those sureties who desire to bond a contract together. BAP will recommend a guarantee only to one surety. This does not mean that surety agreements cannot be entered. In a default situation, BAP will recommend to indemnify only the lead or primary surety, which will have an indemnification agreement with its re-insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:430 (March 1998), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:547 (April 2003).

#### **§905. Calculation of Guarantee Fee Deduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), repealed by Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:548 (April 2003).

#### **§907. Management Construction/Risk Management Company**

A. Surety may require contractor to engage a management construction/risk management company to do, at a minimum, an independent take off and review of all low bid projects and advise BAP of their findings, this determination shall be made based on the Surety's standard underwriting procedures. Surety may also require contractor to engage a management construction/risk management company to provide the following services:

1. review of the initial bond request for compatibility of the contractor with the scope of work as outlined in the solicitation;
2. job cost breakdown and bid preparation assistance;
3. monitor all projects once awarded. This will include a full (critical path) reporting throughout the life of the contract;
4. funds receipt and disbursement through a job-specific account on each project. This will include compliance with all lien waivers, releases and vendor payment verification;
5. make itself immediately available for project completion on any defaults at no additional fee to the project cost.

B. Management construction/risk management company engaged by contractor shall be pre-approved by BAP and surety. BAP shall not receive any portion of any fees paid to management construction/risk management company by contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), amended by the Department of Economic Development, Office of the Secretary, Business Retention and Assistance Services, LR 29:548 (April 2003).

#### **§909. Underwriting a BAP Guaranteed Bond**

A. In underwriting a BAP guaranteed bond, the surety is required to adhere to the surety industry's general principles and practices used in evaluating the credit and capacity; and is also required to adhere to those rules, principles, and practices as may be published from time to time by the BAP.

B. Once an application for a bond guarantee/LC is received from a contractor, a review will be conducted in order to determine whether the Small and Emerging Business is eligible for BAP's surety bond guarantee assistance. This review will focus on the presence of a requirement for surety bonds and other statutory requirements.

##### **1. Bonds**

a. There must be a specific contract amount in dollars or obligee estimate of the contract amount, in writing, on other than firm fixed price contracts.

b. There must be nothing in the contract or the proposed bond that would prevent the surety, at its election, from performing the contract rather than paying the penalty.

c. BAP, having guaranteed the bid bond, may refuse to recommend guarantee of the required payment and performance bonds when the actual contract price exceeds the original bid and the higher amount. In such an instance, the surety would either issue the payment and performance bond without BAP's guarantee, or suffer default in fulfilling the bid bond, which should result in claims against the surety and surety's claim against BAP.

2. Types of Bond Guarantees. BAP guarantees will be limited to certain bid, performance, and payment bonds issued in connection with a contract. Bid, performance, and payment bonds listed in the Contract Bonds section, *Rate Manual of Fidelity, Forgery and Surety Bonds*, published by the Surety Association of America, will be eligible for a BAP guarantee. In addition, the BAP guarantee may be expressly extended, in writing, to an ancillary bond incidental to the contract and essential to its performance.

##### **3. Ineligible Bond Situations and Exceptions**

a. If the contracted work is already underway, no guarantee will be issued unless the director consents, in writing, to an exception.

b. While it should not be a common occurrence, and is in fact to be discouraged, applications for surety bonds may occasionally be submitted for consideration after a job is in process. In such cases, the surety must submit, as part of the application, the following additional information:

- i. evidence from the contractor that the surety bond requirement was contained in the original job contract;
- ii. adequate documentation as to why a surety bond was not previously secured and is now being required;
- iii. certification by contractor: list of all suppliers indicating that they are paid up to date, attaching a waiver of lien from each; that all labor costs are current; that all

subcontractors are paid to their current position of work and a waiver of lien from each;

iv. certification by obligee that the job has been satisfactorily completed to present status; and

v. certification from the architect or engineer that the job is in compliance with plans and specifications; and is satisfactory to the present.

c. There are prepared forms published by the American Institute of Architects (AIA), which may be used for the purposes listed above.

C. The surety must satisfy to BAP that there is reasonable expectation that the Small and Emerging Business will perform the covenants and conditions of the contract with respect to which a bond is required. BAP's evaluation will consider the Small and Emerging Business' experience, reputation, and its present and projected financial condition. Finally, BAP must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The BAP's determination will take into account the standards and principles of the surety industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:548 (April 2003).

#### **§911. Guarantee**

A. Amount of Guarantee. Providing collateral in the form of an irrevocable letter of credit to the surety may be posted on an individual project basis at the discretion of the Department of Economic Development.

##### **B. Surety Bond Guarantee Agreement**

###### **1. Terms and Conditions**

a. The *guarantee agreement* is made exclusively for the benefit of BAP and the surety; it does not confer any rights or benefits on any other party including any right of action against BAP by any person claiming under the bond. When problems occur on a contract substantive enough to involve the surety, the surety is authorized to take actions it deems necessary. Regardless of the extent or outcome of surety's involvement, the surety's services, including legal fees and other expenses, will be chargeable to the contractor unless otherwise settled.

b. Any agreement by BAP to guarantee a surety bond issued by a surety company shall contain the following terms and conditions:

i. the surety represents that the bond or bonds being issued are appropriate to the contract requiring them;

ii. the surety represents that the terms and conditions of the bond or bonds executed are in accordance with those generally used by the surety for the type of bond or bonds involved;

iii. the surety affirms that without the BAP guarantee to surety, it will not issue the bond or bonds to the principal;

iv. the surety shall take all steps necessary to mitigate any loss resulting from principal's default;

v. the surety shall inform BAP of any suit or claim filed against it on any guaranteed bond within 30 days of surety's receipt of notice thereof. Unless BAP decides

otherwise, and so notifies surety within 30 days of BAP's receipt of surety's notice, surety shall take charge of the suit for claim and compromise, settle or defend such suit or claim until so notified. BAP shall be bound by the surety's actions in such matters;

vi. the surety shall not join BAP as a third party in any lawsuit to which surety is a party unless BAP has denied liability in writing or BAP has consented to such joinder.

c. When contractor successfully completes bonded job a status inquiry report is signed by appropriate parties and is forwarded to surety's collateral department. Surety shall release standby letter of credit within 90 days of recordation of acceptance date shown on status inquiry report.

d. Variances. The terms and conditions of BAP's guarantee commitment or actual bond guarantee may vary from surety to surety and contract to contract depending on BAP's experiences with a particular surety and other relevant factors. In determining whether BAP's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, BAP will consider, among other things, the adequacy of the surety's underwriting; the adequacy of the surety's substantiation and documentation of its claims practice; the surety's loss ration and its efforts to minimize loss on BAP guaranteed bonds; and other factors. Any surety which deems itself adversely affected by the director's exercise of the foregoing authority may file an appeal with the secretary of the Department of Economic Development. The secretary will render the final decision.

2. Reinsurance Agreement. In all guarantee situations, BAP agrees to reimburse the participating surety up to the agreed-upon percentage of any and all losses incurred by virtue of default on a particular contract. The participating surety agrees to handle all claims, with recoveries being shared on a pro rata basis with BAP. This includes reinsurance agreements between the surety and any other licensed surety or reinsurance company. In other words, no indemnity agreement can be made to inure solely to the benefit of the surety to recover its exposure on any bond guarantee by BAP without BAP participating in its pro rata share.

###### **3. Default**

a. Notice of Default. Surety shall notify BAP if it becomes aware of any circumstances which may cause the contractor to fail to timely complete the project in accordance with the provisions of the contract. Where BAP receives information from other sources indicating a contractor is in potential violation of his contract, the information is to be relayed to the surety for its information and appropriate action.

###### **b. Default Claims, Indemnity Pursuit, and Settlement**

i. The sole authority and responsibility in BAP for handling claims arising from a contractor's default on a surety bond guaranteed by the BAP shall remain with the director and undersecretary relative to BAP's guarantee. The director and undersecretary will process and negotiate all claim matters with surety company representatives.

ii. In those situations where BAP's share is \$500 or less, the surety shall notify the contractor, by letter, of its outstanding debt with no further active pursuit undertaken

by the surety for which BAP would be requested to reimburse.

iii. In those situations where BAP's share is over \$500 through \$2,500, the surety shall promptly develop financial background information on the debtor contractor. These findings will determine whether it is economically justified to further pursue indemnity recovery or to close the file.

iv. In those situations where BAP's share is over \$2,500, the surety shall pursue recovery through its normal method, assessing and comparing the estimated cost of recovery efforts with the probable monetary gain from the effort prior to exercising its rights under LC.

v. The surety shall advise BAP of attempts made to contact indemnitor or to attach other assets, and the outcome of these attempts. The surety shall insure that BAP is credited with its respective apportionment of all recovery within 90 days of the recovery.

vi. At the culmination of subrogation and indemnity recovery efforts, the surety shall notify the obligor of the total amount outstanding. A copy of the notice sent to the contractor shall be promptly forwarded to the BAP. After recovery efforts have been exhausted, the surety and BAP will make final reconciliation on the defaulted case, and close the file on that particular contractor's project. Prior to closing the file, surety shall conduct a recapitulation of the account to assure that BAP has been correctly credited with all funds recovered from any and all sources.

vii. Under the terms and conditions of the surety bond guarantee agreement, the authority to act upon proposed settlement offers in connection with defaulted surety bonds lies with the surety, not with the BAP. A settlement occurs when a defaulted contractor and its surety agree upon a total amount and/or conditions which will satisfy the contractor's indebtedness to the surety, and which will result in closing the loss file. The surety must pay BAP its pro rata share of such settlement. BAP, immediately upon receipt of same, closes the file.

4. Reinstatement. A contractor's contractual relationship is with the surety company. Therefore, all matters pertaining to reinstatement must be arranged with and through the surety. BAP's contractual relationship is with the surety company only. Because of these relationships, BAP will neither negotiate nor discuss with a contractor amounts owed the surety by the contractor, or settlement thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:432 (March 1998), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:549 (April 2003).

#### **§913. Audits**

A. At all reasonable times, BAP or designee may audit the office of either a participating agency, its attorneys, or the contractor or subcontractor completing the contract, all documents, files, books, records and other material relevant to the surety bond guarantee commitments. Failure of a surety to consent to such an audit will be grounds for BAP to

refuse to issue further surety guarantees until such time as the surety consents to such audit. However, when BAP has so refused to issue further guarantees the surety may appeal such action to the secretary of the Department of Economic Development. All appeals must be in writing and delivered by certified mail within 30 days of receiving the director's written issuance of notice that no further guarantees will be issued. Otherwise the director's decision becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:550 (April 2003).

#### **§915. Ancillary Authority**

A. The director, with the approval of the undersecretary and assistant secretary, will have the authority to commit funds and enter into agreements which are consistent with and further the goals of this program. This authority would include, but not be limited to, designating a pool of funds upon which only a particular surety has recourse to, in the event of a contractor default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:550 (April 2003).

### **Chapter 11. Promotion of Small and Emerging Businesses**

#### **§1101. Promotion**

##### **A. Directory**

1. Compilation. The SEBD Program shall compile a directory of all certified SEBs and make it available to the businesses and governmental agencies.

2. Frequency of Publication. The directory shall be updated at least annually, based upon information provided by certified businesses. The SEBD Program may issue updated directories more frequently.

3. Volume and Distribution. At least one copy of the directory will be made available to each state agency and educational institution, and copies will be provided to the state library. Additional copies may be made available to the public and governmental agencies as SEBD Program's resources permit.

4. Available Information. Public information concerning a Small and Emerging Business may be obtained by contacting the Small and Emerging Business Development Program staff during normal working hours.

B. Other Promotional Means. The SEBD Program will utilize other feasible means of promoting Small and Emerging Businesses, such as, but not limited to, the internet, world wide web, electronic bulletin boards, trade shows, or private sector contacts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

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

Economically Disadvantaged Business Development, LR 23:54 (January 1997), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:550 (April 2003).

### **Chapter 13. Complaints and Investigations**

#### **§1301. Complaints and Investigation of Ineligibility**

A. Right to File Complaint. Any individual, firm, or governmental agency which believes that a certified business does not qualify for certification may file a written, signed complaint with the SEBD Program. The complaint must contain sufficient information for SEBD Program staff to conduct an investigation, including specific identification of the affected business, basis for the charge of ineligibility, and identification, mailing address, and telephone number of the complainant.

B. Right to Due Process. No Small and Emerging Business shall be decertified based upon a complaint, without first having had an opportunity to respond to the allegations; however, failure of the Small and Emerging Business to respond to the SEBD Program's notification within 30 calendar days of mailing from the Program may result in revocation of certification.

#### **C. Investigative Procedure**

1. Notification of Allegation. The SEBD Program shall notify the certified business which is subject of the complaint by certified mail, return receipt requested, of the allegation within 15 calendar days of the complaint's receipt.

2. Investigation Conducted. Within available resources, the SEBD Program shall investigate each complaint as promptly as possible. In no event shall the investigation extend beyond 60 calendar days from the date that the complaint was received.

3. Cooperation. The Small and Emerging Business shall cooperate fully with the investigation and make its staff and records available to the SEBD Program, if requested. Insufficient cooperation may be grounds for concluding that the firm has not borne the burden of proving to the satisfaction of the SEBD Program that it is eligible for certification, resulting in revocation of certification.

4. Upon completion of the investigation, the SEBD Program's staff shall make a determination and issue a written decision which either rejects the complaint or revokes the certification within 10 working days. A copy of the written decision shall be sent to the firm that was subject of the complaint, the complainant, and the director of the SEBD Program of State Purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:551 (April 2003).

#### **§1303. Grounds and Procedure for Reconsideration of Denial**

A. Right to Petition. A decision by the SEBD Program to deny issuing certification, deny renewal of certification, or to revoke certification will be reconsidered after an applicant

business has submitted a written petition for reconsideration to the staff of the SEBD Program.

B. Grounds. Grounds for petitioning the SEBD Program to reconsider a denial or revocation of certification are that the Small and Emerging Business Development Program:

1. did not have all relevant information;
2. misapplied its rules;
3. otherwise made an error in reaching its original decision.

C. Right to Petition for Reconsideration. A petitioning business may appeal SEBD Program's decision to deny issuance of certification, to deny recertification, or to revoke certification. Only a firm which is subject of the denial or revocation has a right to petition for reconsideration.

1. Petition Submitted. The appellant business submits a written petition for reconsideration to the SEBD Program's staff. If the petition has not been received by the SEBD Program within 30 days of the date of the letter announcing the denial or revocation, the SEBD Program's decision becomes administratively final.

2. The petition shall specify grounds upon which a reconsideration is justified and the type of remedy requested. The petition for reconsideration must also clearly identify a contact person, mailing address, telephone number. The petitioning firm may provide any additional information which would be pertinent to the issue.

3. Acknowledgment. Upon receiving a petition for reconsideration, SEBD Program shall acknowledge its receipt by sending certified mail, return receipt requested, to the petitioner within five working days.

4. Reconsideration. The SEBD Program shall consider the petition and review all pertinent information, including additional information provided by the appellant business. The SEBD Program may conduct further investigation as necessary.

5. Notification of Decision. No later than 60 calendar days from receipt of the petition for reconsideration, the SEBD Program shall notify the petitioner by certified mail, return receipt requested, of its decision either to affirm the denial or revocation, with specific reason(s) of the grounds for the decision.

D. Final Decision. A decision to deny, revoke, or suspend certification following consideration of a petition for reconsideration is final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:55 (January 1997), amended by the Department of Economic Development, Office of the Secretary, Division of Business Retention and Assistance Services, LR 29:551 (April 2003).

Don J. Hutchinson  
Secretary

0304#025

## RULE

### Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook  
for School AdministratorsC Policy  
(LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741C *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The State Board of Elementary and Secondary Education (SBESE), at the October 2002 meeting, approved a change to policy number 1.025.01 in Bulletin 741C *Louisiana Handbook for School Administrators*. The Rule change updates the list of state and federal rules, laws and statutes that schools and districts must comply with in regards to data collection and dissemination.

The action is necessary to bring Louisiana's school administrative policy in line with Family Education Rights to Privacy Act (FERPA) guidelines. Specific information regarding FERPA guidelines can be obtained at <http://www.ed.gov/offices/OM/fpco/ferpa/index.html>.

#### Title 28 EDUCATION

#### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

#### §901. School Approval Standards and Regulations

##### A. Bulletin 741

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A(10), (11), (15); R.S. 17:7(5), (7), (11); R.S. 17:10, 11; R.S. 17:22(2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 28:269 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:552 (April 2003).

#### Policy

**1.025.01** The maintenance, use, and dissemination of information included in system records and reports shall be governed by written policies adopted by the local educational governing authority and/or other applicable educational governing authorities. The policies shall conform to the requirements of all applicable state and federal laws, including, but not limited to, the Louisiana Public Records Act, R.S. 44:1 et seq., the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and 45 CFR 99.1 et seq., the Individual with Disabilities Education Act, 20 U.S.C 1400 et seq., 17:1941 et seq. and R.S. 17:1237.

**2.025.01** The maintenance, use and distribution of information included in school records and reports shall be governed by written policies adopted by the local educational governing authority. The policies shall conform to the requirements of all applicable state and federal laws, including, but not limited to, the Louisiana Public Records

Act, R.S. 44:1 et seq., the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and 45 CFR 99.1 et seq., the Individual with Disabilities Education Act, 20 U.S.C 1400 et seq., 17:1941 et seq. and R.S. 17:1237.

Weegie Peabody  
Executive Director

0304#018

## RULE

### Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School  
AdministratorsC Time Requirements  
(LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975).

At its October 2002 meeting, the State Board of Elementary and Secondary Education revised Standards 2.037.12, 2.037.13, 1.090.03, and 2.090.03 of Bulletin 741. These standards relate to the length of the school day and the minimum time requirements for pre-kindergarten classes. This action was necessary to include pre-kindergarten in policy that previously applied to K-12. The revision mandated that 360 minutes shall be the minimum instructional day for a full day pre-kindergarten program, defined instructional time for pre-kindergarten and clarified suggested minimum time requirements for pre-kindergarten.

#### Title 28 EDUCATION

#### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

#### §901. School Approval Standards and Regulations

##### A. Bulletin 741

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A(10), (11), (15); R.S. 17:7(5), (7), (11); R.S. 17:10, 11; R.S. 17:22(2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 28:269-271 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:552 (April 2003).

#### Length of School Day Requirements

**2.037.12** The minimum instructional day for a full-day pre-kindergarten and kindergarten program shall be 360 minutes.

**2.037.13** For grades pre-kindergarten - 12, the minimum school day shall include 360 minutes of instructional time, exclusive of recess, lunch, and planning periods.

#### Elementary Program of Studies/Minimum Time Requirements

**2.090.03** Schools providing pre-kindergarten programs shall offer a curriculum that is developmentally appropriate and informal in nature.

**Suggested Minimum Time Requirements for Pre-Kindergarten**

Teacher directed activities indoor and outdoor whole and small group)	35 percent
Child initiated activities indoor and outdoor learning centers)	35 percent
Snack and restroom time	10 percent
Lunch	
Rest Periods	20 percent

The above suggested minimum time requirements shall be flexibly scheduled to meet the developmental needs of young students.

Weegie Peabody  
Executive Director

0304019

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 1943C Policies and Procedures for Louisiana  
Teacher Assistance and Assessment  
(LAC 28:XXXVII.503, 701, and 901)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education has amended *Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment*, LAC 28:XXXVII. The State Board of Elementary and Secondary Education (SBESE) approved the Louisiana Teacher Assistance and Assessment Program's, *Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment*, at their September 2002 meeting. Bulletin 1943 is revised to be in conformity with R.S. 17:3881-3884, 17:3891-3896, and 17:3901-3904, Act 838 of the Regular Session of the 1997 Louisiana Legislature. These revisions include the new Louisiana teacher certification and licensure structure and the Teacher Preparation Program Accountability Survey for new teachers. The new Louisiana teacher certification and licensure structure, approved by the State Board of Elementary and Secondary Education, was implemented on July 1, 2002. The *Policies and Procedures for Louisiana Teacher Assistance and Assessment* are the criteria by which new teachers will be assessed under the Louisiana Teacher Assistance and Assessment Program.

**Title 28**

**EDUCATION**

**Part XXXVII. Bulletin 1943C Policies and Procedures for Louisiana Teacher Assistance and Assessment**

**Chapter 5. Assessment**

**§503. Teachers Subject to the Program**

A. New teachers subject to this assistance and assessment program, as specified by Act 1 of the 1994 Third Extraordinary Session of the Louisiana Legislature and its 1997 amendments, include general education teachers, vocational education teachers, special education teachers, and "any person employed as a full-time employee of a local board who is engaged to directly and regularly provide instruction to students." Teachers required to participate in this program include those who hold standard certificates (Type C, Level 1), those who hold non-standard certificates (Temporary Authority to Teach, Out-of-Field Authorization to Teach, Practitioner License, or Temporary Employment

Permit), teachers moving for the first time from Louisiana nonpublic schools to public schools, and new teachers from out-of-state who do not meet the conditions outlined in Subsection B of this Section.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:278 (February 2002), amended LR 29:553 (April 2003).

**Chapter 7. Glossary**  
**§701. Assessment Terminology**

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*Nonstandard Certificate* A temporary license issued to one who has not yet completed all requirements for Louisiana certification but who is authorized to teach on a provisional basis in Louisiana schools while pursuing completion of all certification requirements.

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*Standard Certificate* A license issued to one who has completed a teacher education program and satisfied other requirements for certification in Louisiana.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:279 (February 2002), amended LR 29:553 (April 2003).

**Chapter 9. Responsibilities**  
**§901. Duties and Responsibilities of Each Party**

A. - A.3.h. ...

4. Responsibilities of Mentor Teachers or Mentor Support Teams. One of the first responsibilities of the Mentor or Mentor Support Team leaders is to remind the assigned new teacher to complete the *Teacher Preparation Program Accountability Survey*. This survey must be completed during the first semester of the assistance period. Additional responsibilities include:

4.a. - 4.c.v. ...

5. Responsibilities of Principals or Principal Designees

a. Introduce the new teacher to school and system policies and procedures, to faculty and staff, to teaching responsibilities, the school improvement plan, the school accountability program, to the *Teacher Preparation Program Accountability Survey*, to the availability of district resources, and the Teacher Assistance and Assessment Program;

5.b. - 6.c. ...

7. Responsibilities of New Teachers

a. Complete the *Teacher Preparation Program Accountability Survey* during the first semester of the assistance period.

b. Perform new teacher responsibilities in accordance with the Code of Ethics for new teachers appearing in the appendices of this bulletin.

c. Meet regularly with his/her mentor at agreed upon times.

d. Take responsibility for his/her own professional growth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10; R.S. 17:3871-3873; R.S. 17:3881-3884; R.S. 17:3891-3895; R.S. 17:3901-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:280 (February 2002), amended LR 29:553 (April 2003).

Weegie Peabody  
Executive Director

0304#020

## RULE

### Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs  
(LAC 28:IV.501, 503, and 803)

The Louisiana Student Financial Assistance Commission (LASFAC) has exercised the provisions of the Administrative Procedure Act, R.S. 49:953(B) et seq., and amended its Scholarship/Grant Rules.

#### Title 28

#### EDUCATION

#### Part IV. Student Financial Assistance Higher Education Scholarship and Grant Programs

#### Chapter 5. Application; Application Deadlines and Proof of Compliance

##### §501. Application

###### A. Initial Application

1. Except as provided in Paragraph A.2 below, all new applicants for Louisiana scholarship and grant programs must apply for federal aid by completing the Free Application for Federal Student Aid (FAFSA) for the academic year following the year the student graduated from high school. For example, if the student will graduate from high school in school year 2000-2001, submit the 2001-2002 version of the FAFSA.

2. All new applicants for TOPS Opportunity, Performance, Honors and TOPS Tech Awards who graduate from high school during or after the 2001-2002 Academic Year (High School) must apply for federal aid by completing the Free Application for Federal Student Aid (FAFSA) for the Academic Year (College) the applicant will be a First Time-Full Time Student. For example, if the applicant will graduate from high school in the 2002-2003 Academic Year (High School) and intends to enroll as a First Time-Full Time Student in the fall semester of 2004, he must submit the 2004-2005 version of the FAFSA.

a. All applicants for TOPS Opportunity, Performance and Honors awards and TOPS Tech awards (except those students who can demonstrate that they do not qualify for federal grant aid because of their family's financial condition) must complete all applicable sections of the initial FAFSA.

b. Applicants for TOPS Opportunity, Performance and Honors awards and TOPS Tech awards who can demonstrate that they do not qualify for federal grant aid because of their family's financial condition must complete all applicable sections of the initial FAFSA except those sections related to the income and assets of the applicant and the applicant's parents.

c. In the event of a budgetary shortfall, applicants for TOPS Opportunity, Performance and Honors awards and TOPS Tech awards who do not complete all sections of the FAFSA will be the first denied a TOPS award.

###### B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998), amended LR 24:1900 (October 1998), LR 26:1994 (September 2000), repromulgated LR 27:1846 (November 2001), amended LR 29:554 (April 2003).

##### §503. Application Deadlines

###### A. - A.4. ...

###### B. Final Deadline for Full Award

1.a. Except as provided in Subparagraph B.1.b below, in order to receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of a student's initial FAFSA application is July 1st of the Academic Year (High School) in which a student graduates. For example, for a student graduating in the 2000-2001 Academic Year (High School), the student must submit the initial FAFSA in time for it to be received by the federal processor by July 1, 2001.

b. For applicants graduating from high school during or after the 2001-2002 Academic Year (High School), in order to receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of a student's initial FAFSA application is the July 1st immediately preceding the Academic Year (College) in which the applicant will be a First Time-Full Time Student.

###### c. Examples

i. If an applicant graduates in the 2002-2003 Academic Year (High School) and will be a First Time-Full Time student in the fall semester of 2003, the applicant must submit the initial FAFSA in time for it to be received by the federal processor by July 1, (2003).

ii. If an applicant graduates in the 2002-2003 Academic Year (High School) and will be a First Time-Full Time student in the fall semester of 2004, the applicant must submit the initial FAFSA in time for it to be received by the federal processor by July 1, (2004).

d. Students must also apply in time to meet the First Time Freshman enrollment deadlines specified in §703.A.4 (TOPS Opportunity, Performance and Honors) and §803.A.4 (TOPS Tech).

###### B.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998), amended LR 24:1900 (October 1998), LR 25:655 (April 1999), LR 25:2396 (December 1999), LR 25:1994 (September 2000), repromulgated LR 27,1847 (November 2001), amended LR 28:447 (March 2002), LR 28:1760 (August 2002), LR 29:554 (April 2003).

#### Chapter 8. TOPS-TECH Award

##### §803. Establishing Eligibility

###### A. - A.2. ...

3. submit the completed initial Free Application for Federal Student Aid (FAFSA) or renewal FAFSA in accordance with §501 by the applicable state aid deadline in accordance with the requirements of §503; and

4. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65, 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), LR 27:1854 (November 2001), LR 28:447 (March 2002), LR 28:773 (April 2002), LR 29:554 (April 2003)

George Badge Eldredge  
General Counsel

0304#013

**RULE**

**Student Financial Assistance Commission  
Office of Student Financial Assistance**

Scholarship/Grant ProgramsC Definitions  
(LAC 28:IV.301)

The Louisiana Student Financial Assistance Commission (LASFAC) has exercised the provisions of the Administrative Procedure Act, R.S. 49:953(B) et seq., and amended its Scholarship/Grant Rules.

**Title 28  
EDUCATION**

**Part IV. Student Financial Assistance—Higher  
Education Scholarship and Grant Programs**

**Chapter 3. Definitions**

**§301. Definitions**

\* \* \*

*Cost of Attendance*C the total amount it will cost a student to go to school, usually expressed as an academic year figure. This cost is determined by the school in compliance with Title IV of the Higher Education Act of 1965, as amended, and is annually updated and adopted by the institution. The cost of education covers tuition and fees, on-campus room and board (or a housing and food allowance for off-campus students) and allowances for books, supplies, transportation, child care, costs related to a disability, and miscellaneous expenses. Also included are reasonable costs for eligible programs of study abroad. An allowance (determined by the school) is included for reasonable costs connected with a student's employment as part of a cooperative education program.

*Dependent Student*C a student who is dependent on his or her parents or legal guardian for support and therefore is required to include parental information on the Free Application for Federal Student Aid (FAFSA) or renewal FAFSA.

\* \* \*

*TOPS Cumulative Grade Point Average (Academic)*C the grade point average calculated by LOSFA on all academic courses taken by a student at postsecondary institutions to determine whether the student has maintained steady academic progress and whether the student has met the minimum grade point average required to maintain eligibility for continuation of a TOPS Award. The cumulative grade point average shall be calculated on a 4.00

scale and must include all academic courses from all postsecondary institutions attended for which the student has been awarded a grade. Academic courses taken at a college or university while the student was still in high school and at postsecondary institutions other than the institution at which the student is currently enrolled must be included in the calculation. Grades earned in non-academic courses and courses taken on a pass/fail basis are not considered in the calculation of the cumulative grade point average.

*TOPS Cumulative Grade Point Average (Non-Academic)*C the grade point average calculated by LOSFA on all non-academic courses taken by a student at postsecondary institutions to determine whether the student has maintained steady academic progress and whether the student has met the minimum grade point average required to maintain eligibility for continuation of a TOPS Award. The cumulative grade point average shall be calculated on a 4.00 scale and must include all non-academic courses from all postsecondary institutions attended for which the student has been awarded a grade. Non-academic courses taken at a college or university while the student was still in high school and at postsecondary institutions other than the institution at which the student is currently enrolled must be included in the calculation. Grades earned in academic courses and courses taken on a pass/fail basis are not considered in the calculation of the cumulative grade point average.

*TOPS Cumulative High School Grade Point Average*C effective for high school graduates beginning with Academic Year (High School) 2002-2003, the grade point average calculated by LOSFA including only the grades achieved in those courses that were used to satisfy core curriculum requirements. In the event a student has received credit for more than 16.5 hours of courses that are included in the core curriculum, the TOPS cumulative high school grade point average shall be calculated by using the course in each core curriculum category for which the student received the highest grade. For example, if a student has taken more than one advanced mathematics course, the cumulative grade point average shall be determined by using only the course in which the student has received the highest grade.

1. For those high schools that utilize other than a 4.00 scale, all grade values shall be converted to a 4.00 scale utilizing the following formula.

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

2. For school's awarding a maximum of 5 points for honors courses, the formula shall be used to convert the honors course grade of "C" as shown in the following example.

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying,  
5X = 12; X = 2.40

Quality points = Credit for course multiplied by the value assigned to the letter grade.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 29:555 (April 2003).

George Badge Eldredge  
General Counsel

0304#014

## RULE

### Tuition Trust Authority Office of Student Financial Assistance

Student Tuition and Revenue Trust (START Saving)  
ProgramCDefinitions (LAC 28:VI.107)

The Louisiana Student Financial Assistance Commission (LASFAC) has exercised the provisions of the Administrative Procedure Act, R.S. 49:953(B) et seq., and amended its Student Tuition and Revenue Trust Rules.

#### Title 28

#### EDUCATION

#### Part VI. Student Financial Assistance—Higher Education Savings

#### Chapter 1. General Provisions

#### §107. Applicable Definitions

\* \* \*

*Maximum Allowable Account Balance* the amount, determined annually, and effective on August 1 of each year, and expressed as a current dollar value, which is equal to five times the qualified higher education expenses at the highest cost institution in the state. Once the cumulative contributions, earnings on contributions, earnings enhancements and interest accrued thereon of an education savings account equals or exceeds the maximum allowable account balance, principal deposits will no longer be accepted for the account. However, if subsequent increases occur in the maximum allowable account balance, principal deposits may resume until the cumulative credits equal the most recently determined maximum allowable account balance.

\* \* \*

*Other Persons* with respect to any designated beneficiary, is any person, other than the beneficiary, whether natural or juridical, who is not a member of the family, including but not limited to individuals, groups, trusts, estates, associations, organizations, partnerships, corporations, and custodians under the Uniform Transfer to Minors Act (UTMA).

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 29:556 (April 2003).

George Badge Eldredge  
General Counsel

0304#022

## RULE

### Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Naturally Dystrophic Waters Performance-Based Standards  
(LAC 33:IX.1105 and 1109)(WQ046)

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 Water Quality regulations, LAC 33:IX.1105 and 1109 (WQ046).

The Rule modifies the process by which waters of the state are characterized as naturally dystrophic and makes consistent the process by which site-specific water quality standards are set for naturally dystrophic waters. EPA has encouraged the department to use performance-based standards as described in the preamble noticed in the *Federal Register* on April 27, 2000 (Volume 65, Number 82), *EPA Review and Approval of State and Tribal Water Quality Standards* (40 CFR Part 131). The department is now adopting performance-based standards to characterize and set water quality standards for naturally dystrophic waters of the state.

This action replaces the language in LAC 33:IX.1109.C.3.a to cite the scientific methodology that the department will use to characterize and set criteria for naturally dystrophic waters. The methodology that is referenced in the Rule is included in the Water Quality Management Plan/Continuing Planning Process, Volume 9, *Water Quality Standards Documentation and Implementation*. The Water Quality Management Plan/Continuing Planning Process, Volume 9, *Water Quality Standards Documentation and Implementation* has been created in conjunction with this rulemaking. The language in LAC 33:IX.1109.C.3.b is deleted. EPA will have the opportunity to ensure that technical issues are adequately addressed when the state adopts the performance-based standards. The state will no longer need to obtain separate approval from EPA for criteria derived through an approved performance-based approach.

The language from the current rule regarding wastewater discharge (LAC 33:IX.1109.C.3.c-d) that is deleted in this action will be modified and moved to the Water Quality Management Plan/Continuing Planning Process, Volume 3, Section 2, *Permitting Guidance Document for Implementing the Louisiana Surface Water Quality Standards, Application of Numerical Standards and Use Attainability*. This document is available at <http://www.deq.state.la.us/permits/permitguide-wqmp.pdf>.

