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# Executive Orders

## EXECUTIVE ORDER JBE 23-10

### Bond Allocation 2023 Ceiling

WHEREAS, Section 146 of the Internal Revenue Code of 1986 (hereafter the “Act”), as amended (hereafter the “Code”), restricts the total principal amount of certain private activity bonds (hereafter the “Bonds”) that exclude interest from gross income for federal income tax purposes under Section 103 of the Code;

WHEREAS, Act No. 51 of the 1986 Regular Session of the Louisiana Legislature (hereafter “Act No. 51 of 1986”) authorizes the Governor to allocate the volume limit applicable to the Bonds (hereafter the “ceiling”) among the State and its political subdivisions in such a manner as the Governor deems to be in the best interest of the State of Louisiana;

WHEREAS, pursuant to the Act and Act No. 51 of 1986, Executive Order Number JBE 2016-35 was issued to establish:

- (a) the manner in which the ceiling shall be determined,
  - (b) the method to be used in allocating the ceiling,
  - (c) the application procedure for obtaining an allocation of Bonds subject to such ceiling, and
  - (d) a system of record keeping for such allocations;
- and

WHEREAS, the Louisiana Housing Corporation (hereafter the “Corporation”) has applied for an allocation of the 2023 ceiling to be used in connection with providing funds for the acquisition, construction, rehabilitation, and equipping of residential rental housing for individuals and families of low and moderate income.

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2023 ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$19,000,000	Louisiana Housing Corporation	Fairmont Towers Series 2023
\$42,000,000	Louisiana Housing Corporation	Cypress at Ardendale Series 2023
\$10,500,000	Louisiana Housing Corporation	Federal City – Building 10 Series 2023
\$6,000,000	Louisiana Housing Corporation	St. Claude Gardens II Series 2023
\$1,750,000	Louisiana Housing Corporation	H3C Series 2023
\$1,000,000	Louisiana Housing Corporation	Hollywood Acres Series 2023
\$1,000,000	Louisiana Housing Corporation	Hollywood Heights Series 2023

SECTION 2: The allocation granted herein shall be used only for the bond issues described in Section 1 and for the general purpose set forth in the “Application for Allocation of a Portion of the State of Louisiana’s Private Activity Volume Cap” submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect until September 30, 2023.

SECTION 4: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana in the City of Baton Rouge, on this 28th day of July, 2023.

John Bel Edwards  
Governor  
Governor

ATTEST BY  
THE GOVERNOR  
R. Kyle Ardoin  
Secretary of State  
2308#032

# Emergency Rules

## DECLARATION OF EMERGENCY

Office of the Governor  
Division of Administration  
Office of State Americans with  
Disabilities Act Coordinator

Disability Accommodations for Open Meetings  
(LAC 4:I.Chapter 8)

In accordance with Act 452 of the 2021 Regular Session of the Louisiana Legislature and through the provisions of R.S. 49:962, the Office of State Americans with Disabilities Act (ADA) Coordinator hereby adopts LAC 4:I.Chapter 8 to provide accommodations, upon request, to people with disabilities to participate in open meetings held by executive branch state agencies. This Emergency Rule is adopted and effective as of August 1, 2023 and will remain in effect for a period of 180 days unless renewed by the office or until adoption of the final rules, whichever occurs first.

This Emergency Rule is necessary to remove barriers that prevent individuals with disabilities from equal opportunity and full participation in the public policy making process. It gives a voice to people with disabilities who have been historically ostracized and excluded from participating in the administration of their government. By doing so, it seeks to avoid sanctions or penalties from the United States related to potential civil action for conducting public meetings that are inaccessible to people with disabilities. It also serves as a unifying measure across agencies to ensure consistency and fulfill the rulemaking required by R.S. 42:17.14(E)(4).

### Title 4

### ADMINISTRATION

#### Part I. General Provisions

#### Chapter 8. Disability Accommodations for Open Meetings

##### §801. Accommodations

A. The federal Americans with Disabilities Act (ADA) requires state agencies to provide accommodations to ensure people with disabilities have an equal opportunity to benefit from its programs, services, and activities.

AUTHORITY NOTE: Promulgated in accordance with Act 393 of the 2023 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Americans with Disabilities Act Coordinator, LR 49:

##### §803. Agency Requirements

A. Pursuant to R.S. 46:2593(1), the Office of the State Americans with Disabilities Act Coordinator requires each executive branch state agency, except those listed in R.S. 42:17.2(I), to provide accommodations, upon request, to people with disabilities to participate via teleconference or video conference in the agency's open meetings.

B. Agencies listed in R.S. 42:17.2(I) shall provide accommodations, upon request, to people with disabilities to facilitate their in-person participation in the agency's open meetings. Examples of such accommodations may include, but are not limited to, providing an interpreter or assisted listening device, or ensuring the meeting is held in a location that adheres to the ADA's Standards for Accessible Design.

C. People with disabilities are defined as any of the following:

1. a member of the public with an ADA-qualifying disability;
2. the designated caregiver of such a person; or
3. a participant member of the agency with an ADA-qualifying disability.

D. The written public notice for the open meeting, as required by R.S. 42:19, shall include the name, telephone number and email address of the agency representative to whom a disability accommodation request may be submitted.

E. The agency representative shall provide the requestor with the accommodation, including the teleconference or video conference link if applicable, for participation as soon as possible following receipt of the request, but no later than the start of the scheduled meeting.

F. All disability accommodation requests, whether submitted by telephone or email, must be documented by the agency and included in its annual mandatory report pursuant to R.S. 46:2596.

AUTHORITY NOTE: Promulgated in accordance with Act 393 of the 2023 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Americans with Disabilities Act Coordinator, LR 49:

##### §805. Agency Limitations

A. Upon receipt of an accommodation request, an executive branch state agency may only ask if the requestor has an ADA-qualifying disability or is a caregiver of such a person (yes or no). Agencies may not require the requestor to complete a medical inquiry form or disclose the actual impairment or medical condition to support a disability accommodation request.

AUTHORITY NOTE: Promulgated in accordance with Act 393 of the 2023 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Americans with Disabilities Act Coordinator, LR 49:

Rikki Nicole David  
Executive Director

2308#006

## DECLARATION OF EMERGENCY

### Department of Health Bureau of Health Services Financing

Medicaid Reimbursement for Licensed Midwife  
or Certified Nurse Midwife Services  
(LAC 50:IX.15161, 15163 and XV.27101)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:IX.15161 and §15163, and amends LAC 50:XV.27101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:962 and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 207 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to implement a Medicaid reimbursement rate for midwifery services that is, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice. In compliance with Act 207, the Department of Health, Bureau of Health Services Financing adopts provisions in the Professional Service Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amends the provisions governing free-standing birthing centers in order to increase the reimbursement rate for these services.

This action is being taken to promote the health and welfare of Medicaid beneficiaries by ensuring continued provider participation in the Medicaid program. It is anticipated that implementation of this Emergency Rule will increase expenditures in the Medicaid program by \$210,641 for state fiscal year 2023-2024.

Effective August 1, 2023, the Department of Health, Bureau of Health Services Financing adopts provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amends the provisions governing free-standing birthing centers in order to increase the reimbursement rate for services rendered by these providers.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part IX. Professional Services Program

##### Subpart 15. Reimbursement

#### Chapter 151. Reimbursement Methodology

##### Subchapter G. Midwifery Services

#### §15161. General Provisions

A. Certified nurse midwives and licensed midwives shall be reimbursed as a percentage of physician reimbursement according to the established fee schedule.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### §15163. Reimbursement Methodology

A. Effective for dates of service on or after August 1, 2023, services related to pregnancy and childbirth provided by certified nurse midwives (including licensed midwives), shall be reimbursed at 95 percent of the physician fee on file.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### Part XV. Services for Special Populations

##### Subpart 18. Free-Standing Birthing Centers

#### Chapter 271. Reimbursement

##### §27101. Reimbursement Methodology

A. - A.3. ...

B. Effective for dates of service on or after August 1, 2023, the reimbursement amounts for certified nurse midwives and licensed nurse midwives will be as follows:

1. certified nurse midwives providing birthing services within a FSBC shall be reimbursed at 95 percent of the published fee schedule rate for physician services rendered in the Professional Services Program; and

2. licensed midwives providing birthing services within a FSBC shall be reimbursed at 95 percent of the published fee schedule rate for physician services in the Professional Services Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:2360 (November 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

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

Tara A. LeBlanc, Bureau of Health Services Financing, is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Stephen R. Russo, JD  
Secretary

2308#005

## DECLARATION OF EMERGENCY

### Department of Health Office of Public Health

Sanitary Code—Food Service Establishment Violations  
(LAC 51:I.113, LAC 51:XXIII.101, and  
LAC 51:XXIII.4311)

The Louisiana Department of Health, Office of Public Health (LDH/OPH), pursuant to R.S. 40:4, R.S. 40:5, and the emergency rulemaking authority granted by R.S. 40:4(A)(13), and in cognizance of SR159 (2022 Regular Session), hereby adopts the following Emergency Rule for

the protection of public health. This Emergency Rule is promulgated specifically in accordance with R.S. 49:962 of the Administrative Procedure Act (R.S. 49:950, *et seq.*).

The LDH/OPH finds it necessary to promulgate an Emergency Rule effective July 21, 2023. This Emergency Rule is necessary to prevent imminent peril to the public health, safety, or welfare. This Emergency Rule will ensure that a violation by a food service establishment of R.S. 40:5.5.4, which deprives Louisiana consumers of their right to know whether the establishment serves crawfish or shrimp imported from a foreign country, which may pose a health risk, is classified in the Sanitary Code as both a “Critical Item” and a “Class A” violation.

Accordingly, the following Emergency Rule, effective July 21, 2023, shall remain in effect for a maximum of 180 days, or until the final Rule is promulgated, whichever occurs first.

### Title 51

## PUBLIC HEALTH—SANITARY CODE

### Part I. General Provisions

#### Chapter 1. General

#### §113. Suspension/Revocation/Civil Fines or Penalties [formerly paragraph 1:007-21]

A. - A.2. ...

3. impose a civil fine:

a. these civil fines shall not exceed \$10,000 per violator per calendar year applicable to each specific establishment, facility, or property that the violator owns, manages, operates or leases. The schedule of civil fines by class of violations shall be as follows:

i. Class A. Violations that create a condition or occurrence, which may result in death or serious harm to the public. These violations include, but are not limited to the following: cooking, holding or storing potentially hazardous food at improper temperatures; failure to follow schedule process in low acid canned foods or acidified food production; poor personal hygienic practices; failure to sanitize or sterilize equipment, utensils or returnable, multi-use containers; no water; unapproved water source; cross contamination of water; inadequate disinfection of water before bottling; sewage back up; sewage discharge on to the ground; sewage contamination of drinking water; failure to comply with human drug current good manufacturing practices (CGMP); inadequate labeling of foods or drugs regarding life threatening ingredients or information; failure to provide consumer advisories; failure to comply with any applicable requirement of R.S. 40:5.5.4; non-compliant UV lamps or termination control switch on tanning equipment; the inadequate handling and disposal of potentially infectious biomedical wastes; or failure to obtain food safety certification in accordance with §305 of Part XXIII. Class A civil fines shall be \$100 per day per violation;

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 40:4, and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1694 (October 2001), repromulgated LR 28:1210 (June 2002), amended LR 28:2529 (December 2002), LR 41:148 (January 2015); amended LR 49:

#### Chapter 1. Definitions

#### §101. Definitions

#### [formerly paragraph 23:001]

A. Terms not defined or referenced herein shall have the meanings as defined in LAC 51, Part I. In any instance where a term defined herein is also defined in one or more Parts of LAC51:I, the definition contained in this Part shall govern this Part.

\*\*\*

*Critical Item*—a provision of this code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation, such as, but not limited to a potentially hazardous food stored at improper temperature, poor personal hygienic practices, not sanitizing equipment and utensils, no water, contaminated water sources, sewage backup or improper sewage disposal, severe insect or rodent infestation, failure to comply with any applicable requirement of R.S. 40:5.5.4, and chemical contamination.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. R.S. 40:4, and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1405 (June 2002), amended LR 28:2531 (December 2002); amended LR 49:

#### Chapter 43. Inspections and Enforcement

#### §431. Enforcement, Critical Violations

#### [formerly paragraph 22:43-2]

A. Critical items, (as defined in this Part) noted at the time of inspection shall be corrected immediately or by a time set by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. R.S. 40:4, and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002), amended LR 28:1430 (June 2002); amended LR 49:

Michael Vidrine, Sanitarian Services, is responsible for responding to inquiries regarding this Emergency Rule.

Stephen Russo, JD  
Secretary  
and  
Joseph Kanter, MD, MPH  
State Health Officer

2308#003

**DECLARATION OF EMERGENCY**

**Department of Public Safety and Corrections  
Uniform Construction Code Council**

Uniform Construction Code  
(LAC 17:I.103 and 107)

The Department of Public Safety and Corrections, Office of State Fire Marshal, Louisiana State Uniform Construction Code Council, hereafter referred to as the “LSUCCC” or the “Council”, has exercised the emergency provision in accordance with R.S. 49:953(B) of the Administrative Procedure Act, to amend LAC 17:I.Chapter 1 in the state Uniform Construction Code as authorized by R.S.40:1730.28. Furthermore, the LSUCCC has found an immediate need to adopt amendments of the current Louisiana State Uniform Construction Code, 2021 International Residential Code Section N1103.3.7, 2021 International Energy Conservation Code, Sections C301.1, C301.2, C405.11, C405.11.1, R402.4.1.2 and R403.3.7. These changes are a direct result for the need to provide specialized systems and protocols due to Louisiana’s unique hot humid climate. This amendment will serve to better protect the public and to follow national guidelines for occupants to live and work in environmentally safe clean work and live areas. The LSUCCC is promulgating this Rule amendment to provide greater health and safety for the public and for those living and working in conditioned spaces. This rule was first adopted and published in the June 20, 2023 edition of the Louisiana Register (Vol. 49, No. 3). The rule became effective on July 1, 2023. This Emergency Rule is being promulgated to continue those provisions. By the signature of the agency head, Chief Daniel H. Wallis, it was adopted and became effective on June 30, 2023. It shall be in effect for the maximum period allowed under the Act

(180 days) or until adoption of the final Rule, whichever occurs first. The public welfare dictates that these changes be implemented immediately through the adoption of the Emergency Rule to promote greater access to safer environments and to insure safety to existing facilities undergoing renovations and for new proposed facilities.

**Title 17**

**CONSTRUCTION**

**Part I. Uniform Construction Code**

**Chapter 1. Adoption of the Louisiana State Uniform Construction Code**

**(Formerly LAC 55:VI.Chapter 3)**

**§101. Louisiana State Uniform Construction Code (Formerly LAC 55:VI.301.A)**

A. In accordance with the requirements set forth in R.S.40:1730.28, effective February 1, 2018 the following is hereby adopted as an amendment to the *Louisiana State Uniform Construction Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S.40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 41:2380 (November 2015), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 42:1672 (October 2016), LR 44:75 (January 2018), repromulgated LR 45:912 (July 2019), amended LR 49:1136 (June 2023), LR 49:

**§107. International Residential Code (Formerly LAC 55:VI.301.A.3.a)**

A.1. ...

* * *		
Repeal	Item (3.)	
Amend	Section N1103.3.7 Building Cavities	Building framing cavities directly adjacent to and within the building thermal envelope shall not be used as ducts or plenums.
Amend	Section N1103.6 Mechanical Ventilation	The buildings complying with Section N1102.4.1 providing mechanical ventilation shall comply with the requirements of Section M1505 or with other approved means of ventilation. Outdoor air intakes and exhausts shall have automatic or gravity dampers that close when the ventilation system is not operating
* * *		

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the

Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 41:2383 (November 2015), amended LR 42:1672 (October 2016), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 44:79 (January 2018), amended LR 44:2218 (December 2018), repromulgated LR 45:916 (July 2019), amended LR 45:1789 (December 2019), amended LR 48:2582 (October 2022), LR 49:1142 (June 2023), LR 49:

**§117 International Energy Conservation Code  
(Formerly LAC 55:VI.301.A.7)**

A. International Energy Conservation Code (IECC) 2021 Edition and standards referenced in that code for regulation of construction in this state.

* * *		
Amend	Section C301.1 General	All parishes in Louisiana shall be Climate Zone 2A.
Amend	Section C301.2 Warm Humid counties	All parishes in Louisiana shall be Climate Zone 2A warm humid climates.
Amend	Section C402.1.3 Insulation component R-value-based method.	
* * *		
Repeal	Section C405.5.3 Gas Lighting	
Repeal	Section C405.11 Automatic receptacle control	
Repeal	Section C405.11.1 Automatic receptacle control	
Adopt	Residential Provisions	
Amend	Section R102.1.1 Above code programs	The code official serving as the authority having jurisdiction for building codes, shall be permitted to deem a national or state energy-efficiency program to exceed the energy efficiency required by this code. Buildings approved in writing by such an energy-efficiency program shall be considered to be in compliance with this code. The requirements identified in Table N1105.2, as applicable, shall be met and the building thermal envelope is greater than or equal to levels of efficiency and solar heat gain coefficients (SHGC) in Tables 402.1.1 and 402.1.3 of the 2009 International Energy Conservation Code.
* * *		
Repeal	Section R402.4.1.1 Installation.	
Amend	Section R402.4.1.2 Testing	Effective July 1, 2024, blower door testing shall be performed by individuals certified to perform blower door tests by a nationally recognized organization that trains and provides certification exams for the proper procedures to perform such tests. The building or dwelling unit shall be tested for air leakage. The maximum air leakage rate for any building or dwelling unit under any compliance path shall not exceed 7.0 air changes per hour or 0.28 cubic feet per minute (CFM) per square foot [0.0079 m <sup>3</sup> /(s × m <sup>2</sup> )] of dwelling unit enclosure area. Testing shall be conducted in accordance with ANSI/RESNET/ICC 380, ASTM E779 or ASTM E1827 and reported at a pressure of 0.2 inch w.g. (50 Pascals).-The responsible BCEO shall accept written blower door test reports from these certified individuals to verify the minimum requirements of Section N1102.4.1.2. A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope have been sealed. Where multiple dwelling units or other occupiable conditioned spaces are contained within one building thermal envelope, each unit shall be considered an individual testing unit, and the building air leakage shall be the weighted average of all testing unit results, weighted by each testing unit's enclosure area. Units shall be tested separately with an unguarded blower door test as follows:
Adopt	Item (1).	(1).Where buildings have fewer than eight testing units, each testing unit shall be tested.
* * *		
Repeal	Item (3.)	
Amend	Section R403.3.7 Building Cavities	Building framing cavities directly adjacent to and within the building thermal envelope shall not be used as ducts or plenums.
Amend	Section R403.6 Mechanical Ventilation	The buildings complying with Section N1102.4.1 providing mechanical ventilation shall comply with the requirements of Section M1505 or with other approved means of ventilation. Outdoor air intakes and exhausts shall have automatic or gravity dampers that close when the ventilation system is not operating.
* * *		

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 49:1136 (June 2023), amended LR 49:

Chief Daniel H. Wallis  
State Fire Marshal

2308#063

## DECLARATION OF EMERGENCY

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

#### 2023 Recreational Red Snapper Bag Limit Modification

Louisiana's private recreational and state charter red snapper season was previously set by the Wildlife and Fisheries Commission at its regular April 2023 meeting to be open daily with a bag and possession limit of three fish per person per day and a sixteen inch total length minimum size limit until further notice. Under the provisions of state management, NOAA Fisheries has delegated season and bag limit authority as well as allocated a quota to Louisiana. Landings estimates generated from the LA Creel program indicate that harvest rates are lower than previously projected and an increase in the daily bag and possession limit is warranted in order to meet the annual quota allocated to Louisiana.

In accordance with the emergency provisions of R.S. 49:962, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency rules to set finfish seasons, R.S. 56:326.3 which provides that the commission may set seasons for saltwater fish, and the authority given to the secretary by the commission at its regular April 2023 meeting and in LAC 76:VII.335.G.5 to modify the recreational red snapper season, size, and bag limits under the provisions of NOAA delegated state management, the secretary hereby declares:

The season (daily) and size limit (sixteen inches minimum total length) for the private recreational and state charter harvest of red snapper in Louisiana state waters and federal waters off Louisiana shall remain as previously established. The bag and possession limit for private recreational and state charter anglers harvesting red snapper shall be four fish per day per angler effective July 17, 2023 until further notice. This modification does not apply to federally permitted charter boats operating under federal law during federally established seasons and under federally established rules for those vessels.

Robert E. Shadoin  
Secretary

2308#001

## DECLARATION OF EMERGENCY

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

#### Fall Inshore Shrimp Season Opening Dates

The Wildlife and Fisheries Commission received information regarding biological sampling for white shrimp in state inshore waters. The Department of Wildlife and Fisheries (LDWF) provided the Commission with data that projected the date when white shrimp will reach marketable size. After considering biological information and public input, the Commission took action to set the fall shrimp season within state inshore waters. Notice of any opening, delaying or closing of a season by the Wildlife and Fisheries

Commission will be made by public notice at least 72 hours prior to such action.

In accordance with the emergency provisions of R.S. 49:962 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters and to increase the minimum mesh size provided in R.S. 56:499 for any trawl, skimmer net, or butterfly net for the duration of any special shrimp season or regular shrimp season extension, the Wildlife and Fisheries Commission does hereby set the 2023 Fall Shrimp Season in Louisiana state waters to open as follows:

That portion of state inside waters from the Mississippi/Louisiana state line westward to the eastern shore of South Pass of the Mississippi River to open at 6 a.m., August 7, 2023 except for the area as described below which will open at 6 a.m., August 16, 2023:

From a point at the intersection of the eastern shore of the MRGO and the Shell Beach Cut at 29 degrees 51 minutes 29.40 seconds north latitude, 89 degrees 40 minutes 37.99 seconds west longitude; thence northerly to a point where Shell Beach Cut and the south shore of Lake Borgne intersect (29 degrees 52 minutes 00.35 seconds north latitude, 89 degrees 40 minutes 25.33 seconds west longitude); thence easterly and northerly following the southern shore of Lake Borgne and the western shore of the Biloxi Marsh to Pointe Aux Marchettes (29 degrees 59 minutes 26.87 seconds north latitude, 89 degrees 34 minutes 44.91 seconds west longitude); thence northeasterly to Malheureux Point (30 degrees 04 minutes 40.57 seconds north latitude, 89 degrees 28 minutes 46.59 seconds west longitude); thence southeasterly to a point on the western shore of Three-Mile Pass (30 degrees 03 minutes 00.00 seconds north latitude, 89 degrees 22 minutes 23.00 seconds west longitude); thence northeasterly to a point on Isle Au Pitre (30 degrees 09 minutes 20.50 seconds north latitude, 89 degrees 11 minutes 15.50 seconds west longitude), which is a point on the double-rig line as described in R.S. 56:495.1(A)2; thence southerly following the double rig line to where it intersects with the MRGO (29 degrees 40 minutes 40.11 seconds north latitude, 89 degrees 23 minutes 07.71 seconds west longitude); thence northwesterly along the eastern shore of the MRGO to the point of origin.

That portion of state inside waters from the eastern shore of South Pass of the Mississippi River westward to the Atchafalaya River Ship Channel at Eugene Island as delineated by the red Channel Buoy Line to open at 6 p.m., August 7, 2023; and,

That portion of state inside waters from the Atchafalaya River Ship Channel at Eugene Island as delineated by the red Channel Buoy Line westward to the Louisiana/Texas state line to open at 6 a.m., August 7, 2023.

The Commission also hereby grants authority to the secretary of LDWF to delay or advance these opening dates if biological and/or technical data indicate the need to do so, and; to close any portion of Louisiana's inside or outside waters to protect small juvenile white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop.

The secretary is further granted the authority to open any area, or re-open any previously closed area, and to open and close special shrimp seasons in any portion of state waters.

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

Andrew J. Blanchard  
Chairman

2308#009

# Rules

## RULE

### Department of Agriculture and Forestry Board of Veterinary Medicine

Petitions for Rule Modification  
(LAC 46:LXXXV.101 and 105)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Board ("Board") of Veterinary Medicine has amended LAC 46:LXXXV.101 and 105, regarding the petitions for rulemaking in Section 101, providing clearer instructions on submitting petitions for the adoption of new rules or for amendments or repeal of an existing Rule. The amendment to Section 105 also delivers greater clarity on submitting petitions related to application decisions made by the board. This Rule is hereby adopted on the day of promulgation.

#### Title 46

#### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 1. Operations of the Board of Veterinary Medicine

#### §101. Information, Agency Office, Request for Rules or Action

A. - C. ...

D. Submission of Rulemaking Petition. In accordance with R.S. 49:953(C)(1), any interested person may petition the board to adopt a new rule, or to amend or repeal an existing rule.

1. To petition the board for changes to an existing rule or for the adoption of a new rule, an interested person shall submit a written letter to the board. The petition shall include:

- a. petitioner's name and address;
- b. the specific text or a description of the proposed language desired for the adoption or amendment of a rule in the LA Veterinary Practice Act, or the specific rule and language in the LA Veterinary Practice Act identified for repeal;
- c. justification for the proposed action; and,
- d. the petitioner's signature.