LAC 33:IX.1109.C contains excepted use categories of water bodies, including naturally dystrophic waters. EPA has encouraged the department to adopt criteria associated with the excepted use categories. The department has been gathering data on a site-specific basis to support appropriate criteria changes on naturally dystrophic waters that protect the contact recreation and fish and wildlife propagation uses on these waters. The department now has enough data from site-specific Use Attainability Analyses conducted in accordance with state and federal regulations to support the adoption of an updated and consistent scientific methodology by which to set appropriate criteria for naturally dystrophic waters. Adoption of this methodology will streamline the time-consuming Use Attainability Analysis process the department currently uses to adjust criteria and continue to protect the contact recreation and fish and wildlife propagation uses on these waters as required by the Clean Water Act. The basis and rationale for this Rule and Water Quality Management Plan/Continuing Planning Process revisions are to streamline the procedure to evaluate naturally dystrophic waters while maintaining scientific validity.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part IX. Water Quality**

**Chapter 11. Surface Water Quality Standards**  
**§1105. Definitions**

\* \* \*

*Naturally Dystrophic Waters*—waters which are stained with organic material and which are low in dissolved oxygen because of natural conditions.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2545 (November 2000), LR 29:557 (April 2003).

**§1109. Policy**

Water quality standards policies concerned with the protection and enhancement of water quality in the state are discussed in this Section. Policy statements on antidegradation, water use, water body exception categories, compliance schedules and variances, short-term activity authorization, errors, severability, revisions to standards, and sample collection and analytical procedures are described.

A. - C.2.d. ...

3. Naturally Dystrophic Waters. *Naturally dystrophic waters* are defined in LAC 33:IX.1105. Water bodies shall be designated as *naturally dystrophic waters* and assigned

appropriate water quality criteria according to the procedure in the department's current Water Quality Management Plan/Continuing Planning Process.

D. - I.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:746 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:966 (October 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2546 (November 2000), LR 29:557 (April 2003).

James H. Brent, Ph.D.  
Assistant Secretary

0304#059

**RULE**

**Department of Environmental Quality**  
**Office of Environmental Assessment**  
**Environmental Planning Division**

Stage II Vapor Recovery Systems  
(LAC 33:III.2132)(AQ225)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.2132 (Log #AQ225).

This Rule allows the continued use of the current Stage II vapor recovery systems certified under California Air Resources Board (CARB) certification procedures effective on or before March 31, 2001. Stage II vapor recovery system requirements are applicable to motor vehicle fuel dispensing facilities in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge. Louisiana and other states based their vapor recovery programs on the requirements of CARB. CARB recently approved changes to its standards, which affect the installation and operation of CARB-certified systems in Louisiana and other states. The EPA has recommended that a state not changing its standard to meet CARB's revised standards reference in its regulations that certification is based on CARB certification procedures effective on or before March 31, 2001. This revision complies with that recommendation. This Rule is also a revision to the Louisiana State Implementation Plan (SIP) for air quality. The basis and rationale for this Rule are continued compliance with the Clean Air Act requirements for the Baton Rouge area for protection of air quality.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33**  
**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 21. Control of Emission of Organic Compounds**

**Subchapter F. Gasoline Handling**

**§2132. Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities**

A. Definitions. Terms used in this Section are defined in LAC 33:III.111 of these regulations with the exception of those terms specifically defined as follows:

\* \* \*

*Stage II Vapor Recovery System* Ca gasoline vapor recovery system that is CARB-approved on or before March 31, 2001, or equivalent, and recovers vapors during the refueling of motor vehicles.

B. - B.4.d. ...

5. No owner or operator as described in Paragraphs B.1, 2, and 3 of this Section shall cause or allow the dispensing of motor vehicle fuel at any time unless all fuel dispensing operations are equipped with and utilize a Stage II vapor recovery system certified by CARB on or before March 31, 2001, that is properly installed and operated in accordance with the corresponding CARB executive order. The vapor recovery equipment must also be installed and operated within the guidelines of the National Fire Protection Association (NFPA) 30. The vapor recovery equipment utilized shall be certified by CARB or equivalent certification authority approved by the administrative authority\* to attain a minimum of 95 percent gasoline vapor control efficiency. This certified equipment shall have coaxial hoses and shall not contain remote check valves. In addition, only CARB or equivalent approved aftermarket parts and CARB or equivalent approved rebuilt parts shall be used for installation or replacement use. CARB certified enhanced vapor recovery systems and/or individual parts are approvable by the administrative authority\* as equivalent alternatives.

B.6. - D.1.b.iii. ...

2. The test methods used are contained in the Environmental Protection Agency document entitled, "Technical Guidance Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, EPA-450-3-91-022b" and the CARB Stationary Source Test Methods, Volume 2, April 12, 1996.

D.3. - G.4. ...

5. department inspection records;

G.6. - H.1. ...

a. notices of corrected violations;

b. compliance orders;

H.1.c. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:1254 (November 1992), repromulgated LR 19:46 (January 1993), amended LR 23:1682 (December 1997), LR 24:25 (January 1998), amended by the

Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 29:558 (April 2003).

James H. Brent, Ph.D.  
Assistant Secretary

0304#058

**RULE**

**Office of the Governor**  
**Board of Architectural Examiners**

Architects (LAC 46:I.Chapters 1-23)

Under the authority of the Architects Licensing Law, R.S. 37:141 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana State Board of Architectural Examiners has amended its rules contained in LAC 46:I.Chapters 1-21.

The amendments are primarily housekeeping revisions of existing board rules intended to bring the rules up to date. The amendments restructure and renumber the existing board rules, while repealing other sections. By virtue of these amendments, the following sections of the existing board rules are being renumbered: §§401-415 become §§501-515; §501 becomes §701; §507 becomes §703; §511 becomes §705; §§701-703 become §§901-903; §§901-905 become §§1101-1105; §§1101-1123 become §§1301-1321; §§1301-1335 become §§1501-1533; §§1501-1505 become §§1701-1705; §§1701-1703 become §§1901-1903; §§1901-1919 become §§2101-2119, and §§2101-2103 become §§2301-2303. The following sections of the existing board rules are being repealed: §503, §505, §509, §703.B and C, §705 and §1333.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL STANDARDS**

**Part I. Architects**

**Chapter 1. General Provisions**

**§101. Authority**

A. Under the authority of R.S. 37:144 and in accordance with the provisions of R.S. 49:950 et. seq., the Board of Architectural Examiners adopted the following.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 10:737 (October 1984), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:558 (April 2003).

**§103. Rule Making Process**

A. The Louisiana State Board of Architectural Examiners operates pursuant to these rules, adopted under the authority of R.S. 1950, Title 37, Chapter 3 as amended.

B. For purposes of these rules, the term *architect* means a person who is technically and legally qualified to practice architecture in Louisiana including a professional architectural corporation certified by the board pursuant to the provisions of R.S. 12:1086 et seq., an architectural-engineering corporation certified by the board pursuant to the provisions of R.S. 12:1171 et seq., and a limited liability

company certified by the board pursuant to the provisions of R.S. 12:1301 et seq. The term "board" means the Louisiana State Board of Architectural Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:737 (October 1984), amended by the Department of Economic Development, Board of Architectural Examiners, LR 20:995 (September 1994), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:558 (April 2003).

### **Chapter 3. Organization**

#### **§301. Executive Director**

A. The name and address of the person designated by the board upon whom service of process may be served in judicial procedures against the board is the executive director at the address of the official place of business of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:737 (October 1984), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:559 (April 2003).

#### **§303. Officers**

A. The board shall elect a president and a secretary, each to hold office until their successors shall have been elected. The term of office shall be for one year beginning the first day of January the ensuing year.

B. The president shall preside at all meetings; appoint all committees; sign all certificates of registration issued; sign or authorize by signature stamp all checks with the executive director; and perform all other duties pertaining to his office.

C. The secretary shall, with the assistance of such executive and clerical help as may be required:

a. be the official custodian of the records of the board and of the seal of the board and see that the seal of the board is affixed to all appropriate documents;

b. sign, with the chairman, certificates of licensure; and

c. sign the minutes of the board meetings after the minutes have been approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), amended LR 10:737 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:559 (April 2003).

#### **§305. Other Personnel**

A. The board may employ such executive, stenographic, and office assistance, including an executive director, as is necessary, and shall rent office space as necessary to house the staff and records.

B. The board shall employ an executive director who shall have possession on behalf of the secretary of all the official records of the board and who may, under the supervision of the board, perform such administrative and ministerial duties as the board authorizes.

C. In discharging its responsibilities, the board may engage private counsel, or, as prescribed in law, utilize the services of the attorney general. The board may also employ such accountants, auditors, investigators, and professionals as it deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:738 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:559 (April 2003).

#### **§307. Meetings**

A. There shall be at least four regular meetings each year. If the executive director or the president decide additional meetings are necessary, a special meeting may be called by due notification of all members of the board. A special meeting of the board shall be called by the president upon the request of any two members by giving at least a ten-day written notice to each member of the time and place of such meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), amended LR 10:738 (October 1984), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:559 (April 2003).

#### **§309. Minutes**

A. The minutes of all meetings shall be prepared by the executive director and signed by the secretary and the president at the next regular meeting. As soon as the minutes are prepared, the executive director shall mail them to the membership for their comments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), repromulgated LR 10:737 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:559 (April 2003).

#### **§311. Conduct of Meetings**

A. Unless required otherwise, by law or by these rules, *Robert's Rules of Order* shall be used in the conduct of business by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), repromulgated LR 10:736 (October 1984), repromulgated by the Office of the Governor, Board of Architectural Examiners LR 29:559 (April 2003).

#### **§313. Quorum**

A. Four members of the board constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:738 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:559 (April 2003).

### **§315. Official Records**

A. Among other official records required by law, or by rules of other agencies in support of law, there shall be kept in the board offices accurate and current records including, but not limited to:

1. minutes of all meetings of the board;
2. the name and registration number of all persons to whom certificates of registration are issued, the last known address of all registrants, and all current renewals effected through annual registrations;
3. an individual file for each registrant containing the original application, relevant verification and evaluation data, examination dates, grades, and date of original registration;
4. alleged violations and any revocation, rescission and suspension of licenses; and
5. a system of record keeping correctly and currently indicating funds budgeted, spent, and remaining, as well as projections of appropriate requests for consideration in budget development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Architectural Examiners, LR 9:333 (September 1978), amended LR 10:738 (October 1984), amended by the Office of the Governor, Board of Architectural Examiners LR 29:560 (April 2003).

### **§317. National Council of Architectural Registration Boards**

A. The board shall maintain membership in the National Council of Architectural Registration Boards (NCARB) and its regional conference. Up-to-date information on the examinations and policies adopted from time to time by NCARB shall be reported to the board regularly.

B. The board will cooperate with NCARB in furnishing transcripts of records and rendering assistance in establishing uniform standards of professional qualification throughout the jurisdiction of NCARB.

C. Effective February 24, 1989, out of the funds of the board each board member shall be compensated at a rate of \$75 for each day in attending board meetings and hearings, attending NCARB regional and national meetings, issuing certificates and licenses, necessary travel, and discharging other duties, responsibilities, and powers of the board. In addition, out of said funds each board member, the executive director, and the board attorney shall be reimbursed reasonable and necessary travel, meals, lodging, clerical, and other incidental expenses incurred while performing the duties, responsibilities, and powers of the boards, including but not limited to performing the aforesaid specific activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), amended LR 10:738 (October 1984), LR 12:760 (November 1986), amended by the Department of Economic Development, Board of Architectural Examiners, LR 15:732 (September 1989), amended by the Office of the Governor, Board of Architectural Examiners LR 29:560 (April 2003).

## **Chapter 5. Election of Nominees to Fill Vacancy**

### **§501. Vacancy**

A. This chapter concerns the election of the three nominees to be submitted to the governor for the filling of a vacancy on the board of one or more of the five architectural members to be appointed by the governor pursuant to R.S. 37:142.B. This rule shall be applicable whether the vacancy occurs as a result of withdrawal, disability, death, completion of the term of appointment, or any other reason. This rule shall not be applicable to the board members selected by the governor pursuant to R.S. 37:142.C or D.

B. If a vacancy occurs, or is about to occur, the executive director shall publish notice thereof in the official journal of the state for a period of not less than ten calendar days. The published notice need not appear more than three times during the ten day period. The published notice shall identify the district where the vacancy has occurred and state that any licensed architect domiciled in that district desiring to fill that vacancy shall send a letter by certified mail to the director of the board indicating his or her intent to be a candidate, which letter shall be accompanied by a curriculum vitae and shall certify that, if elected, the architect will serve. The deadline for receipt of the certified letter shall be at least 20 calendar days subsequent to the publication of the last notice appearing in the official journal of the state. Confirmation of receipt shall be the sole responsibility of the candidate.

C. The board shall also provide notice of any vacancy to anyone who has requested same by certified mail within 90 days of the occurrence thereof. However, any failure to provide such notice shall not effect the results of any election conducted to fill the vacancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:560 (April 2003).

### **§503. Waiver of Election**

A. If three or fewer eligible architects from any district seek nomination, no election shall be held in that district, and the names of those three or fewer candidates shall be submitted to the governor without any further board action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:560 (April 2003).

### **§505. Ballots**

A. If an election is necessary, an official ballot and an official return envelope shall be mailed to each licensed architect residing in Louisiana. The ballot shall contain the names of the candidates printed in alphabetical order for each district, the date for the return of the ballots, and any other information or instructions the board believes may be helpful in the election process. Biographical information may be attached to the ballot.

B. If the ballot mailed by board is lost, misplaced or not received, an architect desiring to vote may request from the board a substitute or replacement ballot. This substitute or replacement ballot may be used in the election, provided the requirements of §507.C are satisfied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:560 (April 2003).

#### **§507. Voting**

A. All licensed architects residing in Louisiana shall have the right to vote in the election of nominees to fill the vacancy for any district. If nominees are being elected for more than one district, a licensed architect may choose to vote in one or more but less than all district elections, and no ballot shall be voided for that reason. However, any ballot containing more than three votes or fewer than three votes for candidates in any one district will be voided in its entirety. No write-in candidates will be allowed, and any ballot containing a vote for a write-in candidate will be voided in its entirety.

B. Ballots shall be returned in the official return envelopes provided by the board to the board office in Baton Rouge. The voting architect shall sign and provide his or her license number in the upper left-hand corner of the return envelope.

C. The ballot shall not be valid unless the signature and license number appear on the return envelope, and the return envelope is received by the board office on or before the deadline. Ballots returned in an envelope other than the official return envelope provided by the board shall not be voided for that reason, provided the signature and license number of the voting architect appear on the return envelope, and the return envelope is received by the board office on or before the deadline.

D. The deadline for returning the ballots will be fixed by the president and will be at least 14 calendar days after the ballots are mailed to all licensed architects. Ballots received after the deadline shall not be counted.

E. Upon receipt, each return envelope shall be stamped by the board office showing the date received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:561 (April 2003).

#### **§509. Tabulation**

A. Within 14 calendar days of the deadline for receipt of ballots, tellers appointed by the president, including at least one board member, shall meet at the board office for the purpose of tabulating the ballots. Following a determination that each return envelope contains the required signature and license number, and was timely received, the tellers shall open and count all ballots properly prepared. The executive director will notify the governor and the candidates of the results.

B. Alternatively, when in the discretion of the president the manual tabulating of the ballots by tellers in accordance with the preceding paragraph would be burdensome, or for some other reason should be performed by an outside person, the president may refer the entire tabulating of the ballots, or any part thereof, to an accounting firm, data processing company, or other such qualified person in addition to one board member. The outside person may use such clerical or other assistance, including whatever assistance from the board staff, as he or she deems necessary. The outside person shall:

1. determine that each return envelope contains the required signature and license number, and was timely received;

2. count all ballots properly prepared; and

3. certify the number of votes received by each candidate to the board president and the executive director, who shall notify the governor and the candidates of the results.

C. The three candidates receiving the highest number of votes in each district shall have their name submitted to the governor as nominees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:561 (April 2003).

#### **§511. Tie**

A. In the event the three candidates receiving the highest number of votes cannot be determined because of a tie, a run-off election will be held. The only candidates in the run-off election will be those candidates who received the same number of votes so that the outcome of the election cannot be fully determined.

B. If a run-off election is necessary, an official ballot and an official return envelope will be mailed to each licensed architect residing in Louisiana approximately two weeks after it has been determined that such an election is necessary.

C. The official ballot shall contain the information set forth in §505.A, except only the names of and the information for those candidates in the run-off election shall be included.

D. The rules for voting, for determining the person or persons elected as nominees, and for tabulating votes set forth elsewhere in this rule shall be applicable.

E. In the event the run-off election does not decide the three candidates receiving the highest number of votes, the procedure set forth herein shall be repeated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:561 (April 2003).

#### **§513. Vacancy of Person Elected as Nominee**

A. If a vacancy occurs with respect to a person elected as a nominee, that vacancy shall be filled in the following manner: The executive director shall give notice of the vacancy to all of the other candidates in that district and to anyone who has requested notice of any such vacancy in writing by certified mail within 90 days of the election; however, any failure to provide such notice shall not effect any election conducted subsequently held to fill the vacancy. The executive director shall also publish notice of the vacancy in the official journal of the state for a period of not less than 10 calendar days. The published notice need not appear more than three times during the 10 day period. The published notice shall identify the district where the vacancy has occurred and state that any licensed architect domiciled in that district desiring to fill that vacancy shall advise the board in writing before the deadline determined by the president, and may contain other information. If more than one person seeks election as the nominee, the board will call another election to fill that vacancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:561 (April 2003).

#### **§515. Election Contest**

A. The executive director will notify the candidates of the results of the election by U.S. Mail. The 10 calendar days for contesting an election shall commence three work days (excluding Saturdays, Sundays, and legal holidays) after the results of the election are deposited in the mail by the executive director.

B. Any candidate desiring to contest an election shall, within the time period mentioned in the preceding paragraph, file a written petition addressed to the board stating the basis of the complaint. Upon receipt of such petition, the president shall call a special meeting of the board to hear the complaint, which meeting shall be held within 10 calendar days from the date the petition is received and at a time and place to be designated by the president. At the hearing the board shall consider any evidence offered in support of the complaint. The decision of the board shall be announced within 72 hours after the close of the hearing.

C. All ballots shall be preserved until the expiration of the time allowed for the filing and hearing of a contest. After such period has elapsed, if the election be not contested, the executive director shall destroy the ballots. If the election is contested, the executive director shall maintain the ballots until the contest is concluded, after which the executive director shall destroy the ballots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:562 (April 2003).

### **Chapter 7. Applications for Examination**

#### **§701. Making Application for Architectural Registration Examination**

A. A person desiring to take the Architectural Registration Examination ("ARE") should contact the National Council of Architectural Registration Boards ("NCARB").

B. The applicant has full, complete, and sole responsibility for furnishing to NCARB all necessary information and paying to NCARB all required fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:562 (April 2003).

#### **§703. Training Credits for Applicants Not Holding a Professional Degree**

A. Experience used to meet the educational equivalency requirements set forth in R.S. 37:146(D)(2) can not be used to satisfy the practical architectural work experience requirements set forth in R.S. 37:146(D)(3). Although training credits can be earned prior to satisfactory completion of the educational equivalency requirements set forth in R.S. 37:146(D)(2) at such times permitted by NCARB in its Circular of Information No. 1, experience used in earning such credits can not also be used to satisfy the training requirements of R.S. 37:146(D)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:562 (April 2003).

#### **§705. Modifications to Examination Administration to Accommodate Physical Handicaps**

A. Requests for modification to the examination administration to accommodate physical handicaps must be made in writing to the board. Such a request must be accompanied by a physician's report and/or a report by a diagnostic specialist, along with supporting data, confirming to the board's satisfaction the nature and extent of the handicap. After receipt of the request from the applicant, the board may require that the applicant supply further information and/or that the applicant appear personally before the board. It shall be the responsibility of the applicant to timely supply all further information as the board may require. The board, along with the National Council of Architectural Registration Boards (NCARB), shall determine what, if any, modifications will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:562 (April 2003).

### **Chapter 9. The Examination**

#### **§901. Examinations Required**

A. The Architectural Registration Examinations ("ARE") prepared by the NCARB is adopted by this board as the examinations required to obtain registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:562 (April 2003).

#### **§903. Review of Examination and Answers of the Candidate; Reversing Grades**

A. A candidate will not be permitted to review his/her examination or answers thereto.

B. The board will not reverse the grade received by a candidate from NCARB.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:562 (April 2003).

### **Chapter 11. Registration Procedure**

#### **§1101. Registration Information**

A. To obtain information regarding registration to practice architecture in Louisiana an individual, a corporation which satisfies the requirements of the Professional Architectural Corporations Law, an architectural-engineering corporation which satisfies the requirements of the Architectural-Engineering Corporation Law, and a limited liability company which satisfies the requirements of the Limited Liability Company Law shall write the board indicating whether the applicant seeks to be registered as an architect, a professional architectural corporation, an architectural-engineering corporation, or a limited liability company. The applicant will then receive instructions on the procedure to follow. Upon passing all

divisions of the examination, an in-state candidate shall be charged a fee of \$75 and an out of state candidate shall be charged a fee of \$150 for the issuance of his or her initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:562 (April 2003).

#### **§1103. Individuals Registered in Other States**

A. The exclusive means for an individual registered in another state(s) seeking to be registered in Louisiana is the submission to the board of an NCARB (Blue Cover) certificate.

B. Upon finding the NCARB (Blue Cover) certificate in order and upon payment of the registration fee of \$300, the board will register said individual and issue a license to said individual to practice architecture in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:563 (April 2003).

#### **§1105. Certificates**

A. Upon granting registration and issuance of a license to practice architecture, a copy of the licensing law and the rules of the board shall be forwarded to the registrant.

B. Only individuals, professional architectural corporations, architectural-engineering corporations, and limited liability companies who have met the statutory registration requirements through established board rules shall receive certificates of registration.

C. Each holder of a certificate shall maintain the certificate in his principal office or place of business in this state.

D. A replacement certificate will be issued to a registrant to replace one lost or destroyed, provided the current annual registration renewal is in effect, the registrant makes proper request and submits an acceptable explanation of the loss or destruction of the original certificate, and the registrant pays a fee to be set by the board.

E. A registrant retired from practice who has either practiced architecture for 30 years or more or who is 65 years of age or older may request emeritus status. Only a registrant who is fully and completely retired from the practice of architecture may request emeritus status. Any registrant who is presently receiving or who anticipates receiving in the future any salary, income, fees or other compensation (other than retirement income) from an architectural client, architectural firm, architect, design professional, or any other person for the practice of architecture is ineligible for emeritus status. The annual renewal fee for an approved emeritus registrant is \$5. Revocation and reinstatement rules apply to an emeritus registrant, just as they do to any other registrant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:563 (April 2003).

### **Chapter 13. Administration**

#### **§1301. Renewal Procedure**

A. A license for individual architects shall expire and become invalid on December 31 of each year. Licenses for professional architectural corporations, architectural-engineering corporations, and limited liability companies shall expire and become invalid on June 30 of each year. An individual architect, professional architectural corporation, architectural-engineering corporation, and limited liability company who desires to continue his or its license in force shall be required annually to renew same.

B. It is the responsibility of the individual architect, professional architectural corporation, architectural-engineering corporation, and limited liability company to obtain, complete, and timely return a renewal form and fee to the board office, which forms are available upon request from said office.

C. Prior to December 1 of each year the board shall mail to all individual architects currently licensed a renewal form. An individual architect who desires to continue his license in force shall complete said form and return same with the renewal fee prior to December 31. The license renewal fee for an individual architect domiciled in Louisiana shall be \$75, the license renewal fee for an individual domiciled outside Louisiana shall be \$150. Upon payment of the renewal fee the executive director shall issue a renewal license or registration.

D. Prior to June 1 of each year the board shall mail to all professional architectural corporations, architectural-engineering corporations, and limited liability companies currently licensed a renewal form. A professional architectural corporation, an architectural-engineering corporation, and a limited liability company which desires to continue its license in force shall complete said form and return same with the renewal fee prior to June 30. The fee shall be \$50. Upon payment of the renewal fee, the executive director shall issue a renewal license.

E. The failure to renew a license timely shall not deprive the architect of the right to renew thereafter. An individual architect domiciled in Louisiana who transmits his renewal form and fee to the board subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$75. An individual architect domiciled outside Louisiana who transmits his renewal form and fee to the board subsequent to December 31 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$150. The delinquent fee shall be in addition to the renewal fee set forth in the 1301.C.

F. The failure to renew its license in proper time shall not deprive a professional architectural corporation, an architectural-engineering corporation, or a limited liability company of the right to renew thereafter. A professional architectural corporation, an architectural-engineering corporation, or a limited liability company who transmits its renewal form and fee to the board subsequent to June 30 in the year when such renewal fee first became due shall be required to pay a delinquent fee of \$50. This delinquent fee shall be in addition to the renewal fee set forth in 1301.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:563 (April 2003).

### **§1303. Architect's Seal or Stamp**

A. The seal or stamp of the architect shall contain the name of the architect, the architect's license number, and the words "Registered Architect, State of Louisiana."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:564 (April 2003).

### **§1305. Placing of Seal or Stamp**

A. An architect shall affix his or her seal or stamp to all contract drawings and specifications requiring the services of an architect which were prepared by the architect or under the architect's responsible supervision. Contract drawings and specifications prepared by a consulting electrical, mechanical, structural, or other engineer shall be sealed or stamped only by the consulting engineer.

B. An architect shall clearly identify the specification sections prepared by that architect or under that architect's responsible supervision and distinguish such sections from those prepared by consulting engineers. An architect shall affix his or her seal or stamp either to:

1. each specification section, page, or sheet prepared by or under the responsible supervision of the architect, or

2. the appropriate portion of any Seals/Stamp Page in the specification document which identifies the specification sections prepared by the architect or under his or her responsible supervision and those sections prepared by consulting engineers. Consulting engineers shall affix their seal or stamp either to each specification section, page, or sheet prepared by that consultant, or to that portion of any Seals/Stamp Page which identifies the specification sections prepared by that consultant.

C. If a public or governmental agency requires further certification by the architect (such as that the title or index page of the specifications be certified by the architect), the architect's further certification shall include a description of exactly what drawings and what portions or sections of the specifications were prepared by or under the architect's responsible supervision, and what drawings and what portions or sections of the specifications were prepared by others. In addition, the architect shall include a certification from any consulting engineers as to what drawings and what portions or sections of the specifications were prepared by or under the responsible supervision of the consulting engineers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:564 (April 2003).

### **§1307. Architect or Professional Engineer**

A. It is recognized that in certain fields of practice there is a broad overlap between the work of architects and engineers. This is particularly true in the field of buildings and similar structures. It is recognized that an architect, who has complied with all of the current laws of Louisiana relating to the practice of architecture has a right to engage

in activities properly classifiable as professional engineering insofar as it is necessarily incidental to his work as an architect. Likewise, it is recognized that the professional engineer, who has complied with all of the current laws of Louisiana, and is properly registered in that branch of engineering for which he may be qualified, has a right to engage in activities classifiable as architectural insofar as it is necessarily incidental to his work as an engineer. Furthermore, the architect or the professional engineer, as the case may be, shall assume all responsibility for compliance with all laws or ordinances relating to the designs of projects with which he may be engaged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:564 (April 2003).

### **§1309. Calculating Gross Floor Area under R.S. 37:155(4) Where Building Contains Mixed Occupancy Classifications**

A. When a building contains more than one of the occupancy classifications set forth in R.S. 37:155(4)(f), the gross floor area shall be calculated by performing the following calculations.

1. Divide the gross floor area of each of the occupancy classifications by the corresponding threshold of each, as established in R.S. 37:155(4)(f). Round off the resultants to four decimal points.

2. Add the results of each of the above calculations.

3. If the total exceeds 1.0000, the building shall be determined to exceed the gross floor areas established in La. R.S. 37:155(4)(f).

a. For example, calculating the gross floor area of a building containing 3,126 square feet of storage occupancy and 2,000 square feet of business occupancy shall be performed as follows:

$$\begin{array}{rcl} 3,126 \text{ actual storage sq. ft.} & = & 0.5002 \\ \text{divided by 6,250 threshold} & & \\ 2,000 \text{ actual business sq. ft.} & = & 0.5000 \\ \text{divided by 4,000 threshold} & & \\ \text{Total} & = & 1.0002 \end{array}$$

b. In this example, the threshold square footage of this mixed occupancy building would be exceeded and, therefore, would not be exempt under R.S. 37:155(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:564 (April 2003).

### **§1311. Interpretation of R.S. 37:155(4)(c)**

A. As set forth in R.S. 37:155(4)(c), renovations or alterations of any size building which do not affect the structural integrity or life safety, exclusive of building finishes and furnishings, are exempted from the Licensing Law, R.S.37:141 et seq. Renovations or alterations which exceed \$125,000 are exempted from the Licensing Law only if the applicant documents to the satisfaction of the state fire marshal that the project does not affect structural integrity or life safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:564 (April 2003).

**§1313. Interpretation of R.S. 37:152(B)**

A.1. Specifications, drawings, or other related documents will be deemed to have been prepared either by the architect or under the architect's responsible supervision only when:

a. the client requesting preparation of such plans, specifications, drawings, reports or other documents makes the request directly to the architect, or the architect's employee as long as the employee works in the architect's office;

b. the architect personally controls the preparation of the plans, specifications, drawings, reports or other documents and has input into their preparation prior to their completion;

c. if the plans, specifications, drawings, reports, or other such documents are prepared outside the architect's office, the architect shall maintain evidence of the architect's responsible control including correspondence, time records, check prints, telephone logs, site visit logs, research done for the project, calculations, changes, and written agreements with any persons preparing the documents outside of the architect's offices accepting professional responsibility for such work;

d. the architect reviews the final plans, specifications, drawings, reports or other documents; and

e. the architect has the authority to, and does, make necessary and appropriate changes to the final plans, specifications, drawings, reports or other documents.

2. If an architect fails to maintain written documentation of the items set forth above, when such are applicable, then the architect shall be considered to be in violation of R.S. 37:152, and the architect shall be subject to the disciplinary penalties provided in R.S. 37:153. This written documentation should be maintained for the prescriptive period applicable to claims against the architect which may arise from his or her involvement in the project.

B.1. Nothing precludes the use of prototypical documents provided the architect:

a. has written permission to revise and adapt the prototypical documents from the person who either sealed the prototypical documents or is the legal owner of the prototypical documents;

b. reviewed the prototypical documents and made necessary revisions to bring the design documents into compliance with applicable codes, regulations, and job specific requirements;

c. independently performed and maintains on file necessary calculations;

d. after reviewing, analyzing, and making revisions and/or additions, issued the documents with his/her title block and seal (by applying his/her seal, the architect assumes professional responsibility as the architect of record); and

e. maintained design control over the use of site adapted documents just as if they were his/her original design.

2. The term *prototypical documents* shall mean model documents of buildings that are intended to be built in several locations with substantially few changes and/or

additions except those required to adapt the documents to each particular site; that are generic in nature, that are not designed or premised upon the laws, rules or regulations of any particular state, parish, or municipal building code; that do not account for localized weather, topography, soil, subsistence, local building codes, or other such conditions or requirements; and that are not intended to be used as the actual documents to be employed in the construction of a building, but rather as a sample or a model to provide instruction or guidance. The term *legal owner* shall mean the person who provides the architect with a letter that he or she is the owner of the documents and has the written permission to allow the use thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:565 (April 2003).

**§1315. Continuing Education**

A. Purpose and Scope. These rules provide for a continuing education program to insure that all architects remain informed of those technical and professional subjects necessary to safeguard life, health, and promote the public welfare. These rules shall apply to all architects practicing architecture in this state.

B. Exemptions. Exempt from participating in the continuing education program required by these rules are:

1. A newly registered architect during his or her initial year of registration.

2. An emeritus status architect as defined by board rule §1105.E.

3. A civilian who serves on active duty in the Armed Forces of the United States for a period of time exceeding ninety (90) consecutive days during the annual report period.

4. An architect who demonstrates to the satisfaction of the board that meeting these requirements would work an undue hardship by reason of disability, sickness, or other clearly mitigating circumstances.

C. Definitions

*AIAC* The American Institute of Architects.

*AIA/CES* the continuing education system developed by *AIA* to record professional learning as a mandatory requirement for membership in the *AIA*.

*AREC* the Architect Registration Examination prepared by the National Council of Architectural Registration Boards.

*Board* the Louisiana State Board of Architectural Examiners, 9625 Fenway Avenue, Suite B, Baton Rouge, Louisiana 70809, Telephone: 225-925-4802, Telecopier: 225-925-4804, website: <http://www.lastbdarchs.com>.

*CEH* a continuing education hour. One CEH is equivalent to 50 minutes of actual contact time.

*HSW* the health, safety and welfare of the public.

*Individually Planned Educational Activities* Educational activities in which the teaching methodology primarily consists of the architect himself/herself addressing *HSW* subjects which are not systemically presented by others, including authoring a published *HSW* paper, article or book and successfully completing college or university sponsored *HSW* courses.

*NCARB* the National Council of Architectural Registration Boards.

*Non-resident Architect* Can an architect registered by the board and residing outside Louisiana.

*Resident Architect* Can an architect residing in this state.

*Sponsor* Can an individual, organization, association, institution or other entity which offers an educational activity for the purpose of fulfilling the continuing education requirements of these rules.

*Structured Educational Activities* Educational activities in which the teaching methodology consists primarily of the systematic presentation of *HSW* subjects by qualified individuals or organizations, including *HSW* monographs, course of *HSW* study taught in person or by correspondence, organized *HSW* lectures, *HSW* presentations or workshops, and other means to which identifiable technical and professional *HSW* subjects are presented in a planned manner.

#### D. Requirements

1. Beginning with license renewals effective January 1, 1999, all architects must show compliance with the educational requirements of these rules as a condition for renewing registration.

2. Resident architects shall complete a minimum of 12 continuing education hours (CEH) in HSW each calendar year, beginning with 1998. The 12 CEH must be obtained in either Structured Educational Activities or Individually Planned Educational Activities, as defined herein. Of the 12 required CEH, a minimum of eight CEH must be obtained in Structured Educational Activities. No more than four CEH may be obtained in Individually Planned Educational Activities. The requirement must be satisfied during the period which begins January 1 and ends December 31 of the calendar year immediately preceding the license renewal year.

3. Non-resident architects shall complete either:

a. the mandated requirements for continuing education of a jurisdiction in which that architect is registered to practice architecture, provided that a minimum of eight hours of CEH are obtained in HSW educational activities and also provided the other jurisdiction accepts satisfaction of Louisiana continuing education requirements as meeting its own, or

b. the requirements set forth herein for resident architects.

4. To satisfy the continuing education requirements for the year 1998 only, an architect may use hours obtained during calendar years 1997 and 1998.

5. If an architect is being re-registered after having been unregistered then, in addition to all other requirements, the architect must have acquired that number of total CEH that would have been required if registration had been regularly renewed.

#### E. Acceptable Educational Activities

1. Credit will be allowed only for continuing education activities in areas which:

a. directly safeguard the public's health, safety, and welfare, and

b. provide individual participant documentation from a person other than the participant for record keeping and reporting.

2. Only subject matters on the ARE current at the time of the activity are acceptable. An official list of approved topics to accomplish the purpose of these rules is published

on the board's website. The board's current list is also available upon written request from the board.

3. Acceptable continuing educational activities in HSW include the following:

a. attending HSW professional or technical seminars, lectures, presentations, courses, or workshops offered by a professional or technical organization (AIA, National Fire Protection Association, Concrete Standards Institute, NCARB, etc), insurer, or manufacturer;

b. successfully completing HSW tutorials, short courses, correspondence courses, televised courses, or video-taped courses offered by a provider mentioned in the preceding paragraph;

c. successfully completing HSW monographs or other self-study courses such as those sponsored by NCARB or a similar organization which tests the architect's performance;

d. making professional or technical HSW presentations at meetings, conventions or conferences;

e. teaching or instructing HSW courses;

f. authoring a published HSW paper, article or book; and

g. successfully completing college or university sponsored HSW courses.

4. Continuing educational activities need not take place in Louisiana, but may be acquired at any location.

5. All continuing education activities shall:

a. have a clear purpose and objective;

b. be well organized and provide evidence of pre-planning;

c. be presented by persons who are well qualified by education or experience in the field being taught;

d. provide individual participant documentation from a person other than the participant for record keeping and reporting; and

e. shall not focus upon the sale of any specific product or service offered by a particular manufacturer or provider.

#### F. Number of Continuing Education Hours Earned

1. Continuing education credits shall be measured in CEH and shall be computed as follows.

a. Attending seminars, lectures, presentations, workshops, or courses shall constitute one CEH for each contact hour of attendance.

b. Successfully completing tutorials, short courses, correspondence courses, televised or video-taped courses, monographs and other self-study courses shall constitute the CEH recommended by the program sponsor.

c. Teaching or instructing a qualified seminar, lecture, presentation, or workshop shall constitute two CEH for each contact hour spent in the actual presentation. Teaching credit shall be valid for teaching a seminar or course in its initial presentation only. Teaching credit shall not apply to full-time faculty at a college, university or other educational institution.

d. Authoring a published paper, article or book shall be equivalent of 8 CEH.

e. Successfully completing one or more college or university semester or quarter hours shall satisfy the continuing education hours for the year in which the course was completed.

2. Any program in HSW contained in the record of an approved professional registry will be accepted by the board as fulfilling the continuing education requirements of these rules. The board approves the AIA as a professional registry, and contact hours listed in HSW in the AIA/CES Transcript of Continuing Education Activities will be accepted by the board for both resident and non-resident architects.

3. If the architect exceeds the continuing education requirement in any renewal period (January 1 through December 31), the architect may carry over a maximum of 12 qualifying CEH to the subsequent renewal period.

#### G. Reporting, record keeping and auditing

1. Each architect shall complete the language on the renewal application pertaining to that architect's continuing education activities during the calendar year immediately preceding the license renewal period. Any untrue or false statement or the use thereof with respect to course attendance or any other aspect of continuing educational activity is fraud or misrepresentation and will subject the architect and/or program sponsor to license revocation or other disciplinary action.

2. To verify attendance each attendee shall obtain an attendance certificate from the program sponsor. Additional evidence may include but is not limited to attendance receipts, canceled checks, and sponsor's list of attendees (signed by a responsible person in charge of the activity). A log showing the activity claimed, sponsoring organization, location, duration, etc. should be supported by other evidence. Evidence of compliance shall be retained by the architect for two years after the end of the period for which renewal was requested.

3. A number of renewal applications will be randomly selected by the board for audit for verification of compliance with these requirements. Upon request by the board, evidence of compliance shall be submitted to substantiate compliance of the requirements of these rules. The board may request further information concerning the evidence submitted or the claimed educational activity. The board has final authority with respect to accepting or rejecting continuing education activities for credit.

4. The board may disallow claimed credit. If so, unless the board finds that the architect willfully disregarded these requirements, the architect shall have a period up to six months after notification of disallowance to substantiate the original claim or earn other CEH which fulfill the minimum requirements (and such CEH shall not again be used for the next renewal).

#### H. Pre-Approval of Programs

1. Upon written request, the board will review a continuing education program prior to its presentation provided all of the necessary information to do so is submitted in accordance with these rules. If the program satisfies the requirements of these rules, the board will pre-approve same.

2. A person seeking to obtain pre-approval of a continuing education program shall submit the following information:

a. program sponsor(s): name(s), address(es), and phone number(s);

b. program description: name, detailed description, length of instructional periods, and total hours for which credit is sought;

c. approved Seminar Topic: division(s) and topic(s) from the current list of Approved Seminar Topics;

d. program instructor(s)/leader(s): name(s) of instructor(s)/ leader(s) and credential(s);

e. time and place: date and location of program; and

f. certification of attendance: sponsor's method for providing evidence of attendance to attendees.

3. Such information shall be submitted at least 30 calendar days in advance of the program so that the board may analyze and respond.

4. The sponsor of a pre-approved program may announce or indicate as follows:

"This course has been approved by the Louisiana State Board of Architectural Examiners for a maximum of \_\_\_\_\_ CEH."

#### I. Non-Compliance

1. Failure to fulfill the continuing education requirements shall result in non-renewal of that architect's certificate of registration and loss of the right to practice architecture.

2. If the board finds that the architect willfully disregarded these requirements, the board may subject the architect to all of the disciplinary actions allowed by law, including license revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:565 (April 2003).

#### §1317. Interpretation of R.S. 37:155(A)(3)

A. Registered architects of other states will be deemed to be associated with a registered architect of this state on a specific project within the meaning of R.S. 37:155(A)(3) only when:

1. a written agreement is signed by both the out-of-state and the in-state architects describing the association prior to executing the work;

2. the in-state architect reviews all documents prepared by the out-of-state architect and makes necessary revisions to bring the design documents into compliance with applicable codes, regulations, and requirements;

3. the in-state architect independently performs or contracts with an engineer or engineers licensed in Louisiana to perform necessary calculations, and maintains such calculations on file;

4. after reviewing, analyzing and making revisions and/or additions, the in-state architect issues the documents with his/her title block and seal (by applying his/her seal the architect assumes professional responsibility as the architect of record); and

5. the in-state architect maintains control over the use of the design documents just as if they were his/her original design.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:567 (April 2003).

**§1319. Interpretation of R.S. 37:141(B)(3); Design/Build**

A. A partnership or corporation offering a combination of architectural services together with construction services may offer to render architectural services only if:

1. an architect registered in this state or otherwise permitted to offer architectural services participates substantially in all material aspects of the offering;
2. there is written disclosure at the time of the offering that such architect is engaged by and contractually responsible to such partnership or corporation;
3. such partnership or corporation agrees that such architect will have responsible control of the architectural work and that such architect's services will not be terminated prior to the completion of the project without the consent of the person engaging the partnership or corporation; and
4. the rendering of architectural services by such architect will conform to the provisions of the architectural registration law and the Rules adopted thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:568 (April 2003).

**§1321. Interpretation of R.S. 37:145; Architectural Engineers**

A. A registered professional engineer who has a degree entitled Architectural Engineering from a public or private college or university accredited by the Accreditation Board for Engineering and Technology to offer such a degree may use the title "Architectural Engineer." A corporation, partnership, limited liability company, or group may include the title "Architectural Engineer" in its firm name, provided an owner, partner, or principal of that firm is a registered professional engineer who has such a degree from a public or private college or university so accredited.

B. This interpretation limits the use of the words "Architectural Engineer" to the descriptive title only. Nothing contained herein shall be construed to authorize or allow such an individual or firm to practice architecture in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:568 (April 2003).

**Chapter 15. Titles, Firm Names, and Assumed Names**

**§1501. Misleading and Confusing Names Prohibited**

A. The statutory authorization for architects to offer to the public the practice of architecture and the rendering of architectural services is not an authorization to hold out as an architect any person who is not registered by the board. An architect shall not practice architecture under an assumed, fictitious or corporate name that is misleading as to the identity, responsibility, or status of those practicing thereunder or is otherwise false, fraudulent, misleading, or confusing. For example, a firm whose name contains only the real name or names of individuals who are not licensed

to practice architecture is considered misleading if it holds itself out as practicing architecture or renders architectural services, even if said firm employs a licensed architect or architects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:568 (April 2003).

**§1503. Architect's Responsibility**

A. As a licensed professional, it is the responsibility of the architect to select and use a name which is neither misleading nor confusing. In case of doubt, an architect should first consult the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:568 (April 2003).

**§1505. Use of Term "Architect", "Architecture", or "Architectural"**

A. Except as set forth in §1509, whenever the term "architect", "architecture", or "architectural" is used in a firm name, or whenever a firm includes its name in any listing of architects or of firms rendering architectural services, the name of a licensed architect followed by the title "architect" must be included either as a part of the firm title itself or a licensed architect must be identified in the listing, publication, announcement, letterhead or sign.

Allowed	Not Allowed
Smith & Jones, Architecture & Planning John Smith, Architect	Smith & Jones Architecture & Planning (unless Smith & Jones are both engaged in the active practice of architecture)
Smith & Jones, Architecture & Engineering John Smith, Architect	Smith & Jones Architecture & Engineering (unless Smith and Jones are both licensed architects engaged in the active practice of architecture)
Design Professionals Architecture & Planning John Smith, Architect	Design Professionals Architecture & Planning
Heritage Architectural Services John Smith, Architect	Heritage Architectural Services
John Smith, Architect, and Associates	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:568 (April 2003).

**§1507. Use of the Plural Term "Architects"**

A. Except as set forth in §1509, if the firm title indicates that the firm contains two or more architects, the names of at least two licensed architects followed by the title "architect" must be included either as a part of the firm title itself or at least two licensed architects must be identified in the listing, publication, announcement, letterhead, or sign.

Allowed	Not Allowed
Communications Architects John Smith, Architect Jack Jones, Architect	Communications Architects
Smith & Jones, Architectural Services John Smith, Architect	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:568 (April 2003).

**§1509. Firm Name Which Includes Names of Licensed Architects Only**

A. A firm name which includes only the name or names of licensed architects engaged in the active practice of architecture is not required to include the name of a licensed architect followed by the title "architect" as a part of the firm title in any listing, publication, announcement, letterhead, or sign.

Allowed	Not Allowed
John Smith & Associates, Architects (if John Smith is a licensed architect engaged in the active practice of architecture)	John Smith & Associates, Architects (unless John Smith is a licensed architect engaged in the active practice of architecture)
Smith & Jones, Architects (if Smith & Jones are both licensed architects engaged in the active practice of architecture)	Smith & Jones, Architects (if Jones is deceased, retired, or not licensed by the board)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:569 (April 2003).

**§1511. Use of "AIA"**

A. The use of "AIA", in and of itself, is not an acceptable substitution for the required title "architect" on every listing, publication, announcement, letterhead, business card, and sign used by an individual practicing architecture in connection with his practice.

Allowed	Not Allowed
John Smith, Architect John Smith, Architect, AIA	John Smith, AIA

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:569 (April 2003).

**§1513. Use of the Term "Associate"**

A. An architect may only use the word "associate" in the firm title to describe a full time officer or employee of the firm. The plural form may be used only when justified by the number of associates who are full time firm employees. An architectural firm using the plural form, but which loses an associate or associates so that it is no longer able to do so, is not required to change its name for a period of two years from the departure of the associate. Identification of the associates in the firm title, listing, publication, letterhead, or announcement is not required.

Allowed	Not Allowed
John Smith & Associates, Architecture & Planning John Smith, Architect	John Smith & Associates Architects (if the firm employees only one associate as defined herein)
John Smith & Associates, Architect John Smith, Architect	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:569 (April 2003).

**§1515. Sole Proprietorship, Partnership, Group, Association, or Limited Liability Company**

A. The firm name of any form of individual, partnership, corporate, limited liability company, group, or associate practice must comply with all of the rules set forth in this Chapter.

Allowed	Not Allowed
John Smith, Architect	John Smith
John Smith, AIA, Architect	John Smith, AIA
John Smith, Architect, AIA	
John Smith & Associates John Smith, Architect	
Smith & Jones, Architect & Engineer John Smith, Architect	Smith & Jones, Architects & Engineers (if Smith & Jones are not licensed architects engaged in the active practice of architecture)
Smith & Jones, Architects & Engineer (if Smith and Jones are both licensed architects engaged in the active practice of architecture)	Smith & Jones, Architects (if either Smith or Jones are not licensed architects engaged in the active practice of architecture)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:569 (April 2003).

**§1517. Professional Architectural Corporations**

The corporate name of a professional architectural corporation registered with this board must comply with R.S. 12:1088.

Allowed	Not Allowed
Smith & Jones, A Professional Architectural Corporation	Smith & Jones, Inc.
Smith & Jones, Architects, A Professional Architectural Corporation	Smith & Jones, A Professional Interior Architectural Corporation
Heritage Architects, A Professional Architectural Corporation	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:569 (April 2003)

**§1519. Architectural-Engineering Corporation**

A. The corporate name of an architectural-engineering corporation registered with this board must comply with R.S. 12:1172.

Allowed	Not Allowed
Smith & Jones, An Architectural-Engineering Corporation	Smith & Jones
Smith & Jones, Inc.	
Heritage Architects, Ltd.	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:570 (April 2003).

**§1521. Fictitious Name**

A. For the purpose of these rules, a fictitious name is any name other than the real name or names of an individual. Any individual, partnership, corporation, limited liability company, group, or association may practice architecture under a fictitious name provided the name complies with all of the rules of this Chapter.

Allowed	Not Allowed
Heritage Architecture John Smith, Architect	Heritage Architecture
Architecture Design John Smith, Architect	Architectural Design
Architecture Design Consultants John Smith, Architect Jack Jones, Architect	Architectural Design Consultants John Smith, Architect
Heritage Architects, A Professional Corporation	
John Smith, Architect	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:570 (April 2003).

**§1523. Practicing in a Firm with Other Professionals**

A. An architect who practices in a firm with one or more engineers, land surveyors, landscape architects, interior designers, or other professionals in an allied profession is permitted to use in the firm title a phrase describing the professions involved such as "Architect and Engineer", "Architects, Engineers, and Surveyors", etc. provided:

1. the title does not hold out to the public as an architect any person who is not registered by the board;
2. the name of any allied professional in the firm title is practicing in accordance with the applicable statutes and regulations that govern the practice of that allied profession; and
3. the title complies with all the rules of this Chapter.

Allowed	Not Allowed
Smith & Jones, Architect & Engineer	Smith & Jones, Architect & Engineer
John Smith, Architect Smith & Jones, Architects & Engineers	
John Smith, Architect Jack Jones, Architect	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:570 (April 2003).

**§1525. Deceased or Retired Member Predecessor Firms**

A. An architect may include in the firm name the real name or names of one or more living, deceased, or retired members of the firm, or the name of a predecessor firm in a continuing line of succession. If a firm chooses to include in any listing of architects a deceased or retired member, a deceased or retired member should be so identified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:570 (April 2003).

**§1527. Unlicensed Persons**

A. Unlicensed persons cannot use the term "architect", "architectural", "architecture" or anything confusingly similar to indicate that such person practices or offers to practice architecture, or is rendering architectural services. A person who has obtained a degree in architecture may not use the title "graduate architect."

Allowed	Not Allowed
Designer	Architectural Designer
Draftsman	Architectural Draftsman
Building Designer Products	Architectural Building Designer

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:570 (April 2003).

**§1529. Intern Architect**

A.1. A person who:

- a. has completed the education requirements set forth in NCARB Circular of Information No. 1;
- b. is participating in or who has successfully completed the Intern Development Program ("IDP"); and
- c. is employed by a firm which is lawfully engaged in the practice of architecture in this state may use the title "intern architect" but only in connection with that person's employment with such firm.

2. The title may not be used to advertise or offer to the public that such person is performing or offering to perform architectural services, and accordingly such person may not include himself in any listing of architects or in any listing of persons performing architectural services. Such person may

use a business card identifying himself as an "intern architect", provided such business card also includes the name of the architectural firm employing such person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:570 (April 2003).

**§1531. Business Cards**

A. The business card of an architect should comply with all of these rules including that the user thereof is identified an "architect."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:571 (April 2003).

**§1533. Limited Liability Company**

A. The name of a limited liability company registered with the board must comply with R.S.12:1306 and include the words "Limited Liability Company": the abbreviation "L.L.C."; or the abbreviation "L.C."

Allowed	Not Allowed
Smith & Jones, Architects, A Limited Liability Company	Smith & Jones, Architects (if the entity is a limited liability company)
Smith & Jones, Architects, L.L.C.	
Smith & Jones, Architects, L.C	

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:571 (April 2003).

**Chapter 17. Professional Architectural Corporations, Architectural-Engineering Corporations, and Limited Liability Companies**

**§1701. Professional Architectural Corporations**

A. The practice of architecture by professional architectural corporations is only permissible when lawfully constituted under the laws pertaining to professional architectural corporations, R.S. 12:1086, et seq.

B. No person, firm, partnership, corporation, or group of persons shall solicit, offer, execute, or perform architectural services in this state as a professional architectural corporation without first receiving a certificate from the board authorizing the corporation to do so.

C. Any person seeking to be certified to practice architecture as a professional or professional corporation shall request in writing an application to do so from the office of the board. The request shall state the name of the proposed corporation. The applicant is required to complete said application fully and return same to the executive director. Upon receipt of such application and the fee, the board shall either approve said application and certify the applicant as a professional architectural corporation or disapprove said application advising the applicant of the reasons therefor.

D. Architectural services rendered on behalf of a professional architectural corporation must be performed by or under the direct supervision of a natural person duly licensed to practice architecture in this state.

E. The architects licensed in this state who perform such architectural services or directly supervise such services are responsible to this board for all acts and conduct of such corporation.

F. It will be the responsibility of all architects named in an application to be certified as a professional architectural corporation to advise the board of any organizational change that would relate to the authority granted under this rule. Failure to do so could result in disciplinary action leading to suspension, revocation, or rescission of the registrant's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:571 (April 2003).

**§1703. Architectural-Engineering Corporations**

A. The practice of architecture by architectural-engineering corporations is only permissible when lawfully constituted under the laws pertaining to architectural-engineering corporations, R.S. 12:1171 et seq.

B. No person, firm, partnership, corporation, or group of persons shall solicit, offer, execute, or perform architectural services in this state as an architectural-engineering corporation without first receiving a certificate from the board authorizing the corporation to do so.

C. Any person seeking to be certified to practice architecture as an architectural-engineering corporation shall request in writing an application to do so from the office of the board. The request shall state the name of the proposed corporation. The applicant is required to complete said application fully and return same to the executive director. Upon receipt of such application and the fee, the board shall either approve said application and certify the applicant as an architectural-engineering corporation or disapprove said application advising the applicant of the reasons therefor.

D. Architectural services rendered on behalf of an architectural-engineering corporation must be performed by or under the direct supervision of a natural person duly licensed to practice architecture in this state.

E. The architects licensed in this state who perform such architectural services or directly supervise such services are responsible to this board for all acts and conduct of such corporation.

F. It will be the responsibility of all architects named in an application to be certified as an architectural-engineering corporation to advise the board of any organizational change that would relate to the authority granted under this rule. Failure to do so could result in disciplinary action leading to suspension, revocation, or rescission of the registrants' license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:571 (April 2003).

## §1705. Limited Liability Companies

A. The practice of architecture by limited liability companies is only permissible when lawfully constituted under the laws pertaining to limited liability companies, R.S. 12:1301 et seq.

B. No person, firm, partnership, corporation, or group of persons shall solicit, offer, execute, or perform architectural services in this state as a limited liability company without first receiving a certificate from the board authorizing the limited liability company to do so.

C. A limited liability company soliciting, offering, contracting to perform, or performing the practice of architecture shall be subject to the discipline of the board and to its authority to adopt rules and regulations governing the practice of architecture.

D. Any person seeking to be certified to practice architecture as a limited liability company shall request in writing an application to do so from the office of the board. The request shall state the name of the proposed limited liability company. The applicant is required to complete said application fully and return same to the executive director. Upon receipt of such application and the fee, the board shall either approve said application and certify the limited liability company as authorized to practice architecture or disapprove said application advising the applicant of the reasons therefor.

E. Only a person who is presently licensed by the board pursuant to the provisions of R.S. 37:141 through R.S. 37:158, who is in compliance with said provisions, who is a full-time active employee of the limited liability company, and whose primary occupation is with that limited liability company may be designated as a supervising professional architect.

F. By designating an architect as a supervising professional architect, the limited liability company authorizes that architect to appear for and act on behalf of the limited liability company in connection with the execution and performance of all contracts to provide architectural services.

G. In the event that such registered supervising professional architect ceases being a full-time active employee of the limited liability company or no longer employed by the limited liability company on a primary basis, the authority of the limited liability company to practice architecture is suspended until such time as the limited liability company designates another supervising professional architect pursuant to §1705.E above.

H. The designated supervising professional architect is responsible to this board for all acts and conduct of such limited liability company.

I. It will be the responsibility of all architects named in an application to be certified as a limited liability company to advise the board of any organizational change that would relate to the authority granted under this rule. Failure to do so could result in disciplinary action leading to suspension, revocation, or rescission of the registrants' license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:572 (April 2003).

## Chapter 19. Rules of Conduct: Violations

### §1901. Rules of Conduct

NOTE: Commentaries provided by the NCARB Professional Conduct Committee, except the numbering has been changed to conform to the format required by the *Louisiana Register*.

#### A. Competence

1. In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

COMMENTARY Although many of the existing state board rules of conduct fail to mention standards of competence, it is clear that the public expects that incompetence will be disciplined and, where appropriate, will result in revocation of the license. §1901.A.1 sets forth the common law standard which has existed in this country for a hundred years or more in judging the performance of architects. While some few courts have stated that an architect, like the manufacturer of goods, impliedly warrants that his design is fit for its intended use, this rule specifically rejects the minority standard in favor of the standard applied in the vast majority of jurisdictions that the architect need be careful but need not always be right. In an age of national television, national universities, a national registration exam, and the like, the reference to the skill and knowledge applied in the same locality may be less significant than it was in the past when there was a wide disparity across the face of the United States in the degree of skill and knowledge which an architect was expected to bring to his or her work. Nonetheless, the courts have still recognized this portion of the standard, and it is true that what may be expected of an architect in a complex urban setting may vary from what is expected in a more simple, rural situation.

2. In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulations.

COMMENTARY It should be noted that the rule is limited to applicable state and municipal building laws and regulations. Every major project being built in the United States is subject to a multitude of laws in addition to the applicable building laws and regulations. As to these other laws, it may be negligent of the architect to have failed to take them into account, but the rule does not make the architect specifically responsible for such other laws. Even the building laws and regulations are of sufficient complexity that the architect may be required to seek the interpretation of other professionals. The rule permits the architect to rely on the advice of such other professionals.

3. An architect shall undertake to perform professional services only when he or she, together with those whom the architect may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.

COMMENTARY While an architect is licensed to undertake any project which falls within the definition of the practice of architecture, as a professional, the architect must understand and be limited by the limitations of his or her own capacity and knowledge. Where an architect lacks experience, the rule supposes that he or she will retain consultants who can appropriately supplement his or her own capacity. If an architect undertakes to do a project where he or she lacks knowledge and where he or she does not seek such supplementing consultants, the architect has violated the rule.

4. No person shall be permitted to practice architecture if, in the board's judgment, such person's professional competence is substantially impaired by physical or mental disabilities.

COMMENTARY Here the state registration board is given the opportunity to revoke or suspend a license when the board has suitable evidence that the license holder's professional competence is impaired by physical or mental disabilities. Thus, the board need not wait until a building fails in order to revoke the license of an architect whose addiction to alcohol, for example, makes it impossible for that person to perform professional services with necessary care.

#### B. Conflict of Interest

1. An architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.

COMMENTARY This rule recognizes that in some circumstances an architect may receive compensation from more than one party involved in a project but that such bifurcated loyalty is unacceptable unless all parties have understood it and accepted it.

2. If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his or her judgment in connection with the performance of professional services, the architect shall fully disclose in writing to his or her client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

COMMENTARY Like §1901.B.1, this rule is directed at conflicts of interest. It requires disclosure by the architect of any interest which would affect the architect's performance.

3. An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

COMMENTARY This rule appears in most of the existing state standards. It is absolute and does not provide for waiver by agreement.

4. When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

COMMENTARY This rule applies only when the architect is acting as the interpreter of building contract documents and the judge of contract performance. The rule recognizes that that is not an inevitable role and that there may be circumstances (for example, where the architect has an interest in the owning entity) in which the architect may appropriately decline to act in those two roles. In general, however, the rule governs the customary construction industry relationship where the architect, though paid by the owner and owing the owner his or her loyalty, is nonetheless required, in fulfilling his or her role in the typical construction industry documents, to act with impartiality.

#### C. Full Disclosure

1. An architect, making public statements on architectural questions, shall disclose when he or she is being compensated for making such statement or when he or she has an economic interest in the issue.

COMMENTARY Architects frequently and appropriately make statements on questions affecting the environment in the architect's community. As citizens and as members of a profession acutely concerned with environmental change, they doubtless have an obligation to be heard on such questions. Many architects may, however, be representing the interests of potential developers when making statements on such issues. It is consistent with the probity which the public expects from members of the architectural profession that they not be allowed under the circumstances described in the rule to disguise the fact that they are not speaking on the particular

issue as an independent professional but as a professional engaged to act on behalf of a client.

2. An architect shall accurately represent to a prospective or existing client or employer his or her qualifications, capabilities, experience, and the scope of his or her responsibility in connection with work for which he or she is claiming credit.

COMMENTARY Many important projects require a team of architects to do the work. Regrettably, there has been some conflict in recent years when individual members of that team have claimed greater credit for the project than was appropriate to their work done. It should be noted that a young architect who develops his or her experience working under a more senior architect has every right to claim credit for the work which he or she did. On the other hand, the public must be protected from believing that the younger architect's role was greater than was the fact.

3. The architect shall not falsify or permit misrepresentation of his or her associate's academic or professional qualifications. The architect shall not misrepresent or exaggerate his or her degree of responsibility in or for the subject matter or prior assignments. Brochures or other presentations incidental to the solicitation of employment shall not misrepresent pertinent facts concerning employer, employees, associates joint ventures, or his/her or their past accomplishments with the intent and purpose of enhancing his/her qualifications or his/her work.

4.a. If, in the course of his or her work on a project, an architect becomes aware of a decision taken by his or her employer or client, against the architect's advice, which violates applicable state or municipal building laws and regulations and which will, in the architect's judgment, materially affect adversely the safety to the public of the finished project, the architect shall,

i. report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations;

ii. refuse to consent to the decision; and

iii. in circumstances where the architect reasonably believes that other such decisions will be taken notwithstanding his objection, terminate his services with reference to the project unless the architect is able to cause the matter to be resolved by other means.

b. In the case of a termination in accordance with §1901.C.4.a.iii, the architect shall have no liability to his or her client or employer on account of such termination.

COMMENTARY This rule holds the architect to the same standard of independence which has been applied to lawyers and accountants. In the circumstances described, the architect is compelled to report the matter to a public official even though to do so may substantially harm the architect's client. Note that the circumstances are a violation of building laws which adversely affect the safety to the public of the finished project. While a proposed technical violation of building laws (e.g., a violation which does not affect the public safety) will cause a responsible architect to take action to oppose its implementation, the Committee specifically does not make such a proposed violation trigger the provisions of this rule. The rule specifically intends to exclude safety problems during the course of construction which are traditionally the obligation of the contractor. There is no intent here to create a liability for the architect in this area. §1901.C.4.a.iii gives the architect the obligation to terminate his or her services if he or she has clearly lost professional control. The standard is that the architect reasonably believes that other such decisions will be taken notwithstanding his or her objection. The rule goes on to provide that the architect shall not be liable for a

termination made pursuant to §1901.C.4.a.iii. Such an exemption from contract liability is necessary if the architect is to be free to refuse to participate on a project in which such decisions are being made.

5. An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his or her application for registration or renewal.

COMMENTARY The registration board which grants registration or renews registration on the basis of a misrepresentation by the applicant must have the power to revoke that registration.

6. An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience, or character.

7. An architect possessing knowledge of a violation of these rules by another architect shall report such knowledge to the board.

COMMENTARY This rule has its analogue in the Code of Professional Responsibility for lawyers. Its thrust is consistent with the special responsibility which the public expects from architects.

#### D. Compliance with Laws

1. An architect shall not, in the conduct of his or her architectural practice, knowingly violate any state or federal criminal law.

COMMENTARY This rule is concerned with the violation of a state or federal criminal law while in the conduct of the registrant's professional practice. Thus, it does not cover criminal conduct entirely unrelated to the registrant's architectural practice. It is intended, however, that rule §1901.E.4 will cover reprehensible conduct on the part of the architect not embraced by rule §1901.D.1. At present, there are several ways in which member boards have dealt with this sort of rule. Some have disregarded the requirement that the conduct be related to professional practice and have provided for discipline whenever the architect engages in a crime involved "moral turpitude."

The Committee declined the use of that phrase as its meaning is by no means clear or uniformly understood. Some member boards discipline for felony crimes and not for misdemeanor crimes. While the distinction between the two was once the distinction between serious crimes and technical crimes, that distinction has been blurred in recent years. Accordingly, the committee specifies crimes in the course of the architect's professional practice, and, under §1901.E.4, gives to the member board discretion to deal with other reprehensible conduct. Note that the rule is concerned only with violations of state or federal criminal law. The Committee specifically decided against the inclusion of violations of the laws of other nations. Not only is it extremely difficult for a member board to obtain suitable evidence of the interpretation of foreign laws, it is not unusual for such laws to be at odds with the laws, or, at least, the policy of the United States of America. For example, the failure to follow the dictates of the "anti-Israel boycott" laws found in most Arab jurisdictions is a crime under the laws of most of those jurisdictions; while the anti-Israel boycott is contrary to the policy of the government of the United States and following its dictates is illegal under the laws of the United States.

2. An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

COMMENTARY Section 1901.D.2 tracks a typical bribe statute. It is covered by the general language of §1901.D.1, but it was the Committee's view that §1901.D.2 should be explicitly set out in the rules of conduct. Note that all of the rules under this section look to the conduct of the architect and not to whether or not the architect has actually been convicted under a criminal law. An architect who bribes a public official

is subject to discipline by the state registration board, whether or not the architect has been convicted under the state criminal procedure.

3. An architect shall comply with the registration laws and regulations governing his or her professional practice in any United States jurisdiction.

COMMENTARY Here, again, for the reasons set out under §1901.D.1, the Committee chose to limit this rule to United States jurisdictions.

#### E. Professional Conduct

1. Any office offering architectural services shall have an architect resident and regularly employed in that office.

2.a. An architect shall not sign or seal drawings, specifications, reports or other professional work which was not prepared by or under the responsible supervision of the architect; except that:

i. he or she may sign or seal those portions of the professional work that were prepared by or under the responsible supervision of persons who are registered under the architecture registration laws of this jurisdiction if the architect has reviewed in whole or in part such portions and has either coordinated their preparation or integrated them into his or her work, and

ii. he or she may sign or seal portions of the professional work that are not required by the architects' registration law to be prepared by or under the responsible supervision of an architect if the architect has reviewed and adopted in whole or in part such portions and has integrated them into his or her work.

b. "Responsible supervision" shall be that amount of supervision over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible supervision because the reviewer has neither supervision over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible supervision by persons not regularly employed in the office where the architect is resident shall maintain and make available to the board upon request for the prescriptive period applicable to claims against the architect which may arise from his or her involvement in the project adequate and complete records demonstrating the nature and extent of the architect's supervision over and detailed knowledge of such technical submissions throughout their preparation.

COMMENTARY This provision reflects current practice by which the architect's final construction documents may comprise the work of other architects as well as that of the architect who signs and seals professional submissions. The architect is permitted to apply his or her seal to work over which the architect has both control and detailed professional knowledge, and also to work prepared under the direct supervision of another architect whom he or she employs when the architect has both coordinated and reviewed the work.

3. An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

COMMENTARY This provision refers to "private bribes" (which are ordinarily not criminal in nature) and the unseemly conduct of using gifts to obtain work. Note that the rule realistically excludes reasonable entertainment and hospitality and other gifts of nominal value.

4. An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

COMMENTARY Violations of this rule may involve criminal conduct not covered by §1901.D.1 (crimes committed "in the conduct of his or her architectural practice"). The Committee believes that a state board must, in any disciplinary matter, be able to point to a specific rule which has been violated. An architect who is continuously involved in nighttime burglaries (no connection to his daytime professional practice) is not covered by §1901.D.1 (crimes committed "in the conduct of his or her architectural practice"). The Committee believes that serious misconduct, even though not related to professional practice, may well be grounds for discipline. To that end, the Committee recommends Rule §1901.E.4. Many persons who have reviewed and commented on the draft rules were troubled by the sententious character of rule §1901.E.4. The committee has, however, found that lawyers commenting on the rules had little trouble with the standard set in §1901.E.4; it applies to conduct which would be characterized as wicked, as opposed to minor breaches of the law. While each board must "flesh out" the rule, the Committee assumes that murder, rape, arson, burglary, extortion, grand larceny, and the like, would be conduct subject to the rule, while disorderly conduct, traffic violations, tax violations, and the like, would not be considered subject to this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:572 (April 2003).

### §1903. Violations

A. Complaints alleging violation of law or rules and regulations, the enforcement of which is a responsibility of this board, should be addressed to the board office and should be in writing and in the form of a sworn affidavit. The board, upon its own motion, may file a complaint against any architect.