2. The rulemaking petition shall be mailed to the board by certified mail and addressed to:

LA Board of Veterinary Medicine  
ATTN: Executive Director  
5825 Florida Blvd  
Baton Rouge, LA 70806

3. Upon receipt, a rulemaking petition shall be reviewed by the full board at its next available meeting date. Within 90 days of receipt of the rulemaking petition, the board shall either:

- a. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
- b. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:66 (February 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:223 (March 1990), LR 19:1327 (October 1993), LR 23:966 (August 1997), LR 25:2226 (November 1999), LR 49:1373 (August 2023).

#### §105. Appeals and Review

A. Applicants for Licensure or Examination. Any applicant desiring to review his or her (hereinafter in this title, the masculine pronouns he, him, and his shall be deemed to include the feminine pronouns she, her, and hers) national examination and/or the master answer sheet and/or the examination questions shall make arrangements with the national examination service vendor and/or any person, firm, corporation or entity charged by the board with the preparation, grading and/or administration of the national examination(s). The board shall not provide to applicants:

1. reviews of the questions contained on the national examination;
2. the answers to the questions contained on the national examination; or
3. any applicant's score on the national examination.

B. Persons Aggrieved by a Decision of the Board

1. Any person aggrieved by a decision of the board may, within 30 days of notification of the board's action or decision, petition the board for a review of the board's actions.

2. Such a petition shall be submitted in the form of a written letter to the board. The petition shall include:

- a. petitioner's name and address;
- b. the specific grievance and any details related to the board's decision; and,
- c. the petitioner's signature,

3. The petition shall be mailed to the board by certified mail and addressed to:

LA Board of Veterinary Medicine  
ATTN: Executive Director  
5825 Florida Blvd  
Baton Rouge, LA 70806

4. Upon receipt of such petition, the board may then proceed to take such action as it deems expedient or hold such hearings as may be necessary, and may review such action as it deems expedient, and may review such testimony and/or documents and/or records as it deems necessary to dispose of the matter; but the board shall not, in any event, be required to conduct any hearings or investigations, or consider any offerings, testimony or evidence unless so required by statute or other rules or regulations of the board.

5. The party requesting the appeal shall pay all costs incurred by the board for review and appeal proceedings called in accordance with Section 105, and such costs shall include, but not be limited to, board member expenses, court reporter fees, investigative fees, attorney's fees, and administrative costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:66 (February 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:223 (March 1990), LR 19:345 (March 1993), LR 23:966 (August 1997), LR 23:1529 (November 1997), LR 25:2226 (November 1999), LR 49:1373 (August 2023).

Jared B. Granier, MBA  
Executive Director

2308#004

**RULE**

**Board of Elementary and Secondary Education**

Foreign Language and Math Credits  
(LAC 28:LXXIX.2317 and 2323;  
LAC 28:CV.2345 and 2353)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:CV in Bulletin 741—*Louisiana Handbook for School Administrators* and LAC 28:LXXIX in Bulletin 741(Nonpublic)—*Louisiana Handbook for Nonpublic School Administrators*. The revisions establish the effective date for courses for foreign language and math credit to align with TOPS eligibility requirements. The revisions clarify that AP Computer Science A, Computer Science, and Computer Coding as a Foreign Language may be used as a foreign language credit beginning with students graduating during or after the 2026-2027 school year. This Rule is hereby adopted on the day of promulgation.

**Title 28  
EDUCATION**

**Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators**

**Chapter 23. High School Program of Studies  
§2317. Foreign Languages**

A. The foreign language course offerings shall be as follows.

Course Title	Unit(s)
***	
Cambridge AICE—AS (Honors): Japanese	1
AP Computer Science A (effective for students graduating during or after 2026-2027)	1
Computer Science (effective for students graduating during or after 2026-2027)	1
Computer Coding as a Foreign Language I, II (effective for students graduating during or after 2026-2027)	1 each
***	

B. AP Computer Science A may be used as either a math or elective credit for students graduating prior to the 2026-2027 school year.

1. For students graduating during or after the 2026-2027 school year and beyond:
  - a. AP Computer Science A may be used as either a math, elective, or foreign language credit.
  - b. Computer Science and Computer Coding as a Foreign Language courses may be used as an elective or foreign language credit.

C. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.10, and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2354 (November 2003), amended LR 31:3086 (December 2005), LR 38:770 (March 2012), LR 40:1685 (September 2014), LR 40:2538 (December 2014), LR 45:1458 (October 2019), LR 49:642 (April 2023), LR 49:1374 (August 2023).

**§2323. Mathematics**

A. ...

\*\*\*

B. ...

C. AP Computer Science A may be used as either a math or elective credit for students graduating prior to the 2026-2027 school year.

D. For students graduating during or after the 2026-2027 school year, AP Computer Science A may be used as either a math, elective, or foreign language credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), R.S. 17:7(6), R.S. 17:10, R.S. 17:22(6), R.S. 17:391.1-391.1, and R.S. 44:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2354 (November 2003), amended LR 30:2776 (December 2004), LR 31:3086 (December 2005), LR 34:2101 (October 2008), LR 36:2849 (December 2010), LR 38:771 (March 2012), LR 39:1449 (June 2013), LR 40:1685 (September 2014), LR 40:2538 (December 2014), LR 42:1064 (July 2016), LR 49:642 (April 2023), LR 49:1374 (August 2023).

**Title 28  
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

**Chapter 23. Curriculum and Instruction  
Subchapter B. Academic Programs of Study**

**§2345. Foreign Languages**

A. The foreign language course offerings shall be as follows.

Course Title(s)	Units
***	
Cambridge AICE—AS (Honors): Japanese	1
AP Computer Science A (effective for students graduating during or after 2026-2027)	1
Computer Science (effective for students graduating during or after 2026-2027)	1
Computer Coding as a Foreign Language I, II (effective for students graduating during or after 2026-2027)	1 each
***	

B. - B.6. ...

C. AP Computer Science A may be used as either an elective or math credit for students graduating prior to the 2026-2027 school year.

1. For students graduating during or after the 2026-2027 school year:

a. AP Computer Science A may be used as either a foreign language, elective, or math credit.

b. Computer Science and Computer Coding as a Foreign Language courses may be used as either a foreign language or elective credit.

D. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24.4, R.S. 273, and R.S. 17:284.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1295 (June 2005), amended LR 36:1996 (September 2010), LR 38:759 (March 2012), LR 38:2364 (September 2012), LR 39:2220 (August 2013), LR 40:998 (May 2014), LR 40:2527 (December 2014), LR 43:2133 (November 2017), LR 43:2484 (December 2017), LR 45:1455, (October 2019), LR 49:643 (April 2023), LR 49:1374 (August 2023).

**§2353. Mathematics**

A. The mathematics course offerings for the college diploma shall be as follows.

\* \* \*

1. AP Computer Science A may be used as either a math or elective credit for students graduating prior to the 2026-2027 school year.

2. For students graduating during or after the 2026-2027 school year, AP Computer Science A may be used as either a foreign language, math, or elective credit.

B. ...

\* \* \*

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7 and 17:24.4

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1296 (June 2005), amended LR 33:2605 (December 2007), LR 34:1609 (August 2008), LR 35:2322 (November 2009), LR 36:1493 (July 2010), LR 38:760 (March 2012), LR 40:999 (May 2014), LR 40:2527 (December 2014), LR 42:1063 (July 2016), LR 43:2134 (November 2017), LR 44:1868 (October 2018), LR 49:643 (April 2023), LR 49:1375 (August 2023).

Shan N. Davis  
Executive Director

2308#012

**RULE**

**Board of Elementary and Secondary Education**

**Mentor Teacher Waiver (LAC 28:CXXXI.553)**

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:CXXXI in Bulletin 746—*Louisiana Standards for State Certification of School Personnel*. The revision extends the mentor teacher waiver regarding the placement of undergraduate residents and post-baccalaureate candidates with credentialed mentor teachers for the 2023-2024 school year. This Rule is hereby adopted on the day of promulgation.

**Title 28  
EDUCATION**

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

**Chapter 5. Teaching Credentials, Licenses and  
Certifications**

**Subchapter C. Ancillary Teaching Certificates**

**§553. Mentor Teacher (MT) Ancillary Certificate**

A. - F.2. ...

G. For the 2020-2021, 2021-2022, 2022-2023, and 2023-2024 school years, the requirement that all undergraduate

residents and post-baccalaureate candidates be placed with mentor teachers holding the ancillary mentor teacher certificate, the ancillary provisional mentor teacher certificate, or the Supervisor of Student Teaching certificate, is waived with the following contingencies:

I. - 2.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:3902.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 45:230 (February 2019), LR 48:442 (March 2022), repromulgated LR 48:1046 (April 2022), amended LR 48:2099 (August 2022), LR 49:1375 (August 2023).

Shan N. Davis  
Executive Director

2308#013

**RULE**

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

**Incorporation by Reference of Certain Federal  
Air Quality Regulations (LAC 33:III.3101)(AQ394ft)**

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.3101 (Log #AQ394ft).

This Rule is identical to federal regulations found in 40 CFR Part 62, Subpart OOO, which are applicable in Louisiana. For more information regarding the federal requirement, contact William Little at (225) 219-3985. No fiscal or economic impact will result from the Rule. This Rule is promulgated in accordance with the procedures in R.S. 49:963.A(2) and (3).

The Rule incorporates by reference (IBR) the corresponding federal regulations included in 40 CFR Part 62, Subpart OOO, May 21, 2021, into the Louisiana Administrative Code (LAC), Title 33, Part III, Air. Exceptions to the IBR are explicitly listed in the Rule.

On May 21, 2021, the Environmental Protection Agency (EPA) issued 40 CFR Part 62, Subpart OOO - Federal Plan Requirements for Municipal Solid Waste Landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014.

In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted into the Louisiana Administrative Code. This rulemaking is necessary to maintain delegation, authorization, etc. granted to Louisiana by the EPA. The basis and rationale for this Rule are to mirror the federal regulations as they apply to Louisiana's affected sources. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:963(B)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule is hereby adopted on the day of promulgation.

**Title 33  
ENVIRONMENTAL QUALITY  
Part III. Air**

**Chapter 31. Incorporation of Federal Plans for Designated Facilities and Pollutants**

**Subchapter A. Incorporation by Reference**

**§3101. Incorporation by Reference of 40 CFR Part 62, Subpart OOO (Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014)**

A. Federal plan requirements published in the *Code of Federal Regulations* at 40 CFR 62, Subpart OOO, May 21, 2021, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:1376 (August 2023).

Courtney J. Burdette  
Executive Counsel

2308#037

**RULE**

**Office of the Governor  
Division of Administration  
Office of Group Benefits**

Bariatric Surgery Services  
(LAC 32:III.107; V.205, 305, and 505)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., as authorized pursuant to R.S. 42:801 and 42:802, the Office of the Governor, Division of Administration, Office of Group Benefits, has amended Chapter 1 of LAC 32:III, Primary Plan of Benefits, and Chapters 2, 3, and 5 of LAC 32:V, Additional Plans and Operations. The Rule is revised to amend the schedule of benefits. The schedule of benefits is amended to provide for bariatric surgery services. This Rule is hereby adopted on the day of promulgation.

**Title 32  
EMPLOYEE BENEFITS  
Part III. Primary Plan of Benefits**

**Chapter 1. Operation of Primary Plan**

**§107. Schedule of Benefits**

A. Benefits, Copayments, and Coinsurance

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Physician Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• General Practice</li> <li>• Family Practice</li> <li>• Internal Medicine</li> <li>• OB/GYN</li> <li>• Pediatrics</li> </ul>	\$25 Copayment per Visit	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Allied Health/Other Professional Visits: <ul style="list-style-type: none"> <li>• Chiropractors</li> <li>• Federally Funded Qualified Rural Health Clinics</li> <li>• Nurse Practitioners</li> <li>• Retail Health Clinics</li> <li>• Physician Assistants</li> </ul>	\$25 Copayment per Visit	No Coverage
Specialist Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• Physician</li> <li>• Podiatrist</li> <li>• Optometrist</li> <li>• Midwife</li> <li>• Audiologist</li> <li>• Registered Dietician</li> <li>• Sleep Disorder Clinic</li> </ul>	\$50 Copayment per Visit	No Coverage
Ambulance Services - Ground <i>(for Emergency Medical Transportation only)</i>	\$50 Copayment	\$50 Copayment
Ambulance Services - Air <i>(for Emergency Medical Transportation only)</i> Non-Emergency requires prior authorization <sup>2</sup>	\$250 Copayment	No Coverage
Ambulatory Surgical Center and Outpatient Surgical Facility	\$100 Copayment	No Coverage
Bariatric Surgery Services – Facility Services <sup>4</sup>	\$2,500.00 Copayment <sup>2,3</sup>	No Coverage
Bariatric Surgery Services – Professional Services <sup>4</sup>	90% - 10% <sup>2,3</sup>	No Coverage
Bariatric Surgery Services – Preoperative and Postoperative Medical Services <sup>4</sup>	80% - 20% <sup>2,3</sup>	No Coverage
Birth Control Devices – Insertion and Removal <i>(as listed in the Preventive and Wellness Article in the Benefit Plan)</i>	100% - 0%	No Coverage
Cardiac Rehabilitation <i>(limit of 36 visits per Plan Year)</i>	\$25/\$50 Copayment per day depending on Provider Type <sup>2</sup> \$50 Copayment - Outpatient Facility <sup>2</sup>	No Coverage
Chemotherapy/Radiation Therapy <i>(Authorization not required when performed in Physician's office)</i>	Office - \$25 Copayment per Visit Outpatient Facility 100% - 0% <sup>1,2</sup>	No Coverage
Diabetes Treatment	80% - 20% <sup>1</sup>	No Coverage
Diabetic/Nutritional Counseling - Clinics and Outpatient Facilities	\$25 Copayment	No Coverage
Dialysis	100% - 0% <sup>1</sup>	No Coverage
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20% <sup>1,2</sup> of first \$5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of \$5,000 per Plan Year	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Emergency Room ( <i>Facility Charge</i> )	\$200 Copayment; Waived if admitted to the same facility	
Emergency Medical Services ( <i>Non-Facility Charges</i> )	100% - 0% <sup>1</sup>	100% - 0% <sup>1</sup>
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses ( <i>purchased within six months following cataract surgery</i> )	Eyeglass Frames – Limited to a Maximum Benefit of \$50 <sup>1</sup>	No Coverage
Flu shots and H1N1 vaccines ( <i>administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair</i> )	100% - 0%	No Coverage
Hearing Aids ( <i>Hearing Aids are not covered for individuals age eighteen (18) and older.</i> )	80% - 20% <sup>1,3</sup>	No Coverage
Hearing Impaired Interpreter Expense	100% - 0%	No Coverage
High-Tech Imaging - Outpatient <ul style="list-style-type: none"> <li>• CT Scans</li> <li>• MRA/MRI</li> <li>• Nuclear Cardiology</li> <li>• PET Scans</li> </ul>	\$50 Copayment <sup>2</sup>	No Coverage
Home Health Care ( <i>limit of 60 Visits per Plan Year</i> )	100% - 0% <sup>1,2</sup>	No Coverage
Hospice Care ( <i>limit of 180 Days per Plan Year</i> )	100% - 0% <sup>1,2</sup>	No Coverage
Injections Received in a Physician's Office ( <i>when no other health service is received</i> )	100% - 0% <sup>1</sup>	No Coverage
Inpatient Hospital Admission, All Inpatient Hospital Services Included	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Inpatient and Outpatient Professional Services for Which a Copayment Is Not Applicable	100% - 0% <sup>1</sup>	No Coverage
Mastectomy Bras - Ortho-Mammary Surgical ( <i>limited to three (3) per Plan Year</i> )	80% - 20% <sup>1</sup> of first \$5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of \$5,000 per Plan Year	No Coverage
Mental Health/Substance Abuse - Inpatient Treatment and Intensive Outpatient Programs	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Mental Health/Substance Abuse - Office Visit and Outpatient Treatment (Other than Intensive Outpatient Programs)	\$25 Copayment per Visit	No Coverage
Newborn - Sick, Services excluding Facility	100% - 0% <sup>1</sup>	No Coverage
Newborn - Sick, Facility	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Oral Surgery	100% - 0% <sup>1,2</sup>	No Coverage
Pregnancy Care - Physician Services	\$90 Copayment per pregnancy	No Coverage
Preventive Care - Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. ( <i>For a complete list of benefits, refer to the Preventive and Wellness Article in the Benefit Plan.</i> )	100% - 0% <sup>3</sup>	No Coverage
Rehabilitation Services - Outpatient: <ul style="list-style-type: none"> <li>• Speech</li> <li>• Physical/Occupational (<i>Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.</i>) (<i>Visit limits do not apply when services are provided for Autism Spectrum Disorders.</i>)</li> </ul>	\$25 Copayment per Visit	No Coverage
Skilled Nursing Facility ( <i>limit of 90 days per Plan Year</i> )	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Sonograms and Ultrasounds ( <i>Outpatient</i> )	\$50 Copayment	No Coverage
Urgent Care Center	\$50 Copayment	No Coverage
Vision Care (Non-Routine) Exam	\$25/\$50 Copayment depending on Provider Type	No Coverage
X-ray and Laboratory Services ( <i>low-tech imaging</i> )	Hospital Facility 100%-0% <sup>1</sup> Office or Independent Lab 100%-0%	No Coverage
<sup>1</sup> Subject to Plan Year Deductible, if applicable <sup>2</sup> Pre-Authorization Required, if applicable. Not applicable for Medicare primary. <sup>3</sup> Age and/or Time Restrictions Apply <sup>4</sup> No Benefits will be payable unless Prior Authorization is obtained, including Plan Participants with Medicare as the Primary Plan.		

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

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**Part V. Additional Plans and Operations**  
**Chapter 2. PPO Plan Structure—Magnolia Open Access Plan**

**§205. Schedule of Benefits**

**A. Benefits and Coinsurance**

	Coinsurance		
	Active Employees/ Non-Medicare Retirees (regardless of retire date)		Retirees with Medicare (regardless of retire date)
	Network Providers	Non- Network Providers	Network and Non-Network Providers
Physician Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• General Practice</li> <li>• Family Practice</li> <li>• Internal Medicine</li> <li>• OB/GYN</li> <li>• Pediatrics</li> </ul>	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Allied Health/Other Professional Visits: <ul style="list-style-type: none"> <li>• Chiropractors</li> <li>• Federally Funded Qualified Rural Health Clinics</li> <li>• Nurse Practitioners</li> <li>• Retail Health Clinics</li> <li>• Physician Assistants</li> </ul>	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Specialist (Physician) Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• Physician</li> <li>• Podiatrist</li> <li>• Optometrist</li> <li>• Midwife</li> <li>• Audiologist</li> <li>• Registered Dietician</li> <li>• Sleep Disorder Clinic</li> </ul>	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulance Services - Ground (for Emergency Medical Transportation only)	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulance Services - Air (for Emergency Medical Transportation only) Non-emergency requires prior authorization <sup>2</sup>	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulatory Surgical Center and Outpatient Surgical Facility	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Bariatric Surgery Services – Facility Services <sup>4</sup>	\$2,500.00 Copayment <sup>2,3</sup>	Not Covered	Network Providers \$2,500.00 Copayment <sup>2,3</sup>
			Non-Network Providers Not Covered
Bariatric Surgery Services – Professional Services <sup>4</sup>	90% - 10% <sup>2,3</sup>	Not Covered	Network Providers 90% - 10% <sup>2,3</sup>
			Non-Network Providers Not Covered
Bariatric Surgery Services – Preoperative and Postoperative Medical Services <sup>4</sup>	80% - 20% <sup>2,3</sup>	Not Covered	Network Providers 80% - 20% <sup>2,3</sup>
			Non-Network Providers Not Covered

	Coinsurance					
	Active Employees/ Non-Medicare Retirees (regardless of retire date)		Retirees with Medicare (regardless of retire date)			
	Network Providers	Non- Network Providers	Network and Non-Network Providers			
Birth Control Devices - Insertion and Removal (as listed in the Preventive and Wellness Care Article in the Benefit Plan)	100% - 0%	70% - 30% <sup>1</sup>	Network Providers 100% - 0%			
			Non-Network Providers 80% - 20% <sup>1</sup>			
Cardiac Rehabilitation (limit of 36 visits per Plan Year)	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>			
Chemotherapy/Radiation Therapy (Authorization not required when performed in Physician's office)	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>			
Diabetes Treatment	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>			
Diabetic/Nutritional Counseling - Clinics and Outpatient Facilities	90% - 10% <sup>1</sup>	Not Covered	80% - 20% <sup>1</sup>			
Dialysis	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>			
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>			
Emergency Room (Facility Charge)	\$200 Copayment <sup>1</sup> ; Waived if admitted to the same facility					
Emergency Medical Services (Non-Facility Charges)	90% - 10% <sup>1</sup>	90% - 10% <sup>1</sup>	80% - 20% <sup>1</sup>			
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (purchased within six months following cataract surgery)	Eyeglass Frames - Limited to a Maximum Benefit of \$50 <sup>1</sup>					
Flu shots and H1N1 vaccines (administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair)	100% - 0%	100% - 0%	100% - 0%			
Hearing Aids (Hearing Aids are not covered for individuals age eighteen (18) and older)	90% - 10% <sup>1,3</sup>	70% - 30% <sup>1,3</sup>	80% - 20% <sup>1,3</sup>			
Hearing Impaired Interpreter Expense	100% - 0%	100% - 0%	100% - 0%			
High-Tech Imaging – Outpatient <ul style="list-style-type: none"> <li>• CT Scans</li> <li>• MRA/MRI</li> <li>• Nuclear Cardiology</li> <li>• PET Scans</li> </ul>	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>			
			Home Health Care (limit of 60 Visits per Plan Year)	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	Not Covered
			Hospice Care (limit of 180 Days per Plan Year)	80% - 20% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	Not Covered
			Injections Received in a Physician's Office (when no other health service is received)	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Inpatient Hospital Admission, All Inpatient Hospital Services Included Per Day Copayment Day Maximum Coinsurance	\$0 Not Applicable 90% - 10% <sup>1,2</sup>	\$50 5 Days 70% - 30% <sup>1,2</sup>	\$0 Not Applicable 80% - 20% <sup>1,2</sup>			

	Coinsurance		
	Active Employees/ Non-Medicare Retirees (regardless of retire date)		Retirees with Medicare (regardless of retire date)
	Network Providers	Non- Network Providers	Network and Non-Network Providers
Inpatient and Outpatient Professional Services	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Mastectomy Bras - Ortho- Mammary Surgical ( <i>limit of three (3) per Plan Year</i> )	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Mental Health/Substance Abuse - Inpatient Treatment and Intensive Outpatient Programs <i>Per Day Copayment Day Maximum Coinsurance</i>	\$0 Not Applicable 90% - 10% <sup>1,2</sup>	\$50 5 Days 70% - 30% <sup>1,2</sup>	\$0 Not Applicable 80% - 20% <sup>1,2</sup>
Mental Health/Substance Abuse – Office Visit and Outpatient Treatment (Other than Intensive Outpatient Programs)	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Newborn - Sick, Services Excluding Facility	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Newborn - Sick, Facility <i>Per Day Copayment Day Maximum Coinsurance</i>	\$0 Not Applicable 90% - 10% <sup>1,2</sup>	\$50 5 Days 70% - 30% <sup>1,2</sup>	\$0 Not Applicable 80% - 20% <sup>1,2</sup>
Oral Surgery for Impacted Teeth	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>
Pregnancy Care - Physician Services	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Preventive Care - Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. ( <i>For a complete list of benefits, refer to the Preventive and Wellness Care Article in the Benefit Plan.</i> )	100% - 0% <sup>3</sup>	70% - 30% <sup>1,3</sup>	Network 100% - 0 <sup>3</sup>
			Non-Network 80% - 20% <sup>1,3</sup>
Rehabilitation Services - Outpatient: • Speech • Physical/ Occupational ( <i>Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.</i> ) ( <i>Visit limits do not apply when services are provided for Autism Spectrum Disorders</i> )	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Skilled Nursing Facility ( <i>limit 90 days per Plan Year</i> )	90% - 10% <sup>1,2</sup>	70% - 30% <sup>1,2</sup>	80% - 20% <sup>1,2</sup>
Sonograms and Ultrasounds ( <i>Outpatient</i> )	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Urgent Care Center	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
Vision Care (Non-Routine) Exam	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>
X-ray and Laboratory Services ( <i>low-tech imaging</i> )	90% - 10% <sup>1</sup>	70% - 30% <sup>1</sup>	80% - 20% <sup>1</sup>

	Coinsurance		
	Active Employees/ Non-Medicare Retirees (regardless of retire date)		Retirees with Medicare (regardless of retire date)
	Network Providers	Non- Network Providers	Network and Non-Network Providers
<sup>1</sup> Subject to Plan Year Deductible, if applicable			
<sup>2</sup> Pre-Authorization Required, if applicable. Not applicable for Medicare primary.			
<sup>3</sup> Age and/or Time Restrictions Apply			
<sup>4</sup> No Benefits will be payable unless Prior Authorization is obtained, including Plan Participants with Medicare as the Primary Plan.			