B. Complaints shall be preliminarily investigated by the executive director, with the assistance of counsel and the president, who shall either dismiss the charges, so notifying the complainant, or refer the matter to the board for hearing. The board may also refer alleged violations to the appropriate district attorney and/or file suit pursuant to the provisions of R.S. 37:156.

C. The board may obtain the services of a reporter to make a record of the hearing. The respondent may contact the executive director to determine whether a reporter will be provided by the board.

D. Hearings before the board shall be in accordance with R.S. 37:141 et seq. and the Administrative Procedure Act, R.S. 49:951 et seq.

E. In all cases the board's executive director stands instructed to support and cooperate with counsel and the courts in any manner possible, and to keep the board advised of relevant matters as the case develops.

F. In the board office there shall be maintained a current file of all complaints alleging violations, reflecting all information and action pertinent thereto.

G. Upon its own motion, the board may reopen any such case on record and direct a reinvestigation of the respondent's actions subsequent to resolution of the original complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:575 (April 2003).

## Chapter 21. Architects Selection Board

### §2101. Districts

A. Only one architect may be elected from each of the districts set forth in R.S. 38:2311(A)(1)(a).

B. If the parishes comprising any district or if the number of districts are changed by the legislature, these rules shall be revised to be consistent with the latest expression of the legislature without the need of formal action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:575 (April 2003).

### §2103. Nominations

A. For terms commencing September 15 of each year, the board will accept nominations for election to the Architects Selection Board on the following basis: any resident architect holding a current Louisiana license desiring nomination must deliver a written nomination on a current form and/or reproduction obtained from board office to the board office in Baton Rouge, signed by not less than 10 resident architects other than the nominee holding a current Louisiana license, between May 1 and May 31 at 5:00 p.m. preceding the election. The nomination shall state the parish in which the nominee resides and the district for which election is sought. Nominations received on or before such deadline shall be considered timely delivered. Confirmation of receipt is the sole responsibility of the nominee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:575 (April 2003).

### §2105. Waiver of Election

A. If only one resident architect is nominated from any district, no election shall be held in that district, and that nominee shall be deemed elected without any further activity of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:575 (April 2003).

### §2107. Ballots

A. If an election is necessary, an official ballot and an official return envelope will be mailed to each resident architect in Louisiana in good standing approximately three weeks after the closing date for nominations. On the ballot shall be printed the names of the candidates for each district in alphabetical order, the date for the return of the ballots, and any other information the board believes helpful in the election process. Attachments to the ballot may include biographical information of the candidates and instructions.

B. If the ballot mailed by board is lost, misplaced or not received, an architect desiring to vote may request from the board a substitute or replacement ballot. This substitute or replacement ballot may be used in the election, provided the requirements of §2109.C are satisfied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:575 (April 2003).

#### **§2109. Voting**

A. Only resident architects in good standing in Louisiana shall have the right to vote. A resident architect may vote in one or more but less than all district elections, and no ballot shall be voided for that reason.

B. Ballots shall be returned in the official return envelopes provided by the board to the board office in Baton Rouge. The voting architect shall sign and provide his or her license number in the upper left-hand corner of the return envelope.

C.1. The ballot shall not be valid unless

a. the signature and license number appear on the return envelope; and

b. the return envelope is received by the board office on or before the deadline.

2. No write-in candidates will be allowed, and any ballot containing a vote for a write-in candidate will be voided. Any ballot containing more than one vote for candidates in one district will be entirely voided. Ballots returned in an envelope other than the official return envelope provided by the board shall not be voided for that reason, provided

a. the signature and license number of the voting architect appear on the return envelope; and

b. the return envelope is received by the board office on or before the deadline.

D. The deadline for returning the ballots will be fixed by the president and will be at least 14 calendar days after the ballots are mailed to all resident architects. Ballots received after the deadline shall not be counted.

E. Upon receipt, each return envelope shall be stamped by the board office showing the date received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:576 (April 2003).

#### **§2111. Plurality**

A. The candidate elected in each district will be based on plurality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:576 (April 2003).

#### **§2113. Tabulation**

A. On a date fixed by the president, within 14 calendar days of the deadline for receipt of ballots, tellers appointed by the president, including at least one board member, shall meet at the board office for the purpose of tabulating the ballots. Following a determination that each return envelope contains the required signature and license number, and was timely received, the tellers shall open and count all ballots properly prepared. The executive director will notify the candidates of the results.

B. Alternatively, when in the discretion of the president the manual tabulating of the ballots by tellers in accordance with the preceding paragraph would be burdensome, or for some other reason should be performed by an outside person, the president may refer the entire tabulating of the

ballots, or any part thereof, to an accounting firm, data processing company, or other such qualified person in addition to one board member. The outside person may use such clerical or other assistance, including whatever assistance from the board staff, as he or she deems necessary. The outside person shall

1. determine that each return envelope contains the required signature and license number, and was timely received;

2. count all ballots properly prepared; and

3. certify the number of votes received by each candidate to the board president and the executive director, who shall notify the candidates of the results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:576 (April 2003).

#### **§2115. Tie**

A. In the event no candidate receives a plurality, a run-off election between those candidates who received the highest number of votes will be held.

B. If a run-off election is necessary, an official ballot and an official return envelope will be mailed to each resident architect in Louisiana in good standing approximately two weeks after it has been determined that such an election is necessary.

C. The official ballot shall contain the information set forth in §2107, except only the names and information for those candidates in the run-off election shall be included.

D. The rules for voting, for determining the person elected, and for tabulating votes set forth in §2109, §2111, and §2113 shall be applicable.

E. In the event no candidate in the run-off election receives a plurality, the procedure set forth herein shall be repeated until one candidate receives a plurality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:576 (April 2003).

#### **§2117. Vacancies**

A. Any vacancy occurring with respect to any person elected shall be filled in the following manner: The executive director shall give notice of the vacancy to any person who has previously requested such notice in writing, and the executive director shall also publish in the official journal of the state an advertisement which will appear for a period of not less than 10 calendar days. The advertisement in the official journal of the state need not appear more than three times during the 10 day period. The executive director may publish other such advertisements in his or her discretion. The advertisements shall identify the district in which a vacancy has occurred and state that any resident architect in that district holding a current Louisiana license desiring nomination must furnish a nomination signed by not less than 10 resident architects holding a current Louisiana license by certified mail to the board office, that a sample of the nomination may be obtained upon request from the board office, the deadline for filing the nomination, and any other information the board may consider necessary. The deadline for filing a nomination to fill a vacancy shall be at least 10 calendar days subsequent to the expiration of the last

advertisement appearing in the official journal of the state. The board shall appoint one of the nominees to fill the vacancy, which appointee shall serve the unexpired term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:576 (April 2003).

### §2119. Election Contest

A. The executive director will notify the candidates of the results of the election by U.S. Mail. The 10 calendar days for contesting an election shall commence three work days (excluding Saturdays, Sundays, and legal holidays) after the results of the election are deposited in the mail by the executive director.

B. Any candidate desiring to contest an election shall, within the time period mentioned in the preceding paragraph, file a written petition addressed to the board stating the basis of the complaint. Upon receipt of such petition, the president shall call a special meeting of the board to hear the complaint, which meeting shall be held within 10 calendar days from the date the petition is received and at a time and place to be designated by the president. At the hearing the board shall consider any evidence offered in support of the complaint. The decision of the board shall be announced within 72 hours after the close of the hearing.

C. All ballots shall be preserved until the expiration of the time allowed for the filing and hearing of a contest. After such period has elapsed, if the election be not contested, the executive director shall destroy the ballots. If the election is contested, the executive director shall maintain the ballots until the contest is concluded, after which the executive director shall destroy the ballots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:577 (April 2003).

## Chapter 23. Application of Rules

### §2301. Severability

A. If any provision or item of the rules of the board or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of the rules of the board which can be given effect without the invalid provisions, items or applications, and to this end the provisions of the rules of the board are hereby declared severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:577 (April 2003).

### §2303. Adoption and Amendment of Rules

A. These rules may be amended pursuant to the Administrative Procedure Act, R.S. 49:951 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:577 (April 2003).

Mary "Teeny" Simmons  
Executive Director

0304#032

## RULE

### Office of the Governor Crime Victims Reparations Board

Compensation to Victims  
(LAC 22:XIII.503)

In accordance with the provisions of R.S. 49:950 et seq., which is the Administrative Procedure Act, and R.S. 46:1801 et seq., which is the Crime Victims Reparations Act, the Crime Victims Reparations Board hereby promulgates Rules and regulations regarding the awarding of compensation to applicants. There will be no impact on family earnings or the family budget as set forth in R.S. 49:972.

#### Title 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part XIII. Crime Victims Reparations Board

#### Chapter 5. Awards

#### §503. Limits on Awards

A. - L.3. ...

M. Crime Scene Evidence

1. Expenses associated with the collection and securing of crime scene evidence are limited to:

a. reasonable replacement costs for clothing;

b. bedding; or

c. property seized as evidence or rendered unusable as a result of a criminal investigation or lab test.

2. A forensic medical examination for a victim of sexual assault is considered an expense associated with the collection and securing of crime scene evidence. Payment for this examination by the parish governing authority is mandated by state law. All other expenses related to these crimes are eligible for reimbursement by the board at 100 percent, subject to the provisions of the Crime Victims Reparations Act and its administrative rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May 1994), amended LR 22:710 (August 1996), LR 24:328 (February 1998), LR 25:26 (January 1999), LR 29:577 (April 2003).

Lamarr Davis  
Chairman

0304#016

## RULE

### Office of the Governor Division of Administration Office of Group Benefits

PPO Plan of BenefitsC Comprehensive Medical Benefits  
(LAC 32:III.701)

Editor's Note: This Section is being repromulgated in its entirety to correct codification errors. The original Rule may be viewed in the March 20, 2003 edition of the *Louisiana Register* on pages 339-340.

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and

802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the PPO Plan Document relative to the accumulation of deductibles, co-insurance and out-of-pocket expenses. The reason for this action is to align the accumulation of deductibles, co-insurance, and out-of-pocket expenses with the plan year (July 1- June 30) rather than the calendar year (January 1-December 31).

Accordingly, OGB has amended the following Section to become effective upon promulgation.

**Title 32**

**EMPLOYEE BENEFITS**

**Part III. Preferred Provider (PPO) Plan of Benefits**

**Chapter 7. Schedule of Benefits—PPO**

**§701. Comprehensive Medical Benefits**

A. Eligible expenses for professional medical services are reimbursed on a *fee schedule* of maximum allowable charges. All eligible expenses are determined in accordance with *plan* limitations and exclusions.

1. Deductibles

Inpatient <i>deductible</i> per day, maximum of 5 days per admission (waived for admissions at PPO hospitals)	\$ 50
Emergency room charges for each visit unless the <i>covered person</i> is hospitalized immediately following emergency room treatment (prior to and in addition to <i>plan year deductible</i> )	\$150
Professional and other eligible expenses, <i>employees</i> and <i>dependents</i> of <i>employees</i> per person, per <i>plan year</i>	\$500
Professional and other eligible expenses, retirees and <i>dependents</i> of <i>retirees</i> , per person, per <i>plan year</i>	\$300

*Family unit maximum (3 individual deductibles)*

2. Percentage Payable after Satisfaction of Applicable Deductibles

Eligible expenses incurred at a PPO	90%
Eligible expenses incurred at a non-PPO when plan member resides outside of Louisiana	90%
Eligible expenses incurred at a non-PPO when plan member resides in Louisiana	70%
Eligible expenses incurred when Medicare or other <i>group health plan</i> is primary, and after Medicare reduction	80%
Eligible expenses in excess of \$10,000 per <i>plan year</i> per person	100%
<ul style="list-style-type: none"> <li>Eligible expenses at PPO are based upon contracted rates. PPO discounts are not eligible expenses and do not apply to the \$10,000 threshold.</li> <li>Eligible expenses at non-PPO are based upon the OGB's fee schedule. Charges in excess of the fee schedule are not eligible expenses and do not apply to the \$10,000 threshold.</li> </ul>	

3. Eligible *Hospital Expenses*<sup>1</sup>

Hospital room and board not to exceed the average semi-private room rate	See % payable after deductible - above
Intensive care unit not to exceed 2 1/2 times the hospital's average semi-private room rate	See % payable after deductible - above
Miscellaneous expenses	See % payable after deductible - above

4. Prescription Drugs (not subject to deductible)

Network Pharmacy	Member pays 50% of drug costs at point of purchase
Maximum co-payment	\$50 per prescription dispensed
Out-of-pocket threshold	\$1,200 per person, per <i>plan year</i>
<b>Co-Pay after Threshold is Reached</b>	
Brand	\$15
Generic	No co-pay
Plan pays balance of eligible expense	

B. Dental Surgery Benefit for Specified Procedure

Percentage payable ( <i>deductible</i> waived)	100%
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C. Well Care

1. Well Baby

Birth to age 1 - all office visits for scheduled immunizations and screenings	See % payable after deductible
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2. Well Child

Age 1-2 - 3 office visits per year for scheduled immunizations and screenings	See % payable after deductible
Age 3-15 - 1 office visit per year for scheduled immunizations and screenings	See % payable after deductible

3. Well Adult (No *deductible* limited to a maximum benefit of \$200)

Age 16-39 - 1 physical every 3 years	<sup>2</sup> See % payable below
Age 40-49 - 1 physical every 2 years	<sup>2</sup> See % payable below
Age 50 and over - 1 physical every year	<sup>2</sup> See % payable below

<sup>2</sup>PPO in-state and non-Louisiana residents C 100 percent of eligible expenses up to the maximum benefit;

Non-PPO in-state C 70 percent of eligible expenses up to 70 percent of the maximum benefit.

D. Durable Medical Equipment

Lifetime maximum per covered person	\$ 50,000
Percentage payable	See % payable after deductible

E. Facility Fees, Maximum Allowable Charges. Unless otherwise provided by contract between the *program* and the provider, the maximum allowable charges for facility fees for facilities located within the state of Louisiana shall be.

Facility Type/Charges	Maximum Allowable Charges
Medical	\$1,500/day
Surgical	\$2,000/day
ICU, NICU, CCU	\$3,000/day
Cardiovascular Surgery	\$5,000/day
Rehabilitation	\$750/day
Ambulatory (Outpatient) Surgery	\$3,000 max/occurrence

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1843 (October 1999), amended LR 26:488 (March 2000), LR 27:719 (May 2001), LR 27:720 (May 2001), LR 27:722 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1887 (November 2001), LR 28:2345 (November 2002), LR 29:340 (March 2003), repromulgated LR 29:578 (April 2003).

A. Kip Wall  
Chief Executive Officer

0304#055

## RULE

### Office of the Governor Patient's Compensation Fund Oversight Board

Eligible Healthcare Providers, Practice Groups and  
Qualification and Enrollment in the Fund  
(LAC 37:III.517)

Editor's Note: Section 517 is being repromulgated to correct a printing error. This Rule may be viewed in its entirety in the March 20, 2003 edition of the *Louisiana Register* on pages 344-349.

The Patient's Compensation Fund Oversight Board, under authority of the Louisiana Medical Malpractice Act, R.S. 40:1299.41 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended LAC 37:III as follows, to provide additional definitions of eligible healthcare providers, practice groups, and the information required to be furnished to the oversight board for qualification and enrollment in the fund, clarifies the procedure for withdrawal of a security furnished as proof of financial responsibility, clarifies the annual renewal process for enrolled healthcare providers, clarifies the surcharge risk rating for hospitals, clarifies the methods of evidencing financial responsibility to be consistent with current practices, sets forth the requirements of a malpractice complaint, clarifies the requirement to select an attorney-chairman prior to dismissal of a malpractice complaint, and clarifies the authority of the executive director.

### Title 37 INSURANCE

#### Part III. Patient's Compensation Fund Oversight Board Chapter 5. Enrollment with the Fund

##### §517. Expiration, Renewal of Enrollment

A. Enrollment with the fund expires:

1. as to a health care provider evidencing financial responsibility by certification of insurance pursuant to §505 of these Rules, on and as of:

a. the effective date and time of termination of the policy period of the health care provider's professional liability insurance coverage; or

b. the last day of the applicable period for which the prior annual surcharge applied in the event that the annual surcharge for renewal coverage is not paid by the health care provider to the insurer on or before 30 days following the expiration of the prior enrollment period.

2. ...

B. Enrollment with the fund must be annually renewed by each enrolled health care provider on or before termination of the enrollment period by submitting to the executive director an application for renewal, upon forms supplied by the executive director, and payment of the applicable surcharge in accordance with the Rules hereof providing for the fund's billing and collection of surcharges from insured and self-insured health care providers. Each insured health care provider shall cause the insurer to submit a certificate of insurance to the executive director along with the application for renewal. Each self-insured health care provider and each health care provider covered by a self-insurance trust shall submit, along with the application for renewal, original documents which indicate that the health care provider's deposit with the board is current and/or not in default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44.D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18:174 (February 1992), amended LR 29:346 (March 2003), repromulgated LR 29:579 (April 2003).

Lorraine LeBlanc  
Executive Director

03043#027

## RULE

### Office of the Governor Real Estate Commission

Agency Disclosure  
(LAC 46:LXVII.3703 and 3705)

Editor's Note: The following Rule is being repromulgated to correct printing errors. This Rule was promulgated in the March 20, 2003 edition of the *Louisiana Register* and may be viewed on pages 349-350.

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., notice is hereby given that the Real Estate Commission has amended LAC 46:LXVII.3703 and 3705. The amendments provide for an agency disclosure form that may be used in lieu of the agency disclosure pamphlet at the discretion of the licensee. Language regulating the timeframe in which signatures are obtained on the dual agency disclosure form or the agency disclosure form will be amended to coincide with the governing statute, R.S. 9:3897.C.

### Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXVII. Real Estate Subpart 1. Real Estate

##### Chapter 37. Agency Disclosure

##### §3703. Agency Disclosure Informational Pamphlet

A. Licensees shall provide the agency disclosure informational pamphlet or the agency disclosure form to all parties to a real estate transaction involving the sale or lease of real property.

B. The agency disclosure informational pamphlet and the agency disclosure form may be obtained from the commission in a form suitable for use by licensees in reproducing them locally. Licensees are responsible for ensuring that the pamphlets and forms are the most current version prescribed by the commission and that reproductions of the pamphlet and form contain the identical language prescribed by the commission.

C. Licensees will provide the agency disclosure informational pamphlet or the agency disclosure form to prospective sellers/lessors and buyers/lessees at the time of the first face-to-face contact with the sellers/lessors or buyers/lessees when performing any real estate related activity involving the sale or lease of real property, other than a ministerial act as defined in R.S. 9:3891(12).

D. Licensees providing agency disclosure informational pamphlets or agency disclosure forms to prospective sellers/lessors and buyers/lessees shall insure that the recipient of the pamphlet or form signs and dates the pamphlet or form. The licensee providing the pamphlet or form shall sign as a witness to the signature of the recipient, and the licensee will retain the signed pamphlet or form for a period of five years.

E. In any circumstance in which a seller/lessor or a buyer/lessee refuses to sign the receipt included in the agency disclosure informational pamphlet or the agency disclosure form, the licensee shall prepare written documentation to include the nature of the proposed real estate transaction, the time and date the pamphlet or form was provided to the seller/lessor or buyer/lessee, and the reasons given by the seller/lessor or buyer/lessee for not signing the pamphlet or form. This documentation will be retained by the licensee for a period of five years.

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 26:47 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 29:349 (March 2003), repromulgated LR 29:579 (April 2003).

### **§3705. Dual Agency Disclosure**

A. The dual agency disclosure form will be used by licensees acting as a dual agent under R.S. 9:3897.

B. The dual agency disclosure form shall be obtained from the commission in a form suitable for use by licensees in reproducing the form locally. Licensees are responsible for ensuring that the form is the most current version prescribed by the commission and that reproductions of the form contain the identical language prescribed by the commission.

C. Licensees shall ensure that a dual agency disclosure form is signed by all clients at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent.

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 26:47 (January 2000), amended by the Office of the Governor, Real

Estate Commission, LR 29:349 (March 2003), repromulgated LR 29:580 (April 2003).

Julius C. Willie  
Executive Director

0304#026

## **RULE**

### **Department of Health and Hospitals Board of Nursing**

#### **Licensure as Advanced Practice Registered Nurse (LAC 46:XLVII.4507)**

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing (Board) pursuant to the authority vested in the board by R.S. 37:918-919 has amended the Professional and Occupational Standards pertaining to licensure as Advanced Practice Registered Nurse. The amendments of the Rules are set forth below.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XLVII. Nurses**

#### **Subpart 2. Registered Nurses**

#### **Chapter 45. Advanced Practice Registered Nurses**

#### **§4507. Licensure as Advanced Practice Registered Nurse**

##### **A. - F.1.b. ...**

c. evidence of current certification/recertification by a national certifying body accepted by the board; or

d. APRNs initially licensed in accordance with R.S. 37:912.B(3)(4) or 920.A.(2) and 4507.A.2 whose specialty and/or functional role does not provide for certification/recertification shall apply for a six month temporary permit, and practice under the temporary permit and current practice standards set forth by the respective advanced practice nursing specialty and/or functional role; and submit the following documentation with the application for reinstatement for each year of inactive or lapsed status:

i. a minimum of 300 hours of practice in advanced practice registered nursing as defined in R.S. 37:913.(3)(a) for each year of inactive or lapsed status up to a maximum of 800 hours; and

ii. a minimum of 2 college credit hours per year of relevance to the advanced practice role; or

iii. a minimum of 30 continuing education (C.E.) contact hours approved by the board each year. Of the 30 contact hours, a maximum of 10 C.E. contact hours may be approved Continuing Medical Education (CMEs); and

e. the required fee as specified in LAC 46:XLVII.3341.

2. Reinstatement of an APRN license, which has lapsed or been inactive four years or more. If the applicant's APRN license has been lapsed or inactive for four or more years, in addition to meeting the above requirements in Subsection F.1.a-e., the applicant shall:

a. - g. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 22:283 (April 1996), amended LR 27:723 (May 2001), LR 29:580 (April 2003).

Barbara L. Morvant  
Executive Director

0304#037

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

**Public Comment at Meetings of the Board  
(LAC 46:XLVII.3308)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Nursing (board), pursuant to the authority vested in the board by R.S. 37:918, R.S. 37:919, has adopted Rules amending the Professional and Occupational Standards pertaining to public comment at meetings of the board. The amendments of the Rules are set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**§3308. Public Comment at Meetings of the Board**

A. At every open meeting of the board or its committees, members of the public shall be afforded an opportunity to make public comment addressing any matters set by agenda for discussion at that meeting.

1. Concerns and public comments shall be limited to five minutes per individual unless the time limitation is waived by a majority of the board members present.

2. Anyone wishing to speak on a specific item must present the request prior to the convening of the meeting. Cards shall be available to place the request for public comment, along with the requestor's name and for whom the requestor is appearing.

3. The board president or committee chair may defer public comment on a specific agenda item until that item is brought up for discussion. However, the five-minute limitation for public comment shall remain in effect unless waived by a majority of the board members present.

4. In addition, the board president or committee chair may recognize individuals at a public meeting at his or her discretion.

5. Unless otherwise provided by law, public comment is not part of the evidentiary record of a hearing or case unless sworn, subject to cross-examination, offered by a party as relevant testimony, and received in accordance with under the Louisiana Administrative Procedure Act, R.S. 49.950, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:5.D and R.S 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 29:581 (April 2003).

Barbara L. Morvant  
Executive Director

0304#035

**RULE**

**Department of Health and Hospitals  
Licensed Professional Counselors Board of Examiners**

**Licensure of Licensed Professional Counselors  
Continuing Education Requirements  
(LAC 46:LX.3503)**

Editor's Note: Section 3503 is being repromulgated to correct a printing error. This Rule may be viewed in its entirety in the February 20, 2003 edition of the *Louisiana Register* on pages 128-174.

The Licensed Professional Counselors Board of Examiners, under authority of the Louisiana Mental Health Counselor Licensing Act, R.S. 37:1101-1122, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has repealed and adopted certain Rules with regard to licensing of licensed professional counselors and licensed marriage and family therapists.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LX. Licensed Professional Counselors**

**Subpart 1. Licensed Professional Counselors**

**Chapter 35. Renewal of License**

**§3503. Continuing Education Requirements**

**A. General Guidelines**

1. A licensee must accrue 40 clock hours of continuing education by every renewal period every two years.

2. One continuing education unit (CEU) is equivalent to one clock hour.

3. Accrual of continuing education begins only after the date the license was issued.

4. Continuing education hours accrued beyond the required 40 clock hours may not be applied toward the next renewal period. Renewal periods run from January 1 to December 31

5. The licensee is responsible for keeping a personal record of his/her continuing education hours until official notification of renewal is received. Do not forward documentation of continuing education hours to the board office as they are accrued.

6. At the time of renewal 10 percent of the licensees will be audited to ensure that the continuing education requirement is being met. Licensees audited will be requested by letter to submit documentation as specified in §3503.B of their continuing education hours.

7. Licensees will be asked in the renewal application to note any changes in areas of expertise. The advisory committee, at its discretion, may require the licensee to present satisfactory documentation supporting these changes.

8. A licensee must accrue three clock hours of training in ethics that specifically addresses ethics for licensed marriage and family therapy as defined in Subparagraph C.3.e every renewal period. A generic ethics class will not be acceptable.

9. Those licensed marriage and family therapists who hold another license that requires continuing education hours may count the continuing education hours obtained for that license toward their LMFT CEU requirements. Of the 40 CEU's submitted, however, 20 hours must be in the area of marriage and family therapy with an emphasis upon systemic approaches or the theory, research, or practice of systemic psychotherapeutic work with couples or families including three hours of ethics specific to marriage and family therapy.

10. The approval of and requirements for continuing education are specified in Subsection C.

B. Types of documentation needed for continuing education audit:

1. copy of certificate of attendance for workshops, seminars, or conventions;

2. copy of transcript for coursework taken for credit/audit;

3. letter from workshop/convention coordinator verifying presentation;

4. copy of article plus the table of contents of the journal it appears in, copy of chapter plus table of contents for chapter authored for books, title page and table of contents for authoring or editing books, letter from conference coordinator or journal editor for reviewing refereed workshop presentations or journal articles.

C. Approved Continuing Education for Licensed Marriage and Family Therapists

1. Continuing education requirements are meant to ensure personal and professional development throughout an individual's career.

2. An LMFT may obtain the 40 clock hours of continuing education through the options listed. All continuing education hours may be obtained through Subparagraph a or 20 of the 40 hours may be obtained through Subparagraph b:

a. direct participation in a structured educational format as a learner in continuing education workshops and presentations or in graduate coursework (either for credit or audit):

i. the advisory committee will accept workshops and presentations approved by the American Association for Marriage and Family Therapy (AAMFT) and its regional or state divisions including the Louisiana Association for Marriage and Family Therapy (LAMFT). Contact them directly to find out which organizations, groups, or individuals are approved providers graduate coursework either taken for credit or audit must be from a regionally accredited college or university and in the areas of marriage and family therapy described in Paragraph C.3;

ii. licensees may receive one clock hour of continuing education for each hour of direct participation in a structured educational format as a learner. Credit cannot be given to persons who leave early from an approved session or to persons who do not successfully complete graduate coursework;

iii. continuing education taken from organizations, groups, or individuals not holding provider status by one of the associations listed in Clause i. will be subject to approval by the advisory committee at the time of renewal;

(a). the advisory committee will not pre-approve any type of continuing education;

(b). the continuing education must be in one of the seven approved content areas listed in §3503.C.3 and given by a qualified presenter;

(c). a qualified presenter is considered to be someone at the master's level or above trained in marriage and family therapy or another appropriate mental health field;

(d). one may receive one clock hour of continuing education for each hour of direct participation in a structured educational format as a learner;

(e). credit cannot be granted for business/governance meetings; breaks; and social activities including meal functions, except for the actual time of an educational content speaker;

(f). credit may not be given for marketing the business aspects of one's practice, time management, supervisory sessions, staff orientation, agency activities that address procedural issues, personal therapy, or other methods not structured on sound educational principles or for content contrary to the LMFT Code of Ethics (Chapter 43).

b. Optional Ways to Obtain Continuing Education (20 Hours Maximum)

i. Licensees may receive one clock hour of continuing education for each hour of direct work in:

(a). teaching a marriage and family therapy course (10 hours maximum) in an area as described in Paragraph C.3 in an institution accredited by a regional accrediting association. Continuing education hours may be earned only for the first time the individual teaches the course; or

(b). authoring, editing, or reviewing professional manuscripts or presentations (10 hours maximum) in an area of marriage and family therapy as described in Paragraph C.3. Articles must be published in a professional refereed journal.

ii. Presentations at workshops, seminars, symposia, and meetings in an area of marriage and family therapy as described in Paragraph C.3 may count for up to 10 hours maximum at a rate of two clock hours per one-hour presentation. Presenters must meet the qualifications stated in Subparagraph 2.a. The presentation must be to the professional community, not to the lay public or a classroom presentation.

3. Continuing education hours must be relevant to the practice of marriage and family therapy and generally evolve from the following seven areas.

a. Theoretical Knowledge of Marriage and Family Therapy. Continuing education in this area shall contain such content as the historical development, theoretical and empirical foundations, and contemporary conceptual directions of the field of marriage and family therapy and will be related conceptually to clinical concerns.

**RULE**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

**Surveillance and Utilization Review Systems (SURS)  
(LAC 50:I.Chapter 41)**

Editor's Note: Chapter 41, Surveillance and Utilization Review Systems (SURS), has been moved from Part II to Part I within Title 50 and is being repromulgated to show current placement.

The Office of the State Register has moved LAC 50:I.Chapter 41 for topical placement and renumbered for future expansion. The following table indicates the changes made.

b. Clinical Knowledge of Marriage and Family Therapy: Continuing education in this area shall contain such content as:

- i. couple and family therapy practice and be related conceptually to theory;
- ii. contemporary issues, which include but are not limited to gender, violence, addictions, and abuse, in the treatment of individuals, couples, and families from a relational/systemic perspective;
- iii. a wide variety of presenting clinical problems;
- iv. issues of gender and sexual functioning, sexual orientation, and sex therapy as they relate to couple, marriage and family therapy theory and practice;
- v. diversity and discrimination as it relates to couple and family therapy theory and practice.

c. Assessment and Treatment in Marriage and Family Therapy. Continuing education in this area shall contain such content from a relational/systemic perspective as psychopharmacology, physical health and illness, traditional psychodiagnostic categories, and the assessment and treatment of major mental health issues.

d. Individual, Couple, and Family Development. Continuing education in this area shall contain such content as individual, couple, and family development across the lifespan.

e. Professional Identity and Ethics in Marriage and Family Therapy. Continuing education in this area shall contain such content as:

- i. professional identity, including professional socialization, scope of practice, professional organizations, licensure and certification;
- ii. ethical issues related to the profession of marriage and family therapy and the practice of individual, couple and family therapy. Generic education in ethics does not meet this standard;
- iii. the AAMFT Code of Ethics, confidentiality issues, the legal responsibilities and liabilities of clinical practice and research, family law, record keeping, reimbursement, and the business aspects of practice;
- iv. the interface between therapist responsibility and the professional, social, and political context of treatment.

f. Research in Marriage and Family Therapy. Continuing education in this area shall include significant material on research in couple and family therapy; focus on content such as research methodology, data analysis and the evaluation of research, and include quantitative and qualitative research.

g. Supervision in Marriage and Family Therapy: Continuing education in this area include studies in theory and techniques of supervision as well as ethical and legal issues, case management, and topics relative to the specific supervised training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:160 (February 2003), repromulgated LR 29:581 (April 2003).

Gary S. Grand  
Board Chair

Section Numbers Published in September 1999	New Section Numbers Published in April 2003
Subchapter A. General Provisions	
§4101	§4101
§4103	§4103
§4105	§4105
§4107	§4107
Subchapter B. Claims Review/Prepayment or Post-Payment Review	
§4109	§4115
§4111	§4117
§4113	§4119
Subchapter C. Investigations	
§4115	§4127
§4117	§4129
§4119	§4131
§4121	§4133
§4123	§4135
Subchapter D. Conduct	
§4125	§4143
§4127	§4145
§4129	§4147
§4131	§4149
§4133	§4151
§4135	§4153
Subchapter E. Administrative Sanctions, Procedures and Processes	
§4137	§4161
§4139	§4163
§4141	§4165
§4143	§4167
§4145	§4169
Subchapter F. Withholding	
§4147	§4177
§4149	§4179
Subchapter G. Arrangements to Repay	
§4151	§4187
Subchapter H. Corrective Actions	
§4153	§4195
Subchapter I. Informal Hearing Procedures and Processes	
§4155	§4203
Subchapter J. Administrative Appeals	
§4157	§4211
§4159	§4213
Subchapter K. Rewards for Fraud and Abuse Information	
§4160	§4221
Subchapter L. Miscellaneous	
§4161	§4229
§4163	§4231
§4165	§4233
§4167	§4235

**Title 50**  
**PUBLIC HEALTHMEDICAL ASSISTANCE**  
**Part I. Administration**

**Subpart 5. Provider Fraud and Recovery**

**Chapter 41. Surveillance and Utilization Review Systems (SURS)**

**Subchapter A. General Provisions**

**§4101. Foreword**

A. The Medical Assistance Program is a four-party arrangement: the taxpayer; the government; the beneficiaries; and the providers. The secretary of the Department of Health and Hospitals, through this Chapter 41, recognizes:

1. the obligation to the taxpayers to assure the fiscal and programmatic integrity of the Medical Assistance Program. The secretary has zero tolerance for fraudulent, willful, abusive or other ill practices perpetrated upon the Medical Assistance Program by providers, providers-in-fact and others, including beneficiaries. Such practices will be vigorously pursued to the fullest extent allowed under the applicable laws and regulations;

2. the responsibility to assure that actions brought in pursuit of providers, providers-in-fact and others, including beneficiaries, under this regulation are not frivolous, vexatious or brought primarily for the purpose of harassment. Providers, providers-in-fact and others, including beneficiaries, must recognize that they have an obligation to obey and follow all applicable laws, regulations, policies, criteria, and procedures; and

3. that when determining whether a fraudulent pattern of incorrect submissions exists under this regulation, the department has an obligation to demonstrate that the pattern of incorrect submissions are material, as defined under this regulation, prior to imposing a fine or other monetary sanction which is greater than the amount of the identified overpayment resulting from the pattern of incorrect submissions. In the case of an action brought for a pattern of incorrect submissions, providers and providers-in-fact must recognize that if they frivolously or unreasonably deny the existence or amount of an overpayment resulting from a pattern of incorrect submissions, the department may impose judicial interest on any outstanding recovery or recoupment or reasonable cost and expenses incurred as the direct result of the investigation or review including, but not limited to, the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employees or agents.