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

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**Chapter 3. Narrow Network HMO Plan  
Structure—Magnolia Local Plan (in  
certain geographical areas)**

**§305. Schedule of Benefits**

**A. Benefits, Copayments, and Coinsurance**

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Physician Office Visits including surgery performed in an office setting: • General Practice • Family Practice • Internal Medicine • OB/GYN • Pediatrics	\$25 Copayment per Visit	No Coverage
Allied Health/Other Professional Visits: • Chiropractors • Federally Funded Qualified Rural • Health Clinics • Nurse Practitioners • Retail Health Clinics • Physician Assistants	\$25 Copayment per Visit	No Coverage
Specialist Office Visits including surgery performed in an office setting: • Physician • Podiatrist • Optometrist • Midwife • Audiologist • Registered Dietician • Sleep Disorder Clinic	\$50 Copayment per Visit	No Coverage
Ambulance Services - Ground ( <i>for Emergency Medical Transportation only</i> )	\$50 Copayment	\$50 Copayment
Ambulance Services - Air ( <i>for Emergency Medical Transportation only</i> ) Non-emergency requires prior authorization <sup>2</sup>	\$250 Copayment	No Coverage
Ambulatory Surgical Center and Outpatient Surgical Facility	\$100 Copayment	No Coverage
Bariatric Surgery Services – Facility Services <sup>4</sup>	\$2,500.00 Copayment <sup>2,3</sup>	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Bariatric Surgery Services – Professional Services <sup>4</sup>	90% - 10% <sup>2,3</sup>	No Coverage
Bariatric Surgery Services – Preoperative and Postoperative Medical Services <sup>4</sup>	80% - 20% <sup>2,3</sup>	No Coverage
Birth Control Devices - Insertion and Removal (as listed in the Preventive and Wellness Article in the Benefit Plan.)	100% - 0%	No Coverage
Cardiac Rehabilitation (limit of 36 visits per Plan Year)	\$25/\$50 Copayment per day depending on Provider Type <sup>2</sup> \$50 Copayment- Outpatient Facility <sup>2</sup>	No Coverage
Chemotherapy/Radiation Therapy (Authorization not required when performed in Physician's office)	Office – \$25 Copayment per Visit Outpatient Facility 100% - 0% <sup>1,2</sup>	No Coverage
Diabetes Treatment	80% - 20% <sup>1</sup>	No Coverage
Diabetic/Nutritional Counseling - Clinics and Outpatient Facilities	\$25 Copayment	No Coverage
Dialysis	100% - 0% <sup>1</sup>	No Coverage
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20% <sup>1,2</sup> of first \$5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of \$5,000 per Plan Year	No Coverage
Emergency Room (Facility Charge)	\$200 Copayment; Waived if admitted to the same facility	
Emergency Medical Services (Non-Facility Charges)	100% - 0% <sup>1</sup>	100% - 0% <sup>1</sup>
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (purchased within six months following cataract surgery)	Eyeglass Frames – Limited to a Maximum Benefit of \$50 <sup>1</sup>	No Coverage
Flu shots and H1N1 vaccines (administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair)	100% - 0%	No Coverage
Hearing Aids (Hearing Aids are not covered for individuals age eighteen (18) and older.)	80% - 20% <sup>1,3</sup>	No Coverage
Hearing Impaired Interpreter Expense	100% - 0%	No Coverage
High-Tech Imaging - Outpatient • CT Scans • MRA/MRI • Nuclear Cardiology • PET Scans	\$50 Copayment <sup>2</sup>	No Coverage
Home Health Care (limit of 60 Visits per Plan Year)	100% - 0% <sup>1,2</sup>	No Coverage
Hospice Care (limit of 180 Days per Plan Year)	100% - 0% <sup>1,2</sup>	No Coverage
Injections Received in a Physician's Office (when no other health service is received)	100% - 0% <sup>1</sup>	No Coverage
Inpatient Hospital Admission, All Inpatient Hospital Services Included	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Inpatient and Outpatient Professional Services for which a Copayment is Not Applicable	100% - 0% <sup>1</sup>	No Coverage
Mastectomy Bras (limited to three (3) per Plan Year)	80% - 20% <sup>1</sup> of first \$5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of \$5,000 per Plan Year	No Coverage
Mental Health/Substance Abuse - Inpatient Treatment and Intensive Outpatient Programs	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Mental Health/Substance Abuse – Office Visit and Outpatient Treatment (Other than Intensive Outpatient Programs)	\$25 Copayment per Visit	No Coverage
Newborn - Sick, Services excluding Facility	100% - 0% <sup>1</sup>	No Coverage
Newborn - Sick, Facility	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Oral Surgery	100% - 0% <sup>1,2</sup>	No Coverage
Pregnancy Care - Physician Services	\$90 Copayment per pregnancy	No Coverage
Preventive Care - Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (For a complete list of benefits, refer to the Preventive and Wellness Article in the Benefit Plan.)	100% - 0% <sup>3</sup>	No Coverage
Rehabilitation Services - Outpatient: • Speech • Physical/Occupational (Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.) (Visit limits do not apply when services are provided for Autism Spectrum Disorders.)	\$25 Copayment per Visit	No Coverage
Skilled Nursing Facility (limit of 90 days per Plan Year)	\$100 Copayment per day <sup>2</sup> , maximum of \$300 per Admission	No Coverage
Sonograms and Ultrasounds (Outpatient)	\$50 Copayment	No Coverage
Urgent Care Center	\$50 Copayment	No Coverage
Vision Care (Non-Routine) Exam	\$25/\$50 Copayment depending on Provider Type	No Coverage
X-ray and Laboratory Services (low-tech imaging)	Hospital Facility 100% - 0% <sup>1</sup> Office or Independent Lab 100% - 0%	No Coverage

<sup>1</sup>Subject to Plan Year Deductible, if applicable  
<sup>2</sup>Pre-Authorization Required, if applicable. Not applicable for Medicare primary.  
<sup>3</sup>Age and/or Time Restrictions Apply  
<sup>4</sup>No Benefits will be payable unless Prior Authorization is obtained, including Plan Participants with Medicare as the Primary Plan.

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**Chapter 5. PPO/Consumer-Driven Health Plan Structure—Pelican HRA 1000 Plan**

**§505. Schedule of Benefits**

**A. Benefits and Coinsurance**

	Coinsurance	
	Network Providers	Non-Network Providers
Physician's Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• General Practice</li> <li>• Family Practice</li> <li>• Internal Medicine</li> <li>• OB/GYN</li> <li>• Pediatrics</li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Allied Health/Other Office Visits: <ul style="list-style-type: none"> <li>• Chiropractors</li> <li>• Federally Funded Qualified Rural Health Clinics</li> <li>• Retail Health Clinics</li> <li>• Nurse Practitioners</li> <li>• Physician's Assistants</li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Specialist Office Visits including surgery performed in an office setting: <ul style="list-style-type: none"> <li>• Physician</li> <li>• Podiatrist</li> <li>• Optometrist</li> <li>• Midwife</li> <li>• Audiologist</li> <li>• Registered Dietician</li> <li>• Sleep Disorder Clinic</li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Ambulance Services - Ground (for Emergency Medical Transportation Only)	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulance Services – Air (for Emergency Medical Transportation only) Non-emergency requires prior authorization <sup>2</sup>	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Ambulatory Surgical Center and Outpatient Surgical Facility	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Bariatric Surgery Services – Facility Services <sup>4</sup>	\$2,500.00 Copayment <sup>2,3</sup>	No Coverage
Bariatric Surgery Services – Professional Services <sup>4</sup>	90% - 10% <sup>2,3</sup>	No Coverage
Bariatric Surgery Services – Preoperative and Postoperative Medical Services <sup>4</sup>	80% - 20% <sup>2,3</sup>	No Coverage
Birth Control Devices - Insertion and Removal (as listed in the Preventive and Wellness Article in the Benefit Plan)	100% - 0%	60% - 40% <sup>1</sup>
Cardiac Rehabilitation (limited to 36 visits per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Chemotherapy/Radiation Therapy (Authorization not required when performed in Physician's office)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Diabetes Treatment	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Diabetic/Nutritional Counseling – Clinics and Outpatient Facilities	80% - 20% <sup>1</sup>	Not Covered

	Coinsurance	
	Network Providers	Non-Network Providers
Dialysis	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Emergency Room (Facility Charge)	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Emergency Medical Services (Non-Facility Charge)	80% - 20% <sup>1</sup>	80% - 20% <sup>1</sup>
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (purchased within six months following cataract surgery)	Eyeglass Frames – Limited to a Maximum Benefit of \$50 <sup>1</sup>	No Coverage
Flu Shots and H1N1 vaccines (administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair)	100% - 0%	100% - 0%
Hearing Aids (Hearing Aids are not covered for individuals age eighteen (18) and older)	80% - 20% <sup>1,3</sup>	Not Covered
Hearing Impaired Interpreter Expense	100%-0%	100%-0%
High-Tech Imaging - Outpatient <ul style="list-style-type: none"> <li>• CT Scans</li> <li>• MRA/MRI</li> <li>• Nuclear Cardiology</li> <li>• PET Scans</li> </ul>	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Home Health Care (limit of 60 Visits per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Hospice Care (limit of 180 Days per Plan Year)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Injections Received in a Physician's Office (when no other health service is received)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Inpatient Hospital Admission (all Inpatient Hospital services included)	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Inpatient and Outpatient Professional Services	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Mastectomy Bras (limited to three (3) per Plan Year)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Mental Health/Substance Abuse - Inpatient Treatment and Intensive Outpatient Programs	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Mental Health/Substance Abuse – Office Visit and Outpatient Treatment (Other than Intensive Outpatient Programs)	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Newborn - Sick, Services excluding Facility	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Newborn - Sick, Facility	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Oral Surgery	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Pregnancy Care - Physician Services	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Preventive Care - Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (For a complete list of benefits, refer to the Preventive and Wellness/Routine Care Article in the Benefit Plan.)	100% - 0% <sup>3</sup>	100% - 0% <sup>3</sup>

	Coinsurance	
	Network Providers	Non-Network Providers
Rehabilitation Services - Outpatient: <ul style="list-style-type: none"> <li>Speech</li> <li>Physical/Occupational <i>(Limited to 50 Visits combined PT/OT per Plan Year. Authorization required for visits over the combined limit of 50.)</i></li> <li><i>(Visit limits do not apply when services are provided for Autism Spectrum Disorders.)</i></li> </ul>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Skilled Nursing Facility <i>(limit 90 Days per Plan Year)</i>	80% - 20% <sup>1,2</sup>	60% - 40% <sup>1,2</sup>
Sonograms and Ultrasounds - Outpatient	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Urgent Care Center	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
Vision Care (Non-Routine) Exam	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
X-Ray and Laboratory Services <i>(low-tech imaging)</i>	80% - 20% <sup>1</sup>	60% - 40% <sup>1</sup>
<sup>1</sup> Subject to Plan Year Deductible, if applicable		
<sup>2</sup> Pre-Authorization Required, if applicable. Not applicable for Medicare primary.		
<sup>3</sup> Age and/or Time Restrictions Apply		
<sup>4</sup> No Benefits will be payable unless Prior Authorization is obtained, including Plan Participants with Medicare as the Primary Plan.		

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 41:364 (February 2015), effective March 1, 2015, amended LR 43:2160 (November 2017), effective January 1, 2018, LR 49:1381 (August 2023).

David W. Couvillon  
Chief Executive Officer

2308#002

## RULE

### Department of Health Board of Dentistry

#### Dentists; Continuing Education Requirements (LAC 46:XXXIII.122, 301, 1509 and 1709)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760 (8), the Department of Health, Board of Dentistry has amended LAC 46:XXXIII.122, .301, .1509, and .1709.

LAC 46:XXXIII.122 provides a list of the specialties the board approves, but also has a catch all category that provides that any area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full-time years and which program is accredited by a dental accreditation agency that is recognized by the United States Department of Education will be recognized as a specialty field. The Board of Dentistry has amended LAC 46:XXXIII.122 to remove the list and simply have the catch all category as a definition for specialties.

LAC 46:XXXIII.301 provides a list of the specialties the board approves, but also has a catch all category that

provides that any area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full-time years and which program is accredited by a dental accreditation agency that is recognized by the United States Department of Education will be recognized as a specialty field. The Board of Dentistry has amended LAC 46:XXXIII.301 to remove the list and simply have the catch all category as a definition for specialties.

The Board of Dentistry has amended LAC 46:XXXIII.1509 to clarify that any dentist with a sedation permit can provide sedation services to another dentist to the level allowed by the permit.

The Board of Dentistry has amended LAC 46:XXXIII.1709 to change the number of years that examination scores are valid for initial licensure from three years to five years following the candidate's successful completion of an accepted licensing examination. This Rule is hereby adopted on the day of promulgation.

## Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Profession

#### Chapter 1. General Provisions

#### §122. Scopes of Practice

A. The board approves any specialty of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full-time years and which program is accredited by a dental accreditation agency that is recognized by the United States Department of Education.

B. - C. ...

1. The board finds that terms implying that a dentist is a specialist in some field of dentistry are terms of art indicating that the dentist has completed an accredited postdoctoral educational program in that field of at least two years. Therefore, a licensed dentist seeking specialty recognition must have successfully completed a post-doctoral program in a specialty area of dentistry consisting of at least two full-time years and which is accredited by a dental accreditation agency that is recognized by the United States Department of Education.

2. The requirements of Paragraph C.1 of this Section shall not apply to otherwise-qualified specialists who have announced their ADA approved specialty prior to the date of initial promulgation of this rule in 1998.

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1114 (June 1998), amended LR 28:1776 (August 2002), LR 28:2512 (December 2002), amended by the Department of Health, Board of Dentistry, LR 43:1963 (October 2017), LR 49:1382 (August 2023).

#### Chapter 3. Dentists

#### §301. Advertising and Soliciting by Dentists

A. - B. ...

C. The board approves any specialty of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full-time years and which program is accredited by a dental accreditation agency that is recognized by the United States Department of Education.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Dentistry, December 1970, amended 1971, amended and promulgated LR 13:179 (March 1987), amended by Department of Health and Hospitals, Board of Dentistry, LR 15:966 (November 1989), LR 18:739 (July 1992), LR 20:657 (June 1994), LR 21:567 (June 1995), LR 22:23 (January 1996), LR 22:1215 (December 1996), repromulgated LR 23:199 (February 1997), amended LR 23:1524 (November 1997), LR 25:509 (March 1999), LR 25:1476 (August 1999), LR 26:690 (April 2000), LR 27:1890 (November 2001), LR 28:1776 (August 2002), LR 28:2512 (December 2002), LR 30:2305 (October 2004), LR 32:243 (February 2006), LR 37:2150 (July 2011), LR 42:872 (June 2016), amended by the Department of Health, Board of Dentistry, LR 43:1963 (October 2017), LR 49:1382 (August 2023).

**Chapter 15. Anesthesia/Analgesia Administration**

**§1509. Third-Party Sedation/Anesthesia**

A. Sedation and/or general anesthesia may be performed in a dental office in conjunction with dental work when the dentist utilizes the services of a third-party Louisiana-licensed physician who specializes in anesthesiology, a third-party Louisiana-licensed certified registered nurse anesthetist, or a Louisiana-licensed dentist with an appropriate sedation permit for the level of anesthesia to be achieved provided that the third-party anesthetist must remain on the premises of the dental facility until any patient given sedation is recovered.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:54 (January 2016), amended by the Department of Health, Board of Dentistry, LR 43:48 (January 2017), LR 49:1383 (August 2023).

**Chapter 17. Licensure Examination**

**§1709. Examination of Dentists**

A. - B.2. ...

C. Examination scores are valid for initial licensure for five years following the candidate's successful completion of an accepted licensing examination. The examinations accepted by the Board of Dentistry for initial licensure by examination are as follows:

C.1. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:2513 (December 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:3516 (December 2011), repromulgated LR 38:356 (February 2012), amended LR 38:1959 (August 2012), LR 39:86 (January 2013), LR 39:1282 (May 2013), LR 40:783 (April 2014), amended by the Board of Dentistry, LR 42:1622 (October 2016), amended by the Department of Health, Board of Dentistry, LR 44:48 (January 2018), LR 49:1383 (August 2023).

Arthur Hickham, Jr.  
Executive Director

2308#029

**RULE**

**Department of Health  
Bureau of Health Services Financing**

**Early and Periodic Screening, Diagnosis and Treatment  
School-Based Health Services  
(LAC 50:XV.Chapter 95)**

The Department of Health, Bureau of Health Services Financing has amended LAC 50:XV.Chapter 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 5. Early and Periodic Screening, Diagnosis and Treatment**

**Chapter 95. School-Based Health Services**

**Subchapter A. School-Based Health Service Program Guidelines**

**§9501. General Provisions**

A. EPSDT school-based medical services are provided pursuant to a written plan of care and provided by licensed medical providers within a local education agency (LEA) to Medicaid beneficiaries ages 3 to 21 with or suspected of having a disability. The goal of these services is to prevent or mitigate disease, enhance care coordination, and reduce costs by preventing the need for tertiary care. Providing these services in the school increases access to health care for children and youth resulting in a more efficient and effective delivery of care.

B. School-based medical services shall be covered for all beneficiaries in the school system who are eligible according to Subsection A above. Medical necessity criteria shall be determined according to the provisions of LAC 50:I.Chapter 11.

C. Medically necessary services are defined as those health care services that are in accordance with generally accepted evidence-based medical standards or that are considered by most physicians (or other independent licensed practitioners) within the community of their respective professional organizations to be the standard of care.

1. In order to be considered medically necessary, services must be:

a. deemed reasonably necessary to diagnose, correct, cure, alleviate, or prevent the worsening of a condition or conditions that endanger life, cause suffering or pain, or have resulted or will result in a handicap, physical deformity or malfunction; and

b. those for which no equally effective, more conservative and less costly course of treatment is available or suitable for the beneficiary.

2. Any such services must be individualized, specific and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and neither more nor less than what the beneficiary requires at that specific point in time.

3. Although a service may be deemed medically necessary, it does not mean the service will be covered under the Medicaid Program. Services that are experimental, non-FDA approved, investigational or cosmetic are specifically excluded from Medicaid coverage and will be deemed not medically necessary.

4. The Medicaid director, in consultation with the Medicaid medical director, may consider authorizing services at his/her discretion on a case-by-case basis.

D. All service providers providing EPSDT school-based medical services are required to maintain an active license that is necessary for the applicable service within the state of Louisiana.

E. All participating LEAs are required to maintain an active status with Medicaid. Should an LEA's Medicaid provider number become inactive or one LEA from a group that shares a tax identification becomes inactive, it may cause the entire cost report to be denied and the cost settlement forfeited.

F. Effective for the fiscal year ended June 30, 2021 cost report year, the individual cost settlement amounts for each program (therapy services, behavioral health services, nursing services, personal care services, and other medical direct services) will be combined into one cost settlement for the LEA. Settlement letters will be sent to the LEA with the individual final cost reports for its records. Medicaid administrative claiming (MAC) cost reports are derived by using the MAC-related time study results and cost related to each of the EPSDT programs. All costs will have been certified by the LEA with the EPSDT cost report, so no additional signatures or certifications are required for MAC. Therefore, MAC cost reports shall remain separate.

1. - 2. Repealed.

G. LEAs that terminate business must notify the Louisiana Medicaid fiscal intermediary, immediately. Instructions will need to be provided to Department of Health/Rate Setting and Audit and/or Department of Education as to the final disposition of cost settlements and previous dollars owed to or from Louisiana Medicaid.

1. For LEAs that transfer to new management companies and owe the department, the new owners shall assume all obligations of repayment for the new LEA. Overpayments will be recouped from future earnings of the new management company.

2. For separating LEAs that are owed reimbursements, the department will cut a supplemental check to the LEA or the new management company. However, failure to provide instructions to the department within 10 days of closure may result in forfeiture of payment.

3. Repealed.

H. Dollars owed will be assessed to all future cost settlements for the LEA and will be applied to the earliest cost report year with an overpayment. For example, if an LEA has an overpayment for nursing services and an amount

due to them for therapy services, the payment for therapy services will be applied to the LEA's overpayment for the nursing services. The net balance from this offset will:

1. be used to offset overpayments in other periods (from oldest period moving forward to the current period);

2. create a net overpayment that will be carried forward and offset against future billings and/or payments; and

3. be remitted to the LEA.

I. Service Exclusion. Services are not covered if they are performed for educational purposes (e.g., academic testing) or determined not medically necessary. Medicaid does not reimburse for social or educational needs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1298 (August 2016), LR 45:561 (April 2019), LR 47:738 (June 2021), LR 49:1382 (August 2023).

### §9503. Covered Services

A. The following medically necessary services provided by local education agencies (LEAs) are reimbursable when included on a beneficiary's individualized service plan (IEP), a section 504 accommodation plan, an individualized health care plan, or a medical need based written plan of care:

1. medical and remedial behavioral health care including applied behavior analysis (ABA);

a. - c. Repealed.

2. personal care services;

a. - c. Repealed.

3. physical therapy;

4. occupational therapy;

a. Repealed.

5. speech therapy/pathology; and

6. audiology.

B. Medically necessary services shall be provided by local education agencies (LEAs) that correct or ameliorate a child's health condition.

C. Services must be performed by qualified providers as set forth in the State Plan following Louisiana scope of practice laws for the respective provider furnishing services.

1. Services rendered by certified school psychologists must be practicing under the supervision of a licensed psychologist consistent with R.S. 17:7.1.

2. Licensed master social workers or certified master licensed social worker must practice under the supervision of a licensed clinical social worker.

D. LEAs are responsible for proper medical documentation and record keeping. Services shall promote appropriate continuity of care.

E. The following services are covered for any EPSDT eligible beneficiary in schools.

1. EPSDT Program Periodicity Schedule for Screenings. Qualified individuals employed by a school district may perform any of these screens within their licensure. The results of these screens must be made available as part of the care coordination plan of the district. The screens shall be performed according to the periodicity schedule including any inter-periodic screens.

2. EPSDT Medical/Nursing Assessment/Evaluation Services. A licensed health care provider employed by a school district may perform services to protect the health status of children and correct health problems. These services may include health counseling and triage of childhood illnesses and conditions.

a. Consultations are to be face-to-face contact in one-on-one sessions. These are services for which a parent would otherwise seek medical attention at a physician or health care provider's office. Telemedicine/telehealth is not a covered service, but is an applicable service delivery method. When otherwise covered by Louisiana Medicaid, telemedicine/telehealth is allowed for all CPT codes located in Appendix P of the CPT manual. This service is available to all Medicaid individuals eligible for EPSDT.

F. Policy transmittals, State Plan amendments, regulations, provider bulletins, provider manuals, and fee schedules, issued by the department are the final authority regarding services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2760 (October 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 45:562 (April 2019), LR 47:738 (June 2021), LR 49:1384 (August 2023).

#### **§9505. Reimbursement Methodology**

A. Cost Reporting. Settlement payments for EPSDT school-based medical direct, therapy, behavioral health, and PCS services shall be based on the most recent school year's actual costs as determined by desk review and/or audit for each LEA provider.

1. Each LEA shall determine cost annually by using LDH's cost report for medical service cost form based on the direct services cost report.

2. Direct costs shall be limited to the amount of total compensation (salaries, vendor payments and fringe benefits) of current medical service providers as allocated to medical services for Medicaid beneficiaries. There are no additional direct costs included in the rate.

3. ...

4. To determine the amount of EPSDT services costs that may be attributed to Medicaid; the ratio of total Medicaid students in the LEA is multiplied by total direct (direct plus indirect) cost. Cost data are subject to certification by each LEA. This serves as the basis for obtaining federal Medicaid funding.

B. Licensed master social workers practicing under the supervision of a licensed clinical social worker, and certified school psychologist practicing under the supervision of a licensed psychologist that has the authority to practice in the community/outside of schools will be required to show proof of verification when the cost report is monitored.

1. - 6. Repealed.

C. For the EPSDT services the participating LEA's actual cost of providing the services shall be claimed for Medicaid federal financial participation (FFP) based on the following methodology.

1. Develop Direct Cost—The Payroll Cost Base and Vendor Cost Base. The state shall gather actual expenditure information for each LEA through its employee payroll/benefits and vendor accounts payable system. Total annual salaries and benefits paid, as well as contracted

(vendor) payments, shall be obtained initially from each LEA's payroll/benefits and accounts payable system. This data shall be reported on LDH's direct services cost report form for all direct service personnel (i.e., all personnel providing LEA medical services covered under the state plan).

2. Adjust the Payroll and Vendor Cost Base. The payroll and vendor cost base shall be reduced for amounts reimbursed by non-state and local funding sources (e.g., federal grants). The payroll and vendor cost base shall not include any amounts for staff whose compensation is 100 percent reimbursed by a funding source other than state/local funds. This application results in total adjusted employee salary and vendor cost.

3. Determine the Percentage of Time to Provide All EPSDT Services. A time study, which incorporates the CMS-approved Medicaid administrative claiming (MAC) methodology for direct service employees, shall be used to determine the percentage of time EPSDT service providers spend on EPSDT direct services and general and administrative (G and A) time. This time study will assure that there is no duplicate claiming. The G and A percentage shall be reallocated in a manner consistent with the CMS-approved Medicaid administrative claiming methodology. Total G and A time shall be allocated to all other activity codes based on the percentage of time spent on each respective activity. To reallocate G and A time to EPSDT services, the percentage of time spent on EPSDT services shall be divided by 100 percent minus the percentage of G and A time. This shall result in a percentage that represents the EPSDT services with appropriate allocation of G and A. This percentage shall be multiplied by total adjusted salary cost as determined by the adjusted payroll cost base to allocate cost to school-based services. The product represents total direct cost.

a. A sufficient amount of EPSDT service providers' time shall be sampled to ensure results that will have a confidence level of at least 95 percent with a precision of plus or minus 5 percent overall.

b. Time study moments are to be completed and submitted by all participating LEA participants. Participants will have 48 hours (not counting weekends or holidays) from the time of the moment to complete each moment. Reminder emails will be sent to the participant and the Medicaid coordinator each morning until the moment expires. Once a time study moment has expired, it will no longer be able to be completed and will be deemed not returned. Any LEA that fails to return at least 85 percent of its moments from the time study for two quarters in a cost report year for any program, will be suspended from that program for the entire cost report year.

c. Unsupported Time Study Moments. LEAs will be penalized the lessor of \$1,000 times the number of unsupported moments or 50 percent of their cost report. This only applies to LEAs that cannot support at least 50 percent of the moments selected for testing.

d. The time study percentage used for cost reimbursement calculation is an average of the four quarterly statewide time study results for each school-based Medicaid program. LEAs must participate in all four time study quarters to be reimbursed all costs for the fiscal year. Any LEA that does not submit a cost report for any program for

which any billings were submitted will be required to pay back any billing dollars received for that cost report year. This will be handled in the school based claiming cost settlement process.

e. Vendors are not subject to the time study process. Vendors are only at a school to provide the direct service enumerated in the contract. Vendors are not expected to perform G and A tasks and will be reimbursed based on a rate per service. This rate per service should include all direct and indirect costs. The rate per service should cover the time spent providing the direct service, administrative time and any other time related to tasks related to that service.

4. Determine Indirect Costs. Indirect costs shall be determined by multiplying each LEA's indirect unrestricted rate assigned by the cognizant agency (the Department of Education) by total adjusted direct cost. No additional indirect costs shall be recognized outside of the cognizant agency's indirect rate. The sum of direct costs and indirect costs shall be the total direct service cost for all students receiving EPSDT services.

D. Allocate Direct Service Costs to Medicaid. To determine the costs that may be attributed to Medicaid, total direct service cost (employee and vendor) shall be multiplied by the ratio of Medicaid enrolled students in the LEA to all students in the LEA. This results in total cost that may be certified as Medicaid's portion of school-based EPSDT services cost. The Medicaid enrolled student ratio is calculated one time in each cost report year. This calculation is based on the statewide student count performed in October each year.

1. - 9. Repealed.

E. Reconciliation of LEA Certified Costs and Medicaid Management Information System (MMIS) Paid Claims. Each LEA shall complete applicable service cost report(s) and submit the cost report(s) no later than five months after the fiscal year period ends (June 30), and reconciliation should be completed within 12 months from the fiscal year end. All filed cost reports shall be subject to desk review by the department's audit contractor. The department shall reconcile the total expenditures (both state and federal share) for each LEA's therapy, behavioral health services, personal care services, nursing services, and other medical direct services. The Medicaid certified cost expenditures from the cost report(s) will be reconciled against the MMIS paid claims data and the department shall issue a notice of final settlement, after all reviews, that denotes the amount due to or from the LEA. This reconciliation is inclusive of all services provided by the LEA.

F. Interim Billing. The Centers for Medicare and Medicaid Services (CMS) requires each LEA to bill for all Medicaid services provided. CMS and the Office of Inspector General (OIG) rely on interim billing data for documentation of the number of services provided by each LEA and gives them a mechanism to compare the cost reimbursed to the number of services being provided. If there are no claim submissions within an 18 month period, Medicaid management information system (MMIS) automatically terminates eligibility of a provider number making the LEA Medicaid ineligible. Any LEA that is

Medicaid ineligible will have all interim claims denied and its cost report for all programs in which the LEA participated will be rejected.

G. Cost Settlement Process. As part of its financial oversight responsibilities, the department shall develop a risk assessment and an audit plan to ensure cost reasonableness and accuracy in accordance with current CMS guidelines. Based on the audit plan, the department will develop agreed upon procedures to review and process all final settlements to LEAs. The agreed upon procedures will be performed to review cost reports submitted by LEAs.

1. The financial oversight of all LEAs shall include reviewing the costs reported on the EPSDT services cost report against the allowable costs, performing desk reviews and conducting limited reviews.

2. The department will make every effort to audit each LEA at least every four years. These activities shall be performed to ensure that audit and final settlement occurs no later than two years from the LEA's fiscal year end for the cost reporting period audited. LEAs may appeal audit findings in accordance with LDH appeal procedures.

3. The department shall adjust the affected LEA's payments no less than annually, when any reconciliation or final settlement results in significant underpayments or overpayments to any LEA. By performing the reconciliation and final settlement process, there shall be no instances where total Medicaid payments for services exceed 100 percent of actual, certified expenditures for providing LEA services for each LEA.

4. If the interim payments exceed the actual, certified costs of an LEA's Medicaid services, the department shall recoup the overpayment from current and following years cost report settlement until the amount due is zero.

5. If the actual certified costs of an LEA's Medicaid services exceed interim Medicaid payments, the department will pay this difference to the LEA in accordance with the final actual certification agreement.

6. Type 1 and 3 charter schools in Orleans Parish will be required to submit acceptable documentation (board minutes, letter from the school board, etc.) that authorizes the charter to act as its own LEA, upon enrollment. Likewise, in order to receive a cost settlement, confirmation that the authorization is still in good standing with the school board will be required to accompany the submission of the cost report. Failure to provide this documentation at the time the cost report is filed may cause the cost report to be rejected and not be considered as timely filed.

H. Delinquent Cost Report Penalty. Cost reports must be submitted annually. In order to be eligible to submit a cost report, LEAs must participate in all four time study quarters for the fiscal year.

1. The due date for filing annual cost reports is November 30. There shall be no automatic extension of the due date for filing of cost reports. If an LEA experiences unavoidable difficulties in preparing its cost report by the prescribed due date, one 30-day extension may be permitted, upon written request submitted to the department or its designee prior to the due date. The request must explain in detail why the extension is necessary. Extensions beyond 30 days may be approved for situations beyond the LEA's control.

2. Delinquent cost reports that have not been received by November 30 and an extension was not received, will be deemed non-compliant and may be subject to a non-refundable reduction of 5 percent of the total cost settlement. This reduction may be increased an additional 5 percent each month until the completed cost report is submitted or the penalties total 100 percent. LEAs that have not filed their cost report by six months or more beyond the due date cannot bill for services until the cost report is filed.

I. State Monitoring. If the department becomes aware of potential instances of fraud, misuse or abuse of LEA services and Medicaid funds, it will perform timely audits and investigations to identify and take necessary actions to remedy and resolve the problem.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:2761 (October 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 45:562 (April 2019), LR 47:739 (June 2021), LR 49:1385 (August 2023).

#### **§9507. Local Education Agency Responsibilities**

A. The LEA shall ensure that its licensed and unlicensed EPSDT service professionals are employed or contracted according to the requirement specified under the Individuals with Disabilities Education Act (IDEA).

B. LEAs shall ensure that individual professional requirements are in compliance with Medicaid qualifications, Department of Education Bulletin 746, and Louisiana Standards for State Certification of School Personnel prior to an LEA billing for any services of a clinician under Medicaid.

C. Anyone providing EPSDT services must operate within their scope of practice license or certification under the supervision of a licensed practitioner. Licensed practitioners assume professional liability for unlicensed/certified practitioners under their supervision and within their scope of practice. The provider shall create and maintain documents to substantiate that all requirements are met.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:1387 (August 2023).

### **Subchapter B. School-Based EPSDT Transportation Services**

#### **§9511. General Provisions**

A. A special transportation trip is only billable to Medicaid on the same day that a Medicaid-eligible child is receiving a Medicaid Service included in the child's individualized service plan (IEP). Transportation shall be provided on a specially adapted bus. The need for transportation must be documented in the child's IEP.

B. ...

C. Local education agency responsibilities shall be followed in accordance with §9507.

D. Service Exclusion. Transportation services are not covered if performed for educational purposes (e.g., academic testing) or, as the result of the assessment and evaluation, it is determined the service is not reflected in an IEP. Medicaid does not reimburse for social or educational needs.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:563 (April 2019), amended LR 47:740 (June 2021), LR 49:1387 (August 2023).

#### **§9515. Reimbursement Methodology**

A. Medically necessary specialized transportation that is included on the student's IEP, provided by LEAs to beneficiaries under age 21 is reimbursed based on the most recent school year's actual cost as determined by desk review and/or audit for each LEA provider. Each LEA shall determine cost annually by using LDH's specialized transportation cost report form. There is no time study for the transportation program.

1. Direct cost shall be the cost of fuel, repairs and maintenance, rentals, contracted vehicle use cost and the amount of total compensation (salaries, vendor payments, and fringe benefits) of specialized transportation employees or contract cost for contract drivers, as allocated to special transportation services for Medicaid beneficiaries. There are no additional direct costs included in the rate.

2. Indirect cost is derived by multiplying the direct cost by the cognizant agency's unrestricted indirect cost rate assigned by the Department of Education to each LEA by the allowable costs. There are no additional indirect costs included.

B. The transportation cost report initially provides the total cost of all special transportation services provided, regardless of payer. To determine the amount of special transportation costs that may be attributed to Medicaid, total cost is multiplied by the ratio of one-way Medicaid eligible trips to one-way trips for all students transported via specialized transportation. This results in total cost that may be certified as Medicaid's portion of school-based specialized transportation services cost. Trip data is derived from transportation logs maintained by drivers for each one-way trip. This ratio functions in lieu of the time study methodology and student ratio used for the direct services cost report. Cost data on the transportation cost report is subject to certification by each parish and serves as the basis for obtaining federal Medicaid funding.

C. The participating LEA's actual cost of providing specialized transportation services will be claimed for Medicaid federal financial participation (FFP) based on the methodology described in the steps below. The state will gather actual expenditure information for each LEA through the LEA's payroll/benefits and accounts payable system. These costs are also reflected in the annual financial report (AFR) that all LEAs are required to certify and submit to the Department of Education. All costs included in the amount of cost to be certified and used subsequently to determine the reconciliation and final settlement amounts as well as interim rates are identified on the CMS-approved transportation cost report and are allowed in OMB Circular A-87.

1. - 3. ...

4. Step 4—Total Cost. The sum of direct costs and indirect cost is the total specialized transportation direct cost for all students with an IEP indicating medical need.

5. Step 5—Allocate Specialized Transportation Cost to Medicaid. Special transportation drivers shall maintain

logs of all students transported on each one-way trip. These logs shall be utilized to aggregate total annual one-way trips which will be reported by each LEA on the special transportation cost report. To determine the amount of special transportation cost that may be attributed to Medicaid, total cost is multiplied by the ratio of one-way trips by Medicaid students to one-way trips for all students transported via special transportation. This results in total cost that may be certified as Medicaid's portion of school based special transportation services cost.

**D. Medicaid One-Way Trip Ratios for Specialized Transportation**

*Calculation*—Medicaid trip ratio times specialized transportation costs [(direct services) plus (direct services times indirect rate)].

*Denominator*—the total number of one-way trips for all children that ride a specialized transportation bus.

*Numerator*—the number of one-way trips for Medicaid enrolled children who received specialized transportation to and from the IEP service destination will be claimed as a Medicaid eligible trip when the child receives a Medicaid service included in an IEP on a particular day and specialized transportation is specifically listed in the IEP.

E. Reimbursement of LEA Certified Costs. Each LEA shall complete and submit the specialized transportation cost report no later than five months after the fiscal year end (June 30), and reconciliation should be completed within 12 months from the fiscal year end. All filed cost reports shall be subject to desk review or audit by the department's audit contractor. The financial oversight of all LEAs will include reviewing the costs reported on the specialized transportation cost reports against the allowable costs in accordance with 2 CFR 200, performing desk reviews and conducting limited reviews. The department shall issue a notice of final reimbursement, after all reviews, which denotes the amount due to the LEA.

F. As part of financial oversight responsibilities, the department shall develop a risk assessment and audit plan to ensure cost reasonableness and accuracy in accordance with current CMS guidelines. Based on the audit plan, the department will develop agreed upon procedures to review and process all reimbursements to LEAs. The agreed upon procedures will be performed to review cost reports submitted by LEAs.

1. The financial oversight of all LEAs shall include reviewing the costs reported on the specialized transportation cost report against the allowable costs, performing desk reviews and conducting limited reviews.

2. The department shall make every effort to audit each LEA at least every four years. These activities shall be performed to ensure that audit and final reimbursement occurs no later than two years from the LEA's fiscal year end for the cost reporting period audited. LEAs may appeal audit findings in accordance with LDH appeal procedures.

G. Delinquent cost report penalty will be handled in accordance with §9505.H.

H. State monitoring will be handled in accordance with §9505.I.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:563 (April 2019), amended LR 49:1387 (August 2023).

**Subchapter C. School-Based Medicaid Personal Care Services**

**§9521. General Provisions**

A. General provisions shall be followed in accordance with §9501.

B. Early and periodic screening, diagnosis and treatment personal care services must be prescribed by a licensed practitioner within the scope of their practice initially and every 180 days thereafter (or rolling six months) and when changes in the plan of care occur.

C. Local education agency responsibilities shall be followed in accordance with §9507.

D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:564 (April 2019), amended LR 47:740 (June 2021), LR 49:1388 (August 2023).

**§9523. Covered Services**

A. The following school-based personal care services shall be covered:

1. - 3. ...

4. accompanying, but not transporting, the beneficiary to and from his/her physician and/or medical facility for necessary medical services;

5. provides assistance with transfers, positioning and repositioning; and

6. provide positive behavior support strategies to assist students with prompting to perform services related to physical and/or behavioral health needs.

B. - C.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:565 (April 2019), amended LR 47:740 (June 2021), LR 49:1388 (August 2023).

**§9525. Reimbursement Methodology**

A. Cost reporting will be handled in accordance with §9505.A.

1. - 4. Repealed.

B. For the personal care services, the participating LEAs' actual cost of providing the services shall be claimed for Medicaid federal financial participation (FFP) based on the following methodology for employees/vendors:

1. Develop Direct Cost-The Payroll Cost Base. Total annual salaries and benefits paid, as well as contracted (vendor) payments, shall be obtained initially from each LEA's payroll/benefits and accounts payable system. This data shall be reported on LDH's direct services cost report form for all personal care service employees or vendors (i.e., all personnel providing LEA personal care treatment services covered under the state plan).

2. Adjust the Payroll/Vendor Cost Base. The payroll cost base shall be reduced for amounts reimbursed by non-state and local funding sources (e.g., federal grants). The payroll/vendor cost base shall not include any amounts for staff whose compensation is 100 percent reimbursed by a

funding source other than state/local funds. This application results in total adjusted salary cost.

3. Personal care providers will not be subject to a time study.

4. Determine Indirect Cost. Indirect cost shall be determined by multiplying each LEA's indirect unrestricted rate assigned by the cognizant agency (the Department of Education) by total adjusted direct cost. No additional indirect cost shall be recognized outside of the cognizant agency indirect rate. The sum of direct cost and indirect cost shall be the total direct service cost for all students receiving personal care services.

5. - 6. Repealed.

C. Allocate Direct Service Cost to Medicaid. To determine the amount of cost that may be attributed to Medicaid, total direct service cost (employee and vendor) shall be multiplied by the ratio of Medicaid students in the LEA to all students in the LEA. This results in total cost that may be certified as Medicaid's portion of school-based personal care services cost. The Medicaid enrolled student ratio is calculated one time in each cost report year. This calculation is based on the statewide student count performed in October each year.

D. Reconciliation of LEA Certified Cost and Medicaid Management Information System (MMIS) Paid Claims. Each LEA shall complete the personal care services cost report and submit the cost report(s) no later than five months after the fiscal year period ends (June 30), and reconciliation shall be completed within 12 months from the fiscal year end. All filed personal care services cost reports shall be subject to desk review by the department's audit contractor. The department shall reconcile the total expenditures (both state and federal share) for each LEA's services. The Medicaid certified cost expenditures from the personal care services cost report(s) will be reconciled against the MMIS paid claims data and the department shall issue a notice of final settlement, after all reviews, that denotes the amount due to or from the LEA. This reconciliation is inclusive of all services provided by the LEA.

1. - 5. Repealed.

E. Cost settlement process will be handled in accordance with §9505.G.

F. Delinquent cost report penalty will be handled in accordance with §9505.H.

G. State monitoring will be handled in accordance with §9505.I.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:565 (April 2019), amended LR 47:741 (June 2021), LR 49:1388 (August 2023).

#### **Subchapter D. School-Based Therapy Services**

##### **§9531. General Provisions**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:566 (April 2019), amended LR 46:343 (March 2020), LR 47:741 (June 2021), repealed LR 49:1389 (August 2023).

##### **§9533. Covered Services**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:566 (April 2019), amended by the Department of Health, Bureau of Health Services Financing, LR 46:343 (March 2020), LR 47:741 (June 2021), repealed LR 49:1389 (August 2023).

##### **§9535. Reimbursement Methodology**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:567 (April 2019), amended by the Department of Health, Bureau of Health Services Financing, LR 46:343 (March 2020), LR 47:741 (June 2021), repealed LR 49:1389 (August 2023).

#### **Subchapter E. School-Based Applied Behavior Analysis-Based Services**

##### **§9541. General Provisions**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 46:185 (February 2020), amended LR 47:741 (June 2021), repealed LR 49:1389 (August 2023).

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

Stephen R. Russo, JD  
Secretary

2308#053

#### **RULE**

#### **Department of Health Bureau of Health Services Financing**

#### **Home Health Program Reimbursement Rate Increase (LAC 50:XIII.701)**

The Department of Health, Bureau of Health Services Financing has amended LAC 50:XIII.701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

#### **Title 50**

#### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part XIII. Home Health Program**

#### **Subpart 1. Home Health Services**

#### **Chapter 7. Reimbursement Methodology**

#### **§701. Nursing and Home Health Aide Services**

A. - D. ...

E. Effective for dates of service on or after April 3, 2023, the reimbursement rates for all home health services shall be reimbursed based on the Louisiana Medicaid fee schedule. All rates in the fee schedule are published on the Medicaid provider website at [www.lamedicaid.com](http://www.lamedicaid.com).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:654 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2281 (October 2010), LR 37:2159 (July 2011), LR 39:1051 (April 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 49:1389 (August 2023).

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

Stephen R. Russo, JD  
Secretary

2308#054

**RULE**

**Department of Health  
Bureau of Health Services Financing**

**Inpatient Hospital Services  
Well Baby and Transplant Payments  
(LAC 50:V.Chapter 9)**

The Department of Health, Bureau of Health Services Financing has amended LAC 50:V.Chapter 9 and repealed the following uncodified rules in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act:

Register Date	Title	Register Volume, Number	Page Numbers
July 20, 1996	Transplant Services - Reimbursement	Volume 22, No. 07	584
September 20, 2001	Inpatient Hospital Services – Reimbursement Methodology – Well Baby Care	Volume 27, No. 09	1522
March 20, 2005	Hospital Program – Transplant Services	Volume 31, No. 03	667

This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 1. Inpatient Hospitals Services**

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

**Subchapter A. General Provisions**

**§907. Well Baby Care**

A. A separate prospective per diem rate shall be paid to qualifying hospitals for well baby care rendered to infants who are discharged at the same time that the mother is discharged.

B. Qualifying Criteria. Non-state, non-rural hospitals that perform more than 1,500 Medicaid deliveries per year

shall be eligible for this payment. The department will verify that qualifying hospitals meet the 1,500 Medicaid delivery threshold each state fiscal year. Well baby payments shall be discontinued should a hospital no longer qualify.

C. Reimbursement Methodology. The per diem rate for well baby care shall be the same prospective rate that is paid for nursery boarder baby service.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:1390 (August 2023).

**Subchapter B. Reimbursement Methodology  
§953. Acute Care Hospitals**

A. - I.5. ...

J. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 6.3 percent of the per diem rate on file as of August 3, 2009.

1. Payments to small rural hospitals as defined in R.S. 40:1189.3 shall be exempt from this reduction.

2. Repealed.

K. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2010, quarterly supplemental payments will be issued to qualifying non-rural, non-state acute care hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A low-income and needy care collaboration agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital’s inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

i. - ii. Repealed.

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital’s specific DSH limit and the hospital’s DSH payments for the applicable payment period.

3. Effective for dates of service on or after January 1, 2011, all parties that participate in supplemental payments under this Section, either as a qualifying hospital by receipt of supplemental payments or as a state or local governmental entity funding supplemental payments, must meet the

following conditions during the period of their participation.

a. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

b. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

c. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

d. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

e. A participating governmental entity may not recoup funds from an affiliated hospital that has not adequately performed under the low income and needy care collaboration agreement.

f. A participating hospital may not return any of the supplemental payments it receives under this Section to the governmental entity that provides the non-federal share of the supplemental payments.

g. A participating governmental entity may not receive any portion of the supplemental payments made to a participating hospital under this Section.

4. Each participant must certify that it complies with the requirements of §953.K.3 by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health, Bureau of Health Services Financing.

5. Each qualifying hospital must submit a copy of its low income and needy care collaboration agreement to the department.

6. The supplemental payments authorized in this Section shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

L. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to acute care hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

1. Payments to small rural hospitals as defined in R.S. 40:1189.3 shall be exempt from this reduction.

2. - 2.b. Repealed.

M. Effective for dates of service on or after August 1, 2010, the inpatient per diem rate paid to acute care hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

1. Payments to small rural hospitals as defined in R.S. 40:1189.3 shall be exempt from this reduction.

N. Effective for dates of service on or after January 1, 2011, the inpatient per diem rate paid to acute care hospitals shall be reduced by 2 percent of the per diem rate on file as of December 31, 2010.

1. Payments to small rural hospitals as defined in R.S. 40:1189.3 shall be exempt from this reduction.

1.a. - 6. Repealed.

O. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to acute care hospitals

shall be reduced by 3.7 percent of the per diem rate on file as of July 31, 2012.

1. Repealed.

P. Effective for dates of service on or after February 1, 2013, the inpatient per diem rate paid to acute care hospitals shall be reduced by 1 percent of the per diem rate on file as of July 31, 2013.

1. Repealed.

Q. Effective for dates of service on or after March 1, 2017, supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be annual. The amount appropriated for annual supplemental payments shall be reduced to \$1,000. Each qualifying hospital's annual supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

1. Repealed.

R. Effective for dates of service on or after January 1, 2017, the inpatient per diem rate paid to acute care hospitals shall be increased by 7.03 percent of the per diem rate on file as of December 31, 2016.

1. Small rural hospitals as defined in R.S. 40:1189.3 and public-private partnership hospitals as defined in LAC 50:V.1701-1703 shall be exempt from this rate increase.

S. Effective for dates of service on or after January 1, 2018, the inpatient per diem rate paid to acute care hospitals shall be increased by indexing to 56 percent of the small rural hospital prospective per diem rate in effect on January 1, 2017.

1. Acute care hospitals whose per diem rates as of January 1, 2017, excluding the graduate medical education portion of the per diem, are greater than 56 percent of the January 1, 2017 small rural hospital rate shall not be increased.

2. Carve-out specialty units, nursery boarder, and well baby services are excluded from these rate increases.

T. Effective for dates of service on or after January 1, 2020, the inpatient per diem rate paid to acute care hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2019.

1. Small rural hospitals as defined in R.S. 40:1189.3 and public-private partnership hospitals as defined in LAC 50:V.1701-1703 shall be exempt from this rate increase.

2. Carve-out specialty units, nursery boarder, and well baby services are included in these rate increases.

U. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to acute care hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

1. Small rural hospitals as defined in R.S. 40:1189.3 and public-private partnership hospitals as defined in LAC 50:V.1701-1703 shall be exempt from this rate increase.

2. Carve-out specialty units, nursery boarder, and well baby services are included in these rate increases.

V. - X.2. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895, 1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010),

LR 37:2161 (July 2011), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), repromulgated LR 40:1939, 1940 (October 2014), LR 41:133 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017), LR 43:1389 (July 2017), repromulgated LR 43:1757 (September 2017), amended LR 43:2533 (December 2017), repromulgated LR 44:1445 (August 2018), amended LR 45:1770 (December 2019), LR 46:1683 (December 2020), LR 49:1390 (August 2023).

#### **§955. Long-Term Hospitals**

A. - C. ...

D. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to long term hospitals for inpatient services shall be reduced by 6.3 percent of the per diem rate on file as of August 3, 2009.

1. - 2. Repealed.

E. Effective for dates of service on or after February 3, 2010, the inpatient per diem rate paid to long term hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

F. Effective for dates of service on or after August 1, 2010, the inpatient per diem rate paid to long term hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

G. Effective for dates of service on or after January 1, 2011, the inpatient per diem rate paid to long term hospitals shall be reduced by 2 percent of the per diem rate on file as of December 31, 2010.

H. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to long term hospitals shall be reduced by 3.7 percent of the per diem rate on file as of July 31, 2012.

I. Effective for dates of service on or after February 1, 2013, the inpatient per diem rate paid to long term hospitals shall be reduced by 1 percent of the per diem rate on file as of January 31, 2013.

J. Effective for dates of service on or after January 1, 2017, the inpatient per diem rate paid to long term hospitals shall be increased by 7.03 percent of the per diem rate on file as of December 31, 2016.