B. The Department of Health and Hospitals, Bureau of Health Services Financing (BHSF) has adopted this Chapter 41 in order to:

1. establish procedures for conducting surveillance and utilization review of providers and others;

2. define conduct in which providers and others cannot be engaged;

3. establish grounds for sanctioning providers and others who engage in prohibited conduct; and

4. establish the procedures to be used when sanctioning or otherwise restricting a provider and others under the Louisiana Medicaid Program.

C. The purpose of this regulation is to assure the quality, quantity, and need for such goods, services, and supplies and to provide for the sanctioning of those who do not provide adequate goods, services, or supplies or request payment or

reimbursement for goods, services, or supplies which do not comply with the requirements of federal laws, federal regulations, state laws, state regulations, or the rules, procedures, criteria or policies governing providers and others under the Louisiana Medicaid Program.

D. A further purpose of this regulation is to assure the integrity of the Louisiana Medicaid Program by providing methods and procedures to:

1. prevent, detect, investigate, review, hear, refer, and report fraudulent or abusive practices, errors, over-utilization, or under-utilization by providers and others;

2. impose any and all administrative sanctions and remedial measures authorized by law or regulation, which are appropriate under the circumstances;

3. pursue recoupment or recovery arising out of prohibited conduct or overpayments;

4. allow for informal resolution of disputes between the Louisiana Medicaid Program and providers and others;

5. establish rules, policies, criteria and procedures; and

6. other functions as may be deemed appropriate.

E. In order to further the purpose of this regulation the secretary may establish peer review groups for the purpose of advising the secretary on any matters covered in this Chapter.

F. Nothing in this Chapter 41 is intended, nor shall it be construed, to grant any person any right to participate in the Louisiana Medicaid Program which is not specifically granted by federal law or the laws of this state or to confer upon any person's rights or privileges which are not contained within this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1630 (September 1999), repromulgated LR 29:584 (April 2003).

**§4103. Definitions**

A. The following specific terms shall apply to all those participating in the Louisiana Medicaid Program, either directly or indirectly, and shall be applied when making any and all determinations related to this and other departmental regulations, rules, policies, criteria, and procedures applicable to the Louisiana Medicaid program and its programs.

*Affiliate*—any person who has a direct or indirect relationship or association with a provider such that the provider is directly or indirectly influenced or controlled by the *affiliate* or has the power to do so. Any person with a direct or indirect ownership interest in a provider is presumed to be an *affiliate* of that provider. Any person who shares in the proceeds or has the right to share in the proceeds of a provider is presumed to be an *affiliate* of that provider unless that person is a spouse or a minor child of the provider and has no other affiliation with the provider other than that of being a family member of the provider.

*Agent*—a person who is employed by or has a contractual relationship with a provider or who acts on behalf of the provider.

*Agreement to Repay*—a formal written and enforceable arrangement to repay an identified overpayment, interest, monetary penalties or costs and expenses.

*Billing Agent* Any agent who performs any or all of the provider's billing functions. Billing agents are presumed to be an agent of the provider.

*Billing or Bill* Submitting, or attempting to submit, a claim for goods, supplies, or services.

*Claim* Any request or demand, including any and all documents or information required by federal or state law or by rule made against Medical Assistance Program funds for payment. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. In the case of a claim based on a cost report, any entry or omission in a cost report, book of account or other documents used or intended to be used to support a cost report shall constitute a claim. Each claim may be treated as a separate claim, or several claims may be combined to form one claim.

*Claims or Payment Review* The process of reviewing documents or other information or sources required or related to the payment or reimbursement to a provider by the department, BHSF, SURS or the fiscal intermediary in order to determine if the bill or claim should be or should have been paid or reimbursed. Payment and claim reviews are the same process.

*Contractor* Any person with whom the provider has a contract to perform a service or function on behalf of the provider. A *contractor* is presumed to be an agent of the provider.

*Corrective Action Plan* A written plan, short of an administrative sanction, agreed to by a provider, provider-in-fact or other person with the department, BHSF or, Program Integrity designed to remedy any inefficient, aberrant or prohibited practices by a provider, provider-in-fact or other person. A corrective action plan is not a sanction.

*Department* The Louisiana Department of Health and Hospitals.

*Deputy Secretary* The deputy secretary of the department or authorized designee.

*Director of Bureau of Health Finance Services* The director of BHSF or authorized designee.

*Director of Program Integrity or Assistant Director of Program Integrity* The individual whom the secretary has designated as the director, program manager or section chief of the Program Integrity Division or the designated assistant to the director of Program Integrity Division respectively or their authorized designee.

*Exclusion from Participation* A sanction that terminates a provider, provider-in-fact or other person from participation in the Louisiana Medicaid program, or one or more of its programs and cancels the provider's provider agreement.

a. A provider who is excluded may, at the end of the period of exclusion, reapply for enrollment.

b. A provider, provider-in-fact or other person who is excluded may not be a provider or provider-in-fact, agent of a provider, or affiliate of a provider or have a direct or indirect ownership in any provider during their period of exclusion.

*False or Fraudulent* A claim which the provider or his billing agent submits knowing the claim to be false, fictitious, untrue, or misleading in regard to any material information. *False or fraudulent claim* shall include a claim

which is part of a pattern of incorrect submissions in regard to material information or which is otherwise part of a pattern in violation of applicable federal or state law or rule.

*Federal Regulations* The provisions contained in the Code of Federal Regulations (CFR) or the Federal Register (FR).

*Finalized Sanction or Final Administrative Adjudication or Order* A final order imposed pursuant to an administrative adjudication that has been signed by the secretary or the secretary's authorized designee.

*Fiscal Agent or Fiscal Intermediary* An organization or legal entity which whom the department contracts with to provide for the processing, review of or payment of provider bills and claims.

*Good, Service, or Supply* Any good, item, device, supply, or service for which a claim is made, or is attempted to be made, in whole or in part.

*Health Care Provider* Any person furnishing or claiming to furnish a good, service, or supply under the Medical Assistance Programs as defined in R.S. 46:437.3 and any other person defined as a *health care provider* by federal or state law or by rule. For the purpose of this Chapter, *health care provider* and *provider* are interchangeable terms.

*Identified Overpayment* The amount of overpayment made to or requested by a provider that has been identified in a final administrative adjudication or order.

*Indirect Ownership* An ownership interest in an entity that has an ownership interest in a provider. This term includes an ownership interest in any entity that has an indirect ownership interest in a provider.

*Ineligible Recipient* An individual who is not eligible to receive health care through the medical assistance programs.

*Informal Hearing* An informal conference between the provider, provider-in-fact or other persons and the director of Program Integrity or the SURS manager related to a notice of corrective action, notice of withholding of payments or notice of sanction.

*Investigator or Analyst* Any person authorized to conduct investigations on behalf of the department, BHSF, Program Integrity Division, SURS or the fiscal intermediary, either through employment or contract for the purposes of payment or programmatic review.

*Investigatory Process* The examination of the provider, provider-in-fact, agent-of-the-provider, or affiliate, and any other person or entity, and any and all records held by or pertaining to them pursuant to a written request from BHSF. No adjudication is made during this process.

*Knew or Should Have Known* The person knew or should have known that the activity engaged in or not engaged in was prohibited conduct under this regulation or federal or state laws and regulations. The standard to be used in determining *knew or should have known* is that of a reasonable person engaged in the activity or practice related to the Medical Assistance Program at issue.

*Knowing or Knowingly* The person has actual knowledge of the information, or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information. The standard to be used in determining *knowing or knowingly* is that of a reasonable person engaged in the activity or practice related to the Medical Assistance Program at issue.

*Law* the constitutions, statutory or code provisions of the federal government and the government of the state of Louisiana.

*Louisiana Administrative Code (LAC)* the Louisiana Administrative Code or the Louisiana Register.

*Managing Employee* a person who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operations of a provider. *Managing employee* shall include, but is not limited to, a chief executive officer, president, general manager, business manager, administrator, or director.

*Medical Assistance Program* or *Medicaid* the *Medical Assistance Program* (Title XIX of the Social Security Act), commonly referred to as *Medicaid*, and other programs operated by and funded in the department which provide payment to providers.

*Misrepresentation* the knowing failure to truthfully or fully disclose any and all information required, or the concealment of any and all information required on a claim or a provider agreement or the making of a false or misleading statement to the department relative to the Medical Assistance Program.

*Notice* actual or constructive notice.

*Notice of an Action* a written notification of an action taken or to be taken by the department, BHSF or SURS. A notice must be signed by or on behalf of the secretary, director of BHSF, or director of Program Integrity.

*Ownership Interest* the possession, directly or indirectly, of equity in the capital or the stock, or right to share in the profits of a provider.

*Payment or Reimbursement* the payment or reimbursement to a provider from Medical Assistance Programs=funds pursuant to a claim, or the attempt to seek payment for a claim.

*Person* any natural person, company, corporation, partnership, firm, association, group, or other legal entity or as otherwise provided for by law.

*Policies, Criteria or Procedure* those things established or provided for through departmental manuals, provider updates, remittance advice or bulletins issued by the Medical Assistance Program or on behalf of the Medical Assistance Program.

*Program* any program authorized under the Medical Assistance Program.

*Program Integrity Division (PID)* the Program Integrity Unit under BHSF within the department, its predecessor and successor.

*Provider Agreement* the document(s) signed by or on behalf of the provider and those things established or provided for in R.S. 46:437.11-437.14 or by rule, which enrolls the provider in the Medical Assistance Program or one or more of its programs and grants to the provider a provider number and the privilege to participate in Medicaid of Louisiana or one or more of its programs.

*Provider Enrollment* the process through which a person becomes enrolled in the Medical Assistance Program or one of its programs for the purpose of providing goods, services, or supplies to one or more Medicaid recipients or submissions of claims.

*Provider-in-Fact* person who directly or indirectly participates in management decisions, has an ownership interest in the provider, or other persons defined as a

*provider-in-fact* by federal or state law or by rule. A person is presumed to be a *provider-in-fact* if the person is:

- a. a partner;
- b. a Board of Directors member;
- c. an office holder; or
- d. a person who performs a significant management or administrative function for the provider, including any person or entity who has a contract with the provider to perform one or more significant management or administrative functions on behalf of the provider;
- e. a person who signs the provider enrollment paper work on behalf of the provider;
- f. a managing employee;
- g. an agent of the provider, or a billing agent may also be a *provider-in-fact* for the purpose of determining a violation and the imposing of a sanction under this regulation.

*Provider Number* a provider's billing or claim reimbursement number issued by the department through BHSF under the Medical Assistance Program.

*Recipient* an individual who is eligible to receive health care through the medical assistance programs.

*Recoupment* recovery through the reduction, in whole or in part, of payments or reimbursements to a provider.

*Recovery* the recovery of overpayments, damages, fines, penalties, costs, expenses, restitution, attorney fees, or interest or settlement amounts.

*Referring Provider* any provider, provider-in-fact or anyone operating on the provider's behalf who refers a recipient to another person for the purpose of providing goods, services, or supplies.

*Rule or Regulation* any rule or regulation promulgated by the department in accordance with the Administrative Procedure Act and any federal rule or regulation promulgated by the federal government in accordance with federal law.

*Secretary* the secretary of the Department of Health and Hospitals, or his authorized designee.

*Statistical Sample* a statistical formula and sampling technique used to produce a statistical extrapolation of the amount of overpayment made to a provider or a volume of the violations.

*SURS Manager* the individual designated by the secretary as the manager of SURS or authorized designee.

*Surveillance and Utilization Review Section (SURS)* the section within BHSF assigned to identify providers for review, conduct payment reviews, and sanction providers resulting from payments to and claims from providers, and any other functions or duties assigned by the secretary.

*Suspension from Participation* occurs between the issuing of the notice of the results of the informal hearing and the issuing of the final administrative adjudication or order.

*Terms of the Provider Agreement* the terms contained in the provider agreement or related documents and established or provided for in R.S. 46:437.11-437.14 or established by law or rule.

*Undersecretary* the undersecretary of the department or authorized designee.

*Violations* Any practice or activity by a provider, provider-in-fact, agent-of-the-provider, affiliate, or other persons which is prohibited by law or this Chapter.

*Withhold Payment* To reduce or adjust the amount, in whole or in part, to be paid to a provider for pending or future claims during the time of a criminal, civil, or departmental investigation or proceeding or claims review of the provider.

*Working Days* Monday through Friday, except for legal holidays and other situations when the department is closed.

B. General Terms. Definitions contained in applicable federal laws and regulations shall also apply to this and all department regulations. In the case of a conflict between federal definitions and departmental definitions, the department's definition shall apply unless the federal definition, as a matter of law, supersedes a departmental definition. Definitions contained in applicable state laws shall also apply to this and all departmental definitions. In the case of a conflict between a state statutory definition and a departmental definition, the departmental definition shall apply unless the state statutory definition, as a matter of state law, supersedes the departmental definition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1631 (September 1999), repromulgated LR 29:584 (April 2003).

#### **§4105. Material**

A. The secretary of the Department of Health and Hospitals establishes the following definitions of *Material*.

1. For the purpose of R.S. 48:438.3 as required under R.S. 48:438.8(D), in determining whether a pattern of incorrect submissions exists in regards to an alleged false or fraudulent claim, the incorrect submissions must be 5 percent or more of the total claims submitted, or to be submitted, by the provider during the period covered in the civil action filed or to be filed. The total amount of claims for the purpose of this provision is the total number of claims submitted, or to be submitted, by the provider during the period of time and type or kind of claim which is the subject of the civil action under R.S. 48:438.3.

2. For the purpose of this Chapter, in determining whether a pattern of incorrect submissions exists in regards to an alleged fraudulent or willful violation, the incorrect submissions must be 5 percent or more of the total claims being subjected to claims review under the provisions of this Chapter. The total amount of claims for the purpose of this provision is the total number of claims submitted or to be submitted by the provider during the period of time and type or kind of claim which is the subject of claims review.

3. Statistically valid sampling techniques may be used by either party to prove or disprove whether the pattern was material.

B. This provision is enacted under the authority provided in R.S. 46:438.8(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1633 (September 1999), repromulgated LR 29:587 (April 2003).

#### **§4107. Statistical Sampling**

A. Statistical sampling techniques may be used by any party to the proceedings.

B. A valid sampling technique may be used to produce an extrapolation of the amount of overpayment made to a provider or the volume or number of violations committed by a provider or to disprove same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1634 (September 1999), repromulgated LR 29:587 (April 2003).

#### **Subchapter B. Claims Review Prepayment or Post-Payment Review**

##### **§4115. Departmental and Provider Obligations**

A. The department, through the secretary, has an obligation, imposed by federal and state laws and regulations, to:

1. review bills and claims submitted by providers before payment is made or after;

a. payments made by the Louisiana Medicaid Program are subject to review by the Department of Health and Hospitals, Bureau of Health Services Financing, Program Integrity Division or the fiscal intermediary at anytime to ensure the quality, quantity, and need for goods, services, or supplies provided to or for a recipient by a provider, and to protect the fiscal and programmatic integrity of the Louisiana Medicaid Program and its programs;

b. it is the function of the Program Integrity Division (PID) and the Surveillance and Utilization Review Section (SURS) to provide for and administer the utilization review process within the department;

2. assure that claims review brought under this regulation are not frivolous, vexatious or brought primarily for the purpose of harassment;

3. recognize that when determining whether a fraudulent pattern of incorrect submissions exists under this regulation the department has an obligation to demonstrate that the pattern of incorrect submissions are material as defined under this regulation prior to imposing a fine or other monetary sanction which is greater than the amount of the identified or projected overpayment resulting from the pattern of incorrect submissions;

4. recognize the need to obtain advice from applicable professions and individuals concerning the standards to be applied under this Chapter. At the discretion of the secretary may seek advice from peer review groups which the secretary has established for the purpose of seeking such advice;

5. recognize the right of each individual to exercise all rights and privileges afforded to that individual under the law including, but not limited to, the right to counsel as provided under the applicable laws.

B. Providers have no right to receive payment for bills or claims submitted to BHSF or its fiscal intermediary. Providers only have a right to receive payment for valid claims. Payment of a bill or claim does not constitute acceptance by the department or its fiscal intermediary that the bill or claim is a valid claim. The provider is responsible for maintaining all records necessary to demonstrate that a bill or claim is in fact a valid claim. It is the provider's

obligation to demonstrate that the bill or claim submitted was for goods, services, or supplies:

1. provided to a recipient who was entitled to receive the goods, services, or supplies;
2. were medically necessary or otherwise properly authorized;
3. were provided by or authorized by an individual with the necessary qualifications to make that determination; and
4. were actually provided to the appropriate recipient in the appropriate quality and quantity by an individual qualified to provide the good, service or supply; or
5. in the case of a claim based on a cost report, that each entry is complete, accurate and supported by the necessary documentation.

C. The provider must maintain and make available for inspection all documents required to demonstrate that a bill or claim is a valid claim. Failure on the part of the provider to adequately document means that the goods, services, or supplies will not be paid for or reimbursed by the Louisiana Medicaid program.

D. A person has no property interest in any payments or reimbursements from Medicaid which are determined to be an overpayment or are subject to payment review.

E. Providers, providers-in-fact and others, including beneficiaries must recognize that they have an obligation to obey and follow all applicable laws, regulations, policies, criteria and procedures. In the case of an action brought for a pattern of incorrect submissions, providers and providers-in-fact recognize that if they frivolously or unreasonably deny the existence or amount of an overpayment resulting from a pattern of incorrect submissions the department may impose judicial interest on any outstanding recovery or recoupment, or reasonable cost and expenses incurred as the direct result of the investigation or review, including, but not limited to, the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employees or agents.

F. In determining the amount to be paid or reimbursed to a provider any and all overpayments, recoupment or recovery must be taken into consideration prior to determining the actual amount owed to the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1634 (September 1999), repromulgated LR 29:587 (April 2003).

#### **§4117. Claims Review**

A. BHSF establishes the following procedures for review of bills and claims submitted to it or its fiscal intermediary.

##### **1. Prepayment Review**

a. Upon concurrence of the director of BHSF and the director of Program Integrity, bills or claims submitted by a provider may be reviewed by the SURS or the SURS unit of the Fiscal Intermediary for 15 days from date the payment or reimbursement is ordinarily sent to a provider by BHSF or its fiscal intermediary prior to the issuing of or denial of payment or reimbursement.

b. If, during the prepayment review process, it is determined that the provider may be overpaid, BHSF or its fiscal intermediary must conduct an investigation to

determine the reasons for and estimates of the amount of the potential overpayments.

i. If it is determined that evidence exists which would lead the director of BHSF and the director of Program Integrity to believe that the provider, provider-in-fact, agent of the provider, or affiliate of the provider has engaged in fraudulent, false, or fictitious billing practices or willful misrepresentation, current and future payments shall be withheld.

ii. If it is determined that evidence exists which would lead the director of BHSF and the director of Program Integrity to believe that overpayments may have occurred through reasons other than fraudulent, false or fictitious billing or willful misrepresentation, current and future payments may be withheld.

c. Prepayment review is not a sanction and cannot be appealed nor is it subject to an informal hearing. If prepayment review results in withholding of payments, the provider or provider-in-fact will be notified within five working days of the determination to withhold payments. In the case of an ongoing criminal or outside governmental investigation, information related to the investigation shall not be disclosed to the provider, provider-in-fact or other person unless release of such information is otherwise authorized or required under law. The issuing of a notice of withholding triggers the right to an informal hearing. Denials or refusals to pay individual bills that are the result of the edit and audit system are not withholdings of payments.

d. Prepayment review is conducted at the absolute discretion of the director of BHSF and the director of Program Integrity.

##### **2. Post-Payment Review**

a. Providers have a right to receive payment only for those bills that are valid claims. A person has no property interest in any payments or reimbursements from Medicaid, which are determined to be an overpayment or are subject to payment review. After payment to a provider, BHSF or its fiscal intermediary may review any or all payments made to a provider for the purpose of determining if the amounts paid were for valid claims.

b. If, during the post-payment review process, it is determined that the provider may have been overpaid, BHSF or its fiscal intermediary must conduct an investigation to determine the reasons for and estimated amounts of the alleged overpayments.

i. If it is determined that evidence exists that would lead the director of BHSF and the director of Program Integrity to believe that the provider, provider-in-fact, agent of the provider, or affiliate of the provider may have engaged in fraudulent, false, or fictitious billing practices or willful misrepresentation, current and future payments shall be withheld.

ii. If it is determined that evidence exists that overpayments may have occurred through reasons other than fraud or willful misrepresentation, current and future payments may be withheld.

c. Post-payment review is not a sanction and is not appealable nor subject to an informal hearing. If post-payment review results in withholding of payments, the provider or provider-in-fact will be notified within five working days of the determination to withhold payments. In the case of an ongoing criminal or outside government

investigation, information related to the investigation shall not be disclosed to the provider, provider-in-fact or other person. Denials or refusals to pay individual bills that are the result of the edit and audit system are not withholdings of payments.

d. Post-payment review is conducted is at the absolute discretion of the director of BHSF and director of Program Integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1634 (September 1999), repromulgated LR 29:588 (April 2003).

#### **§4119. Claims Review Scope and Extent**

A. Prepayment and post-payment review may be limited to specific items or procedures or include all billings or claims by a provider.

B. The length of time a provider is on post-payment review shall be at the sole discretion of the director of BHSF and the director of Program Integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1635 (September 1999), repromulgated LR 29:589 (April 2003).

#### **Subchapter C. Investigations**

##### **§4127. Formal or Informal Investigations**

A. Prepayment and post-payment review may be conducted through either a formal or informal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:153 and 46:442.1, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1635 (September 1999), repromulgated LR 29:589 (April 2003).

##### **§4129. Informal Investigatory Process**

A. An informal investigation may be initiated without cause and requires no justification. The provider and provider-in-fact of the provider have an affirmative duty to cooperate fully with the investigation. The provider and provider-in-fact, if they have the ability to do so, shall:

1. make all records requested as part of the investigation available for review or copying; and

2. make available all agents and affiliates of the provider for the purpose of being interviewed during the course of the informal investigation at the provider's ordinary place of business or any other mutually agreeable location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:153 and 46:442.1, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1635 (September 1999), repromulgated LR 29:589 (April 2003).

##### **§4131. Formal Investigatory Process**

A. The formal investigatory process must be initiated in writing by the director of BHSF and director of Program Integrity. The written notice of investigation shall be directed to a provider, specifically naming an investigating

officer and be given to the provider, provider-in-fact or their agent. The investigating officer shall provide written notice of the investigation to the provider or a provider-in-fact of the provider at the time of the on-site investigation.

B. The written notice need not contain any reasons or justifications for the investigation, only that such an investigation has been authorized and the individual in charge of the investigation.

C. The investigating officer and the agents of the investigating officer shall have the authority to review and copy records of the provider including, but not limited to, any financial or other business records of the provider or any or all records related to the recipients, and take statements from the provider, provider-in-fact, agents of the provider and any affiliates of the provider, as well as any recipients who have received goods, services, or supplies from the provider or whom the provider has claimed to have provided goods, services, or supplies.

D. The provider and provider-in-fact of the provider have an affirmative duty to cooperate fully with the investigating officer and agents of the investigating officer, including full and truthful disclosure of all information requested and questions asked. The provider and provider-in-fact, if they have the ability to do so, shall:

1. make all records requested by the investigating officer available for review and copying; and

2. make available all agents and affiliates of the provider for the purpose of being interviewed by the investigating officer or agent of the investigating officer at the provider's ordinary place of business or any other mutually agreeable location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:153 and 46:442.1, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1636 (September 1999), repromulgated LR 29:589 (April 2003).

##### **§4133. Investigatory Discussion**

A. During the investigatory process the provider, provider-in-fact, agent of the provider, or affiliate of the provider shall be notified in writing of the time and place of an investigatory discussion. The notice shall contain the names of the individuals who are requested to be present at the discussion and any documents that the provider, provider-in-fact, agent of the provider or affiliate of the provider must bring to the discussion.

B. The provider and provider-in-fact, if they have the ability to do so, shall be responsible for assuring the attendance of individuals who are currently employed by, contracted by, or affiliated with the provider.

C. This notice may contain a request to bring records to the investigatory discussion. If such a request for records is made, the provider and provider-in-fact are responsible for having those records produced at the investigatory discussion. The provider or provider-in-fact shall be given at least five working days to comply with the request.

D. At the investigatory discussion, the authorized investigating officer can ask any of the individuals present at the discussion questions related to the provider's billing practices or other aspects directly or indirectly related to the providing of goods, supplies, and services to Medicaid recipients or nonrecipients, or any other aspect related to the

provider's participation in the Louisiana Medicaid program. Any provider, provider-in-fact, agent of the provider, affiliate of the provider, or recipient brought to an investigatory discussion has an affirmative duty to fully and truthfully answer any questions asked and provide any and all information requested.

E. Any person present at an investigatory discussion may be represented by counsel. The exercising of a constitutional or statutory right during an investigatory discussion shall not be construed as a failure to cooperate.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1636 (September 1999), repromulgated LR 29:589 (April 2003).

#### **§4135. Written Investigatory Reports**

A. The investigating officer or analyst, at the discretion of the director of Program Integrity or the SURS manager, may draft a written investigative report concerning the results of the informal or formal investigation. The director of BHSF and director of Program Integrity, at their discretion, may release the report to outside law enforcement agencies, authorized federal representatives, the legislative auditor or any individuals within the department whom the secretary has authorized to review such reports. No other entities or persons shall have a right to review the contents of an investigative report.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1636 (September 1999), repromulgated LR 29:590 (April 2003).

### **Subchapter D. Conduct**

#### **§4143. Introduction**

- A. This Subchapter D pertains to:
1. the kinds of conduct which are violations;
  2. the scope of a violation;
  3. types of violations; and
  4. elements of violations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1636 (September 1999), repromulgated LR 29:590 (April 2003).

#### **§4145. Prohibited Conduct**

A. Violations are kinds of conduct that are prohibited and constitute a violation under this regulation. No provider, provider-in-fact, agent of the provider, billing agent, affiliate of a provider or other person may engage in any conduct prohibited by this Chapter. If they do, the provider or provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person may be subject to:

1. corrective action;
2. withholding of payment;
3. recoupment;
4. recovery;
5. suspension;

6. exclusion;
7. posting bond or other security;
8. monetary penalties; or
9. any other sanction listed in this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1636 (September 1999), repromulgated LR 29:590 (April 2003).

#### **§4147. Violations**

A. The following is a list of violations.

1. Failure to comply with any or all federal or state laws applicable to the Medical Assistance Program or a program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent, affiliate or other person is participating is a violation of this provision.

a. Neither the Secretary, Director of BHSF, or any other person can waive or alter a requirement or condition established by statute.

b. Requirements or conditions imposed by a statute can only be waived, modified or changed through legislation.

c. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable laws.

d. Providers, providers-in-fact, agents of providers, billing agents, and affiliates of providers are presumed to know the law. Ignorance of the applicable laws is not a defense to any administrative action.

2. Failure to comply with any or all federal or state regulations or rule applicable to the Medical Assistance Program or a program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider is participating is a violation of this provision.

a. Neither the Secretary, Director BHSF or any other person can waive or alter a requirement or condition established by regulation.

b. Requirements or conditions imposed by a regulation can only be waived, modified, or changed through formal promulgation of a new or amended regulation, unless authority to do so is specifically provided for in the regulation.

c. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable regulations.

d. Providers, providers-in-fact, agents of providers, and affiliates of the provider are presumed to know the regulations and rules applicable to participation in the Medical Assistance Program or one or more of its programs in which they are participating. Ignorance of the applicable regulations is not a defense to any administrative action.

3. Failure to comply with any or all policies, criteria or procedures of the Medical Assistance Program or the applicable program of the Medical Assistance Program in

which the provider, provider-in-fact, agent of the provider, billing agent or affiliate of the provider is participating is a violation of this provision.

a. Policies, criteria and procedures are contained in program manuals, training manuals, remittance advice, provider updates or bulletins issued by or on behalf of the Secretary or Director of BHSF.

b. Policies, criteria and procedures can be waived, amended, clarified, repealed or otherwise changed, either generally or in specific cases, only by the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF.

c. Such waivers, amendments, clarifications, repeals, or other changes must be in writing and state that it is a waiver, amendment, clarification, or change in order to be effective.

d. Notice of the policies, criteria and procedures of the Medical Assistance Program and its programs are provided to providers upon enrollment and receipt of a provider number. It is the duty of the provider at the time of enrollment or re-enrollment to obtain the policies, criteria, and procedures, which are in effect at the time of enrollment or re-enrollment.

e. Waivers, amendments, clarifications, repeals, or other changes to the policies, criteria, or procedures must be in writing and are generally contained in a new or reissued program manual, new manual pages, remittance advice, provider updates, or specifically designated bulletins from the Secretary, Undersecretary, Deputy Secretary or Director of BHSF.

f. Waivers, amendments, clarifications, repeals or other changes are mailed to the provider at the address given to BHSF or the fiscal intermediary by the provider for the express purpose of receiving such notifications.

i. It is the duty of the provider to provide the above address and make arrangements to receive these mailings through that address. This includes the duty to inform BHSF or the fiscal intermediary of any changes in the above address prior to actual change of address.

ii. Mailing of a manual, new manual pages, provider update, bulletins, or remittance advice to the provider's latest listed address creates a reputable presumption that the provider received it. The burden of proving lack of notice of policy, criteria, or procedure or waivers, amendments, clarifications, repeals, or other changes in same is on the party asserting it.

iii. Providers and providers-in-fact are presumed to know the applicable policies, criteria and procedures and any or all waivers, amendments, clarifications, repeals, or other changes to the applicable rules, policies, criteria and procedures which have been mailed to the address provided by the provider for the purpose of receiving notice of same.

iv. Ignorance of an applicable policy, criteria, or procedure or any and all waivers, amendments, clarifications, repeals, or other changes to applicable policies, criteria and procedures is not a defense to an administrative action brought against a provider or provider-in-fact. Lack of notice of a policy, criteria, or procedure or waiver, amendment, clarification, repeal, or other change of the same is a defense to a violation based on abusive, fraudulent, false, or fictitious billing practice or willful practices or the imposition of any sanction except issuing a warning, education and training, prior authorization, posting

bond or other security, recovery of overpayment or recoupment of overpayment. Lack of notice of a policy, criteria, or procedure, or waivers, amendments, clarifications, repeals, or other changes to applicable policies, criteria, or procedures is not a defense to a violation, which is aberrant.

g. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable policies, criteria, and procedures and any waivers, amendments, clarifications, repeals, or other changes in applicable policies, criteria, or procedures.

4. Failure to comply with one or more of the terms or conditions contained in the provider's provider agreement or any and all forms signed by or on behalf of the provider setting forth the terms and conditions applicable to participation in the Medical Assistance Program or one or more of its programs is a violation of this provision.

a. The terms or conditions of a provider agreement or those contained in the signed forms, unless specifically provided for by law or regulation or rule, can only be waived, changed or amended through mutual written agreement between the provider and the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF. Those conditions or terms that are established by law or regulation or rule may not be waived, altered, amended, or otherwise changed except through legislation or rule making.

b. A waiver, change, or amendment to a term or condition of a provider agreement and any signed forms must be reduced to writing and be signed by the provider and the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF in order to be effective.

c. Such mutual agreements cannot waive, change or amend the law, regulations, rules, policies, criteria or procedures.

d. The provider and provider-in-fact are presumed to know the terms and conditions in their provider agreement and any signed forms related thereto and any changes to their provider agreement or the signed forms related thereto.

e. The provider and provider-in-fact are required and have an affirmative duty to fully inform all their agents or affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the terms and conditions contained in the provider agreement and the signed forms related thereto and any change made to them. Ignorance of the terms and conditions in the provider agreement or signed forms or any changes to them is not a defense.

i. Department, BHSF or the fiscal intermediary may, from time to time, provide training sessions and consultation on the law, regulations, rules, policies, criteria, and procedures applicable to the Medical Assistance Program and its programs. These training sessions and consultations are intended to assist the provider, provider-in-fact, agents of providers, billing agents, and affiliates. Information presented during these training sessions and consultations do not necessarily constitute the official stands of the department and BHSF in regard to the law, regulations and rules, policies, or procedures unless reduced to writing in compliance with this Subpart.

5. Making a false, fictitious, untrue, misleading statement or concealment of information during the application process or not fully disclosing all information required or requested on the application forms for the Medicaid Assistance Program, provider number, enrollment paperwork, or any other forms required by the department, BHSF or its fiscal intermediary that is related to enrollment in the Medical Assistance Program or one of its programs or failing to disclose any other information which is required under this regulation, or other departmental regulations, rules, policies, criteria, or procedures is a violation of this provision. This includes the information required under R.S. 46:437.11-437.14. Failure to pay any fees or post security related to enrollment is also a violation of this Section.

a. The provider and provider-in-fact have an affirmative duty to inform BHSF in writing through provider enrollment of any and all changes in ownership, control, or managing employee of a provider and fully and completely disclose any and all administrative sanctions, withholding of payments, criminal charges, or convictions, guilty pleas, or no contest pleas, civil judgments, civil fines, or penalties imposed on the provider, provider-in-fact, agent of the provider, billing agent, or affiliates of the provider which are related to Medicare or Medicaid in this or any other state or territory of the United States.

i. Failure to do so within 10 working days of when the provider or provider-in-fact knew or should have known of such a change or information is a violation of this provision.

ii. If it is determined that a failure to disclose was willful or fraudulent, the provider's enrollment can be voided back to the date of the willful misrepresentation or concealment or fraudulent disclosure.

6. Not being properly licensed, certified, or otherwise qualified to provide for the particular goods, services, or supplies provided or billed for or such license, certificate, or other qualification required or necessary in order to provide a good, service, or supply has not been renewed or has been revoked, suspended or otherwise terminated is a violation of this provision. This includes, but is not limited to, professional licenses, business licenses, paraprofessional certificates, and licenses or other similar licenses or certificates required by federal, state, or local governmental agencies, as well as, professional or paraprofessional organizations or governing bodies which are required by the Medical Assistance Program. Failure to pay required fees related to licensure or certification is also a violation of this provision.