K. Effective for dates of service on or after January 1, 2018, the inpatient per diem rate paid to long term hospitals shall be increased by indexing to 42 percent of the small rural hospital prospective per diem rate in effect on January 1, 2017. Long term hospitals whose per diem rates as of January 1, 2017, excluding the graduate medical education portion of the per diem, are greater than 42 percent of the January 1, 2017 small rural hospital rate shall not be increased.

L. Effective for dates of service on or after January 1, 2020, the inpatient per diem rate paid to long term acute hospitals shall be increased by indexing to 45 percent of the small rural hospital prospective per diem rate in effect on January 1, 2019. Long term hospitals whose per diem rates as of January 1, 2019, excluding the graduate medical education portion of the per diem, are greater than 45 percent of the January 1, 2019 small rural hospital rate shall not be increased.

M. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to long term acute hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

N. Repealed.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2533 (December 2017), repromulgated LR 44:1445 (August 2018), amended LR 45:1770 (December 2019), LR 46:1683 (December 2020), LR 49:1392 (August 2023).

#### **§957. Hospital Intensive Neurological Rehabilitation Units**

Repealed.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), repealed by the Department of Health, Bureau of Health Services Financing, LR 49:1392 (August 2023).

#### **§959. Inpatient Psychiatric Hospital Services**

A. - C. ...

D. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals shall be reduced by 5.8 percent of the rate on file as of August 3, 2009.

1. - 2.b. Repealed.

E. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to non-rural, non-state distinct part psychiatric units shall be reduced by 6.3 percent of the rate on file as of August 3, 2009.

1. - 2.b. Repealed.

F. Effective for dates of service on or after February 3, 2010, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 5 percent of the per diem rate on file as of February 2, 2010.

G. Effective for dates of service on or after August 1, 2010, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 4.6 percent of the per diem rate on file as of July 31, 2010.

H. Effective for dates of service on or after January 1, 2011, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be reduced by 2 percent of the per diem rate on file as of December 31, 2010.

I. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2012, quarterly supplemental payments shall be issued to qualifying non-rural, non-state free-standing psychiatric hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state free-standing

psychiatric hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement.

a. A non-state free-standing psychiatric hospital is defined as a free-standing psychiatric hospital which is owned or operated by a private entity.

b. A low income and needy care collaboration agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for the purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient psychiatric services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) program, the difference between the hospital's specific DSH limit and the hospital's DSH payment for the applicable payment period.

J. Effective for dates of service on or after February 10, 2012, a Medicaid-enrolled non-state acute care hospital that enters into a cooperative endeavor agreement (CEA) with the Department of Health, Office of Behavioral Health to provide inpatient psychiatric services to Medicaid and uninsured patients, and which also assumes the operation and management of formerly state-owned and operated psychiatric hospitals/visits, shall be paid a per diem rate of \$581.11 per day.

K. Effective for dates of service on or after January 1, 2017, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals, and distinct part psychiatric units within non-rural, non-state acute care hospitals, shall be increased by 2 percent of the per diem rate on file as of December 31, 2016.

1. Inpatient hospital psychiatric services provided under a public-private partnership as defined in §959.J of this Chapter, LAC 50:V.1701 and LAC 50:V.2901 shall be exempt from this rate increase.

1.a. - 2.b. Repealed.

L. Effective for dates of service on or after January 1, 2018, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals, and distinct part psychiatric units within non-rural, non-state acute care hospitals, shall be increased by indexing to 31 percent of the small rural hospital prospective per diem rate in effect on January 1, 2017.

1. Psychiatric hospitals and units whose per diem rates as of January 1, 2017, excluding the graduate medical education portion of the per diem, are greater than 31 percent of the January 1, 2017 small rural hospital rate shall not be increased.

2. Inpatient hospital psychiatric services provided under a public-private partnership as defined in §959.J of this Chapter, LAC 50:V.1701 and LAC 50:V.2901 shall be exempt from this rate increase.

M. Effective for dates of service on or after January 1, 2020, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals, and distinct part psychiatric units within non-rural, non-state acute care hospitals, shall be increased by 32 percent of the small rural hospital prospective per diem rate in effect on January 1, 2019.

1. Psychiatric hospitals and units whose per diem rates as of January 1, 2019, excluding the graduate medical portion of the per diem, are greater than 32 percent of the January 1, 2019 small rural hospital rate shall not be increased.

2. Inpatient hospital psychiatric services provided under a public-private partnership as defined in §959.J of this Chapter, LAC 50:V.1701 and LAC 50:V.2901 shall be exempt from this rate increase.

N. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to non-rural, non-state free-standing psychiatric hospitals, and distinct part psychiatric units within non-rural, non-state acute care hospitals, shall be increased by 3.2 percent of the per diem rate in on file as of December 31, 2020.

1. Inpatient hospital psychiatric services provided under a public-private partnership as defined in §959.J of this Chapter, LAC 50:V.1701 and LAC 50:V.2901 shall be exempt from this rate increase.

N.2. - P.1. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 39:94 (January 2013), LR 39:323 (February 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2533 (December 2017), LR 44:1446 (August 2018), LR 45:1771 (December 2019), LR 46:1683 (December 2020), LR 49:1392 (August 2023).

### **§969. Transplant Services**

A. **Qualifying Criteria.** The hospital must be a Medicare approved transplant center for each type of organ transplant to qualify for reimbursement of Medicaid transplant services. Bone marrow transplant, stem cell transplant, and certain autologous immunotherapies (such as CAR T-cell therapy) services shall only be allowable for payment to hospitals that are accredited by the Foundation for the Accreditation of Cellular Therapy (FACT).

B. **Reimbursement Methodology.** Reimbursement shall be limited to the lesser of allowable cost, net of capital and medical education cost, or the hospital-specific per diem limitation calculated for each type of transplant.

1. Allowable cost is defined as the ratio of cost to charges from the annual filed cost report multiplied by the

covered charges, net of capital and medical education cost, for the specific transplant type.

2. The per diem limitation is calculated by deriving the hospital's per diem for the transplant type from the hospital's base period trended forward using the annual Medicare target rate inflation percentage for prospective payment system (PPS)-exempt hospitals.

3. The base period is the cost report period for the hospital's fiscal year ending September 30, 1983 through August 31, 1984. The base period for types of transplants that were not performed in the base period shall be the first cost report filed subsequently that includes costs for that type of transplant.

4. Reasonable capital and medical education costs as calculated per the annual filed cost report shall be paid as a pass through cost and included in cost report settlement amounts.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:1393 (August 2023).

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

Dr. Courtney N. Phillips  
Secretary

2308#055

**RULE**

**Department of Health  
Bureau of Health Services Financing**

Medicaid Eligibility  
Disregard of Accumulated Resources  
(LAC 50:III.10705)

Editor's Note: This Rule is being repromulgated to correct a citation error. The original Rule can be viewed in its entirety on page 1223 of the July 20, 2023 *Louisiana Register*.

The Department of Health, Bureau of Health Services Financing has amended LAC 50:III.10703 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

**Title 50**

**PUBLIC HEALTH—GENERAL**

**Part III. Eligibility**

**Subpart 5. Financial Eligibility**

**Chapter 107. Resources**

**§10705. Resource Disregards**

A. - E. ...

F. Resources accumulated from March 18, 2020 through March 31, 2023, that, but for the continuous enrollment provision at section 6008(b)(3) of the Families First

Coronavirus Response Act, would have been paid toward the cost of a beneficiary's home and community-based services waiver or institutional services based on the application of post-eligibility treatment of income, will be disregarded through the twelfth month following the first full redetermination of the beneficiary's eligibility conducted after March 31, 2023.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1899 (September 2009), amended LR 36:2867 (December 2010), LR 41:949 (May 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1772 (December 2019), LR 46:1393 (October 2020), LR 49:1223 (July 2023), repromulgated LR 49:1394 (August 2023).

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

Stephen R. Russo  
Secretary

2308#062

**RULE**

**Department of Health  
Bureau of Health Services Financing**

Medicaid Eligibility  
Twelve-Month Continuous Eligibility  
(LAC 50:III.2525)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:III.2525 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

**Title 50**

**PUBLIC HEALTH—GENERAL**

**Part III. Eligibility**

**Subpart 3. Eligibility Groups and Factors**

**Chapter 25. Eligibility Factors**

**§2525. Twelve-Month Continuous Eligibility**

A. - B. ...

C. A child's eligibility may not be terminated during a continuous eligibility period, regardless of any changes in circumstances, unless the child meets an exception set forth in 42 CFR 435.926(d) or 42 CFR 457.342.

I - 6. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:253 (February 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 47:737 (June 2021), LR 49:1394 (August 2023).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of

Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Stephen R. Russo, JD  
Secretary

2308#056

**RULE**

**Department of Health  
Bureau of Health Services Financing**

**Pharmacy Benefits Management Program  
Reimbursement for Clotting Factor  
(LAC 50:XXIX.949)**

The Department of Health, Bureau of Health Services Financing has amended LAC 50:XXIX.949 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This Rule is hereby adopted on the day of promulgation.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXIX. Pharmacy**

**Chapter 9. Methods of Payment**

**Subchapter D. Maximum Allowable Costs**

**§949. Fee for Service Cost Limits**

A. - I.2.b. ...

J. Clotting Factor. Pharmacy claims for clotting factor will be reimbursed using a state generated actual acquisition cost (AAC) ingredient cost and a unit based professional dispensing fee reimbursement methodology.

K. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1185 (June 2017), LR 43:1554 (August 2017), LR 44:1020 (June 2018), LR 45:571 (April 2019), LR 45:665 (May 2019), LR 46:35 (January 2020), LR 49:1395 (August 2023).

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

Stephen R. Russo, JD  
Secretary

2308#057

**RULE**

**Department of Health  
Office of Public Health**

Commission for the Deaf  
(LAC 67:VII.Chapter 3)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the state health officer, acting through the Department of Health, Office of Public Health (LDH-OPH), has reenacted and amended certain sections of Chapter 3 (Commission for the Deaf) of Title 67, Social Services, of the Louisiana Administrative Code. This Rule has repealed §§311-333 of Chapter 3 of Title 67 and adopted and amended §§302-309. This Rule is hereby adopted on the day of promulgation.

**Title 67**

**SOCIAL SERVICES**

**Part VII. Rehabilitation Services**

**Chapter 3. Commission for the Deaf**

**§302. Construction of Regulations; Severability**

A. Nothing contained in this Chapter shall be construed as to conflict with any provision of the Act 128 or any other applicable statute. If any provision of any rule is held invalid by any state or federal court in Louisiana, such provision shall be deemed severed from the Rule and court's finding shall not be construed to invalidate any of the other provisions of this Chapter.

AUTHORITY NOTE: Promulgated pursuant to the authority in R.S. 46:2352(A) and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:1395 (August 2023).

**§303. Definitions**

A. As used in this Chapter the following definitions apply:

*Board of Commissioners*—the group of individuals named or appointed to inform and support the work of the Louisiana Commission for the Deaf

*Commission*—the Louisiana Commission for the Deaf, an organizational unit within the Louisiana Department of Health

*Deaf*—a condition of or person with some or complete absence of auditory sensitivity, regardless of when the hearing loss occurred, and is most often represented with a lowercase letter “d.” Methods of communication may include American Sign Language or spoken English. The term “Deaf,” when written or expressed with an uppercase letter “D,” specifically refers to a group of deaf individuals who identify as a cultural and linguistic minority with specific languages, namely visual or tactile methods of communication, and social mores.

*DeafBlind*—a condition of or person with noncomitant visual and auditory sensitivity to the extent that it causes

extreme difficulty in gaining independence in daily life activities, achieving psychosocial adjustments, or obtaining vocation

*Department*—the Louisiana Department of Health

*Hard of Hearing*—a condition of or person with total or partial inability to hear sound, but not to the extent that the person must rely primarily on visual communication

*Hearing*—any person who has average to above hearing levels

*Interpreter*—an individual involved in the process of interpreting or transliterating between the English language and American Sign Language or any communication modes used by d/Deaf, DeafBlind, or hard of hearing persons. Communication modes may include, but are not limited to, cued speech and tactile sign

*Secretary*—the secretary of the Louisiana Department of Health

AUTHORITY NOTE: Promulgated pursuant to the authority in R.S. 46:2352 (A) and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:93 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), amended by the Department of Health, Office of Public Health, LR 49:1395 (August 2023).

#### **§304. Mission of the Commission**

A. To engage, empower, and enrich the lives and opportunities of Louisiana's Deaf, DeafBlind, and hard of hearing people.

B. The minimum commission requirements are as follows:

1. establish initiatives and programs to identify and address the needs of the d/Deaf, DeafBlind, and hard of hearing communities;

2. develop strategic plan to guide the work and priorities of the commission, in collaboration with the board of commissioners and other constituencies affected by the plan, published no less frequently than every five years; and

3. publish guidelines for all services to the public including descriptions of the services, eligibility, and requirements of service providers no less frequently than every five years.

AUTHORITY NOTE: Promulgated pursuant to the authority in La. R.S. 46:2353 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Commission for the Deaf, LR 13:94 (February 1987), amended by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 17:388 (April 1991), LR 21:589 (June 1995), LR 24:494 (March 1998), LR 28:2373 November 2002), amended by the Department of Health, Office of Public Health, LR 49:1396 (August 2023).

#### **§305. Telecommunications Assistance Program**

A. Role and Function. The commission serves as the statewide coordinator for the distribution of telecommunications devices and related assistive technology devices for d/Deaf, DeafBlind, and hard of hearing people.

B. The eligibility requirements for the telecommunications assistance program are as follows:

1. Louisiana resident with proof of residency;

2. Social Security number;

3. documentation of hearing-related diagnosis or combined hearing and vision-related diagnosis;

4. age of 18 years or older or parent/guardian available to receive the equipment on behalf of those under 18 years of age; and

5. limit of one unique type of equipment per household. Exceptions may be granted on an individual basis.

C. Accessing Services. Provision of services requires a completed application with one of the commission's regional services center.

1. The application shall require identifying information and the necessary documentation required to demonstrate eligibility.

D. Consultation. The commission shall consult with the following entities for advisement with and assessment of this program:

1. the board of commissioners;
2. the Louisiana Relay Administration Board; and
3. the national Telecommunications Equipment Distribution Association.

AUTHORITY NOTE: Promulgated pursuant to the authority in La. R.S. 46:2353 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:94 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), LR 24:495 (March 1998), amended by the Department of Health, Office of Public Health, LR 49:1396 (August 2023).

#### **§306. Support Service Provider Program**

A. Role and Function. The commission serves as the statewide coordinator of the Support Service Provider (SSP) Program to promote the availability of one-to-one support for DeafBlind individuals to understand their environment, facilitate communication, and promote autonomous living.

B. The eligibility requirements for the support service provider program are as follows:

1. Louisiana resident with proof of residency;

2. Social Security number;

3. documentation of combined hearing and vision-related diagnosis;

4. central visual acuity of 20/20 or less in their better eye with corrected lenses or a visual field defect no greater than 20 degrees, or a progressive visual loss having a diagnosis leading to one or both of these conditions;

5. chronic or progressive hearing loss so severe that most speech cannot be understood even with amplification; and

6. extreme difficulty in doing daily life activities, participating in social activities, or gaining meaningful employment.

7. If an individual cannot have their hearing and vision properly measured, but they have severe hearing and visual disabilities that make it extremely difficult to be independent, they may still be eligible for the program.

C. Provider Requirements

1. Organization Requirements:

a. organization(s) engaged to provided SSP services must have demonstrated the ability to effectively serve DeafBlind individuals and their families; and

b. organization(s) engaged to provide the SSP services must have the ability to train, supervise, and manage the SSP workforce, including rigorous systems to monitor service quality and integrity.

2. SSP Requirements:

a. be at least 18 years of age;

b. able to accommodate a consumer's communication preference. This includes sign language,

tactile communication, speech, print, Braille, technology, etc.;

- c. pass a background check (no criminal record);
- d. have a valid driver's license; and
- e. have current car insurance that includes liability insurance (this only applies to those who will drive consumers as part of their SSP role).

D. Accessing Services. Provision of services requires a completed application with the commission's designated SSP organization.

1. The application shall require identifying information and information concerning the applicant's diagnosis and evaluation of need.

E. Consultation. The commission shall consult with the following entities for advisement with and assessment of this program;

1. the board of commissioners;
2. the DeafBlind Advisory Council; and
3. the Helen Keller National Center for DeafBlind Youths and Adults.

AUTHORITY NOTE: Promulgated pursuant to the authority in La. R.S. 46:2353 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:1396 (August 2023).

### §307. Hearing Aid Program

A. Role and Function. The commission serves as the statewide distributor of amplification devices.

B. The eligibility requirements for the hearing aid program are as follows:

1. Louisiana resident with proof of residency;
2. Social Security number;
3. age 50 or older;
4. documentation of hearing-related diagnosis. Hearing loss Pure Tone Average of 40 dB or greater in either ear, which is documented by an evaluation and audiogram performed by a commission approved audiologist and/or hearing aid instruments specialist selected by the consumer from a pre-approved commission vendor list;
5. meet an economic need factor of 250 percent of federal poverty guidelines;
6. individuals may not be eligible for any other state or federal program providing assistance with hearing aid purchases;
7. consumers may be eligible for replacement of aids every five years, with possible exceptions made by LCD office for extenuating circumstances; and
8. younger individuals who meet all other eligibility requirements may be considered on an individual basis according to funding availability.

C. Provider Requirements. To be eligible to dispense hearing aids for the LCD Hearing Aid Program, vendors must be one of the following:

1. licensed by the Louisiana Board of Hearing Aid Dealers;
2. licensed by the Louisiana Board of Examiners for Speech-Language Pathology and Audiology; or
3. a physician licensed under the Louisiana State Medical Practices Act and be listed on LCD's approved hearing aid vendor list.

D. The required services for the hearing aid program are as follows:

1. official hearing assessment and determination;

2. recommendation and fitting of hearing aid(s), if applicable; and

3. follow-up appointment according to program policies.

E. Consultation. The commission shall consult with the following entities for advisement with and assessment of this program:

1. the board of commissioners;
2. registered hearing aid vendors/audiologists; and
3. the Louisiana Board of Hearing Aid Dealers.

AUTHORITY NOTE: Promulgated pursuant to the authority in La. R.S. 46:2353 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:95 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), amended by the Department of Health, Office of Public Health, LR 49:1397 (August 2023).

### §308. Interpreting Program

A. Role and function of the interpreting program is to:

1. promote the understanding and implementation of the Americans with Disability Act (ADA) through education and informing businesses and organizations responsible under the ADA of their obligation in providing auxiliary aids and services when needed to communicate effectively with people who are d/Deaf, DeafBlind, or hard of hearing.
2. promote the development of the state's interpreter workforce through the support of interpreter training programs and continuing education;
3. develop and maintain the criteria for standardizing the qualifications and practices of the interpreter workforce which advance best practices related to the needs of the state's interpreting workforce and d/Deaf, DeafBlind, and hard of hearing communities; and
4. maintain a statewide, public-facing registry of interpreters which is accessible via the commission's website.

B. The eligibility requirements for the interpreting program are as follow:

1. the commission may provide limited funding for American Sign Language (ASL) interpreting services or other auxiliary aids to individuals or entities to ensure access to public and private services when resources are unavailable or the ADA is not applicable. The commission may seek reimbursement for costs incurred on behalf of ADA covered entities.

a. Situations which may be approved include, but are not limited to:

- i. state and local government services when access is essential to the public and not otherwise covered under the ADA;
- ii. emergency medical services;
- iii. urgent situations which may critically impact a person's physical or mental health;
- iv. interim occupations needs such as job interviews; and
- v. public/community/civil service meetings crucial to public awareness such as during a disaster or weather related events.

b. Funding may not be used for interpreting services related to religious services or settings, education-related activities under the supervision of the Louisiana Department of Education or other higher education institutions, or personal circumstances.

c. Special determinations may be considered for DeafBlind individuals.

C. Consultation. The commission will consult with the following entities for advisement with the assessment of this program:

1. the board of commissioners;
2. the Louisiana Registry of Interpreters for the Deaf board; and
3. professional interpreters representative of the state of Louisiana.

AUTHORITY NOTE: Promulgated pursuant to the authority in La. R.S. 46:2353 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:1398 (August 2023).

### **§309. Louisiana Commission for the Deaf Board of Commissioners**

A. Name. The name shall be the Louisiana Commission for the Deaf board of commissioners, hereinafter referred to as the “board of commissioners.”

B. The role and function of the Louisiana Commission for the Deaf board of commissioners are as follows:

1. to support the work of the commission by making recommendations to the commission regarding its programs, policies, procedures, regulations, rules and criteria on behalf of d/Deaf, DeafBlind, and hard of hearing communities and their families; and

2. to advocate for the general welfare, needs, and rights of d/Deaf, DeafBlind, and hard of hearing individuals in this state through education, advising, informing, and promoting relevant laws, policies, and practices which support the eradication of barriers and discrimination affecting individuals who are d/Deaf, DeafBlind, and hard of hearing.

AUTHORITY NOTE: Promulgated pursuant to the authority in R.S. 46:2352(B).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:93 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995); amended by the Department of Health, Office of Public Health, LR 49:1398 (August 2023).

### **§311. Replacements**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:95 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), repealed LR 49:1398 (August 2023).

### **§313. Privileges of Membership**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:95 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), repealed LR 49:1398 (August 2023).

### **§315. Liability**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:96 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), LR 49:1398 (August 2023).

### **§317. Compensation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:96 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), LR 49:1398 (August 2023).

### **§319. Designees**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:94 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), LR 49:1398 (August 2023).

### **§321. Officers of the Commission**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:94 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), repealed LR 49:1398 (August 2023).

### **§323. Officers Resignations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:94 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), repealed LR 49:1398 (August 2023).

### **§325. Termination of Office**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:95 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), repealed LR 49:1398 (August 2023).

### **§327. Meeting Protocol**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:95 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), repealed LR 49:1398 (August 2023).

### **§329. Committees, Boards and Task Forces**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:96 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), LR 24:495 (March 1998), repealed LR 49:1398 (August 2023).

**§331. Executive Director**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:95 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), LR 24:495 (March 1998), repealed LR 49:1399 (August 2023).

**§333. Amendments**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2352 and R.S. 47:1061.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Rehabilitation Services, Commission for the Deaf, LR 13:96 (February 1987), amended LR 17:388 (April 1991), LR 21:589 (June 1995), repealed LR 49:1399 (August 2023).

Stephen R. Russo, JD  
Secretary

2308#038

**RULE**

**Department of Health  
Office of Public Health**

**Participant Eligibility (LAC 48:V.Chapter 41)**

Under the authority of R.S. 46:972, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the secretary, acting through the Department of Health, Office of Public Health (LDH/OPH), has amended parts of Chapter 41 of Title 48, Public Health—General, and amended those rules to comply with the requirements of the Child and Nutrition and WIC Reauthorization Act of 2010 and applicable WIC federal regulations of the United States Department of Agriculture.

This rulemaking has amended §§4101-4103 of Chapter 41, §§4303-4309 of Chapter 43 and §§44511 of Chapter 45, all within Part V of Title 48, Public Health—General, of the Louisiana Administrative Code (LAC). These amendments are necessary to ensure the State of Louisiana remains in compliance with applicable WIC federal regulations of the USDA at 7 CFR 246. This Rule is hereby adopted on the day of promulgation.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part V. Preventive Health Services**

**Subpart 15. Special Supplemental Nutrition Program  
for Women, Infants and Children (WIC)**

**Chapter 41. General Provisions**

**§4101. Purpose and Scope**

A. ...

B. The Special Supplemental Nutrition Program for Women, Infants and Children (WIC), also hereinafter known as “The Louisiana WIC Program or LA WIC”, provides supplemental foods and nutrition education, including breastfeeding promotion and support, for women, infants and children. It is federally funded through the U.S. Department of Agriculture (USDA) via cash grants to state agencies which administer the program. The Louisiana Department of Health, Office of Public Health, Center for

Community and Preventive Health, Bureau of Nutrition Services, shall be responsible for the administration of the program in Louisiana. Extensive regulations have been published by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) in 7 CFR Part 246. Federal regulations stipulate participation requirements, length of certifications, certification processes, certification standards, WIC participant responsibilities, WIC participant grievance rights, and retail food delivery systems. If there is a conflict with any portion of LAC 48:V.Subpart 15 and 7 CFR Part 246 and/or if there is a regulatory waiver issued by USDA to LA WIC, the provisions of 7 CFR Part 246 and/or the regulatory waiver shall supersede the provisions of LAC 48:V.Subpart 15.

C. The annual LA WIC state plan, including a comprehensive policy manual, is available for review by any interested party at both of the Bureau of Nutrition Services offices in Louisiana, as follows: 628 North Fourth Street, Baton Rouge, LA 70802 and 1450 Poydras Street, New Orleans, LA 70112.

D. As described in 7 CFR part 246, LA WIC is to provide supplemental foods and nutrition education, including breastfeeding promotion and support, to categorically eligible WIC participants who are income eligible and found to be at nutritional risk. LA WIC shall serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of these persons. LA WIC is responsible for providing services to as many eligible WIC participants as funding allows.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR part 246, P. L. 95-627, and 41 USC 1786. Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:330 (February 2017), LR 49:1399 (August 2023).

**§4103. Definitions**

A. The following words and terms are defined for the purposes of this Subpart and for all contracts, guidelines, instructions, forms and other documents related hereto.

*Abbreviated Administrative Review*—a procedure by which a vendor may appeal specified adverse actions by LA WIC to an independent reviewer.

*Above-50-Percent (A-50) Vendors*—vendors that derive more than 50 percent of their annual food sales revenue from WIC approved food items, and new vendor applicants expected to meet this criterion under guidelines approved by the Food and Nutrition Service (FNS) of USDA.

*Abuse*—diversion of resources away from necessary LA WIC services benefits

*Adjustment*—price adjustment.

*Administrative Review*—Repealed.

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*Authorized Supplemental Foods/WIC-Approved Foods*—Repealed.

*Authorized WIC Vendor*—a store owned by a sole proprietorship, partnership, cooperative association, corporation, limited liability company, or other business entity that is authorized by LA WIC to provide WIC-approved food items to WIC participants under a retail food

delivery system. Each store must have a single, fixed location and must be authorized separately from other stores owned by the business entity.

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*Cash Value Benefit*—Cash value voucher.

*Cash Value Voucher*—a fixed-dollar amount used by a participant to obtain authorized fruits and vegetables

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*Change of Location*—Repealed.

*Change of Ownership*—Repealed.

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*Civil Money Penalty (CMP)*—a monetary penalty imposed in lieu of disqualification as a sanction applied due to inadequate participant access.

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*Competitive Price Criteria (CPC)*—the prices a vendor or vendor applicant charges for a selection of WIC approved food items as compared to the prices charged by other vendors within the same vendor peer group.

*Compliance Buy*—a covert, on-site investigation in which a representative of the program poses as a WIC participant, parent, or caretaker of an infant or child participant, or proxy, conducts one or more WIC transactions, and does not reveal during the visit that he or she is a program representative.

*Compliance Investigation*—compliance buys and/or inventory audits.

*Confidential Participant Information*—confidential applicant and WIC participant information is any information about an applicant or WIC participant whether it is obtained from the applicant or WIC participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or WIC participant and/or family member(s). Applicant or WIC participant information is confidential, regardless of the original source.

*Confidentiality*—Repealed.

*Confidentiality Vendor Information*—any information about a vendor (whether it is obtained from the vendor or any other source) that individually identifies the vendor except for vendor's name, address, telephone number, web site/email address, store type, and authorization status.

*Corrective Action Plan (CAP)*—a plan submitted by a vendor to take remedial action(s) to correct a violation(s) of LA WIC vendor rules and regulations.

*Courtesies*—LA WIC requires vendors to offer WIC participants the same services that are offered to other customers, such as, but not limited to, helping the customer to obtain an item from a shelf or from behind a counter, bagging food for the customer, and assisting with loading the food into a vehicle.

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*Deficiency*—inventory audit deficiency.

*Disqualification*—the act of ending the program participation of a WIC participant, vendor or authorized state or local agency.

*Documentation*—the presentation of written documents which substantiate statements made by an applicant, WIC participant, person applying on behalf of an applicant, vendor, and/or vendor applicant.

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*Dual Participation*—simultaneous participation in LA WIC in more than one WIC clinic.

*Electronic Benefit Transfer (EBT)*—a method that permits electronic access to WIC benefits using a card or other access device approved by the Secretary of USDA.

*Electronic Benefit Transfer (EBT) Capable*—demonstration by a vendor or vendor applicant that its cash register system or payment device can accurately and securely obtain WIC food balances associated with an EBT card, maintain the necessary files such as the authorized product list, hot card file and claim file and successfully complete WIC EBT purchases.

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*Equitable Treatment*—vendors will offer WIC participants the same courtesies that are offered to other (non-WIC) customers.

\*\*\*

*Food Delivery System*—the method used by state and local agencies to provide WIC-approved foods items to WIC participants.

*Food Instrument (FI)*—Repeal.

*Food Package*—WIC-eligible food items designed to meet the special nutritional needs of the WIC participant and issued in designated quantities and types.

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*Fraud*—regarding any and all LA WIC matters, a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for a party or to cause a loss or inconvenience to the other

*Full Administrative Review*—a procedure by which a vendor may appeal specified adverse actions by LA WIC to the Division of Administrative Law of the Louisiana Department of the State Civil Service.

*Full Line Grocery Store*—Repealed.

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*Incentive Items/Incentives*—an item or service provided by a vendor to attract customers or encourage customer loyalty.

*Infant Formula*—a food that meets the definition of an infant formula in section 201(z) of the Federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 321(z)), and that meets the requirements for an infant formula under section 412 of the federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 350a), as amended, and the regulations at 21 CFR parts 106 and 107 published on April 1, 2021.

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*Inventory Audit*—the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of supplemental food(s) to provide WIC participants with the quantity of supplemental food(s) redeemed during a given period of time.

*Inventory Audit Deficiency*—the monetary value of a vendor's claimed reimbursement for the sale of supplemental food(s) that exceeds the store's documented inventory of supplemental food(s) for a specific period of time.

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*Judicial Review*—the procedure by which a vendor may appeal a decision rendered at an administrative review, or a WIC participant may appeal a decision rendered at a fair hearing.

LA WIC—the Louisiana WIC Program.

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*Maximum Allowable Reimbursement Level (MARL)*—the highest reimbursement amount for WIC approved food items for each peer group.

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*Monitoring*—routine monitoring.

*Monitoring Review*—routine monitoring.

*Non-A50 Vendors*—Repealed.

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*Participant Access*—the ability of a WIC participant to adequately access WIC approved food items from vendors for which LA WIC has established participant access criteria in accordance with federal regulations at 7 CFR part 246.

*Participant Violation*—any intentional action of a WIC participant, caregiver or a proxy that violates federal or state statutes, regulations, policies or procedures governing the program.

*Participants*—pregnant women, breastfeeding women, postpartum women, infants and children who are receiving WIC approved food items or cash-value vouchers under the program, and the breastfed infants of WIC participant breastfeeding women.

*Participation*—the sum of the number of:

- a. persons who received WIC approved food items or cash-value vouchers during the reporting period;
- b. infants who did not receive WIC approved food items or cash-value vouchers but whose breastfeeding mother received WIC approved food items or cash-value vouchers during the report period; and
- c. breastfeeding women who did not receive WIC approved food items or cash-value vouchers but whose infant received WIC approved food items or cash-value vouchers during the report period.

*Peer Group*—a group of vendors that is based on common characteristics or criteria that affect food prices. Vendors are grouped for management and cost containment purposes.

*Postpartum Women*—usually, women up to six months after termination of pregnancy.

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*Price Adjustment*—changes made to the reimbursement amount by LA WIC, in accordance with the vendor agreement, to ensure that the payment to the vendor complies with LA WIC's price limitations.

*Program*—the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) authorized by section 17 of the Child Nutrition Act of 1966, as amended (unless the context in which this word is used in this Subpart clearly indicates otherwise).

*Proxy*—any person designated by a WIC participant, or by a parent or caretaker of an infant or child participant, to obtain and transact WIC benefits and/or to obtain WIC approved food items on behalf of a WIC participant. The proxy shall be designated consistent with LA WIC's procedures established pursuant to 7 CFR §246.12(r)(1). Parents or caretakers applying on behalf of a child or infant WIC participants are not proxies.

*Regular Vendors (Non-A-50)*—vendors that do not meet the vendor selection criterion for above-50-percent (A-50) vendors.

*Reimbursement*—the payment from LA WIC to a vendor for WIC transactions in accordance with the vendor agreement.

*Routine Monitoring*—an overt, on-site monitoring visit during which program representatives identify themselves to vendor personnel.

*Sanctions*—adverse actions including, but not limited to, termination of the vendor agreement, and/or disqualification or civil money penalties (CMPs), taken by LA WIC against a vendor after a vendor fails to comply with vendor rules and regulations. The sanction schedule appears in the vendor guide and policy manual.

*Secretary*—the Secretary of Agriculture.

*Sign or Signature*—a handwritten signature on paper or an electronic signature. If LA WIC chooses to use electronic signatures, LA WIC shall ensure the reliability and integrity of the technology used and the security and confidentiality of electronic signatures collected in accordance with sound management practices, and applicable federal law and policy, and the confidentiality provisions at 7 CFR §246.26.

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*State Agency*—the state of Louisiana, Louisiana Department of Health, Office of Public Health, Center for Community and Preventive Health, Bureau of Nutrition Services.

*State Plan*—a plan of program operation and administration that describes the manner in which LA WIC intends to implement and operate all aspects of program administration within its jurisdiction in accordance with 7 CFR §246.4.

*Supplemental Foods*—those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding and postpartum women, infants, and children, and foods that promote the health of the population served by LA WIC as indicated by relevant nutrition science, public health concerns, and cultural eating patterns, as prescribed by the Secretary in 7 CFR §246.10.

*Supplemental Nutrition Assistance Program (SNAP)*—the program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), in which eligible households receive benefits that can be used to purchase food items from authorized retail stores and farmers' markets.

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*Unauthorized Food Item*—allowing the purchase of any food item that is not a WIC approved food item, the purchase of any WIC approved food item that is not prescribed for a particular WIC participant, or the purchase of any WIC approved food item in excess of available WIC benefits.

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*Vendor*—authorized WIC vendor.

*Vendor Agreement*—a contract between an authorized WIC vendor and LA WIC.

*Vendor Authorization*—the process by which LA WIC assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be an authorized WIC vendors.

*Vendor ID*—vendor identification number.

*Vendor Identification Number*—a distinctive number assigned to each authorized WIC vendor that is confidential.

*Vendor Limiting Criteria*—criteria established by LA WIC to determine the maximum number and distribution of vendors it authorizes pursuant to 7 CFR §246.12(g)(2).

*Vendor Number*—Repealed.

*Vendor Overcharge*—intentionally or unintentionally charging LA WIC more for a WIC-approved food item than is permitted under the vendor agreement, such as a vendor charging more for a WIC approved food item in the WIC transaction than the shelf price of the item. WIC transactions submitted by the vendor for redemption that are adjusted by LA WIC to meet cost containment measures are not considered vendor overcharges.

*Vendor Portal*—Repealed.

*Vendor Rules and Regulations*—provisions that control vendor participation within LA WIC including, but not limited to, affirmations made in the vendor application and the vendor agreement, and federal and state rules, regulations, guidance and policy governing LA WIC as well as the vendor guide, memorandums and policy manual.

*Vendor Selection Criteria*—the criteria established by LA WIC to select individual vendors for WIC authorization consistent with the requirements in 7 CFR §246.12(g)(3) and (g)(4) and found in the vendor rules and regulations.

*Vendor Termination*—the dissolution of a vendor agreement.

*Vendor Violation*—any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor agreement or federal or state statutes, regulations, policies, or procedures governing LA WIC.

*WIC*—the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786.

*WIC Approved Food Items*—those supplemental foods authorized by LA WIC for issuance to WIC participants.

*WIC Benefit*—a supplemental food benefit issued to WIC participants in the form of a cash value voucher (CVV) or EBT card.

*WIC Federal Regulations*—the regulations contained within part 246 of title 7 of the Code of Federal Regulations (7 CFR 246) published on January 1, 2021 and titled the Special Supplemental Nutrition Program for Women, Infants and Children.

*WIC Program*—Repealed.

*WIC Transaction*—an electronic benefit transfer (EBT) of a WIC benefit.

*WIC Transaction for Food Not Received*—occurs when LA WIC reimburses a vendor for a WIC approved food item(s) not received by the WIC participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR12:869 (December 1988), amended by the Department of Health, Office of Public Health, LR 43:331 (February 2017);, amended LR 49:1399 (August 2023).

## **Chapter 43. Participant Eligibility**

### **§4301. Integration with Health Services**

A. Whenever possible, (LA WIC) intake procedures shall be combined with intake procedures from other health programs and/or services administered by state and local agencies. Such merging may include verification procedures, certification interviews, and income computations.

1. A list of local counseling and treatment resources for drug and other harmful substance abuse shall be made available to all pregnant, postpartum, and breastfeeding women, and to parents and caretakers of infants and children, any of whom are applying for and participating in LA WIC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:334 (February 2017), LR 49:1402 (August 2023).

### **§4303. Eligibility Criteria**

A. To be certified as eligible for LA WIC, applicants shall:

1. - 2. ...

3. meet nutritional risk criteria as described in Subparagraph d (Priority IV) of Paragraph 4 of Subsection C of this Section and in the state plan.

B. Income Criteria and Income Eligibility Determination

1. Income criteria for the program is established annually at 185 percent of poverty level (U.S. Department of Health and Human Services) as issued annually by the USDA's FNS. This shall have an annual effective date of no later than July 1.

2. LA WIC will determine income through the use of a clear and simple application form. Routine verification on a random selection of WIC participants to verify income is, and shall remain, at the discretion of LA WIC. Applicants are adjunctively income eligible for LA WIC when proof of enrollment in Louisiana Medicaid, Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) is provided.

C. Nutritional Risk

1. A competent professional authority shall determine if a WIC participant is at nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data by an applicant or WIC participant's medical provider.

2. At minimum, height (or length) and weight of the WIC participant shall be measured, and a hematological test for anemia (such as a hemoglobin, hematocrit or free erythrocyte protoporphyrin test) shall be performed. Such hematological tests are not required, but are permitted, for infants under nine months of age. All infants nine months of age and older (who have not already had a hematological test performed or obtained between the ages of six and nine months), shall have a hematological test performed between nine and 12 months of age or obtained from referral sources.

3. Appropriate nutritional risk codes, as specified in the current state plan and as summarized in Paragraph 4 of this Subsection, shall be documented at each certification/recertification visit.

4. In the event that statewide participation has reached the maximum level, LA WIC shall fill vacancies according to the federally mandated priority system. In the event a priority level must be partially closed, subpriorities are described in the state plan as approved by USDA. Priority levels are identified as follows.

a. Priority I—pregnant women, breastfeeding women and infants at nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the need for WIC approved food items .

b. Priority II—

i. infants (except those infants who qualify for Priority I) up to 6 months of age born of women who participated in LA WIC during pregnancy; and

ii. infants (except those infants who qualify for Priority I) up to 6 months of age born of women who were not WIC participants during pregnancy but whose medical records document that they were at nutritional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions which demonstrated the person's need for WIC approved food items.

c. Priority III—children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for WIC approved food items.

d. Priority IV—pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

e. Priority V—children at nutritional risk because of an inadequate dietary pattern.

f. Priority VI—postpartum women at nutritional risk.

g. Priority VII—individuals certified for LA WIC solely due to homelessness or migrancy and, at state agency option, previously certified WIC participants who might regress in nutritional status without continued provision of WIC approved food items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of Public Health, LR 12:869 (December 1988), amended by the Department of Health, Office of Public Health, LR 43:335 (February 2017), LR 49:1402 (August 2023).

#### **§4305. Timeframes for Processing Applicants**

A. When LA WIC is not serving its maximum caseload, LA WIC may accept applications, and make eligibility determinations. Applicants shall be notified of the decisions made, and if enrolled, will be issued WIC benefits. These actions shall be accomplished within the timeframes set forth below.

1. The processing timeframes shall begin when an individual visits the WIC clinic during clinic office hours to make an oral or written request for WIC benefits.

2. Special nutritional risk applicants shall be notified of their eligibility or ineligibility within 10 days of the date of the first request for WIC benefits. LA WIC may provide an extension of the notification period to a maximum of 15 days for the WIC clinics which make written request, including a justification of the need for an extension. LA WIC shall establish criteria for identifying categories of persons at special nutritional risk who require expedited services. At a minimum, however, these categories shall include pregnant women eligible as Priority I WIC participants, and migrant farm workers and their family members who soon plan to leave the jurisdiction of the local agency.

3. All other applicants shall be notified of their eligibility or ineligibility within 20 days of the first date of the request for WIC benefits.

4. The WIC clinic or local agency using a retail purchase system shall issue WIC benefits to the WIC Participant at the same time as notification of certification. The WIC benefits issued should be valid for the current month and shall be redeemable immediately upon receipt by the WIC Participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:335 (February 2017), LR 49:1403 (August 2023).

#### **§4307. Certification Periods**

A. WIC benefits shall be based upon certifications established in accordance with the following timeframes.

1. - 4. ...

5. Children shall be certified at intervals of approximately one year and ending with the end of the month in which a child reaches its fifth birthday. WIC clinic staff shall ensure children certified for a year shall be offered a mid-certification assessment, which includes a health and nutrition assessment (review of anthropometrics, blood work, and a brief update of the health and dietary assessment), immunizations screening, nutrition education, and referrals to other health and social services, within a certification period. Food benefits shall not be denied to parents/guardians who refuse to obtain the mid-certification assessment for their children.

B. Upon request, WIC participants shall receive verification of certification (VOC) when transferring to another WIC program out of state.

C. ...

D. WIC participants receiving program benefits may be disqualified during a certification period for the following reasons:

1. WIC participant violation including, but not limited to, intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain WIC benefits; exchanging WIC benefits for cash, credit, non-food items, or unauthorized food items, including WIC approved food items in excess of those listed

on the participant's WIC benefit; threatening to harm or physically harming vendor staff; or making a written, electronic, or verbal offer to sell WIC benefits, including WIC approved food items, and/or WIC EBT cards, or allowing someone else to do so.

2. If LA WIC experiences funding shortages, it may be necessary to discontinue program benefits to a number of certified and participating WIC participants. LA WIC shall not enroll new participants during the period when currently participating WIC participants, those who have received WIC benefits during a current certification, are denied remaining WIC benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:336 (February 2017), LR 49:1403 (August 2023).

### **§4309. WIC Participant Rights and**

#### **Responsibilities/Notification/Fair Hearing**

A. WIC Participant Rights and Responsibilities. All applicants shall read or have read to them the programs' rights and responsibilities statement, including the restriction of dual participation in the program. After reviewing the statement, all applicants shall sign attesting to have reviewed the statement.

B. Notification of Ineligibility. WIC participants found ineligible during a certification period shall be advised in writing of the ineligibility, the reasons for the ineligibility and of the right to a fair hearing.

C. Notification of Disqualification. WIC participants who are about to be disqualified from program participation during a certification period shall be advised in writing not less than 15 days before the effective date of disqualification, of the reasons for the disqualification and the right to a fair hearing.

D. Fair Hearing Procedures for WIC participants. LA WIC provides a hearing procedure through which any individual may appeal, within sixty days of the date of notification by LA WIC, an action which results in the denial of participation or the disqualification from LA WIC.

1. The hearing process is governed by the procedures set forth in the Administrative Procedure Act, R.S. 49:950 et seq., and as mandated by WIC federal regulations, 7 CFR part 246.

2. LA WIC shall not summarily deny or dismiss an appeal unless:

a. - c. ...

3. LA WIC shall continue WIC benefits for a WIC participant whose participation has been terminated during a certification period if a request for an appeal is received within the 15 days of advance notification of disqualification. WIC benefits shall continue until the hearing officer reaches a decision or the certification period expires, whichever occurs first. Applicants who are denied WIC benefits at initial certification or because of the expiration of their certification may appeal the denial, but shall not receive WIC benefits while pending the hearing and decision of the hearing officer.

4. A WIC participant or representative may appeal the fair hearing decision through judicial review as provided for in the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:336 (February 2017), LR 49:1404 (August 2023).

### **Chapter 45. Vendor Selection, Participation and Sanctions**

#### **§4503. Vendor Selection Criteria**

A. As outlined in 7 CFR part 246, LA WIC has the responsibility to maximize the use of available funds by providing WIC-approved food items to WIC participants at the most reasonable prices and to have an agreement with enough vendors to ensure adequate participant access. LA WIC reserves the right to implement limiting criteria on vendors statewide in order to meet this responsibility. If LA WIC elects to implement such limiting criteria, the criteria shall be made available and applied consistently.

B. WIC federal regulations at 7 CFR §246.12 mandate that state WIC agencies must develop and implement selection criteria to select only qualified vendors to provide WIC-approved food items to WIC participants. Specific vendor selection criteria must be addressed while allowing WIC state agencies to identify additional vendor selection criteria to further enhance services to WIC participants.

C. LA WIC has established vendor selection criteria in conjunction with and with approval from the USDA. The vendor selection criteria are published within this Subpart and in the vendor rules and regulations.

D. In order to be eligible to participate in LA WIC, the vendor applicant, including any of the vendor applicant's current owners, officers, or managers and/or vendors shall:

1. stock and maintain sufficient quantities and varieties of all WIC approved food items in accordance with LA WIC's minimum stock requirements (MSR). See 7 CFR §246.12(g)(3)(i);

2. not have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity during the last six years. Activities indicating a lack of business integrity include fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice [see 7 CFR §246.12(g)(3)(ii)];

3. not be currently disqualified from SNAP or have been assessed a SNAP Civil Money Penalty (CMP) for hardship and the disqualification period that would have otherwise been imposed has not expired. [see 7 CFR §246.12(g)(3)(iii)];

4. have prices that are competitive with other vendors in LA WIC's designated peer group, as determined by the LA WIC's competitive price criteria (CPC). All vendors are subject to CPC at all times to ensure cost containment. Applying vendors, whose prices are higher than the CPC applicable to their peer groups, shall be informed and given one opportunity to lower their prices to meet the CPC. [see 7 CFR §246.12(g)(4)];

5. purchase infant formula only from vendors included on LA WIC's list of infant formula manufacturers registered with the Food and Drug Administration (FDA) that provide infant formula, and licensed infant formula

wholesalers, distributors, and retailers. This list can be found on the LA WIC website at [ldh.la.gov/wicvendor](http://ldh.la.gov/wicvendor);

6. not derive or expect to derive more than 50 percent of annual food sales revenue from WIC transactions. [see 7 CFR §246.12(g)(4)(i).];

7. agree to be placed in a vendor peer group with other above-50-percent (A-50) vendors when deriving or expecting to derive more than 50 percent of their annual food sales revenue from WIC transactions. Vendors within this peer group shall maintain WIC approved food item prices at a level such that the average payments for A-50 vendors does not exceed average payments to regular vendors; [see 7 CFR §246.12(g)(4)(i)(A).];

8. agree to neither provide nor advertise nor indicate an intent to provide customers with any incentive items, when deriving or expecting to derive more than 50 percent of their annual food sales revenue from WIC transactions. LA WIC shall make a determination on what constitutes a violation of the meaning of the previous sentence; however, incentive items definitively prohibited include, but are not necessary limited to:

a. goods and services which result in a conflict of interest or the appearance of such conflict for the A-50 vendor, such as assistance with applying for WIC;

b. lottery tickets at no charge or below face value;

c. cash gifts in any amount for any reason;

d. anything made available in a public area as a complimentary gift which may be consumed or taken without charge;

e. an allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or WIC benefits involved, unless the incentive items have been obtained by the vendor at no cost or the total value of multiple incentive items provided during one shopping visit would not be exceed the less-than-\$2 nominal limit;

f. food, merchandise or services of greater than less-than-\$2 nominal value provided to the customer;

g. food, merchandise sold to customers below cost, or services purchased by customers below fair market value;

h. any kind of incentive item which incurs a liability for the WIC program; and

i. any kind of prohibited incentive item which violates any federal, state, or local law or regulations.

9. have EBT capability; and

10. in addition to the above, shall adhere to any and all vendor selection criteria within the vendor rules and regulations and any changes thereto. [see 7 CFR §246.12(g)(3)].

E. WIC federal regulations at 7 CFR §246.12(g)(3) mandate that LA WIC shall not authorize a vendor applicant if LA WIC determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction.

F. After WIC authorization, all vendors shall continue to meet the criteria of this Section and vendor rules and regulations, and any changes thereto, at all times. A vendor found to be out of compliance with vendor rules and regulations any time during the authorization period is subject to termination of WIC authorization and the vendor agreement and possible disqualification.

G. WIC federal regulations at 7 CFR §246.12(g)(8) allow LA WIC to establish timeframes for accepting and processing the vendor application, outside of which LA WIC may deny authorization. Such timeframes are stated in the vendor guide and policy manual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:337 (February 2017), LR 49:1404 (August 2023).

#### **§4505. Agreement**

A. LA WIC must enter into written agreements with all vendors. The agreements must be for a period not to exceed three years. By signing the agreement, a vendor understands and agrees to the conditions enumerated and/or referenced in the vendor rules and regulations.

B. A vendor shall allow authorized personnel to monitor the vendor through announced and unannounced monitoring and/or compliance investigations to determine compliance with LA WIC and WIC vendor rules and regulations. A vendor shall provide access to any items, documentation, and records requested by authorized personnel, including but not limited to, inventory and invoices for purchase of WIC approved food items.

C. Recordkeeping. The vendor must maintain inventory records used for federal tax reporting purposes and other records LA WIC may require for the period of time specified by LA WIC in the vendor agreement. Upon request, the vendor must make available to representatives of LA WIC, the USDA, and the comptroller general of the United States, at any reasonable time and place for inspection and audit, all program-related records. Vendors are required to keep confidential the customer's eligibility for and receipt of WIC benefits.

D. LA WIC may make adjustments to a vendor's submission for reimbursement for WIC approved food item(s) to ensure that the payments do not exceed the maximum allowable reimbursement level (MARL) for the vendor's assigned peer group and pay vendors' claims for reimbursement for WIC transactions accordingly. No claim for reimbursement for WIC approved food items submitted by the vendor shall be paid by LA WIC unless the claim is in accordance with the terms of the vendor rules and regulations. LA WIC shall recoup any and all payments for WIC transactions made to the vendor in error.