7. Having engaged in conduct or performing an act in violation of official sanction which has been applied by a licensing authority, professional peer group, or peer review board or organization, or continuing such conduct following notification by the licensing or reviewing body that said conduct should cease is a violation of this provision.

8. Having been excluded or suspended from participation in Medicare is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded or suspended from Medicare during the period of exclusion or suspension.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such exclusions or suspensions on the part of the provider, provider-in-fact, their agents or their affiliates;

ii. not hire, contract with or affiliate with any person or entity who has been excluded or suspended from Medicare; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been excluded or suspended from Medicare.

b. Failure to do so on the part of the provider or provider-in-fact within 10 working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents, or affiliates is a violation of Paragraph 5 of this Subsection.

c. If the terms of the exclusion or suspension have been completed, no violation of this provision has occurred.

9. Having been excluded, suspended, or otherwise terminated from participation in Medicaid or other publicly funded health care or insurance programs of this state or any other state or territory of the United States is a violation of this provision. It is also a violation of this Section for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded, suspended or otherwise terminated from participation in Medicaid or other publicly funded health care or health insurance programs of this state or another state or territory of the United States. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded from Medicaid or other publicly funded health care or health insurance programs of this state or any other state or territory of the United States during the period of exclusion or suspension.

a. The provider and provider-in-fact after they knew or should have known have an affirmative duty to:

i. inform BHSF in writing of any such exclusions or suspensions on the part of the provider, provider-in-fact, their agents or their affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been excluded or suspended from any Medicaid or other publicly funded health care or health insurance programs; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been excluded or suspended from any Medicaid or other publicly funded health care or health insurance programs.

b. Failure to do so on the part of the provider or provider-in-fact within 10 working days of when the provider or provider-in-fact knew or should have known of any violation of this provisions by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If the terms of the exclusion or suspension have been completed, no violation of this provision has occurred.

10. Having been convicted of, pled guilty, or pled no contest to a crime, including attempts or conspiracy to commit a crime, in federal court, any state court, or court in any United States territory related to providing goods, services, or supplies or billing for goods, services, or supplies under Medicare, Medicaid, or any other program involving the expenditure of public funds is a violation of this provision. It is also a violation for a provider to employ,

contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest to a crime, including attempts to or conspiracy to commit a crime, in federal court, any state court, or court in any United States territory related to providing goods, services, or supplies or billing for goods, services, or supplies under Medicare, Medicaid, or any other program involving the expenditure of public funds.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilt pled, or no contest plea to the above felony criminal conduct on the part of the provider, provider-in-fact, their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, pled guilty to, or pled no contest to the above felony criminal conduct; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been convicted, pled guilty to, or pled no contest to the above felony criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within 10 working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three year period, this provision is not violated. Criminal conduct, which has been pardoned, does not violate this provision.

11. Having been convicted of, pled guilty to, or pled no contest to Medicaid Fraud in a Louisiana court or any other criminal offense, including attempts to or conspiracy to commit a crime, relating to the performance of a provider agreement with the Medical Assistance Program is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest to Medicaid Fraud in a Louisiana court or any other criminal offense, including attempts to or conspiracy to commit a crime, relating to the performance of a provider agreement with the Louisiana Medicaid program.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, plead guilty to, or plead no contest to the above criminal conduct; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been convicted, plead guilty to, or plead no contest to the above criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within 10 working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-

fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three year period, this provision is not violated. Criminal conduct, which has been pardoned, does not violate this provision.

12. Having been convicted of, pled guilty, or pled no contest in federal court, any state court, or court of any United States territory to criminal conduct involving the negligent practice of medicine or any other activity or skill related to an activity or skill performed by or billed by that person or entity under the Medical Assistance Program or one of its programs or which caused death or serious bodily, emotional, or mental injury to an individual under their care is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest in federal court, any state court, or court of any United States territory to criminal conduct involving the negligent practice of medicine or any other activity or skill related to an activity or skill performed by or billed by that person or entity under the Medical Assistance Program or one of its programs or which caused death or serious bodily, emotional, or mental injury to an individual under their care.

a. The provider and provider-in-fact after they knew or should have known have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, or their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, plead guilty to, or plead no contest to the above criminal conduct; and

iii. terminate any and all ownership, employment or contractual relationships with any person or entity that has been convicted, pled guilty to, or pled no contest to the above criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within 10 working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three year period, this provision is not violated. Criminal conduct, which has been pardoned, does not violate this provision.

13. Having been convicted of, pled guilty, or pled no contest to Medicaid, Medicare or health care fraud, including attempts to or conspiracy to commit Medicaid, Medicare or health care fraud or any other criminal offense related to the performance of or providing any goods, services, or supplies to Medicaid or Medicare recipients or billings to any Medicaid, Medicare, publicly funded health care or publicly funded health insurance programs in any state court, federal court or a court in any territory of the United States is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been

convicted of, plead guilty, or plead no contest to Medicaid, Medicare, or health care fraud, including attempts to or conspiracy to commit Medicaid, Medicare or health care fraud, or any other criminal offense related to the performance of or providing any goods, services, or supplies to Medicaid or Medicare recipients or billings to any Medicaid, Medicare, publicly funded health care or publicly funded health insurance programs in any state court, federal court or a court in any territory of the United States.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, or their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, pled guilty to, or pled no contest to the above criminal conduct; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been convicted, pled guilty to, or pled no contest to the above criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within 10 working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three year period, this provision is not violated. Criminal conduct that has been pardoned does not violate this provision.

14. Having been convicted of, pled guilty to, or pled no contest to in any federal court, state court, or court in any territory of the United States to any of the following criminal conduct, attempt to commit or conspiracy to commit any of the following crimes are violations of this provision:

a. bribery or extortion;

b. sale, distribution, or importation of a substance or item that is prohibited by law;

c. tax evasion or fraud;

d. money laundering;

e. securities or exchange fraud;

f. wire or mail fraud;

g. violence against a person;

h. act against the aged, juveniles or infirmed;

i. any crime involving public funds; or

j. other similar felony criminal conduct.

i. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

(a). inform BHSF in writing of any such criminal charges, convictions, or pleas on the part of the provider, provider-in-fact, their agents, or their affiliates;

(b). not hire, contract with, or affiliate with any person or entity who has engaged in any such criminal misconduct; and

(c). terminate any and all ownership, employment and contractual relationships with any person or entity that has engaged in any such criminal misconduct.

ii. Failure to do so on the part of the provider or provider-in-fact within 10 working days of when the

provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or their affiliates is a violation of Paragraph 5 of this Subsection.

iii. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three-year period, this provision is not violated. Criminal conduct that has been pardoned does not violate this provision.

15. Being found in violation of or entering into a settlement agreement under this state's Medical Assistance Program Integrity Law, the Federal False Claims Act, Federal Civil Monetary Penalties Act, or any other similar civil statutes in this state, in any other state, United States or United States territory is a violation of this provision.

a. Relating to violations of this provision, the provider and provider-in-fact after they knew or should have known have an affirmative duty to:

i. inform BHSF in writing of any violations of this provision on the part of the provider, provider-in-fact, their agents or their affiliates;

ii. not hire, contract with or affiliate with any person or entity who has violated this provision; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has violated this provision.

b. Failure to do so on the part of the provider or provider-in-fact within 10 working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or their affiliates is a violation of Paragraph 5 of this Subsection.

c. If a False Claims Act action or other similar civil action is brought by a Qui-Tam plaintiff or under a little attorney general or other similar provision, no violation of this provision has occurred until the defendant has been found liable in the action.

d. If three years have passed from the time a person is found liable or entered a settlement agreement under the False Claims Act or other similar civil statute and the conditions of the judgment or settlement have been satisfactorily fulfilled, no violation has occurred under this provision.

16. Failure to correct the deficiencies or problem areas listed in a notice of corrective action or failure to meet the provisions of a corrective action plan or failure to correct deficiencies in delivery of goods, services, or supplies or deficiencies in billing practices or record keeping after receiving written notice to do so from the Secretary, Director of BHSF or Director of Program Integrity is a violation of this provision.

17. Having presented, causing to be presented, attempting to present, or conspiring to present false, fraudulent, fictitious, or misleading claims or billings for payment or reimbursement to the Medical Assistance Program through BHSF or its authorized fiscal intermediary for goods, services, or supplies, or in documents related to a cost report or other similar submission is a violation of this provision.

18. Engaging in the practice of charging or accepting payments, in whole or in part, from one or more recipients for goods, services, or supplies for which the provider has

made or will make a claim for payment to the Louisiana Medicaid program is a violation of this provision, unless this prohibition has been specifically excluded within the program under which the claim was submitted or will be made or the payment by the recipient is an authorized copayment or is otherwise specifically authorized by law or regulation. Having engaged in practices prohibited by R.S. 46:438.2 or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

19. Having rebated or accepted a fee or a portion of a fee or anything of value for a Medicaid recipient referral is a violation of this provision, unless this prohibition has been specifically excluded within the program or is otherwise authorized by statute or regulation, rule, policy, criteria or procedure of the department through BHSF. Having engaged in practices prohibited by R.S. 46:438.2 or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

20. Paying to another a fee in cash or kind for the purpose of obtaining recipient lists or recipients names is a violation of this provision, unless this prohibition has been specifically excluded within the program or is otherwise authorized by statute or regulation, rule, policy, criteria or procedure of the department through BHSF. Using or possessing any recipient list or information, which was obtained through unauthorized means, or using such in an unauthorized manner is also a violation of this provision. Having engaged in practices prohibited by R.S. 46:438.2 or R.S. 46:438.4 or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

21. Failure to repay or make arrangements to repay an identified overpayment or otherwise erroneous payment within 10 working days after the provider or provider-in-fact receives written notice of same is a violation of this provision. Failure to pay any and all administrative or court ordered restitution, civil money damages, criminal or civil fines, monetary penalties or costs or expenses is also a violation of this provision. Failure to pay any assessed provider fee or payment is also a violation of this provision.

22. Failure to keep or make available for inspection, audit, or copying records related to the Louisiana Medicaid program or one or more of its programs for which the provider has been enrolled or issued a provider number or has failed to allow BHSF or its fiscal intermediary or any other duly authorized governmental entity an opportunity to inspect, audit, or copy those records is a violation of this provision. Failure to keep records required by Medicaid or one of its programs until payment review has been conducted is also a violation of this provision;

23. Failure to furnish or arrange to furnish information or documents to BHSF within five working days after receiving a written request to provide that information to BHSF or its fiscal intermediary is a violation of this provision.

24. Failure to cooperate with BHSF, its fiscal intermediary or the investigating officer during the post-payment or prepayment process, investigatory process, an investigatory discussion, informal hearing or the administrative appeal process or any other legal process or making, or caused to be made, a false or misleading statement of a material fact in connection with the post-payment or prepayment process, corrective action,

investigation process, investigatory discussion, informal hearing or the administrative appeals process or any other legal process is a violation of this provision. The exercising of a constitutional or statutory right is not a failure to cooperate. Requests to for scheduling changes or asking questions are not grounds for failure to cooperate.

25. Making, or causing to be made, a false, fictitious or misleading statement or making, or caused to be made, a false, fictitious or misleading statement of a fact in connection with the administration of the Medical Assistance Program which the person knew or should have known was false, fictitious or misleading is a violation of this provision. This includes, but is not limited to, the following:

a. claiming costs for noncovered or nonchargeable services, supplies, or goods disguised as covered items;

b. billing for services, supplies, or goods which are not rendered to person(s) who are eligible to receive the services, supplies, or goods;

c. misrepresenting dates and descriptions and the identity of the person(s) who rendered the services, supplies, or goods;

d. duplicate billing that are abusive, willful or fraudulent;

e. upcoding of services, supplies, or goods provided;

f. misrepresenting a recipient's need or eligibility to receive services, goods, or supplies or the recipients eligibility for a program;

g. improperly unbundling goods, services, or supplies for billing purposes;

h. misrepresenting the quality or quantity of services, goods, or supplies;

i. submitting claims for payment for goods, services, and supplies provided to nonrecipients if the provider knew or should have known that the individual was not eligible to receive the good, supply, or service at the time the good, service, or supply was provided or billed.

j. Furnishing or causing to be furnished goods, services, or supplies to a recipient which;

i. are in excess of the recipient's needs;

ii. were or could be harmful to the recipient;

iii. serve no real medical purpose;

iv. are of grossly inadequate or inferior quality;

v. were furnished by an individual who was not qualified under the applicable Louisiana Medicaid program to provide the good, service, or supply;

vi. the good, service, or supply was not furnished under the required programmatic authorization; or

vii. the goods, services or supplies provided were not provided in compliance with the appropriate licensing or certification board's regulations, rules, policies or procedures governing the conduct of the person who provided the goods, services or supplies.

k. providing goods, services, or supplies in a manner or form that is not within the normal scope and range of the standards used within the applicable profession.

l. billing for goods, services, or supplies in a manner inconsistent with the standards established in relevant billing codes or practices.

26. In the case of a managed care provider or provider operating under a voucher, notwithstanding any contractual agreements to the contrary, failure to provide all medically

necessary goods, services, or supplies of which the recipient is in need of and entitled to is a violation of this provision.

27. Submitting bills or claims for payment or reimbursement to the Louisiana Medicaid program through BHSF or its fiscal intermediary on behalf of a person or entity which is serving out a period of suspension or exclusion from participation in the Medical Assistance Program or one of its programs, Medicare, Medicaid, publicly funded health care or publicly funded health insurance program in any other state or territory of the United States or the United States is a violation of this provision except for bona fide emergency services provided during a bona fide medical emergency.

28. Engaging in a systematic billing practice which is abusive or fraudulent and which maximizes the costs to the Louisiana Medicaid program after written notice to cease such billing practice(s) is a violation of this provision.

29. Failure to meet the terms of an agreement to repay or settlement agreement entered into under this state's Medical Assistance Program Integrity Law or this regulation is a violation of this provision.

30. If the provider, a person with management responsibility for a provider, an officer or person owning, either directly or indirectly, any shares of stock or other evidence of ownership in a corporate provider, an owner of a sole proprietorship which is a provider, or a partner in a partnership which is a provider, is found to fall into one or more of the following categories:

a. the provider was previously terminated from participation in the Louisiana Medicaid program or one or more of its programs; and

i. was a person with management responsibility for a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs; or

ii. was an officer or person owning, directly or indirectly, any shares of stock or other evidence of ownership in a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs; or

iii. was an owner of a sole proprietorship or a partner of a partnership in a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs.

b. the provider has been found to have engaged in practices prohibited by federal or state law or regulation; and

i. was a person with management responsibility for a provider during the time the provider engaged in practices prohibited by federal or state law or regulation; or

ii. was an officer or person owning, directly or indirectly, any shares of stock or other evidence of ownership in a provider during the time the provider engaged in practices prohibited by federal or state law or regulation; or

iii. was an owner of a sole proprietorship or a partner of a partnership which was a provider during the time the provider engaged in practices prohibited by federal or state law or regulation.

c. the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law was:

i. a person with management responsibility for a provider during the time the provider engaged in practices for which the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

ii. an officer or person owning, directly or indirectly, any of the shares of stock or other evidence of ownership in a provider during the time the provider engaged in practices the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

iii. an owner of a sole proprietorship or a partner of a partnership which was a provider during the time the provider engaged in practices the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1637 (September 1999), repromulgated LR 29:590 (April 2003).

#### **§4149. Scope of a Violation**

A. Violations may be imputed in the following manner.

1. The conduct of a provider-in-fact is always attributable to the provider. The conduct of a managing employee is always attributable to the provider and provider-in-fact.

2. The conduct of an agent of the provider, billing agent, or affiliate of the provider may be imputed to the provider or provider-in-fact if the conduct was performed within the course of his duties for the provider or was effectuated by him with the knowledge or approval of the provider or provider-in-fact.

3. The conduct of any person or entity operating on behalf of a provider may be imputed to the provider or provider-in-fact.

4. The provider and provider-in-fact are responsible for the conduct of any and all officers, employees or agents of the provider including any with whom the provider has a contract to provide managerial or administrative functions for the provider or to provide goods, services, or supplies on behalf of the provider. The conduct of these persons or entities may be imputed to the provider or provider-in-fact.

5. A violation under one Medicaid number may be extended to any and all Medicaid Numbers held by the provider or provider-in-fact or which may be obtained by the provider or provider-in-fact.

6. Recoupments or recoveries may be made from any payments or reimbursement made under any and all provider numbers held by or obtained by the provider or provider-in-fact.

7. Any sanctions, including recovery or recoupment, imposed on a provider or provider-in-fact shall remain in effect until its terms have been satisfied. Any person or entity who purchases, merges or otherwise consolidates with a provider or employs or affiliates a provider-in-fact, agent

of the provider or affiliate of a provider who has had sanctions imposed on it under this regulation assumes liability for those sanctions, if the person or entity knew or should have known about the existence of the sanctions, and may be subject to additional sanctions based on the purchase, merger, consolidation, affiliation or employment of the sanctioned provider or provider-in-fact.

8. A provider or provider-in-fact who refers a recipient to another for the purpose of providing a good, service, or supply to a recipient may be held responsible for any or all over-billing by the person to whom the recipient was referred provided the referring provider or person knew or should have known that such over-billing was likely to occur.

9. Providers which are legal entities, i.e., clinics, corporations, HMOs, PPOs, etc., may be held jointly liable for the repayment or recoupment of any person within that legal entity if it can be shown that the entity received any economic benefit related to the overpayment.

10. Withholdings of payments imposed on a provider may be extended to any or all provider numbers held or obtained by that provider or any provider-in-fact of that provider.

B. Attributing, imputing, extension or imposing under this provision shall be done on a case-by-case basis with written reasons for same. The written reasons must demonstrate that the imputing was based on knowledge of the violation and that the person to whom it was imputed received an economic benefit as a result of the violation. The person to whom the violation has been imputed may only be sanctioned up to the amount of the economic benefit received by that individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1637 (September 1999), repromulgated LR 29:596 (April 2003).

#### **§4151. Types of Violation**

A. Violations can be of four different types: aberrant; abusive; willful; or fraudulent. This Section defines the following four different types of violations.

1. *Aberrant Practice*—any practice that is inconsistent with the laws, rules, policies, criteria or practices or the terms in the provider agreement or signed forms related to the provider agreement and are applicable to the Louisiana Medicaid program or one or more of its programs in which the provider is enrolled or was enrolled at the time of the alleged occurrence.

2. *Abusive Practice*—any practice of which the provider has been informed in writing by the secretary, director of BHSF, or director of Program is aberrant, and the provider, provider-in-fact, agent of the provider, or an affiliate of the provider continues to engage in that practice after the written notice to discontinue such a practice has been provided to the provider or provider-in-fact.

3. *Willful Practice*—a deception or misrepresentation made by a person who knew, or should have known, that the deception or misrepresentation was false, untrue, misleading, or wrong or an aberrant or abusive practice which is so pervasive as to indicate that the practice was willful. A

willful practice also includes conduct that would be in violation of this state's Medical Assistance Program Integrity Law.

4. *Fraudulent Practice*—a deception or misrepresentation made by a person who had knowledge that the deception or misrepresentation was false, untrue or wrong or deliberately failed to take reasonable steps to determine the truthfulness or correctness of information, and the deception or misrepresentation did or could have resulted in payment of one or more claims for which payment should not have been made or payment on one or more claims which would or could be greater than the amount entitled to. This includes any act, or attempted act, that could constitute fraud under either criminal or civil standards under applicable federal or Louisiana law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1643 (September 1999), repromulgated LR 29:597 (April 2003).

#### **§4153. Elements**

A. Each type of violation contains different elements, which must be established.

1. An aberrant practice is a technical or inadvertent violation where the person did not knowingly engage in prohibited conduct. A finding of an aberrant practice does not require proof of knowledge, intent, or overpayment or attempted overpayment.

2. An abusive practice occurs where the person has been informed in writing that the person has engaged in an aberrant practice and the person continues to engage in the practice after such notice but the person has not obtained or attempted to obtain an overpayment. A finding of an abusive practice requires notice of the aberrant practice and its continued existence following that notice, but does not require proof of intent or overpayment or attempted overpayment.

3. A willful practice occurs when the person knew or should have known of the prohibited conduct and the person has obtained or attempted to obtain overpayment. A finding of willful practice requires that the person knew or should have known of the deception or misrepresentation, but does not require proof of intent or overpayment or attempted overpayment.

4. A fraudulent practice occurs when the person had actual knowledge of the prohibited conduct and knowingly obtained or attempted to obtain overpayment. A finding of fraudulent practice requires knowledge, intent and overpayment or attempted overpayment.

B. Providers, providers-in-fact, agents of the provider, affiliates of the provider and other persons may be found to have engaged in the same prohibited conduct but committed different types of violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1644 (September 1999), repromulgated LR 29:597 (April 2003).

## **Subchapter E. Administrative Sanctions, Procedures and Processes**

### **§4161. Sanctions for Prohibited Conduct**

A. Any or all of the following sanctions may be imposed for any one or more of the above listed kinds of prohibited conduct, except as provided for in this Chapter 41:

1. issue a warning to a provider or provider-in-fact or other person through written notice or consultation;
2. require that the provider or provider-in-fact, their affiliates, and agents receive education and training in laws, rules, policies, criteria and procedures, including billing, at the provider's expense;
3. require that the provider or provider-in-fact receive prior authorization for any or all goods, services or supplies under the Louisiana Medicaid program or one or more of its programs;
4. require that some or all of the provider's claims be subject to manual review;
5. require a provider or provider-in-fact to post a bond or other security or increase the bond or other security already posted as a condition of continued enrollment in the Louisiana Medicaid program or one or more of its programs;
6. require that a provider terminate its association with a provider-in-fact, agent of the provider, or affiliate as a condition of continued enrollment in the Louisiana Medicaid program or one or more of its programs;
7. prohibit a provider from associating, employing or contracting with a specific person or entity as a condition of continued participation in the Louisiana Medicaid program or one or more of its programs;
8. prohibit a provider, provider-in-fact, agent of the provider, billing agent or affiliate of the provider from performing specified tasks or providing goods, services, or supplies at designated locations or to designated recipients or classes or types of recipients;
9. prohibit a provider, provider-in-fact, or agent from referring recipients to another designated person or purchasing goods, services, or supplies from designated persons;
10. recoupment;
11. recovery;
12. impose judicial interest on any outstanding recovery or recoupment;
13. impose reasonable costs or expenses incurred as the direct result of the investigation or review, including but not limited to the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employee or agent;
14. exclusion from the Louisiana Medicaid program or one or more of its programs;
15. suspension from the Louisiana Medicaid program or one or more of its programs pending the resolution of the departments administrative appeals process;
16. impose a bond or other form of security as a condition of continued participation in the Medical Assistance Program;
17. require the forfeiture of a bond or other security;
18. impose an arrangement to repay;
19. impose monetary penalties not to exceed \$10,000 per violation;
20. impose withholding of payments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1644 (September 1999), repromulgated LR 29:598 (April 2003).

### **§4163. Scope of Sanctions**

A. Sanction(s) imposed can be extended to other persons or entities and to other provider numbers held or obtained by the provider in the following manner.

1. Sanction(s) imposed on a provider or provider-in-fact may be extended to a provider or provider-in-fact.

2. Sanction(s) imposed on an agent of the provider or affiliate of the provider may be imposed on the provider or provider-in-fact if it can be shown that the provider or provider-in-fact knew or should have known about the violation(s) and failed to report the violation(s) to BHSF in writing in a timely manner.

3. Sanction(s) imposed on a provider or provider-in-fact arising out of goods, services, or supplies to a referred recipient may also be imposed on the referring provider if it can be shown that the provider or provider-in-fact knew or should have known about the violation(s) and failed to report the violation(s) to BHSF in writing in a timely manner.

4. Sanction(s) imposed under one provider number may be extended to all provider numbers held by or which may be obtained in the future by the sanctioned provider or provider-in-fact, unless and until the terms and conditions of the sanction(s) have been fully satisfied.

5. Sanction(s) imposed on a person remains in effect unless and until its terms and conditions are fully satisfied. The terms and conditions of the sanction(s) remain in effect in the event of the sale or transfer of ownership of the sanctioned provider.

a. The entity or person who obtains ownership interest in a sanctioned provider assumes liability and responsibility for the sanctions imposed on the purchased provider including, but not limited to, all recoupments or recovery of funds or arrangements to repay that the entity or person knew or should have known about.

b. An entity or person who employs or otherwise affiliates itself with a provider-in-fact who has been sanctioned assumes the liability and responsibility for the sanctions imposed on the provider-in-fact that the entity or person knew or should have known about;

c. Any entity or person who purchases an interest in, merges with or otherwise consolidates with a provider which has been sanctioned assumes the liability and responsibility for the sanction(s) imposed on the provider that the entity or person knew or should have known about.

B. Exclusion from participation in the Louisiana Medicaid program precludes any such person from submitting claims for payment, either personally or through claims submitted by any other person or entity, for any goods, services, or supplies provided by an excluded person or entity, except bona fide emergency services provided during a bona fide medical emergency. Any payments, made to a person or entity which are prohibited by this provision, shall be immediately repaid to the Medical Assistance Program through BHSF by the person or entity which received the payments.

C. No provider shall submit claims for payment to the department or its fiscal intermediary for any goods, services, or supplies provided by a person or entity within that provider who has been excluded from the Medical Assistance Program or one or more of its programs for goods, services, or supplies provided by the excluded person or entity under the programs which it has been excluded from except for goods, services, or supplies provided prior to the exclusion and for bona fide emergency services provided during a bona fide medical emergency. Any payments, made to a person or entity, which are prohibited by this provision, shall be immediately repaid to the Medical Assistance Program through BHSF by the person or entity which received the payments.

D. When the provisions of §4151.B-C are violated, the person or entity which committed the violations may be sanctioned using any and all of the sanctions provided for in this Chapter.

E. Extending of sanctions must be done on a case-by-case basis.

F. The provisions in R.S. 46:437.10 shall apply to all sanctions and withholding of payments imposed pursuant to this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1645 (September 1999), repromulgated LR 29:598 (April 2003).

#### **§4165. Imposition of Sanction(s)**

A. The decision as to the sanction(s) to be imposed shall be at the discretion of the director of BHSF and director of Program Integrity except as provided for in this provision, unless the sanction is mandatory. In order to impose a sanction, the director of BHSF and the director of Program Integrity must concur. One or more sanctions may be imposed for a single violation. The imposition of one sanction does not preclude the imposition of another sanction for the same or different violations.

B. At the discretion of the director of BHSF and the director of Program Integrity, each occurrence of misconduct may be considered a violation or multiple occurrences of misconduct may be considered a single violation or any combination thereof.

C. The following factors may be considered in determining the sanction(s) to be imposed:

1. seriousness of the violation(s);
2. extent of the violation(s);
3. history of prior violation(s);
4. prior imposition of sanction(s);
5. prior provision of education;
6. willingness to obey program rules;
7. whether a lesser sanction will be sufficient to remedy the problem;
8. actions taken or recommended by peer review groups or licensing boards;
9. cooperation related to reviews or investigations by the department or cooperation with other investigatory agencies; and
10. willingness and ability to repay identified overpayments.

D. Notwithstanding §4165.A, sanctions of judicial interest, costs and expenses may only be imposed upon a finding willful or fraudulent practice or upon a finding that the person's denial of prohibited conduct was frivolous.

E. Notwithstanding §4165.A, a monetary penalty may be imposed only after a finding that the violation involved a willful or fraudulent practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law)

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1645 (September 1999), repromulgated LR 29:599 (April 2003).

#### **§4167. Mandatory Sanctions**

A. Mandatory Exclusion from the Medical Assistance Program. Notwithstanding any other provision to the contrary, director of BHSF and director of Program Integrity have no discretion and must exclude the provider, provider-in-fact or other person from the Medical Assistance Program if the violation involves one or more of the following:

1. a conviction, guilty plea, or no contest plea to a criminal offense(s) in federal or Louisiana State court-related, either directly or indirectly, to participation in either Medicaid or Medicare;

2. has been excluded from Louisiana Medicaid or Medicare; or

3. has failed to meet the terms and conditions of a repayment agreement, settlement or judgment entered into under this state's Medical Assistance Program Integrity Law.

B. In these situations (Paragraphs A.1-3 above), the exclusion from the Medical Assistance Program is automatic and can be longer than, but not shorter in time than, the sentence imposed in criminal court, the exclusion from Medicaid or Medicare or time provided to make payment.

1. The exclusion is retroactive to the time of the conviction, plea, exclusion, the date the repayment agreement was entered by the department or the settlement or judgment was entered under this state's Medical Assistance Program Integrity Law.

2. Proof of the conviction, plea, exclusion, failure to meet the terms and conditions of a repayment agreement, or settlement or judgment entered under this state's Medical Assistance Program Integrity Law can be made through certified or true copies of the conviction, plea, exclusion, agreement to repay, settlement, or judgment or via affidavit.

a. If the conviction is overturned, plea set aside, or exclusion or judgment are reversed on appeal, the mandatory exclusion from the Medical Assistance Program shall be removed.

b. The person or entity that is excluded from the Medical Assistance Program under this Subsection B is entitled to an administrative appeal of a mandatory exclusion.

c. The facts and law surrounding the criminal matter, exclusion, repayment agreement or judgment which serves as the basis for the mandatory exclusion from the Medical Assistance Program cannot be collaterally attacked at the administrative appeal.

C. Mandatory Arrangements to Pay, Recoupment or Recovery. If the violation(s) was fraudulent or willful and resulted in an identified overpayment, the secretary, director

of BHSF, and director of Program Integrity has no discretion. The person or entity must have imposed on them an arrangement to repay, recoupment or recovery of the identified overpayment.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1646 (September 1999), repromulgated LR 29:599 (April 2003).

#### **§4169. Effective Date of a Sanction**

A. All sanctions, except exclusion, are effective upon the issuing of the notice of the results of the informal hearing. The filing of a timely and adequate notice of administrative appeal does not suspend the imposition of a sanction(s), except that of exclusion. In the case of the imposition of exclusion from the Louisiana Medicaid program or one or more of its programs, the filing of a timely and adequate notice of appeal suspends the exclusion. In the case of an exclusion, the director of BHSF and director of Program Integrity may impose a suspension from the Medical Assistance program or one or more of its programs during the pendency of an administrative appeal. A sanction becomes a final administrative adjudication if no administrative appeal has been filed, and the time for filing an administrative appeal has run. Or in the case of a timely filed notice of administrative appeal, a sanction(s) becomes a final administrative adjudication when the order on appeal has been entered by the secretary. In order for an appeal to be filed timely it must be sent to the department's Bureau of Appeals within 30 days from the date on the letter informing the person of the results of that person's informal discussion.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1646 (September 1999), repromulgated LR 29:600 (April 2003).

#### **Subchapter F. Withholding**

##### **§4177. Withholding of Payments**

A. The director of BHSF and the director of Program Integrity may initiate the withholding of payments to a provider for the purpose of protecting the interest and fiscal integrity of the Louisiana Medicaid program if, during the course of claims review, the director of BSHF and the director of Program Integrity have a reasonable expectation:

1. that an overpayment to a provider may have occurred or may occur;
2. that a provider or provider-in-fact has failed to cooperate or attempted to delay or obstruct an investigation;
- or
3. has information that fraudulent, willful or abusive practices may have been used; or
4. that willful misrepresentations may have occurred.

##### **B. Basis for Withholding**

1. The director of BHSF and the director of Program Integrity may withhold a portion of or all payments or reimbursements to be made to a provider upon receipt of information:

- a. that overpayments have been made to a provider;
- b. that the provider or provider-in-fact has failed to cooperate or attempted to delay or obstruct an investigation

(a request for a delay in a hearing shall not constitute a failure to cooperate or delay or obstruction of an investigation);

c. that fraudulent, willful or abusive practices may have occurred or that willful misrepresentation has occurred.

2. Payments to that provider may be withheld if the director of BHSF and the director of Program Integrity has been informed in writing by a prosecuting authority that a provider or provider-in-fact:

a. has been formally charged or indicted for crimes;

or

b. is being investigated for potential criminal activities which relate to the Louisiana Medicaid Program or one or more of its programs or Medicare.

3. If the director of BHSF and the director of Program Integrity has been informed in writing by any governmental agency or authorized agent of a governmental agency that a provider or a provider-in-fact is being investigated by that governmental agency or its authorized agent for billing practices related to any government funded health care program, payment may be withheld.

4. Withholding of payments may occur without first notifying the provider.

##### **C. Notice of Withholding**

1. The provider shall be sent written notice of the withholding of payments within five working days of the actual withholding of the first check that is the subject of the withholding. The notice shall set forth in general terms the reason(s) for the action, but need not disclose any specific information concerning any ongoing investigations nor the source of the allegations. The notice must:

- a. state that payments are being withheld;
- b. state that the withholding is for a temporary period and cite the circumstances under which the withholding will be terminated;
- c. specify to which type of Medicaid claims withholding is effective;
- d. inform the provider of its right to submit written documentation for consideration and to whom to submit that documentation.

2. Failure to provide timely notice of the withholding to the provider or provider-in-fact may be grounds for dismissing or overturning the withholding, except in cases involving written notification from outside governmental authorities, abusive practice, willful practices or fraudulent practices.

##### **D. Duration of Withholding**

1. All withholding of payment actions under this Chapter will be temporary and will not continue after:

- a. the director of BHSF and the director of Program Integrity has determined that insufficient information exists to warrant the withholding of payments;
- b. recoupment or recovery of overpayments has been imposed on the provider;
- c. the provider or provider-in-fact has posted a bond or other security deemed adequate to cover all past and future projected overpayments by the director of BHSF and the director of Program Integrity;
- d. the notice of the results of the informal hearing.

2. In no case shall withholding remain in effect past the issuance of the notice of the results of the informal hearing, unless the withholding is based on written

notification by an outside agency that an active and ongoing criminal investigation is being conducted or that formal criminal charges have been brought. In that case, the withholding may continue for as long as the criminal investigation is active and ongoing or the criminal charges are still pending, unless adequate bond or other security has been posted with BHSF.

#### E. Amount of the Withholding

1. If the withholding of payment results from projected overpayments which the director of BHSF and the director of Program Integrity determines not to be related to fraudulent, willful or abusive practices, obstruction or delay in investigation or based on written notification from an outside agency, then when determining the amount to be withheld, the ability of the provider to continue operations and the needs of the recipient serviced by the provider shall be taken into consideration by the director of BHSF and the director of Program Integrity. In the event that a recipient cannot receive needed goods, services or supplies from another source, arrangements shall be made to assure that the recipient can receive goods, supplies, and services. The burden is on the provider to demonstrate that absent that provider's ability to provide goods, supplies, or services to that recipient, the recipient could not receive needed goods, supplies, or services. Such showing must be made at the informal hearing.

2. The amount of the withholding shall be determined by the director of BHSF and the director of Program Integrity. The provider should be notified of the amount withheld every 60 days from the date of the issuing of the Notice of Withholding until the withholding is terminated or the results of the informal hearing are issued, whichever comes first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1646 (September 1999), repromulgated LR 29:600 (April 2003).

### **§4179. Effect of Withholding on the Status of a Provider or Provider-in-Fact with the Medical Assistance Program**

A. Withholding of payments does not, in and of itself, affect the status of a provider or provider-in-fact. During the period of withholding, the provider may continue to provide goods, services, or supplies and continue to submit claims for them, unless the provider has been suspended or excluded from participation. Any and all amounts withheld or bonds or other security posted may be used for recovery, recoupment or arrangements to pay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1647 (September 1999), repromulgated LR 29:601 (April 2003).

### **Subchapter G. Arrangements to Repay**

#### **§4187. Arrangement to Repay**

A. Arrangements to repay may be mutually agreed to or imposed as a sanction on a provider, provider-in-fact or other person. Arrangements to repay identified overpayments, interest, monetary penalties or costs and

expenses should be made through a lump sum single payment within 60 days of reaching or imposing the arrangement to repay. However, an agreement to repay may contain installment terms and conditions. In such cases, the repayment period cannot extend two years from the date the agreement is reached or imposed, except that a longer period may be established by the secretary or director of BHSF. In such a case the agreement to repay must be signed by the secretary or director of BHSF.

B. All agreements to repay must contain at least:

1. the amount to be repaid;
2. the person(s) responsible for making the repayments;
3. a specific time table for making the repayment;
4. if installment payments are involved, the date upon which each installment payment is to be made; and
5. the security posted to assure that the repayments will be made, and if not made, the method through which the security can be seized and converted by Medicaid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR. 23:1647 (September 1999), repromulgated LR 29:601 (April 2003).

### **Subchapter H. Corrective Actions**

#### **§4195. Corrective Actions Plans**

A. The following procedures are established for the purpose of attempting to resolve problems prior to the issuing of a notice of sanction or for resolution during the informal hearing or administrative hearing.

##### 1. Corrective Action Plan-Notification

a. The director of BHSF and the director of Program Integrity may at any time issue a notice of corrective action to a provider or provider-in-fact, agent of the provider, or affiliate of the provider. The provider, provider-in-fact, agent of the provider, or affiliate of the provider shall either comply with the corrective action plan within 10 working days of receipt of the corrective action plan or request an informal hearing within that time. The purpose of a corrective action plan is to identify potential problem areas and correct them before they become significant discrepancies, deviations or violations. This is an informal process.

i. The request for an informal hearing must be made in writing.

ii. If the provider, provider-in-fact, agent of the provider, or affiliate of the provider opts to comply, it must do so in writing, signed by the provider, provider-in-fact, agent of the provider, or affiliate of the provider.

b. Corrective action plans are also used to resolve matters at or before the informal hearing or administrative appeal process. When so used they serve the same function as a settlement agreement.

2. Corrective Action Plan-Inclusive Criteria. The corrective action plan must be in writing and contain at least the following:

- a. the nature of the discrepancies or violations;
- b. the corrective action(s) that must be taken;
- c. notification of any action required of the provider, provider-in-fact, agent of the provider, billing agent or affiliate of the provider;

d. notification of the right to an informal hearing on any or all of the corrective actions in which the provider, provider-in-fact, agent of the provider, or affiliate of the provider are not willing to comply within 10 working days of the date of receipt of the notice; and

e. the name, address, telephone and facsimile number of the individual to contact in regards to compliance or requesting an informal hearing.

3. Corrective Action Plans-Restrictions. Corrective actions, which may be included in a corrective action plan, are the following:

a. issuing a warning through written notice or consultation;

b. require that the provider, provider-in-fact, agent of the provider, or affiliate receive education and training in the law, rules, policies, criteria and procedures related to the Medical Assistance Program, including billing practices or programmatic requirements and practices. Such education or training may be at the provider or provider-in-fact's expense;

c. require that the provider receive prior authorization for any or all goods, services, or supplies to be rendered;

d. place the provider's claims on manual review status before payment is made;

e. restrict or remove the provider's privilege to submit bills or claims electronically;

f. impose any restrictions deemed appropriate by the director of BHSF and the director of Program Integrity; or

g. any other items mutually agreed to by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person and the director of BHSF or the director of Program Integrity, including, but not limited to, one or more of the sanctions listed in this Chapter and an agreement to repay.

4. Only restrictions in Subparagraphs A.3.a-f above can be imposed on a provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider without their agreement. Any other items included in a corrective action plan must be mutually agreed to among the parties to the corrective action plan.

5. A corrective action plan is effective 10 days after receipt of the corrective action plan by the provider, provider-in-fact, agent of the provider, or affiliate of the provider.

6. No right to an informal hearing or administrative appeal can arise from a corrective action plan, unless the corrective action plan violates the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1648 (September 1999), repromulgated LR 29:601 (April 2003).

## **Subchapter I. Informal Hearing Procedures and Processes**

### **§4203. Informal Hearing**

A. A provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person who has received notice of a corrective action(s), notice of sanction or notice of withholding of payment shall be

provided with an informal hearing if that person makes a written request for an informal hearing within 15 days of receipt of the corrective action plan or notice. The request for an informal hearing must be made in writing and sent in accordance with the instruction in the corrective action plan or notice. The time and place for the informal hearing will be set out in the notice of setting of the informal hearing.

B. The informal hearing is designed to provide the opportunity:

1. to provide the provider, provider-in-fact, agent of the provider, billing agent, the affiliate of the provider or other person an opportunity to informally review the situation;

2. for BHSF to offer alternatives based on information presented by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider, or other person, if any; and

3. for the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person to evaluate the necessity for seeking an administrative appeal. During the informal hearing, the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person may be afforded the opportunity to talk with the department's personnel involved in the situation, to review pertinent documents on which the alleged violations are based, to ask questions, to seek clarification, to provide additional information and be represented by counsel or other person. Upon agreement of all parties, an informal discussion may be recorded or transcribed.

C. Notice of the Results of the Informal Hearing. Following the informal hearing, BHSF shall inform the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person in writing of the results which could range from canceling, modifying, or upholding the any or all of the violations, sanctions or other actions contained in a corrective action plan, notice of sanction or notice of withholding of payments and the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person's right to an administrative appeal. The notice of the results of the informal hearing must be signed by the director of BHSF and the director of Program Integrity.

1. The provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person has the right to request an administrative appeal within 30 days of the mailing of the notice of the results of the informal hearing. At any time prior to the issuance of the written results of the informal hearing, the notice of corrective action or notice of administrative sanction or withholding of payment may be modified.

a. If a finding or reason is dropped from the notice, no additional time will be granted to the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person to prepare for the informal hearing.

b. If additional reasons or sanctions are added to the notice prior to, during or after the informal hearing, the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person shall be granted an additional 10 working days to prepare responses to the new reasons or sanctions, unless the 10-day period is waived by the provider, provider-in-fact, agent of the

provider, billing agent, affiliate of the provider or other person.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1648 (September 1999), repromulgated LR 29:602 (April 2003).

## **Subchapter J. Administrative Appeals**

### **§4211. Administrative Appeal**

A. The provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider may seek an administrative appeal from the notice of the results of an informal hearing if the provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider has had one or more appealable sanctions imposed upon him or an appealable issue exists related to a corrective action plan imposed in a notice of the results of the informal hearing.

B. The notice of administrative appeal must be adequate as to form and lodged with the Bureau of Appeals within 30 days of the receipt of the notice of the results of the informal hearing. The lodging of a timely and adequate request for an administrative appeal does not affect the imposition of a corrective action plan or a sanction, unless the sanction imposed is exclusion. All sanctions imposed through the notice of the results of the informal hearing are effective upon mailing or FAXing of the notice of the results of the informal hearing to the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person, except exclusion from participation in the Medical Assistance Program or one or more of its programs.

C. In the case of an exclusion from participation, if the director of BHSF and the director of Program Integrity determines that allowing that person to participate in the Medicaid Program during the pendency of the administrative appeal process poses a threat to the programmatic or fiscal integrity of the Medicaid Program or poses a potential threat to health, welfare or safety of any recipients, then that person may be suspended from participation in the Medicaid Program during the pendency of the administrative appeal. If the exclusion is mandatory, a threat to Medicaid Program or recipients is presumed. This determination shall be made following the informal hearing.

D. Failure to lodge a timely and adequate request for an administrative appeal will result in the imposition of any and all sanctions in the notice of the results of the informal hearing or the corrective action plan.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1649 (September 1999), repromulgated LR 29:603 (April 2003).

### **§4213. Right to Administrative Appeal and Review**

A. Only the imposing of one or more sanctions can be appealed to the department's Bureau of Appeals.

1. The adversely effected party has the right to challenge the basis for the violation and the sanction imposed.

2. The adversely effected party must specifically state the basis for the appeal and what actions are being challenged on appeal.

B. The following actions are not sanctions, even if listed as such in the notice of sanction or notice of the results of the informal hearing, and are not subject to appeal or review by the department's Bureau of Appeals:

1. referral to a state, federal or professional licensing authority;

2. referral to the Louisiana Attorney General's Medicaid Fraud Control Unit or any other authorized law enforcement or prosecutorial authority;

3. referral to governing boards, peer review groups or similar entities;

4. issuing a warning to a provider or provider-in-fact or other person through written notice or consultation;

5. require that the provider, or provider-in-fact, their affiliates and agents receive education and training in laws, rules, policies, and procedures, including billing;

6. conducting prepayment or post-payment review;

7. place the provider's claims on manual review status before payment is made;

8. require that the provider or provider-in-fact receive prior authorization for any or all goods, services, or supplies under the Louisiana Medicaid program or one or more of its programs;

9. remove or restrict the provider's use of electronic billing;

10. any restrictions imposed as the result of a corrective action plan;

11. any restrictions agreed to by a provider, provider-in-fact, agent of the provider, or affiliate of the provider;

12. any terms or conditions contained in an arrangement to repay which has been agreed to by a provider, provider-in-fact, agent of the provider, or affiliate of the provider.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1649 (September 1999), repromulgated LR 29:603 (April 2003).

## **Subchapter K. Rewards for Fraud and Abuse Information**

### **§4221. Tip Rewards**

A. The secretary may approve a reward of 10 percent of the actual monies recovered from a person, with a maximum reward of \$2,000 to a person who submits information to the secretary which results in a recovery under this Chapter or the provisions of the Medical Assistance Program Integrity Law.

B. The secretary shall grant rewards only to the extent monies are appropriated for that purpose from the Medical Assistance Programs Fraud Detection Fund. The approval of a reward is solely at the discretion of the secretary. In making a determination of a reward, the secretary shall consider the extent to which the tip information contributed to the investigation and recovery of monies. The person providing the information need not have requested a reward in order to be considered for an award by the secretary.

C. No reward shall be made to any person if:

1. the information was previously known to the department or criminal investigators;

2. a person planned or participated in the action resulting in the investigation;

3. a person who is, or was at the time of the tip, excluded from participation in the Medical Assistance Program or subject to recovery under this Chapter or the Medical Assistance Program Integrity Law;

4. a person who is or was a public employee or public official or person who was or is acting on behalf of the state if the person has or had a duty or obligation to report, investigate, or pursue allegations of wrongdoing or misconduct by health care providers or Medicaid recipients unless that individual has not been employed or had such duties and obligation for a period of two years prior to providing the information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4, R. S. 46:440.2 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1650 (September 1999), repromulgated LR 29:603 (April 2003).

#### **Subchapter L. Miscellaneous**

##### **§4229. Mailing**

A. Mailing refers to the sending of a hard copy via U.S. mail or commercial carrier. Sending via facsimile is also acceptable, so long as a hard copy is mailed. Delivery via hand is also acceptable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1650 (September 1999), repromulgated LR 29:604 (April 2003).

##### **§4231. Confidentiality**

A. All contents of claim reviews and investigations conducted under this Chapter shall remain confidential until a final administrative adjudication is entered. Prior to that, only the parties or their authorized agents and representatives may review the contents of the payment review and investigatory files, unless by law others are specifically authorized to have access to those files. These files may be released to law enforcement agencies, other governmental investigatory agencies, or specific individuals within the department who are authorized by the director of BHSF and the director of Program Integrity to have access to such information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1650 (September 1999), repromulgated LR 29:604 (April 2003).

##### **§4233. Severability Clause**

A. If any provision of this Chapter is declared invalid or unenforceable for any reason by any court of this state or federal court of proper venue and jurisdiction, that provision shall not affect the validity of the entire regulation or other provisions thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1650 (September 1999), repromulgated LR 29:604 (April 2003).

##### **§4235. Effect of Promulgation**

A. This regulation, when promulgated, shall supersede any and all other departmental regulations that conflict with the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:1650 (September 1999), repromulgated LR 29:604 (April 2003).

David W. Hood  
Secretary

0304#074

#### **RULE**

#### **Department of Public Safety and Corrections Office of Motor Vehicles**

##### **Driver's License (LAC 55:III.187)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority contained in R.S. 32:408, Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles, amends the existing rules relative to the administration of knowledge and skills test by third parties to applicants for Class "D" and "E" driver's licenses. The amendment changes the insurance coverage requirement for approved third parties to conduct the knowledge and skills test required of an applicant for a Louisiana driver's license.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part III. Motor Vehicles**

#### **Chapter 1. Driver's License**

#### **Subchapter C. Third Party Knowledge and Skills**

#### **Testing for Class AD and AE**

##### **§187. Compliance**

A. - M. ...

N. Third Party Testers and Third Party Examiners shall maintain a minimum limit of automobile liability insurance coverage of \$1,000,000 per occurrence in connection with the skills test. Third Party Testers and Third Party Examiners shall also maintain a minimum general liability policy of \$1,000,000 per occurrence. These policies shall provide primary coverage to the state of Louisiana, the department, and the department's employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:408.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 27:1928 (November 2001), amended LR 29:604 (April 2003).

Chris Keaton  
Undersecretary

0304#024

**RULE**

**Department of Public Safety and Corrections  
Office of Motor Vehicles**

License PlatesCInternational Registration Plan, Apportioned  
Plates; Exemption from Sales Tax  
(LAC 55:III.325, 327, and 383)

Under the authority of R.S. 47:511, R.S. 47:508(H), R.S. 47:305.50 and R.S. 47:321 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Public Safety and Corrections, Office of Motor Vehicles (department), amends the existing Rule regarding the adoption of the International Registration Plan, the use of permanent metal plates on commercial motor vehicles, and the sales tax exemption on commercial motor vehicles issued apportioned plates and used in interstate commerce. These amendments are technical in nature and do not change the substance of the Rules.

The first amendment adopts the current International Registration Plan by reference. The International Registration Plan authorizes the apportioned registration of fleets of vehicles among the various jurisdictions in which the vehicles are operated. This plan provides that for one license plate even though the motor vehicle is registered in more than one jurisdiction. Louisiana was approved to participate in the plan on December 1, 1975, and began participating in the plan on April 1, 1976.

The second amendment corrects the reference to another section regarding the eligibility for a permanent metal plate.

The third amendment amends the existing Rule regarding the eligibility for the exemption from state and local sales and use taxes for commercial motor vehicles registered pursuant to the International Registration Plan. This amendment removes the requirement that the operation of the motor vehicle be outside of the state of Louisiana as that requirement is not in the statute and as operation outside of the state is not necessary to be in interstate commerce.

**Title 55**

**PUBLIC SAFETY**

**Part III. Motor Vehicles**

**Chapter 3. License Plates**

**Subchapter A. Types of License Plates**

**§325. International Registration Plan**

A. The Department of Public Safety and Corrections, Office of Motor Vehicles, hereby adopts by reference, the International Registration Plan, hereinafter referred to as the plan, adopted in August 1994 and as revised through October 1, 2001 by the member jurisdictions, and published by International Registration Plan, Inc. The department only adopts the articles and sections contained in the agreement, as well as the exceptions to the plan as reflected in the October 1, 2001 revision and included in Appendix C of the plan. The commentary and governing board decisions included with the adopted plan shall not be part of this Rule, but may be considered by the department in interpreting and implementing the various sections of the plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:511.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 26:89 (January 2000), amended LR 29:605 (April 2003).

**§327. Apportioned Plates**

A. ...

B. The permanent metal plate issued pursuant to §325.A shall be renewed annually, but without the issuance of a renewal emblem, sticker, or tab by the Department of Public Safety and Corrections, Office of Motor Vehicles. The department shall issue a renewed certificate of registration or other credential to indicate that the metal plate attached to, and displayed by, the commercial motor vehicle is still valid. The original or a copy of the renewed certificate of registration or other credential shall be kept with the commercial motor vehicle described in the certificate or other credential.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:508(H).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 26:89 (January 2000), amended LR 29:605 (April 2003).

**Subchapter C. Tax Exemption for Certain Trucks and Trailers Used 80 Percent of the Time in Interstate Commerce**

**§383. Exemption from Sales Tax**

A. Trucks with a minimum gross weight of 26,000 pounds, trailers, and contract carrier buses used at least 80 percent of the time in interstate commerce may claim a sales and use tax exemption.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.50 and R.S. 47:321.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 25:2257 (November 1999), amended LR 29:605 (April 2003).

Chris Keaton  
Undersecretary

0304#023

**RULE**

**Department of Social Services  
Office of Family Support**

Food Stamp ProgramC2002 Farm Bill  
(LAC 67:III.1917, 1932, 1949, 1953,  
1961, 1965, 1966, 1980, 1983 and 2013)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps.

Pursuant to Public Law 107-171, The Food Stamp Reauthorization Act of 2002, the agency is amending §§1932, 1961, and 1983, to comply with mandates issued by the U.S. Department of Agriculture, Food and Nutrition Service. A Declaration of Emergency effecting these changes was signed October 1, 2002, and published in the October issue of the *Louisiana Register*. Additionally, effective April 1, 2003, P.L. 107-171 mandates restoration of food stamp eligibility to legal immigrants who have lived in the United States as a qualified alien for five years or longer.

The Farm Bill also provides multiple options from which states may chose to apply to their programs. The agency has incorporated several of these options by amending §§1965, 1966, 1980, and 2013 in an effort to create less burdensome

reporting requirements for the client, simplify policy, reduce workloads, and improve quality.

Additionally, the agency has amended §§1917 and 1953 for grammatical reasons only.

#### **Title 67**

### **SOCIAL SERVICES**

## **Part III. Family Support**

### **Subpart 3. Food Stamps**

## **Chapter 19. Certification of Eligible Households**

### **Subchapter B. Application Processing**

#### **§1917. Homeless Meal Provider**

A. - C. ...

D. Applicant meal providers must apply for approval at the Office of Family Support in their parish. An approval review at the provider's establishment will be conducted by the regional program specialist. After approval has been granted by OFS, the provider must then make application to an FNS field office to receive authorization to accept food stamp benefits.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:7554 et seq., 7 CFR 273.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:437 (August 1987), LR 13:287 (May 1987), amended by the Department of Social Services, Office of Family Support, LR 24:1782 (September 1998), LR 29:606 (April 2003).

### **Subchapter D. Citizenship and Alien Status**

#### **§1932. Time Limitations for Certain Aliens**

A. - A.5. ...

B. The following qualified aliens are eligible for an unlimited period of time:

1. - 3. ...

4. effective October 1, 2002, individuals who are lawfully residing in the United States and are receiving benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997;

5. - 6. ...

7. effective April 1, 2003, individuals who have been lawful, permanent residents or otherwise qualified aliens for at least five years beginning on the date the immigrant was designated as a qualified alien by the Immigration and Naturalization Service.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, P.L. 105-185, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999), LR 29:606 (April 2003).

### **Subchapter H. Resource Eligibility Standards**

#### **§1949. Exclusions from Resources**

A. The following are excluded as a countable resource:

1. - 4. ...

5. effective October 1, 2002, an Individual Development Account (IDA) which is a special account established in a financial institution for specific purposes.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387, 45 CFR 263.20, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security in LR 13:656 (November 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992),

LR 21:186 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:606 (April 2003).

### **Subchapter I. Income and Deductions**

#### **§1953. Income Eligibility Standards**

A. The income eligibility standards for the Food Stamp Program shall be as follows:

1. - 3. ...

4. The income eligibility limits, as described in this Paragraph, are revised annually to reflect OMB's annual adjustment to the nonfarm poverty guidelines for the 48 states and the District of Columbia, for Alaska, and for Hawaii.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 29:606 (April 2003).

#### **§1961. Adjustment of Standard Deduction**

A. Effective October 1, 2002, the standard deduction shall be set at 8.31 percent of the poverty level based on household size of up to six persons with a minimum deduction of \$134. The standard deduction will be adjusted in accordance with directives from the United States Department of Agriculture, Food and Nutrition Service.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended by the Department of Social Services, Office of Family Support, LR 29:606 (April 2003).

#### **§1965. Standard Utility Allowance (SUA)**

A. - B. ...

C. The full standard utility allowance shall be allowed to all parties who contribute to the utility costs when the household shares a residence and utility costs with other individuals.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:51551 et seq., 7 CFR 272 and 273.9, P.L. 104-193, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:64 (February 1983), amended by the Department of Social Services, Office of Family Support, LR 21:187 (February 1995), LR 23:82 (January 1997), LR 24:108 (January 1998), LR 29:606 (April 2003).

#### **§1966. Basic Utility Allowance (BUA)**

A. Households which do not incur heating or cooling costs separate and apart from their rent or mortgage use a mandatory single Basic Utility Allowance (BUA). To be eligible, a household must be billed on a regular basis for utility costs. Any household living in a housing unit which has central utility meters and which charges the household for excess utility costs only shall use the BUA. The full basic utility allowance shall be allowed to all parties who contribute to the utility costs when the household shares a residence and utility costs with other individuals.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 107-171

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 29:606 (April 2003).

**§1980. Income Exclusions**

A. - B. ...

C. Legally obligated child support payments to non-household members are excluded when determining eligibility based on gross income standards.

AUTHORITY NOTE: Promulgated in accordance with P.L. 103-66, 7 CFR 273.9(c)(11), P.L. 104-193, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 21:186 (February 1995), amended LR 23:82 (January 1997), LR 29:607 (April 2003).

**§1983. Income Deductions and Resource Limits**

A. - A.3.a. ...

B. The resource limit for a household is \$2,000, and effective October 1, 2002, the resource limit for a household that includes at least one elderly or disabled member is \$3,000.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 13:181 (March 1987), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:905 (July 1993), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003).

**Subchapter R. Semi-Annual Reporting**

**§2013. Semi-Annual Reporting**

A. Effective July 1, 2003, all households shall submit a reporting form to the agency on a semi-annual basis with the following exceptions:

1. - 2. ...

3. elderly, disabled households with 24-month certification periods.

B. - H. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:867 (June 2001), amended LR 28:103 (January 2002), LR 29:607 (April 2003).

Gwendolyn P. Hamilton  
Secretary

0304#065

**RULE**

**Department of Transportation and Development  
Office of Purchasing**

**Purchasing (LAC 70:XXIII.Chapter 3)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et. seq., given that the Louisiana Department of Transportation and Development hereby promulgates a Rule which replaces Chapter 3 of Part XXIII of Title 70 (formerly Chapter 9 of Part I of Title 70) entitled "Purchasing Rules and Regulations." It is promulgated in accordance with the provisions of R.S. 39:1551-1736 and R.S. 48:204-210.

**Title 70**

**TRANSPORTATION**

**Part XXIII. Purchasing**

**Chapter 3. Purchasing Rules and Regulations**

**§301. Types of Commodities**

A. Commodities purchased by the DOTD procurement section fall into two categories, either exempt commodities or non-exempt commodities.

1. Exempt Commodities. Exempt commodities are defined in R.S. 39:1572 as materials and supplies that will become component parts of any road, highway, bridge or appurtenance thereto. These commodities are exempt from central purchasing and regulations of the commissioner of administration, but nevertheless shall be subject to the requirements of the Louisiana Procurement Code and such regulations as may be promulgated by the secretary of the Department of Transportation and Development.

2. Non-Exempt Commodities. Non-Exempt commodities are defined as materials and supplies that will not become component parts of any road, highway, bridge or appurtenance thereto. These commodities are subject to the requirements of the Louisiana Procurement Code and such regulations as may be promulgated by the commissioner of administration and shall be governed by the rules and regulations adopted by the director of state purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:607 (April 2003).

**§303. Delegation of Purchasing Authority Set by the Director of State Purchasing**

A. R.S. 39:1566 authorizes the director of state purchasing to delegate authority to any governmental body as deemed appropriate within the limitations of state law and the state procurement regulations. The director of state purchasing has set the delegated purchasing authority covering non-exempt commodities for the Department of Transportation and Development. The director of state purchasing has the authority to change or rescind the purchasing authority of the Department of Transportation and Development at any time.

B. In accordance with R.S. 39:1566 and the latest revision to the governor's executive order covering small purchases, the director of state purchasing has also set the delegated purchasing authority covering equipment repairs and/or parts to repair equipment. The director of state purchasing has the authority to change or rescind the purchasing authority of the Department of Transportation and Development which covers equipment repairs and parts to repair equipment at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:607 (April 2003).

**§305. Delegation of Purchasing Authority Set by the DOTD Procurement Director**

A. R.S. 39:1572 authorizes the secretary of the Department of Transportation and Development to

promulgate rules and regulations regarding the purchase of materials and supplies that will become a component part of any road, highway, bridge, or appurtenance thereto. The secretary has authorized the DOTD procurement director to set the delegated purchasing authority covering exempt commodities for each district and section within the Department of Transportation and Development. The DOTD procurement director has the authority to change or rescind the purchasing authority of any district or section at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:607 (April 2003).

### **§307. Non-Competitive Procurement**

A. Purchases of less than \$500.00 (or the amount set in the latest governor's executive order, whichever is higher) do not require competitive bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:608 (April 2003).

### **§309. Requests for Quotations Covering Non-Exempt Commodities**

A. Purchases of non-exempt commodities having an estimated cost which exceeds the non-competitive dollar limit but which do not exceed the delegated purchasing authority of the department are referred to as "requests for quotations."

B. All requests for quotations covering non-exempt commodities which exceed the non-competitive dollar limit but do not exceed \$2,000.00 (or the dollar limits listed in the latest governor's executive order, whichever is higher) shall be awarded on the basis of the lowest responsive price quotation solicited by telephone, facsimile or other means to at least three bona fide, qualified bidders. Whenever possible, at least one of the bona fide, qualified bidders shall be a certified economically disadvantaged business. All facsimile or written solicitations shall include the bid closing date, time, and all pertinent specifications, including quantities, units of measure, packaging, delivery requirements, terms and conditions, and basis of award.

C. All requests for quotations covering non-exempt commodities having an estimated cost which exceeds \$2,000.00 but which do not exceed \$10,000.00, (or the dollar limits listed in the latest governor's executive order, whichever is higher) shall be awarded on the basis of the lowest responsive price quotation solicited by facsimile or written solicitation to at least five bona fide, qualified bidders. Whenever possible, at least two of the bona fide, qualified bidders shall be certified economically disadvantaged businesses. Facsimile quotations shall allow for bids to be accepted for a minimum period of five calendar days. Written solicitations shall allow for bids to be accepted for a minimum period of ten calendar days. All facsimile or written solicitations shall include the bid closing date, time, and all pertinent specifications, including quantities, units of measure, packaging, delivery requirements, terms and conditions and basis of award.

D. All requests for quotations shall be publicly opened and read whenever interested parties are present at the bid opening.

E. Purchases of non-exempt commodities having an estimated cost which exceeds \$10,000.00 (or the latest delegated purchasing authority, whichever is higher) are prepared and forwarded to the Office of State Purchasing for bid solicitation.

F. Requests for quotations for non-exempt commodities may also be referred to as "invitations for bids" throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:608 (April 2003).

### **§311. Requests for Quotations Covering Exempt Commodities**

A. Purchases of exempt commodities having an estimated cost which exceeds the non-competitive dollar limit but which do not exceed \$25,000.00 (or the latest revision to R.S. 48:205, whichever is higher) are also referred to as "requests for quotations."

B. All requests for quotations covering exempt commodities which exceed the non-competitive dollar limit but which do not exceed \$2,000.00 (or the dollar limits listed in the latest governor's executive order, whichever is higher) shall be awarded on the basis of the lowest responsive price quotation solicited by telephone, facsimile or other means to at least three bona fide, qualified bidders. Whenever possible, at least one of the bona fide, qualified bidders shall be a certified economically disadvantaged business. All facsimile or written solicitations shall include the bid closing date, time, and all pertinent specifications, including quantities, units of measure, packaging, delivery requirements, terms and conditions, and basis of award.

C. All requests for quotations covering exempt commodities having an estimated cost which exceeds \$2,000.00 (or the dollar limit listed in the latest governor's executive order, whichever is higher) but which do not exceed \$25,000.00 (or the latest revision to R.S. 48:205, whichever is higher) shall be awarded on the basis of the lowest responsive price quotation solicited by facsimile or written solicitation to at least five bona fide, qualified bidders. Whenever possible, at least two of the bona fide, qualified bidders shall be certified economically disadvantaged businesses. Facsimile quotations shall allow for bids to be accepted for a minimum period of five calendar days. Written solicitations shall allow for bids to be accepted for a minimum period of ten calendar days. All facsimile or written solicitations shall include the bid closing date, time, and all pertinent competitive specifications, including quantities, units of measure, packaging, delivery requirements, terms and conditions, and basis of award.

D. All requests for quotations shall be publicly opened and read whenever interested parties are present at the bid opening.

E. Purchase of exempt commodities having an estimated cost which exceeds \$25,000.00 (or the latest revision to R.S. 48:205, whichever is higher) will be processed as sealed bids and shall be advertised in accordance with R.S. 48:205.

F. Request for quotations for exempt commodities may also be referred to as "invitation for bids" throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:608 (April 2003).

### **§313. Request for Sealed Bids Covering Exempt Commodities**

A. Purchases of exempt commodities having an estimated cost which exceeds \$25,000.00 (or the latest revision to R.S. 48:205, whichever is higher) are referred to as sealed bids.

B. All sealed bids shall be advertised in the Official Journal of the State. Advertisements shall be published not less than ten days prior to the date set for opening the bids. In the event the purchase pertains to a particular parish, the advertisement shall also be published in a newspaper of general circulation printed in the parish. The published advertisement shall fix the exact place and time for presenting and opening of bids.

C. For bids over \$25,000.00 (or the latest revision to R.S. 48:205, whichever is higher), a minimum of 21 days should be provided unless the DOTD procurement director or designee deems that a shorter time is necessary for a particular procurement. However, in no case shall the bidding time be less than 10 days unless the DOTD procurement director has declared the purchase to be an emergency.

D. Sealed bids shall be awarded on the basis of the lowest responsive price quotation solicited by written solicitation to at least five bona fide, qualified bidders. Whenever possible, at least two of the bona fide, qualified bidders shall be a certified economically disadvantaged business. All written solicitations shall include the bid closing date, time, and all pertinent specifications, including quantities, units of measure, packaging, delivery requirements, terms and conditions, and basis of award.

E. The practice of dividing proposed or needed purchases into separate installments for the purpose of evading the bid advertisement requirement is expressly prohibited.

D. Sealed bids shall be publicly opened on the bid opening day.

E. Bids will be publicly read whenever interested parties are present.

F. Sealed bids may also be referred to as invitation for bids throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

### **§315. Single Purchase or One-Time Purchase**

A. A single purchase or a one-time purchase refers to a purchase for a specific quantity to be delivered in one shipment.

B. A single purchase or a one-time purchase may also be referred to as invitation for bids throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

### **§317. Term Contract**

A. A Term contract (also referred to as an Indefinite Quantity Purchase) is a purchase by which a source of supply is established for a specific period of time. Term contracts are usually based on indefinite quantities to be ordered as needed, and no quantities are guaranteed. This type of contract can also be used to specify definite quantities with deliveries extended over the contract period.

B. Term contracts may contain an option for renewal or extension of the contract; however, this provision must be included in the bid solicitation. When such a contract is awarded by competitive sealed bidding, exercise of the option shall be at the discretion of the department only and shall be with the mutual agreement of the contractor.

C. A term contract or indefinite quantity purchase may also be referred to as invitation for bids throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

### **§319. Proprietary Purchase**

A. A proprietary purchase is defined as a purchase that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

B. Because use of a proprietary specification is restrictive, it may be used only when written documents verify and substantiate that only the identified brand name item or items will satisfy the needs of the department.

C. In order to declare a purchase a proprietary procurement, a "Justification For Sole Source or Proprietary Purchase" document must be submitted to the DOTD procurement director.

D. The use of a proprietary specification covering a non-exempt commodity requires approval of the DOTD procurement director and also requires the approval of the director of state purchasing if the purchase exceeds the delegated purchasing authority of the Department of Transportation and Development.

E. The use of a proprietary specification covering an exempt commodity requires approval of the DOTD procurement director.

F. The DOTD procurement section shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made as a sole source procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

### **§321. Sole Source Procurement**

A. A sole source procurement is the purchase of a required supply, service, or major repair without competition.

B. A sole source procurement is permissible only if the required supply, service, or major repair is available from only a single supplier.

C. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder, supplier or distributor for that item.

D. Examples of circumstances which could necessitate a sole source procurement:

1. compatibility of equipment, accessories, or replacement parts is the paramount consideration;

2. sole supplier's item is needed for trial use or testing.