E. The termination of a vendor agreement will be effective 15 days after the date of the notice of adverse action, with the exception of LAC §48:V.4505.G.2, G.3, H.3, and H.4.

F. LA WIC will recoup payments for any and all WIC transactions conducted after the termination of the vendor agreement.

G. LA WIC must terminate a vendor agreement based on any of the following:

1. When LA WIC disqualifies a vendor.

2. When LA WIC permanently disqualifies a vendor.

The termination of the vendor agreement for permanent disqualification is effective on the date of receipt of the notice of adverse action.

3. When LA WIC determines that the vendor has provided false information in connection with its application for WIC authorization. The termination of the vendor agreement for providing false information is effective on the date of receipt of the notice of adverse action.

H. LA WIC may also terminate a vendor agreement based on any of the following:

1. When a vendor is non-compliant with its terms and vendor rules and regulations.

2. When a vendor fails to meet vendor selection criteria at any time. The length of termination due to failure to meet vendor selection criteria will be effective for the time period provided in the vendor guide and policy manual.

3. When a vendor experiences a change of ownership, the vendor agreement shall automatically become null and void and terminates immediately as of the date the change of ownership occurred. Neither the previous owner nor the new owner will be authorized to conduct WIC transactions. Any WIC transactions conducted after the vendor agreement becomes null and void will be subject to recoupment by LA WIC. LA WIC shall hold the previous owner and new owner solidarily liable for any monies owed.

4. When a vendor experiences a change in availability or location. A vendor must provide advance written notice of a period of no less than 15 days of a change in availability or location. The vendor agreement shall automatically become null and void and shall immediately terminate as of the date the change in availability or location occurred.

5. When a conflict of interest between a vendor and LA WIC exists.

6. When either LA WIC or a vendor elects not to renew the vendor agreement. The vendor agreement may be terminated after 15 days written notice by either party or by the mutual agreement of both parties to terminate.

7. When a vendor is no longer authorized by SNAP, except for adverse actions by SNAP.

I. LA WIC will not permit a voluntary withdrawal of a vendor and/or a non-renewal of the vendor agreement as an alternative to an LA WIC termination or disqualification.

J. Participation as a vendor in LA WIC is a privilege. WIC authorization does not constitute a license or property interest. ([See 7 CFR §246.12(h)(3)(xxi)]). A vendor cannot claim and is not entitled to money for loss of WIC sales during the pendency of an appeal of an adverse action. If the vendor is reinstated following a successful administrative review of an adverse action taken by LA WIC, the vendor cannot claim and is not entitled to retroactive payments and/or compensation for revenues lost for the period of time the vendor was not in the program.

K. A vendor that has been disqualified and/or had its vendor agreement terminated by LA WIC and who seeks Authorization shall reapply and meet all current requirements for WIC Authorization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:338 (February 2017), LR 49:1404 (August 2023).

### **§4507. WIC Transaction Processing and Reimbursement and Claims by LA WIC**

A. Only authorized WIC vendors may transact WIC benefits.

B. LA WIC will establish a vendor peer group system, place vendors into peer groups, and set allowable reimbursement levels for each peer group for the purpose of cost containment. If an above-50-percent (A-50) vendor is needed for participant access, LA WIC will place the A-50 vendor into a peer group for vendors designated as A-50.

C. A vendor shall process WIC transactions as outlined in the vendor guide and policy manual. LA WIC shall reimburse a vendor in accordance with its peer group, making adjustments as required by WIC federal regulations.

D. A vendor shall maintain and operate its WIC EBT system in compliance with the USDA/FNS's WIC operating rules for EBT, the technical implementation guide, the vendor rules and regulations and any changes thereto.

E. If a vendor submitted a claim for reimbursement that was rejected or the payment amount for the claim for reimbursement was adjusted by the LA WIC-contracted EBT processor or bank with which the vendor disagrees, the vendor may submit its dispute of the rejection of (or adjustment to) the reimbursement according to the process outlined in the vendor guide and policy manual. Any dispute submitted untimely shall be denied. Disputes that exceed the federal monetary threshold are subject to USDA approval. Vendors shall be notified of adverse reimbursement decisions.

F. LA WIC shall establish a claim against the vendor for any amounts owed to the program (e.g., overcharges, unauthorized items, excess WIC approved food items, excess payments, deficiencies identified during an inventory audit, and adjustment to the vendor's claim for reimbursement). Disqualification and/or termination of the vendor agreement or payment of a civil money penalty (CMP) does not relieve the vendor of the obligation to repay any monies claimed by and owed to LA WIC. LA WIC may refer debts to the Louisiana Department of Revenue, Office of Debt Recovery and/or commence action in the 19th Judicial District Court to recover the outstanding claim amount and/or pursue any other remedies allowed to LA WIC by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972 and R.S. 47:1676.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:338 (February 2017), LR 49:1406 (August 2023).

### **§4509. Vendor Sanctions for Violations**

A. Pattern of Incidences.

1. WIC federal regulations at 7 CFR §246.12(I)(2)(i) mandate that state agency sanction(s) must be based on a pattern of violative incidences.

2. Federal guidance from the USDA WIC Vendor Management and Food Delivery Handbook (Sept. 2017, section 9.1.2., pg. 35) mandates that LA WIC must develop a definition of a pattern of violations. Some federal mandatory vendor sanctions and all state agency vendor sanctions must

be based on a pattern of violations [See 7 CFR §246.12(l)(1) and 7 CFR §246.12(l)(2)(i)]. The definition of a pattern of violations may be different for different types of violations (e.g., to account for severity). The definition of a pattern of violations is stated in the vendor rules and regulations.

3. WIC federal regulations at 7 CFR §246.12(h)(3)(xix) mandate that LA WIC must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless LA WIC determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation. Notification shall not be provided for a pattern of claiming reimbursement for the sale of an amount of a WIC approved food item at the category level that exceeds documented inventory. See 7 CFR §246.12(l)(3).

4. Unaddressed violations will carry from one agreement period to the next.

B. Federal Mandatory Vendor Sanctions. LA WIC shall impose sanctions for federal mandatory vendor sanction violations. The federal mandatory sanction violations are found in the vendor guide and policy manual. Federal mandatory vendor sanctions shall include disqualification and/or civil money penalties (CMP) assessed in lieu of disqualification. WIC federal regulations mandate that when, during the course of a single investigation, LA WIC determines a vendor has committed multiple violations (which may include violations subject to state agency sanctions), LA WIC must disqualify the vendor for the period corresponding to the most serious (i.e., longest) federal mandatory sanction violation. LA WIC must include all violations in the notice of adverse action and enter all such violations into the vendor record. LA WIC shall impose any sanctions that are not overturned in an (abbreviated or full) administrative review. The federal mandatory vendor sanction violations are as follows:

1. LA WIC shall permanently disqualify a vendor convicted of trafficking in WIC benefits or selling firearms, ammunition, explosives, or controlled substances [as defined in section 102 of the Controlled Substances Act of 1970 (21 U.S.C. 802), as amended] in exchange for WIC benefits.

2. LA WIC shall disqualify a vendor for six years for:

a. one incidence of buying or selling WIC benefits benefits for cash (trafficking);

b. one incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, as amended, in exchange for WIC benefits benefits.

3. LA WIC shall disqualify a vendor for three years for:

a. one incidence of the sale of alcohol, alcoholic beverages, or tobacco products in exchange for WIC benefits benefits;

b. a pattern of claiming reimbursement for the sale of an amount of a specific WIC approved food item that exceeds the store's documented inventory of that WIC approved food item at the WIC approved food category level for a specific period of time;

c. a pattern of vendor overcharges;

d. a pattern of receiving, transacting and/or redeeming WIC benefits outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;

e. a pattern of charging for WIC approved food items not received by the WIC participant (WIC transaction for food not received);

f. a pattern of providing credit or non-food items (not including alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, as amended) in exchange for WIC benefits benefits.

4. LA WIC shall disqualify a vendor for one year for:

a. a pattern of providing unauthorized food items in exchange for WIC benefits benefits, including charging for WIC approved food items provided in excess of those issued to a WIC EBT card;

b. a pattern of an above-50-percent (A-50) vendor providing prohibited incentive items to customers as set forth in WIC federal regulations at 7 CFR 246.12 (l)(1)(iv)(B).

C. Second Federal Mandatory Vendor Sanction—CMP. When a vendor that has previously been assessed a CMP for any of the federal mandatory vendor sanctions receives a second CMP for any of the federal mandatory vendor sanctions, LA WIC shall double the second CMP. The total amount assessed in CMPs for a second sanction may not exceed the maximum limits allowed under WIC federal regulations.

D. Third or Subsequent Federal Mandatory Vendor Sanction—CMP. When a vendor who previously has been assessed two or more CMPs as a result of any of the federal mandatory vendor sanctions receives another CMP as a result of any of the federal mandatory vendor sanctions, LA WIC shall double the third CMP and all subsequent sanctions. LA WIC may not impose a CMP in lieu of disqualification for third or subsequent sanctions for federal mandatory vendor sanctions.

E. State Agency Vendor Sanction Violations. WIC federal regulations allow LA WIC to impose sanctions for non-federally mandated (State) vendor violations based on a pattern of violative incidences as long as such vendor violations and sanctions are included in the federally-required state agency sanction schedule. The LA WIC sanction schedule appears in the vendor guide and policy manual. State agency vendor sanctions will include disqualification and/or CMP assessed in lieu of disqualification. LA WIC will disqualify a vendor for the period of time specified in the LA WIC sanction schedule or issue a CMP for a pattern of any of the following state agency sanction violations:

1. failing to comply with WIC transaction procedures outlined in the vendor guide and policy manual;

2. failing to maintain or provide LA WIC or authorized parties with requested records and/or information by the due date identified;

3. failing to provide WIC participants or proxies the same courtesies as offered to other customers;

4. any other violation of the vendor rules and regulations except for the federal mandatory vendor

sanctions, for which a longer disqualification period is required.

F. Selection Criteria. LA WIC shall develop and implement vendor selection criteria for WIC authorization, which must include, at a minimum, the federally-required categories and requirements, and may include criteria developed by LA WIC. The vendor selection criteria are found in the vendor guide and policy manual. LA WIC may reassess any vendor at any time during the agreement period for compliance with vendor selection criteria. A pattern is not required to establish a vendor's failure to meet selection criteria. One incidence of a failure to meet vendor selection criteria may warrant termination of the vendor agreement. A vendor that fails to meet vendor selection criteria may be terminated from LA WIC for up to one year.

G. Corrective Action Plan (CAP). At any time, LA WIC may require that a vendor implement a CAP.

H. Participant Access Determination(s). LA WIC shall develop participant access criteria and consider the availability of other authorized vendors and any geographic barriers to using such vendors when making participant access determinations. Participant access is determined at the sole discretion of LA WIC and the validity or appropriateness of LA WIC's participant access criteria and determinations are not subject to administrative review. Prior to disqualifying a vendor for certain federal mandatory vendor sanctions and/or state agency vendor sanctions, LA WIC may conduct a participant access determination. If LA WIC determines in its sole discretion that disqualification of a vendor would result in inadequate participant access, LA WIC shall impose a civil money penalty in lieu of disqualification. All vendors, including vendors determined necessary for participant access, are subject to reassessment at all times throughout the authorization period.

I. Civil Money Penalty (CMP). Except where prohibited by federal regulation or in those cases of permanent vendor disqualification, if LA WIC determines, in its sole discretion, that disqualification of the vendor would result in inadequate participant access, LA WIC shall impose a CMP in lieu of disqualification. Such CMP will be calculated in accordance with regulations for federal mandatory sanction violation(s) and/or in accordance with LA WIC vendor rules and regulations for state agency vendor sanction violation(s). If a vendor does not pay the CMP, only partially pays the CMP, or fails to make timely payment of the CMP, LA WIC shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed. Disqualification and/or termination of the vendor agreement or payment of a CMP does not relieve the vendor of the obligation to repay any monies claimed by and owed to LA WIC.

J. Notifications to FNS. LA WIC must notify FNS that it has either disqualified or imposed a CMP in lieu of disqualification for any of the federal mandatory sanction violations listed in LAC 48:V.4509.B. Disqualification from WIC may result in disqualification from the Supplemental Nutrition Assistance Program (SNAP) and such SNAP disqualification is not subject to administrative or judicial review under the SNAP.

K. Actions by SNAP

1. SNAP Disqualification. LA WIC shall disqualify from the WIC program a vendor who is disqualified from

SNAP. The disqualification shall be for the same length of time as SNAP disqualification, may begin at a later date than SNAP disqualification, and is not subject to administrative or judicial review under LA WIC. However, if LA WIC determines that disqualification of the vendor would result in inadequate participant access, LA WIC must impose a CMP in lieu of disqualification.

2. SNAP CMP. LA WIC shall disqualify a vendor who receives a CMP for hardship by SNAP. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in SNAP. However, if LA WIC determines that disqualification of the vendor would result in inadequate participant access, LA WIC may not disqualify the vendor or impose a CMP in lieu of disqualification.

L. Mandatory Sanction by another WIC State Agency. LA WIC shall disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a federal mandatory vendor sanction under the provisions of §4509 of this Subpart.

1. Disqualification by another WIC State agency. The length of the disqualification from LA WIC shall be for the same length of time as the disqualification by the other WIC state agency. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency. If LA WIC determines that the vendor is needed for participant access, LA WIC will issue a CMP in lieu of disqualification.

2. CMP by another WIC State agency. If the other WIC state agency has assessed a CMP in lieu of disqualification, the length of the disqualification from LA WIC shall be for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency. If LA WIC determines the vendor is needed for participant access, LA WIC will not disqualify or issue a CMP to the vendor.

M. Legal Remedies Not Precluded by Sanction. A vendor that commits fraud and/or abuse of LA WIC is liable to prosecution under applicable federal, state or local laws. LA WIC shall, where appropriate, refer a vendor that LA WIC suspects has committed fraud and/or abuse to federal, state and/or local authorities and/or another WIC state agency for prosecution. Disqualification and/or termination from LA WIC does not preclude criminal and/or civil legal actions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:338 (February 2017), LR 49:1407 (August 2023).

#### **§4511. Administrative Review of Adverse Actions**

A. Some adverse actions taken by LA WIC that affect vendors or vendor applicants may be subject to administrative review, if appealed.

B. LA WIC shall provide written notification of the adverse action, the procedures to follow to request an administrative review (full or abbreviated), if applicable, and the cause(s) for and the effective date of the action. If the vendor is disqualified due in whole or in part to federal mandatory vendor sanction violations of §4509 of this Subpart, such notification shall include the following statement: "This disqualification from WIC may result in

disqualification as a retailer in SNAP. Such disqualification is not subject to administrative or judicial review under SNAP.”

C. If the vendor or vendor applicant wishes to appeal the decision, and the adverse action is appealable, the vendor or vendor applicant shall submit a request for appeal stating the permissible reason(s) for appeal. The request shall be submitted to LA WIC within 15 days after the date of the notice of the adverse action.

D. Effective Date of Adverse Actions Against Vendors. Denials of WIC authorization and permanent disqualifications imposed under §4509 of this Subpart are effective on the date of receipt of the notice of adverse action. All other adverse actions are effective 15 days after the date of the notice of the adverse action.

E. Adverse Actions Subject to Full Administrative Review:

1. The following adverse actions are subject to full administrative review.

a. denial of WIC authorization based on the application of the vendor selection criteria of failure to stock and maintain sufficient quantities and varieties of all WIC approved food items in accordance with LA WIC’s minimum stock requirements;

b. denial of WIC authorization based on a determination that the vendor is attempting to circumvent a sanction;

c. termination of an agreement for cause, which does not include termination of an agreement because of a change in ownership or location, or cessation of operations, or expiration of an agreement;

d. disqualification,; or

e. imposition of a fine or a civil money penalty (CMP) in lieu of disqualification.

2. Full Administrative Review Procedures. A vendor or vendor applicant who files a timely and proper appeal request for those actions subject to full administrative review shall be provided:

a. adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review.;

b. the opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request. LA WIC may set standards on how many review dates can be scheduled, provided that a minimum of two review dates is allowed.;

c. the opportunity to cross examine adverse witnesses. When necessary to protect the identity of WIC program investigators, such examination may be conducted behind a protective screen or other device.;

d. the opportunity to be represented by counsel.;

e. the opportunity to examine prior to the review the evidence upon which LA WIC’s action is based.;

f. an impartial decision-maker, whose determination is based solely on whether LA WIC has correctly applied Federal and State statutes, regulations, policies, and procedures governing LA WIC, according to the evidence presented at the review. LA WIC may appoint a reviewing official, such as chief hearing officer or judicial officer, to review appeal decisions to ensure that they conform to approved policies and procedures.;

g. written notification of the review decision, including the basis for the decision, within 90 days from the date of receipt of the request for an administrative review from a vendor. This timeframe is only an administrative requirement for LA WIC and does not provide a basis for overturning LA WIC’s adverse action if a decision is not made within the specified timeframe.

F. Adverse Actions Subject to Abbreviated Administrative Review.

1. The following adverse actions are subject to abbreviated administrative review

a. denial of WIC authorization based on:

i. LA WIC’s vendor limiting criteria;

ii. vendor submitting its vendor application outside the timeframes during which applications are being accepted and processed as stated in the vendor guide and policy manual;

iii. a current sanction (termination) for a non-federally mandated (State) selection criteria; or

iv. failure to meet the following vendor selection criteria:

(a). business integrity;

(b). current SNAP authorization; or

(c). competitive pricing.

b. termination of an agreement because of change in ownership or location or cessation of operations;

c. disqualification based on the following:

i. a trafficking conviction;

ii. the imposition of a SNAP CMP for hardship;

or

iii. a mandatory sanction imposed by another WIC state agency.

d. A CMP imposed in lieu of disqualification based on the following:

i. a mandatory sanction imposed by another WIC state agency; or

ii. SNAP disqualification.

e. LA WIC’S application of vendor peer group criteria; or

f. LA WIC’s application of the criteria used to identify vendors that are above-50-percent (A-50) vendors.

2. Abbreviated Administrative Review Procedures. A vendor or vendor applicant who files a timely and proper appeal request for those actions subject to abbreviated administrative review shall be provided:

a. a decision-maker who is someone other than the person who rendered the initial decision on the action and whose determination is based solely on whether LA WIC has correctly applied federal and state statutes, regulations, policies, and procedures governing LA WIC, according to the information provided to the vendor, concerning the cause(s) for the adverse action and the response from the vendor; and

b. written notification of the review decision, including the basis for the decision within 90 days from the date of receipt of the request for an administrative review from a vendor. This timeframe is only an administrative requirement for LA WIC and does not provide a basis for overturning LA WIC’s adverse action if a decision is not made within the specified timeframe.

G. Actions Not Subject to Administrative Review. Adverse actions not described in this Subpart are not subject to administrative review. Adverse actions that are not subject to administrative review include, but are not limited to, the following:

1. the validity or appropriateness of the following:
  - a. LA WIC's vendor limiting criteria;
  - b. LA WIC's participant access criteria and LA WIC's participant access determinations;
  - c. LA WIC's prohibition of incentive items and LA WIC's denial of an A-50 vendor's request to provide an incentive item to customers;
  - d. vendor selection criteria for the following:
    - i. minimum variety and quantity of WIC approved food items ;
    - ii. business integrity;
    - iii. current SNAP disqualifications or CMP for hardship; or
    - iv. competitive price including, but not limited to, vendor peer group criteria and the criteria used to identify vendors that are A-50 vendors or comparable to A-50 vendors.
2. LA WIC's determination:
  - a. to include or exclude an infant formula supplier (manufacturer, wholesaler, distributor, or retailer) from the LA WIC infant formula supplier list; or
  - b. to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction.
3. denial of WIC authorization if LA WIC's vendor authorization is subject to the procurement procedures applicable to LA WIC;
4. The expiration of a vendor's agreement;
5. disputes regarding:
  - a. payments by LA WIC to vendors for WIC transactions;
  - b. vendor claims for reimbursement; or
  - c. claims and/or recoupment made by LA WIC against vendors (other than the opportunity to justify or correct a vendor overcharge or other error).
6. disqualification of a vendor as a result of disqualification from SNAP; or
7. any other circumstance, situation, or action not described in this Subpart.

H. A vendor who has been issued a CMP and is permitted to continue program operations while its appeal is in process must also continue to abide by all LA WIC vendor rules and regulations.

I. Participation as a vendor in LA WIC is a privilege. WIC authorization does not constitute a license or property interest. A vendor cannot claim and is not entitled to money for loss of WIC sales during the pendency of an appeal of an adverse action. If the vendor is reinstated following a successful administrative review of an adverse action taken by LA WIC, the vendor cannot claim and is not entitled to retroactive payments and/or compensation for revenues lost for the period of time the vendor was not on the program.

J. Unless otherwise noted, full and abbreviated administrative review decisions are the final action of LA WIC. LA WIC reserves the right to file additional motions

for reconsideration as well as motions for re-appeal. LA WIC is under no obligation to immediately reinstate the vendor during ongoing proceedings.

1. If the administrative review yields a decision in favor of LA WIC, the vendor may pursue judicial review of the decision.

2. If the administrative review yields a decision in favor of the vendor, the vendor will be reinstated provided all appeal rights have been exhausted and the vendor agreement has not expired during ongoing proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Department of Health, Office of Public Health, LR 43:340 (February 2017), LR 49:1408 (August 2023).

Stephen R. Russo, JD  
Secretary

2308#039

## RULE

### Department of Insurance Office of the Commissioner

#### Regulation 112—Adoption of NAIC Handbooks, Guidelines, Forms, and Instructions (LAC 37:XIII.16101)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended Regulation 112.

The purpose of the amendment to Regulation 112 is to identify and to incorporate by reference the current edition of handbooks, guidelines, forms, and instructions adopted by the National Association of Insurance Commissioners (NAIC) and referenced in the Louisiana Insurance Code. This Rule is hereby adopted on the day of promulgation.

#### Title 37

#### INSURANCE

#### Part XIII. Regulations

#### Chapter 161. Regulation Number 112—Adoption of NAIC Handbooks, Guidelines, Forms and Instructions

#### §16101. NAIC Handbooks, Guidelines, Forms and Instructions Incorporated by Reference

A. ...  
B. The following NAIC handbooks, guidelines, forms, and instructions are hereby adopted and incorporated by reference:

1. The Financial Condition Examiner's Handbook, 2022 edition;

2. The Annual and Quarterly Statement Instructions, Property and Casualty, 2022 edition;

3. The Annual and Quarterly Statement Instructions, Life, Accident, and Health, 2022 edition;

4. The Annual and Quarterly Statement Instructions, Health, 2022 edition;

5. The Annual and Quarterly Statement Instructions, Title, 2022 edition;

6. The Annual and Quarterly Statement Instructions, Fraternal, 2022 edition;
7. The Annual and Quarterly Statement Blanks, Property and Casualty, 2022 edition;
8. The Annual and Quarterly Statement Blanks, Life, Accident, and Health, 2022 edition;
9. The Annual and Quarterly Statement Blanks, Health, 2022 edition;
10. The Annual and Quarterly Statement Blanks, Title, 2022 edition;
11. The Annual and Quarterly Statement Blanks, Fraternal, 2022 edition;
12. The Accounting Practices and Procedures Manual, 2022 edition;
13. The Financial Analysis Handbook, 2022 edition;
14. The Own Risk and Solvency Assessment Guidance Manual, 2022 edition;
15. The Purposes and Procedures Manual of the NAIC Investment Analysis Office, 2022 edition;
16. The Risk-Based Capital Forecasting and Instructions, 2022 edition;
17. The Market Regulation Handbook, 2022 edition.

C. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 258, 619(B), 640(B), 675, 661(A), 691.11, 691.54, and 1804.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 45:1208 (September 2019), amended LR 46:993 (July 2020), amended LR 47:1328 (September 2021), LR 48:2299 (September 2022), amended LR 49:1410 (August 2023).

James J. Donelon  
Commissioner

2308#007

## RULE

### Department of Insurance Office of the Commissioner

#### Regulation 128—Louisiana Timber and Agriculture Transportation Group Self-Insurance Funds (LAC 37:XIII.Chapter 193)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and through the authority granted under R.S. 22:1 et seq., and specifically R.S. 22:11, the Department of Insurance has promulgated *Regulation 128—Louisiana Timber and Agriculture Transportation Group Self-Insurance Funds*. The Department of Insurance has promulgated *Regulation 128* to comply with Acts 2022, No. 598, § 1, of the Regular Session of the Louisiana Legislature, that enacted R.S. 3:4351.1 through 4351.16, authorizing the creation of the timber and agriculture transportation group self-insurance fund and giving the Department of Insurance regulatory authority over such fund. This Rule is hereby adopted on the day of promulgation.

## Title 37 INSURANCE

### Part XIII. Regulations

#### Chapter 193. Regulation Number 128—Louisiana Timber and Agriculture Transportation Group Self-Insurance Funds

##### §19301. Definitions

A. When used in this regulation, the following words or terms shall have the following meaning.

*Contingent Liability*—the amount that a group self-insurance fund may be obligated to pay in excess of a given fund year's normal premium collected or on hand.