E. In cases of reasonable doubt, competitive bids will be solicited.

F. Because use of a sole source procurement is restrictive, it may be used only when written documents verify and substantiate that only the identified brand name item or items will satisfy the needs of the department, and that there is only one single source.

G. In order to declare a purchase a sole source procurement, a "Justification For Sole Source or Proprietary Purchase" document must be submitted to the DOTD procurement director.

H. The request for a sole source procurement covering a non-exempt commodity requires approval of the DOTD procurement director and also requires the approval of the director of state purchasing if the purchase exceeds the delegated purchasing authority of the Department of Transportation and Development.

I. The request for a sole source procurement covering an exempt commodity requires approval of the DOTD procurement director.

J. The DOTD procurement director shall submit reports of all sole source purchases to the Office of State Purchasing upon their request. This report shall cover the preceding fiscal year and shall list the following:

1. contractor's name;

2. amount and type of contract;

3. list of the supplies, services or major repairs procured under the contract; and

4. contract number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

### **§323. Emergency Purchase of Exempt Commodities**

A. In order for the purchase of an exempt commodity to be declared an emergency purchase without solicitation of bids, the emergency must conform to the definition set forth in R.S. 48:207.

B. Purchases which conform to this definition are made in accordance with the Department's Policy and Procedure Memorandum No. 38 which states the internal procedures which must be followed before proceeding with an emergency purchase.

C. Prior to all emergency procurements of exempt commodities, the DOTD procurement director or designee shall approve the procurement if the emergency occurs during normal working hours. Facsimile requests for emergency procurement should be submitted to the DOTD procurement director if time permits, and must contain adequate justification for the emergency.

D. The procurement method used shall be selected so that required supplies, services, or major repair items are procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained.

E. Any bid accepted shall be confirmed in writing.

F. The DOTD procurement director shall submit reports of all emergency purchases to the Office of State Purchasing upon request.

G. This report shall cover the preceding fiscal year and shall list the following:

1. contractor's name;

2. amount and type of contract;

3. the supplies services or major repairs procured under the contract;

4. the contract number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:610 (April 2003).

### **§325. Emergency Procurement of Non-Exempt Commodities**

A. The provisions of this Section apply to every non-exempt procurement made under emergency conditions that will not permit other source selection methods to be used.

B. Emergency procurement shall be limited to only those supplies, services, or major repair items necessary to meet the emergency.

C. The Department of Transportation and Development is authorized to make emergency procurement of non-exempt commodities of up to \$10,000 (or the delegated purchasing authority, whichever is higher) when an emergency condition arises and the need cannot be met through normal procurement methods.

D. Prior to all such emergency procurement of non-exempt commodities above the delegated purchasing authority, both the DOTD procurement director and the director of state purchasing shall approve the procurement. Facsimile requests for emergency procurement should be submitted to the DOTD procurement director if time permits, and must contain adequate justification for the emergency.

E. The source selection method used shall be selected to insure that the required supplies, services, or major repair items are procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained.

F. Any bid accepted shall be confirmed in writing.

G. If emergency conditions exist as a result of an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:610 (April 2003).

### **§327. Goods Manufactured or Services Performed by Sheltered Workshops**

A. R.S. 39:1595.4 provides in part that a preference shall be given by all governmental bodies in purchasing products and services from state operated or state supported sheltered workshops for persons with severe disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 29:610 (April 2003).

### **§329. Purchase of Used or Demonstrator Equipment**

A. R.S. 39:1645 authorizes the procurement of any equipment which is used or which has been previously purchased by an individual or corporation.

B. The DOTD procurement director must first determine that the procurement of said equipment is cost effective to the state.

C. After receiving the approval of the DOTD procurement director to proceed, the section or district will obtain a letter from the secretary of the Department of Transportation and Development certifying in writing to the director of state purchasing the following:

1. the price for which the used equipment may be obtained;
2. the plan for maintenance and repair of the equipment;
3. the cost of the equipment;
4. the savings that will accrue to the state because of the purchase of the used equipment;
5. the fact that following the procedures set out in the Louisiana Procurement Code will result in the loss of the opportunity to purchase the equipment.

D. If approved, the used equipment shall be purchased within the price range set by the director of state purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

### **§331. Exclusive Statewide Contracts**

A. If the Office of State Purchasing has entered into an exclusive statewide competitive contract for non-exempt commodities or services, the Department of Transportation and Development shall use such statewide competitive contracts when procuring such supplies or services unless given written exemption by the director of state purchasing.

B. A lower local price is not justification for exception.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

### **§333. Non-Exclusive Statewide Contracts**

A. If the Office of State Purchasing has entered into a non-exclusive contract for non-exempt commodities or services, the Department of Transportation and Development has the option of either using the contract or seeking competitive bids.

B. Non-Exclusive Contracts may be by-passed if the district or section can obtain the item at a better price or if the delivery time is more acceptable. Approval to by-pass a non-exclusive contract is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

### **§335. Brand Name Contracts**

A. Brand name contracts are non-exclusive contracts entered into by the Office of State Purchasing. Because these contracts are not competitively bid, they are usually not considered cost effective.

B. The department also discourages the use of brand name products which come in concentrated form.

C. The only exception to the use of brand name contracts is computers and computer equipment which have been mandated by the DOTD Information Technology Director for approved usage. Purchases must be made against brand name contracts for this equipment if the item appears on the Information Technology Approved List.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

### **§337. DOTD Contracts**

A. DOTD contracts for exempt commodities are exclusive contracts entered into by the DOTD procurement section. Approval to by-pass a DOTD contract requires written approval from the DOTD procurement director and will only be approved in cases of emergency.

B. DOTD contracts may also be referred to as invitation for bids throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

### **§339. Cost-Plus-a-Percentage-of-Cost Contracts**

A. The cost-plus-a-percentage-of-cost system of contracting shall not be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

### **§341. Vendor Commodity Lists**

A. Vendor commodity lists are maintained to provide the department with the names and addresses of businesses that may be interested in competing for various types of state contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing the contract.

B. It shall be the responsibility of the bidder to confirm that his company is in the appropriate bid category.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

### **§343. Qualified Products List**

A. Qualified products lists have been developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable products. These qualified products lists have been developed by the DOTD Materials and Testing Laboratory when testing or examination of the supplies or major repair items prior to

issuance of the solicitation is desirable or necessary in order to best satisfy the needs of the department.

B. When developing a qualified products list, the DOTD Materials and Testing Laboratory shall contact a representative group of potential suppliers soliciting products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration.

C. Inclusion on a qualified products list shall be based on results of tests or examinations conducted by the DOTD Materials and Testing Laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

#### **§345. Availability of Funds**

A. The continuation of a term contract which extends beyond the fiscal year is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of a contract, or if such appropriation is reduced by the veto of the governor or by any means provided in the Appropriations Act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:612 (April 2003).

#### **§347. Bid Documents**

A. All invitations for bids issued by the Department of Transportation and Development shall be solicited on the department's bid form and shall contain all pertinent information and shall be full and complete including, but not limited to, the following:

1. purchase description;
2. specifications;
3. special instructions and conditions;
4. instructions for submitting bids;
5. terms and conditions;
6. delivery requirements;
7. packaging;
8. bid evaluation and award criteria.

B. The bid solicitation may incorporate documents by reference, provided that the bid solicitation specifies where such documents can be obtained.

C. If any special conditions are to apply to a particular contract, they shall be included in the bid solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:612 (April 2003).

#### **§349. Specifications**

A. A specification is defined as any description of the physical, functional, or performance characteristics of a supply, service, or major repair item.

B. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or item for delivery.

C. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this rule.

D. The purpose of a specification is to serve as a basis for obtaining a supply, service, or major repair item adequate and suitable for the needs of the department in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

E. It is the policy of the Department of Transportation and Development that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the requirements of the department.

F. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or major repair item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

G. It is the general policy of the Department of Transportation and Development to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided to the extent practicable.

H. Bid specifications may contemplate a fixed escalation or de-escalation in accordance with a recognized escalation index.

I. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

J. This Section applies to all persons who may prepare a specification for use by the Department of Transportation and Development, including consultants, architects, engineers, designers, and other draftsmen of specifications used for public contracts.

K. To the extent feasible, a specification may provide alternate descriptions of supplies, services, or major repair items where two or more design, functional, or performance criteria will satisfactorily meet the requirements of the Department of Transportation and Development.

L. Whenever a manufacturer's name, trade name, brand name, catalog number or approved equivalent is used in a solicitation, the use is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:612 (April 2003).

**§351. Bid Samples and/or Descriptive Literature**

A. Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, packaging or operation of an item which enables the department to consider whether the item meets its specifications and needs.

B. Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

C. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

D. If the invitation for bids states that either a sample or descriptive literature must be submitted with bid, the bid will be rejected if bidder fails to comply.

E. When the invitation for bids states that bidders may be required to submit a sample prior to award, the sample must be received by the deadline set at time of request. Failure to submit samples within the time allowed will result in disqualification or non-consideration of bid.

F. Requirements for samples

1. When required, samples must be submitted free of expense to the department.

2. Samples shall be marked plainly with name and address of bidder and the purchase requisition number.

3. The bidder must state if he desires that the sample be returned after evaluation, provided that the sample has not been used or made useless through testing procedures. When requested, samples will be returned at bidder's risk and expense. Unsolicited bid samples will not be evaluated and will not be returned to the bidder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

**§353. New Products**

A. Unless specifically called for in the invitation for bids, all products for purchase must be new, never previously used, and the current model and/or packaging. No remanufactured, demonstrator, used or irregular product will be considered for purchase unless otherwise specified in the invitation for bids.

B. The manufacturer's standard warranty will apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 29:613 (April 2003).

**§355. Brand Names**

A. Unless otherwise specified in the invitation for bids, any manufacturer's name, trade name, brand name, or catalog number used in the solicitation is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

**§357. Product Acceptability**

A. The invitation for bids shall set forth the evaluation criteria to be used in determining product acceptability. The invitation for bids may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for Inspection or testing of a product prior to award for such characteristics as quality or workmanship

B. Examination of the product to determine whether the product conforms with purchase description requirements, such as unit of measure or packaging, shall be performed. If a bidder changes the unit or packaging, the bid for the changed item shall be rejected.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

**§359. Estimated Quantities**

A. Term contracts and/or indefinite quantity contracts contain no specific quantities given or guaranteed. Only such quantities as required by the department during the contract period will be ordered.

B. Estimated quantities are based on the previous contract usage or estimates. Where usage is not available, a quantity of one indicates a lack of history on the item.

C. The contractor must supply actual quantities ordered, whether the total of such quantities are more or less than the estimated quantities shown on the bid schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

**§361. Guarantee and Liability**

A. The Department of Transportation and Development requires that all contractors submit to the following guarantees.

1. Guarantee that the supplies delivered are free from defects in design and construction.

2. Guarantee that the supplies are the manufacturer's standard design in construction and that no changes or substitutions have been made in the items listed in the contract.

3. Guarantee that the contractor holds and saves the Department of Transportation and Development, its officers, agents and employees harmless from liability of any kind, including cost and expenses on account of any patented or non-patented invention, articles, devices or appliances manufactured or used in the performance of any DOTD contract, including use by the government.

4. Guarantee to replace free of charge all defective equipment, materials or supplies delivered under the contract. All transportation charges covering return and replacement shall be paid by the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

**§363. Pre-Bid Conferences Covering Exempt Commodities**

A. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation for bids and shall be advertised in the Official Journal of the State if the estimated cost is over \$25,000 (or the latest revision to R.S.48:205, whichever is higher).

B. The conference will be held after an interval following the issuance of invitation for bids in order to allow bidders to become familiar with the invitation, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids.

C. Nothing stated at the pre-bid conference shall change the invitation for bids unless an addendum is issued.

D. If the pre-bid conference requires mandatory attendance, bidders not attending the conference will not be considered for award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:614 (April 2003).

**§365. Modifying Written Bid Solicitations**

A. Addenda modifying written bid solicitations covering purchases above the non-competitive bid level shall not be issued within three working days prior to the scheduled bid opening date for the opening of bids, excluding Saturdays, Sundays and any other legal holidays.

B. If the necessity arises to issue an addendum modifying an invitation for bids within the three working day period prior to the bid opening date, then the opening of bids shall be extended exactly one week, without the requirement of re-advertising.

C. An addendum shall be sent to all prospective bidders known to have received an invitation for bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:614 (April 2003).

**§367. Cancellation of Invitation for Bids**

A. A solicitation may be canceled in whole or in part when the DOTD procurement director determines, in writing, that such action is in the best interest of the department, for reasons including, but not limited to the following:

1. the department no longer requires the supplies, services, or major repairs;
2. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
3. ambiguous or otherwise inadequate specifications were part of the solicitation;
4. the solicitation did not provide for consideration of all factors of significant cost to the state;
5. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

6. all otherwise acceptable bids received are at unreasonable prices;

7. there is reason to believe that the bids or proposals may not have been independently calculated in open competition, may have been collusive, or may have been submitted in bad faith.

B. When a solicitation is canceled prior to the bid opening, a notice of cancellation shall be sent to all businesses solicited. The notice of cancellation shall:

1. identify the solicitation
2. briefly explain the reason for cancellation
3. where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar supplies, services, or major repairs.

C. The reasons for cancellation shall be made a part of the procurement file and shall be made available for public inspection.

D. If the solicitation is canceled prior to the bid opening, all bids will be returned to the bidders.

E. If the solicitation is canceled after the bid opening, all bids will be retained by the DOTD procurement section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:614 (April 2003).

**§369. Modification or Withdrawal of Bids**

A. Bids covering requests for quotations may be modified or withdrawn by written, telegraphic or fax notice received at the address designated in the invitation for bids prior to the time set for bid opening, as recorded by date stamp at the DOTD procurement section.

B. Bids covering sealed bids may only be modified if the modification is received in writing prior to the time set for bid opening, as recorded by date stamp at the DOTD procurement section. Telegraphic or fax modifications will not be accepted on a sealed bid.

C. A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of bid opening. If a bidder withdraws a bid prior to the bid opening, the bid document will be returned to the bidder.

D. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 29:614 (April 2003).

**§371. Postponed Bid Openings**

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:614 (April 2003).

**§373. Receipt, Opening and Recording of Bids**

A. Upon receipt, all bids and modified bids will be time-stamped, but not opened. They shall be stored in a secure place until time for bid opening.

B. Bids and modified bids shall be publicly opened and publicly read at the time and place designated in the invitation for bids if prospective bidders attend the bid opening.

C. The names of the bidders and the bid price shall be read aloud or otherwise be made available and shall be recorded.

D. Bidders may attend the bid opening but no information or opinion concerning the ultimate award will be given at the bid opening or during the evaluation process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

**§375. Late Bids**

A. Formal bids and addenda thereto, received at the address designated in the invitation for bids after the time specified for bid opening will not be considered, whether delayed in the mail or for any other causes whatsoever. In no case will late bids be accepted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

**§377. Bid Results**

A. Information pertaining to results of bids may be secured by visiting the Department of Transportation and Development during normal working hours, except weekends and holidays.

B. Written tabulations may be obtained by submitting a stamped self-addressed envelope with the bid.

C. Information pertaining to completed files may be secured by visiting the department during normal working hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

**§379. Rejection of Bids**

A. All written bids, unless otherwise provided for, must be submitted on, and in accordance with, forms provided. Bids submitted in the following manner will not be accepted.

1. Bid contains no signature indicating an intent to be bound.
2. A typed name without either a printed or written signature will not be accepted.
3. Bid completed in pencil.
4. Bids received after the bid opening time.
5. Bids not submitted on the Department of Transportation and Development's bid form indicating an intent not to be bound by the department's special instructions and conditions.

6. Bids which contain special conditions and terms which differ from the department's special instructions and conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

**§381. Mistakes in Bids**

A. Bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders, and such actions may be taken only to the extent permitted under these regulations.

B. A request to withdraw a bid after the bid opening must be made within three business days after bid opening, and must be supported in writing.

C. Requests to withdraw a bid after three business days will be considered by the DOTD procurement director and the bidder may or may not be allowed to withdraw the bid based on the best interest of the Department of Transportation and Development.

D. Minor informalities are matters of form rather than substance which are evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders. The DOTD procurement director may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the state. Examples include, but are not limited to:

1. failure to return the number of signed bids required by the invitation for bids;
2. failure to sign the bid, but only if the unsigned bid is accompanied by other signed material indicating the bidder's intent to be bound;
3. failure to sign or initial a write-over or correction in bid;
4. failure to get certification that a mandatory job-site visit was made;
5. failure to return non-mandatory pages of the bid proposal.

E. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn.

F. Some examples of mistakes that may be clearly evident on the face of the bid document are:

1. typographical errors;
2. errors in extending unit prices;
3. failure to return an addendum provided there is evidence that the addendum was received.

G. When an error is made in extending total prices, the unit bid price will govern.

H. Under no circumstances will a unit bid price be altered or corrected unless the bid price is clearly marked stating the unit of measure used. However, if the invitation for bids states that bids submitted in a different unit of measure will not be considered for award, the bid will be rejected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

**§383. Increase or Decrease in Quantities**

A. Bidders must quote in the quantity shown on the invitation for bids.

B. Bidders increasing or decreasing quantity due to packaging will not be considered for award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

### **§385. Alternate Bids**

A. Any bidder quoting an alternate product which does not fully comply with the specifications contained in the invitation for bids must state in what respect the product deviates.

B. Failure to note exceptions on the bid form will be considered an indication that the product meets the specifications contained in the invitation for bids.

C. Bidders quoting an equivalent brand or model should submit with the bid information such as illustrations, descriptive literature and /or technical data sufficient for the Department of Transportation and Development to evaluate quality, suitability and compliance with the specifications.

D. Failure to submit descriptive information may cause bid to be rejected.

E. Any change made to a manufacturer's published specification submitted for a product should include verification by the manufacturer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

### **§387. All or None Bids Covering Non-Exempt Commodities**

A. Bidders may limit a bid on acceptance of the whole bid, whereupon the department shall not thereafter reject part of such bid and award on the remainder.

B. An award shall be made to the "all or none" bid only if it is the overall low bid on all items, or on those items bid.

C. The overall low bid shall be that bid whose total bid, including all items bid, is the lowest dollar amount; be it an individual bid or a computation of all low bids on individual items of those bids that are not conditioned "all or none".

D. When multiple items are contained on any solicitation and the department chooses to make a group award in order to save the department the cost of issuing another purchase order, an award may be made to a vendor already receiving a purchase order if the total bid for said item is \$1,000 or less, and the total difference between the low bidder and the bidder receiving the award is \$100 or less.

E. Bidders quoting "all or none" will not be considered for award if the invitation for bids specifically states that all or none bids will not be considered for award. The only exception to this is if the bidder is the low bidder on all items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551 - 1736 and 48:204 - 210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003)

### **§389. All or None Bids Covering Exempt Commodities**

A. Bidders may limit a bid on acceptance of the whole bid, whereupon the department shall not thereafter reject part of such bid and award on the remainder.

B. When multiple items are contained on any solicitation and the department chooses to make a group award in order to save the department the cost of issuing another purchase order, an award may be made to a vendor already receiving a purchase order if the total bid for said item is \$1,000 or less,

and the total difference between the low bidder and the bidder receiving the award is \$100 or less.

C. The decision to award on the basis of all or none or on individual items will be determined by the DOTD procurement director taking into consideration the best interest of the Department of Transportation and Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

### **§391. Preferences**

A. Preference in awarding contracts will be given for all types of products produced, manufactured, assembled, grown, or harvested in Louisiana in accordance with the Louisiana Procurement Code.

B. Preferences will not be considered in the award of service contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

### **§393. Bid Prices**

A. All bid prices shall remain firm for the contractual period.

B. Unit prices must not exceed four digits to the right of the decimal point. Unit prices submitted beyond four digits will be rounded off to the nearest fourth digit.

C. All bid prices quoted shall include all costs incidental to any license or patent that may be held by any company. The bidder agrees to hold the Department of Transportation and Development harmless from any claims, suits, costs or penalties for infringement or use of licensed or patented products.

D. Bid prices, unless otherwise specified, must be net including transportation and handling charges fully prepaid to destination. Bids containing C.O.D. requirements will not be considered for award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

### **§395. Bids Binding**

A. Unless otherwise specified, all invitations for bid shall be binding for a minimum of 30 calendar days. Nevertheless, if the lowest responsive and responsible bidder is willing to keep his price firm in excess of 30 days, the department may award to this bidder after this period has expired, or after the period specified in the bid has expired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

### **§397. Taxes**

A. Pursuant to Act 1029 of the 1991 Regular Session of the Louisiana Legislature, the state and any of its agencies, boards or commissions are exempt from the Louisiana State Sales and Use Taxes.

B. Vendors are responsible for including any other applicable taxes in the bid price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

#### **§399. Rejection of Bids**

A. The Department of Transportation and Development reserves the right to reject any or all bids in whole or in part, waive any informalities, and to award by items, parts of items, or by any group of items specified and/or waive any informalities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

#### **§401. Bid Evaluation and Award**

A. Contracts are awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

B. No bid shall be evaluated for any requirements or criteria that are not disclosed in the invitation for bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

#### **§403. Determination of Lowest Bidder**

A. Following determination of product acceptability, bids will be evaluated to determine which bidder offers the lowest cost to the Department of Transportation and Development in accordance with the evaluation criteria set forth in the invitation for bids.

B. Only objectively measurable criteria which are set forth in the invitation for bids shall be applied in determining the lowest bidder. Evaluation factors shall treat all bids equitably.

C. A contract shall not be awarded to a bidder submitting a higher quality item than that required by the invitation for bids unless the bid is also the lowest bid meeting specifications. There shall be no negotiation with any bidder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

#### **§405. Tie Bids**

A. Tie bids are defined as low responsive bids from responsible bidders that are identical in price and which meet all requirements and criteria set forth in the invitation for bids.

B. Resident businesses shall receive preference over nonresident businesses where there is a tie bid and where there will be no sacrifice or loss of quality.

C. A written determination justifying the manner of award must be made a part of the file. This would include, but is not limited to consideration of such factors as:

1. resident business;
2. proximity;
3. past performance;
4. delivery;
5. completeness of bid proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

#### **§407. Discounts**

A. Discounts will be considered in determining low bidder on one-time purchases or definite quantity purchases if the discount is at least one percent for a minimum of 30 days.

B. In the event the discount is for less than one percent or less than 30 days, the discount will be taken but will not be a determining factor in the bid evaluation.

C. Discounts will not be considered in determining low bidder on term contracts or indefinite quantity purchases.

D. Discounts will be taken but will not be a determining factor in the bid evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

#### **§409. Standards of Responsibility**

A. A responsible bidder is a company or person who has the capability in all respects to perform fully the contract requirements, and which has the integrity and reliability which will assure good faith performance.

B. Capability, as used in this rule, means capability at the time of award of the contract, unless otherwise specified in the invitation for bids.

C. Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, whether a prospective contractor has the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability of meeting all contractual requirements.

D. The prospective contractor shall supply information requested concerning the responsibility of such contractor.

E. If such contractor fails to supply the requested information, the DOTD procurement director shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsive.

F. Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

#### **§411. Signatory Authority**

A. By signing a bid form, the bidder certifies that the bid is made without collusion or fraud.

B. In accordance with R.S.39:1594, the person signing the bid must be:

1. a current corporate officer, partnership member or other individual specifically authorized to submit a bid as reflected in the appropriate records on file with the secretary of state; or
2. an individual authorized to bind the vendor as reflected by an accompanying corporation resolution, certificate or affidavit; or

3. an individual listed on the State of Louisiana Bidder's Application as authorized to execute bids.

C. Evidence of authority to submit the bid shall be required in accordance with R.S. 39:1594(C)(4).

D. By signing the bid, the bidder certifies compliance with the provisions listed above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

#### **§413. Documentation of Award**

A. Following award, all files shall contain documentation including, but not limited to, the following:

1. a list of all solicited bidders;
2. a list of all bids received;
3. the bid tabulation; and
4. the basis of award.

B. In the event that the low bidder was by-passed and the award was made to a higher bidder, the file shall contain documentation that states the reason for the rejection of the lower bid.

C. If no bid was solicited from a certified economically disadvantaged business, the file shall contain an explanation of why such a bid was not solicited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

#### **§415. Insurance Requirements**

A. Any contractor performing any service on any premises of the Department of Transportation and Development must furnish proof of:

1. public liability insurance;
2. property damage insurance;
3. workmen's compensation insurance; and
4. automobile public liability insurance, if applicable before work can commence.

B. The certificates of insurance, issued by a company licensed to do business in the state of Louisiana, must be furnished within ten days after notification of award.

C. The contractor shall not suspend, void, cancel or reduce the coverage or limits of any of the required insurance while the contract is in effect. In the event of any such occurrence, the DOTD procurement director must be immediately notified and acceptable alternate coverage must be furnished.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

#### **§417. Workman's Compensation Insurance**

A. If applicable, contractors and subcontractors shall secure and maintain workman's compensation insurance for all of their employees employed at the site of a project.

B. In case any class of employees is engaged in hazardous work as defined by the Workman's Compensation Statute, the contractor and subcontractor shall provide employer's liability insurance for the protection of their employees not otherwise protected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551 - 1736 and 48:204 - 210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

#### **§419. Public Liability and Property Damage Insurance**

A. If applicable, contractors and subcontractors shall secure and maintain comprehensive public general liability insurance, including but not limited to:

1. bodily injury;
2. property damage;
3. contractual liability;
4. products liability; and
5. owner's protective liability, with combined single

limits of \$500,000 per occurrence with a minimum aggregate of \$1,000,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

#### **§421. Automobile Public Liability Insurance**

A. If applicable, contractors and subcontractors shall take and maintain automobile public liability insurance in an amount not less than combined single limits of \$500,000 per occurrence for bodily injury and/or property damage.

B. If any non-licensed motor vehicles are engaged in operations at a Department of Transportation and Development jobsite, such insurance shall cover the use of all such motor vehicles engaged in operating within the terms of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

#### **§423. Performance Bond**

A. When specified in the invitation for bids, a performance bond made payable to the Department of Transportation and Development must be submitted prior to award.

B. Failure to submit a performance bond within the time allowed will result in disqualification or non-consideration of the bid.

C. Performance bonds shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an "A-" rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide.

D. No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an "A-" rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this paragraph who are not on the Treasury List shall not write a performance bond when the penalty exceeds 15

percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Louisiana Department of Insurance.

E. The requirement of a performance bond cannot be waived. The conditions of the performance bond shall provide that failure to meet delivery requirements and specifications shall constitute a forfeiture of said bond to the extent of loss suffered by the department or shall constitute a forfeiture of said bond to the extent required to enable the Department of Transportation and Development to meet the requirements of the contract hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

#### **§425. Deliveries**

A. Any extension of time on delivery or project completion time must be requested in writing by the vendor and accepted or rejected in writing by the DOTD procurement director.

B. Such extension is applicable only to the particular item or shipment affected.

C. No delivery charges shall be added to invoices except when express delivery is requested by the DOTD procurement director and is substituted on an order for less expensive methods specified in the contract. In such cases, when requested by the DOTD procurement director, the difference between freight or mail and express charges may be added to the invoice.

D. The Department of Transportation and Development reserves the right to weigh shipments if deemed appropriate.

E. Deliveries shall be subject to reweighing on official scales designated by the department.

F. Payments shall be made on the basis of net weight of materials delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

#### **§427. Invoices**

A. Upon each delivery and its acceptance by the department, the contractor shall bill the department by means of an invoice and such invoice shall make reference to the purchase order number on which delivery was made.

B. At the time of delivery, the contractor is to make a delivery ticket on his own form showing:

1. complete description;
2. the exact quantity delivered;
3. price;
4. extension; and
5. purchase order number.

C. Invoices shall be submitted by the contractor in triplicate directly to the address shown on the purchase order.

D. Invoice price must agree with contract price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

#### **§429. Payment**

A. After receipt and acceptance of order and receipt of valid invoice, payment will be made by the Department of Transportation and Development within the discount period or within thirty calendar days from receipt of correct invoice.

B. If contractor proposes a discount, the discount period will start from receipt of correct invoice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003)

#### **§431. Default of Contractor**

A. Failure to deliver within the time specified in the invitation for bids will constitute a default and may cause cancellation of the contract.

B. If the contractor is considered to be in default, the Department of Transportation and Development reserves the right to purchase any or all products or services covered by the contract on the open market and to charge the contractor with costs in excess of the contract price.

C. Until such assessed charges have been paid, no subsequent bid from the defaulting contractor will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

#### **§433. Assignments**

A. No contract or purchase order or proceeds thereof may be assigned, sublet or transferred without a written request from the contractor.

B. Contractors are required to submit an "assignment of proceeds of contract" document and an "assignment of contract" document to the DOTD procurement director.

C. If the contract covers an exempt commodity, the assignment must be approved by the DOTD procurement director.

D. If the contract covers a non-exempt commodity, the assignment must be approved by the director of state purchasing and the commissioner of administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

#### **§435. Reduction in Contract Price**

A. The Department of Transportation and Development cannot accept a reduction in price on any non-exempt commodity contract unless the price reduction is offered to all state agencies using the contract.

B. The Department of Transportation and Development reserves the right to accept a reduction in price on any exempt commodity contract if it is considered in the best interest of the department.

C. Inspection of Facilities Contracts entered into by the Department of Transportation and Development may provide that the state may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or after award, to contract requirements, and are therefore acceptable.

D. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract and shall be performed so as not to unduly delay the work of the contractor or subcontractor.

E. No inspector may change any provision of the specifications or the contract without written authorization of the DOTD procurement director. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

F. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

#### **§437. Audit of Records**

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

1. audit cost or pricing data; or
2. audit the books and records of any contractor or subcontractor;
3. investigate in connection with an action to debar; or
4. suspend a person from consideration for award of contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

#### **§439. Contract Renewal**

A. When a contract contains an option for renewal clause, notice of such provision shall be included in the solicitation.

B. When such a contract is awarded by competitive sealed bidding, exercise of the option shall be at the department's discretion only, and shall be with the mutual agreement of the Department of Transportation and Development and the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

#### **§441. Exercise of Renewal Option**

A. Before exercising any option for renewal, the DOTD procurement director or designee shall attempt to ascertain whether a re-solicitation is practical.

B. Factors to be considered include but are not limited to:

1. current market conditions;
2. trends;
3. cost factors;
4. price comparisons with similar service in other states; and
5. various other factors as determined by the DOTD procurement director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

#### **§443. Termination of Contract**

A. The Department of Transportation and Development reserves the right to terminate any contract prior to the end of the contract period upon providing a ten day written notice to the contractor for:

1. failure to deliver within the time specified in the contract;
2. failure of the product or service to meet specifications;
3. failure to conform to sample quality;
4. failure to be delivered in good condition;
5. unsatisfactory performance;
6. unsatisfactory delivery;
7. unsatisfactory service;
8. misrepresentation by the contractor;
9. fraud;
10. collusion;
11. conspiracy or other unlawful means of obtaining contract;
12. conflict of contract provisions with constitutional or statutory provisions of state or federal law;
13. breach of contract; or
14. if termination is in the best interest of the department.

B. Should the contractor find that due to increase in price or lack of product availability an order cannot be filled, the contractor must submit a request for cancellation to the DOTD procurement director.

C. The DOTD procurement director will make a determination as to whether the contract will be cancelled based upon the reasons cited in the request.

D. All orders delivered prior to the effective date of such termination shall be paid for by the department in accordance with the terms of the contract, whereupon all obligations of both parties to the contract shall cease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

#### **§445. Debarment**

A. This Section applies to a debarment or suspension for cause from consideration for award of contracts where there is probable cause for such action.

B. After reasonable notice to the party involved, the appropriate chief procurement officer shall have authority to suspend or debar a party for cause.

C. The DOTD procurement director serves as the hearing officer for exempt commodities, and the director of state purchasing serves as the hearing officer for non-exempt commodities.

D. Should the party involved desire a formal hearing, he shall, within five days of receipt of the notice referred to Subsection B, inform the chief procurement officer in writing of said desire.

E. Formal hearings will be conducted pursuant to the provisions of Title 49, Chapter 13 of the Louisiana Revised Statutes.

F. Within fourteen days after the date of mailing of the notice referred to in Subsection B, the chief procurement officer will issue a written decision stating the reasons for the action taken and informing the party, aggrieved person or interested person of the right to administrative review and thereafter judicial review, where applicable.

G. A copy of the decision or order shall be mailed or otherwise furnished to all interested parties.

H. Appeals from a suspension or debarment decision must be filed with the commissioner of administration within fourteen days of the receipt of the decision.

I. The commissioner shall decide within fourteen days whether, or the extent to which, the debarment or suspension was in accordance with the Constitution, Statutes, Regulations, and the best interest of the state, and was fair.

J. The decision of the commissioner of administration on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the debarred or suspended party has timely appealed to the court in accordance with R.S. 39:1691(B).

K. The filing of the petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner of administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

#### **§447. Protest of Bid Solicitation or Award**

A. In accordance with R.S. 39:1671, any person who is aggrieved in connection with the solicitation, award, or issuance of written notice of intent to award may protest to the chief procurement officer.

B. The chief procurement officer for exempt commodities is the DOTD procurement director and the chief procurement officer for non-exempt commodities is the director of state purchasing.

C. Protests with respect to a solicitation shall be submitted in writing at least two days prior to the opening of bids.

D. In the event of protest, the chief procurement officer will suspend the bid opening until a decision on the protest has been determined.

E. Protests with respect to the award of a contract or the issuance of written notice of intent to award a contract shall be submitted in writing within fourteen days after contract award.

F. In the event of protest, the chief procurement officer will issue a stay until a decision on the protest has been determined.

G. Within fourteen days of receipt of protest, the chief procurement officer shall issue a written decision stating the reasons for the action taken and informing the party, aggrieved person, or interested person of the right to administrative review and thereafter judicial review where applicable.

H. An aggrieved person or an interested person must appeal to the commissioner of administration within seven days of receipt of the decision of the chief procurement officer.

I. The commissioner of administration shall decide within fourteen days whether the solicitation or award or intent to award was in accordance with the constitution, statutes, regulations and the terms and conditions of the solicitation.

J. The decision of the commissioner of administration on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the person adversely affected by the decision of the commissioner of administration has timely appealed to the court in accordance with R.S. 39:1691.

K. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a bidder or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:621 (April 2003).

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