*Department*—the Louisiana Department of Insurance.

*Group Self-Insurance Fund or Fund*—employers who enter into agreements to pool their automobile liabilities for timber transportation vehicles, agriculture transportation vehicles, or a combination of both types of vehicles in accordance with Louisiana Revised Statutes 3:4351.2.

*Members Distribution Payable/Surplus*—assets of a group self-insurance fund in excess of loss reserves, actual and contingent liabilities and loss development reserves in all fund years.

*Surplus*—assets of a group self-insurance fund in excess of loss reserves, actual and contingent liabilities and loss development reserves in all fund years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4351.9(D).

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:1411 (August 2023).

##### §19303. Excess Insurance or Reinsurance

A. All funds shall maintain specific excess insurance or reinsurance in the amount of at least \$2,000,000 per occurrence and aggregate excess insurance or reinsurance of at least \$2,000,000.

B. The maximum retention allowed for a fund's specific excess policy shall be approved by the department.

1. A fund shall submit a feasibility study prepared by a qualified actuary which analyzes the impact the specific retention on the fund.

2. No fund shall secure a retention which in the commissioner's opinion is not actuarially sound.

3. The commissioner shall deny the use of a retention if he finds that the higher retention will have a significant adverse effect on the financial condition of the fund.

C. The fund shall secure an aggregate limit of at least 20 percent of the annual premium of the fund for the term of the policy. The retention of the aggregate policy shall be subject to the approval of the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4351.3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:1411 (August 2023).

##### §19305. Financial and Actuarial Reports

A. At inception, each fund shall either:

1. Provide evidence satisfactory to the commissioner that it possesses surplus in excess of \$1,000,000, or

2. Submit a current audited financial statement, audited by an independent certified public accountant, of at least two members showing, at the inception of the fund, a combined net worth of a minimum of \$1,000,000, current

financial statements of all other members, a combined ratio of current assets to current liabilities of more than one to one, a combined working capital of an amount establishing financial strength and liquidity of the members to pay normal compensation claims promptly, and showing evidence of the financial ability of the group to meet its obligations. An audited or a financial statement properly certified by an officer, owner, or partner for all members joining the fund after the inception date shall be submitted to the commissioner until such time as an audited financial statement is available for the fund as a whole. Thereafter, the filing of member financial statements with the department is no longer required. In no event shall the cumulative net worth or ratio of the current assets to current liabilities of all members be less than that required in this Subsection.

B. An annual financial statement audited by an independent certified public accountant shall be due annually within six months of the close of the fiscal year of the fund, unless an extension is granted by the commissioner.

C. Actuarial reviews shall be made by a qualified actuary. Actuarial reports shall be due and filed at the same time as the fund's annual financial statement, except as otherwise provided by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4351.3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:1411 (August 2023).

#### **§19307. Insolvencies**

A. Pursuant to R.S. 3:4351.9(D)(1), a fund subject to delinquency proceedings shall be governed by the applicable provisions of R.S. 22:731, et seq., pertaining to administrative supervisions, or the applicable provisions of R. S. 22:2001, et seq., pertaining to receivership, that are not inconsistent with the provisions of R. S. 3:4351.1, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4351.9.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:1412 (August 2023).

#### **§19309. Cease and Desist Orders and Other Penalties**

A.1. After notice and opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be not in compliance with R.S. 3:4351, et seq. or with any rule promulgated by the department pursuant to the Administrative Procedure Act or order or directive issued by the department. Any cease and desist order issued under this Section may include a prohibition against the fund writing any new or renewal business.

2. After notice and opportunity for a hearing, the commissioner may suspend or revoke the certificate of authority of the fund found to be not in compliance with R.S. 3:4351, et seq. or with any rule promulgated by the department pursuant to the Administrative Procedure Act or order or directive issued by the department.

B. Upon the determination that a fund failed to comply with any provision of R.S. 3:4351 et seq., any rule or regulation promulgated by the department, or orders or directives issued by the commissioner, the department may levy a fine of up to \$2,000 for each violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4351.5.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:1409 (August 2023).

#### **§19311. Examinations**

A. The commissioner shall examine, not less frequently than once every five years, and at any other time when an examination is necessary in the opinion of the commissioner, all group self-insurance funds established pursuant to R.S. 3:4351 et seq. The reasonable expenses of such examinations shall be paid by the fund being examined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4351.5.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:1412 (August 2023).

James J. Donelon  
Commissioner

2308#008

### **RULE**

#### **Department of Public Safety and Corrections Office of Motor Vehicles**

##### **Odometer Disclosure (LAC 55:III.398)**

Under the authority of R.S. 32:704, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Motor Vehicles has adopted Section 398, Odometer Disclosure, to provide that the special secure power of attorney shall not require notarization if ownership of the non-exempt motor vehicle is being transferred using a special power of attorney. This Rule becomes effective upon the promulgation of the Rule in the *Louisiana Register*. This Rule is hereby adopted on the day of promulgation.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part III. Motor Vehicles**

#### **Chapter 3. License Plates and Removal of Plates, Registrations, and Title Transactions**

#### **Subchapter D. Title Transactions**

#### **§398. Odometer Disclosure**

A. The Federal Truth in Mileage Act requires the seller of a motor vehicle to provide an odometer disclosure to the buyer at the time of sale or transfer of ownership. A completed odometer disclosure must be provided for all non-exempt vehicles at the time of application for title.

1. Beginning January 1, 2021, vehicles of model year 2011 and newer will be subject to odometer disclosure for 20 years.

B. Vehicles exempt from odometer requirements include:

1. vehicles having a gross weight rating of more than 16,000 pounds;

2. vehicles that are not self-propelled (i.e. trailers);

3. a vehicle with a model year of 2010 or before, that is transferred at least 10 years after January 1 of the calendar year corresponding to its designated model year.

C. Transfer of ownership when the certificate of title is in the possession of a lienholder, lost or otherwise unavailable. The same person may not sign a disclosure statement as both the transferor and the transferee in the

same transaction except if the certificate of title is physically held by the lienholder, the transferor may complete a special power of attorney that meets the criteria set forth in 49 CFR. 580.4 and 580.13 for the purpose of granting a transferee authority to complete an odometer disclosure on their behalf. The special power of attorney form shall not require notarization.

D. Upon receipt of the certificate of title, the transferee shall complete the odometer disclosure exactly as the mileage was disclosed by the transferor on the special power of attorney form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:704.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 49:1412 (August 2023).

Karen St. Germain  
Commissioner

2308#061

## RULE

### Department of Transportation and Development Office of Multimodal Commerce

#### Intermodal Transportation (LAC 70:IX.Chapters 1-7)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:961 et seq., and through the authority granted in Title 2 of the Revised Statutes, the Department of Transportation and Development, Office of Multimodal Commerce, Aviation Section, has amended Title 70, Part IX, Chapter 1. "Aeronautics in Louisiana", and Chapter 3. "Airport Construction and Development Priority Program Process" and has adopted Title 70, Part IX, Chapter 5. "Airport Project and Grant Management Procedures", and Chapter 7. "Unmanned Aircraft Systems (UAS) Program", and has updated technical wording, applications, procedures, and processes for compliance with the Federal Aviation Administration, to allow airports to update their project applications in the state Airport Construction and Development Priority Program, and to manage the Unmanned Aerial Systems (UAS) Program for the Department of Transportation and Development, to foster UAS operational safety, protect the citizens of Louisiana, and those engaged in UAS operations. This Rule is hereby adopted on the day of promulgation.

#### Title 70

#### TRANSPORTATION

#### Part IX. Intermodal Transportation

#### Subpart A. Intermodal

#### Chapter 1. Aeronautics in Louisiana

#### §101. General

A. Pursuant to Title 2 of the Revised Statutes, the Louisiana Department of Transportation and Development regulates aeronautics in Louisiana.

1. R.S. 2:6 provides, in part, that the department may prescribe such reasonable rules and regulations as it deems necessary and advisable for the public safety and for the promotion of aeronautics governing the designing, laying out, location, building, equipping, operation, and use of all airports, landing fields, or landing strips, and for the safety

of those engaged in aeronautics. It is for that purpose this rule is promulgated.

2. Definitions. As used in this chapter or subsequent chapters pertaining to the DOTD Aviation Program, unless the context clearly indicates otherwise, the following definitions shall apply.

*AIP*—Airport Improvement Program: provides Federal Aviation Administration grants to public agencies for the planning and development of public-use airports for safety and efficiency.

*Air Carrier Airport*—airports that are required by the Federal Aviation Administration to meet all standards as set forth in Part 139 of the Federal Aviation Regulations (FAR) and have scheduled air passenger service.

*Airport Sponsor*—any state agency, city, town, parish, airport authority, airport commission, airport district, or other political subdivision, which owns, operates, leases, or controls any public-use airport or landing area.

*Basic (Airport) Maintenance*—the responsibility of each airport sponsor to maintain the airport in an efficient and safe manner. Maintenance includes any regular or recurring work necessary to preserve existing airport facilities in good operating condition. Basic maintenance items for runway, taxiway, apron, lighting, and navigational aid include: routine cleaning, filling, and/or sealing of longitudinal and traverse cracks; grading pavement edges; maintaining drainage systems; patching pavement; remarking pavement areas; replacing airfield lights or fixtures; replacing sensors or equipment; sweeping airfield pavement; operability of backup emergency generators for airfield equipment; and re-topping/removing trees for approach protection (if this work was previously completed in an AIP or DOTD funded project).

*DOTD*—Aviation Division of the Louisiana Department of Transportation and Development.

*FAA*—Federal Aviation Administration.

*FAR*—Federal Aviation Regulations: rules prescribed by the Federal Aviation Administration, governing all aviation activities in the United States.

*LAS*—Louisiana Airport System.

*LASP*—Louisiana Aviation System Plan.

*NPAIS*—National Plan of Integrated Airport Systems.

*Public and/or Public-Use Airport*—an airport that is publicly owned, which is open for use by the public.

*Rural Airport*—any airport categorized as a Non-NPIAS in the LASP or a NPIAS airport that is unclassified.

B. Landing Area Registration Procedures. Pursuant to statutory provisions, all landing area proponents shall provide DOTD with the following information for the Louisiana Aviation Program, prior to operational use of the area for aircraft operations. The registration application shall be submitted electronically through DOTD's website, and the information submitted shall adhere to federal airport master records, aeronautical data and airspace determinations for consideration in the Louisiana Aviation Program.

C. At a minimum, the following are required to be submitted to DOTD.

1. Completed Landing Area Information Application. The applicant shall include their first and last name; email address; telephone number; landing area name; notification of local/building permitting authority; date and time of

requested inspection; and notification of FAA landing area proposal.

2. Completed Landing Area Location Map. This reflects the relationship of the proposed site to other prominent centers of activity within an area of five miles.

3. Completed Landing Area Immediate Vicinity Map. This reflects the relationship of the proposed site to structures within the immediate vicinity. This shall also include the distance of the proposed landing area as it relates to the nearest active airport or heliport. Proponent will include safety considerations for joint use airspace, if applicable.

4. A location drawing of the proposed landing area on the United States Geological Survey topographic quadrangle series map covering landing area proponent's location, or a Geographic Information System (GIS) map with Global Positioning System (GPS) coordinates. These can be obtained at blueprint supply companies, or one can be sent by DOTD, upon request, if none are available from commercial sources.

5. Confirmation that the landing area proposal notification was submitted to the FAA.

6. Confirmation of the FAA's airspace determination findings.

7. The drive time of the proposed landing area as it relates to the nearest public-use airport.

8. Proponents requesting new private landing area registrations shall follow the landing area design standards from the FAA Advisory Circulars, pertaining to airports and heliport design standards.

9. Airports or heliports that are designated as public-owned/public-use or private-owned/public-use shall adhere to airport state design standards.

D. Applications for a registration certificate shall not be accepted unless accompanied by all documentation showing that the applicant has met all the requirements as determined by the Louisiana Aviation Program, airspace determinations, land-use compatibility, FAA advisory circulars, and engineering briefs.

E. A renewal registration certificate is required for all hospital heliports, emergency service heliports, and any frequently used registered heliport, regardless of changes to the heliport every five years. DOTD may initiate the renewal registration process with the heliport owner. Renewal dates shall be included on the registration operating certificate.

1. Airport data shall be collected every three years through onsite inspections at all emergency service, hospital, and special use heliports.

2. Airport data shall be collected once every five years through onsite inspections at all private-use airports.

F. Classifications of Louisiana Airports, Seaplane Bases and Heliports.

1. Airports. The airports in the LASP are classified according to a simplified version of the FAA's NPIAS classification system. This involves identifying the airport with the type of aircraft it will principally serve. Although the LASP classification is less complicated than that of the FAA's NPIAS, there is no conflict between the NPIAS classification of an airport and the LASP classification. The state classification of each publicly owned airport is in LASP.

2. Seaplane Bases. These facilities can be either natural waterways, or man-made seaways used on a regular basis for take-off and landing of amphibious aircraft.

3. Heliport. Any area of land, water, or structure used or intended to be used for the landing and takeoff of helicopters, which has been specifically prepared for use by helicopters; any area for use by helicopters which is open to the public; or any area—other than those used for agricultural operations—which may have three or more takeoffs or landings in a thirty-day period. All heliports must be registered with the state in accordance with this chapter.

G. Aviation Safety Program. The following standards will be utilized by DOTD when reviewing airport safety data and airport inspection information. The Aviation Safety Program promotes and encourages airport operational safety through direct contact with airport sponsors and airport management through the application of methods, techniques, and standards to improve and enhance safety conditions at general aviation public airports. Inspections are to assess and report conditions within the system of general aviation public airports; to inform and provide guidance to airport sponsors on correcting safety; and other operational related deficiencies. It ensures the data is promulgated with a degree of accuracy and consistent with the exercise of FAA responsibilities. It will also provide for the production of recurring and one-time special inspection reports for management guidance, sponsor programming, and statistical analysis.

1. Inspections—Generally

a. LAP provides that the inspections detailed in this Chapter be completed by DOTD, and details the facilities required to be inspected by the state. The purpose of an annual airport inspection is to work closely with airport sponsors and airport management to ensure that they are conducting daily inspections of their airports, and ensuring proper documentation to maintain a safe and secure facility for aviation operations.

b. Day and/or night inspections shall be conducted annually by DOTD. Supplemental or special airport inspections may also be conducted by DOTD to ensure the airport sponsor is correcting any discrepancies or deficiencies within the airport operating environment.

c. Airport data shall be annually collected through onsite inspections at all nonprimary, general aviation, and public-use airports/heliports.

2. Inspection Scheduling. DOTD shall establish control procedures to ensure ultimate accuracy of all reported data and adherence to schedules for inspections and reporting. Inspections will be scheduled by DOTD and written notice provided to the airport sponsor and airport management a minimum of ten working days prior to the actual onsite inspection. For those inspections performed under the Airport Certification Program, written notice from DOTD shall be provided to the airport sponsor and airport management a minimum of thirty working days prior to the actual onsite inspection.

3. Public-Use Airport Inspections (State Non-Certificated General Aviation Airports)

a. This section pertains only to those general aviation airports that are state non-certificated.

b. DOTD shall conduct all airport inspections. DOTD inspectors will assess and report all items that may be hazardous or be defined as a deficiency, pursuant to FAA or state standards. A representative of the airport sponsor and airport management familiar with the operations of the airport should be available to discuss inspection criteria. Inspectors will notate non-standard airport conditions relative to airport pavements, obstructions, hazardous materials, wildlife hazards, navigational aids, lighting, signage, fuel system deficiencies, navigable airspace issues, and any other issues related to the FAA requirements.

c. The most recent Airport Master Record shall be used by the airport inspector in conducting the inspection of an airport. During the inspector's visit to the airport, the inspector shall verify or correct each data element for the DOTD inspection criteria, except those assigned to a specific office. DOTD inspectors may use any official documents available, i.e., Airport Master Plan, Airport Layout Plan, airport specific operations manuals, and other airport public documents to ensure the airport master record information is accurate as possible.

d. The measurements and computations shall be in accordance with sound engineering practices. Engineering instruments such as hand levels, altimeters, inclinometers, distance measuring wheels/tapes, rangefinders, and similar tools shall be used to obtain the necessary data. Measurements obtained by "pacing" distances, "eyeballing" heights of structures, using a vehicle's odometer, and other similar estimating practices are not acceptable. The use of more sophisticated engineering equipment such as a transit, rods, chains, and surveyor's stakes may be appropriate if, in the judgment of the inspector, such equipment is necessary to obtain the required data. Airport data will be collected at:

- i. public-use general aviation airports every year;
- ii. emergency service, hospital, and special use heliports every three years;
- iii. private-use airport landing areas other than emergency service facilities every five years; and
- iv. supplemental inspections to ensure airport sponsor compliance with correcting any safety discrepancies within the aeronautical operating area for the Louisiana Aviation Program.

e. DOTD shall assess and report all items that may be hazardous or defined as a deficiency by the FAA or the state. The airport manager shall be available to discuss inspection criteria. The latest airport master record shall be used by the airport inspector for conducting the inspection of an airport. Each data element on the master record shall be verified during the inspection.

f. The inspection criteria that shall be used to assess general aviation non-certificated airports shall include: all items that may be hazardous or be defined as a deficiency pursuant to FAA or state standards; non-standard airport conditions; airport pavements; obstructions; hazardous materials; wildlife hazards; navigational aids; airfield lighting; airfield signage; fuel systems; perimeter/security fencing and access gates; backup generators; navigable airspace issues; notice to airman; airport self-inspections; and any noteworthy issues pertaining to aeronautical safety.

g. The inspection criteria used to assess general aviation *certificated* airports shall include the above referenced criteria and the following: the Airport Pavement Management Program; airport specific operation procedures; airport emergency documented procedures; airport minimum standards; airport rates and charges; and documented airport maintenance program.

#### 4. Public-Use Airport Inspections

a. This section pertains only to those general aviation airports participating in the General Aviation Airport Certification Pilot Program (GAAC).

b. DOTD will conduct all airport inspections professionally and accurately utilizing a predetermined airport environment checklist of items to ensure a complete and thorough inspection. DOTD inspectors will assess and report all items that may be hazardous or defined as a deficiency from FAA or state standards. A representative of the airport sponsor and airport management familiar with the operations of the airport should be available to discuss inspection criteria.

c. Inspectors will notate unsafe airport conditions with airport pavements, obstructions, hazardous materials, wildlife hazards, navigational aids, lighting, signage, fuel system deficiencies, navigable airspace issues, and any other noteworthy issues in accordance with the FAA 5010 Master Record and the inspection criteria listed on DOTD's website.

d. The latest airport master record shall be used by the inspector for conducting the inspection. During the inspector's visit to the airport, the inspector shall verify or correct each element for the DOTD inspection criteria, except those assigned to a specific office. DOTD inspectors may use any official documents available, i.e., the Airport Master Plan, the Airport Layout Plan, airport specific operations manuals, and other airport public documents, to ensure the airport master record information is as accurate as possible.

5. Post Inspection Procedures. Once the inspection is complete, the DOTD Inspector may review any discrepancies or safety issues with the airport sponsor and airport management before departing the airport. Additionally, the DOTD Inspector may discuss airport management's responsibility in promptly notifying airmen through the local Flight Service Station (FSS) of any condition affecting future aeronautical use of the airport by the issuance of a Notice to Airmen (NOTAM). Where feasible, airport inspection results shall be uploaded to the Aeronautical Data Information Portal within five business days of the inspection. Additionally, the report shall be transmitted to the airport sponsor and airport management within ten business days of the inspection. The inspection reports shall include, at a minimum, the identification of the airport inspected; any discrepancies or safety related issues noted during the inspection; notable airport master record revisions needed; basic maintenance items noted; and a suspense date for basic maintenance items to be corrected by the airport sponsor. Deficiencies needing correction shall be noted by DOTD and provided to the airport sponsor in writing, following the inspection, within ten business days. Airports shall be given a time period of not less than 30

days, but not more than 90 days, to correct any basic maintenance or safety deficiencies. A follow up supplemental inspection of the correctable deficiencies may be scheduled by the DOTD inspector to confirm the noted deficiencies have been addressed.

6. Airport Compliance. The maintenance and repair of discrepancies after an annual safety inspection shall be completed within a period specified by DOTD. If the airport sponsor fails to correct the discrepancies, this will be annotated on the inspection report log at DOTD. DOTD may schedule and conduct any supplemental or special airport inspections as needed to ensure the safety of aircraft and aeronautical operations at any public-use airport in the LAS without notice.

7. DOTD Inspectors. DOTD inspectors shall have training on airport, aerodrome, and aviation operational environments to ensure safety of aeronautical operations with the Louisiana Aviation Program. Training may be completed through an FAA training program or certified aviation stakeholder industry training programs.

H. Review of Landing Area Proposals. Upon receipt of the FAA determination, and following a reasonable period for review, DOTD will provide the proponents with a statement of its findings and issue a notice of no objection to the establishment and use of the proposed landing area, if such is appropriate. The review may include the following:

1. review of site in comparison with FAA and/or state minimum safety standards, as appropriate;
2. the solicitation of comments by the local governing bodies and local residents;
3. review of the application submitted to ensure accuracy of information submitted;
4. site inspections;
5. potential impacts to the LAS, including current landing areas that are within a 30-minute drive time of the proposed landing area;
6. the solicitation of any approval documentation from local municipality zoning boards or commissions, construction approval agencies, or public laws/ordinances;
7. any other lawful means of gathering needed information.

I. Administrative Remedy for Rejection of Application. R.S. 2:13 provides, in pertinent part, that where the department rejects an application for permission to operate or establish an airport, landing field, air school, flying club, air beacon, air navigation facility, or in any case where the department shall issue any order requiring certain things to be done, it shall set forth its reasons and shall state the requirements to be met before such approval will be given or the order modified or changed. In any case where the department may deem it necessary, it may order the closing of the items detailed above until it complies with the requirements of the department. The secretary of DOTD and/or any person designated by him and any officers, state, parish, or municipal, charged with the duty of enforcing this Chapter, may inspect and examine at reasonable hours any premises, buildings and other structures thereon, where the items detailed above are operated. Any order made by the department shall be served upon the interested person by registered mail or in person before such order shall become effective.

J. Failure to Comply. Failure to comply with appropriate directives of DOTD may result in penalties. R.S. 2:12 provides that the department, its members and employees, and every state, parish, and municipal officer charged with the enforcement of state and municipal laws, shall enforce and assist in the enforcement. The department is also authorized to enforce the provisions by injunction in the district courts of this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 2:5 through R.S. 2:17.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 6:163 (May 1980), amended LR 6:559 (September 1980), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:510 (March 2007), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:757 (May 2016), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1414 (August 2023).

### **Chapter 3. Airport Construction and Development Priority Program Process**

#### **§301. Introduction**

A. DOTD is responsible for developing public aviation facilities in the state, fostering air commerce, promoting aeronautics statewide, and protecting the health and safety of those engaged in aeronautics. Assistance with the planning, design, construction, and inspection of facilities is provided to local governments whom own the public airports. In addition, state funding is used in many cases to provide all or a portion of the local match requirement, as requested by the airport sponsor, when the improvement is federally funded, received 90 percent or more of project funds from sources other than state funds, or if most or all of the total funding is previously approved by the Legislature.

AUTHORITY NOTE: Promulgated in accordance with SCR No. 67 (1997), R.S. 2:6, R.S. 2:7, and R.S. 2:803(B).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1504 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:519 (March 2007), amended by the Department of Transportation and Development, Aviation Section, LR 39:104 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:757 (May 2016), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1416 (August 2023).

#### **§303. Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grants**

A. Federal funding for projects is received through grants from the FAA directly to the recipient airport sponsor. Under the Airport Improvement Program (AIP) a minimum of 90 percent of project funds are federal. Occasionally, the FAA may offer a grant requiring a local match of more than 10 percent. When the airport sponsor requests state funding assistance for the local share, the project is evaluated through the priority system because of the use of state dollars. The airport sponsor must coordinate the development of the project with DOTD and the FAA, in order to receive the matching funds through the priority system. When the required match to the federal grant is greater than 10 percent, the state will participate in no more than 10 percent of the project cost, while the local sponsor

must provide the remaining amount necessary to match the federal grant. The FAA provides the AIP grants directly to the airport sponsor who is responsible for administering the grant. DOTD may participate in additional funding contributions toward the FAA funded project through the Airport Construction and Development Program.

**AUTHORITY NOTE:** Promulgated in accordance with USC 49:47101 through 49:47112, SCR No. 67 (1997), R.S. 2:6, and R.S. 2:803(B).

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1504 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:519 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:104 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:758 (May 2016), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1416 (August 2023).

### **§305. Project Identification and Development**

A. The primary objective of the priority system is to prioritize airport improvement projects. Nonprioritized projects are not included in the priority system as individual projects, but are funded through approved amounts for each category of project. Differences in the criteria for assessing these types of projects and the relatively small amount of state funding available make them impractical to include in the same process with airport improvement projects.

B. Potential projects for inclusion in the priority system are initiated by the airport sponsor or by DOTD. The need for the project may be identified in a master plan, airport action plan, airport layout plan, system planning document, or as a result of a change in conditions or facilities at the airport which is supported through appropriate and sufficient documentation and justification.

C. Only airport development projects are subject to prioritization. Airport administration and operations are not included since they are the responsibility of the airport owner and are not within the purview of the prioritization process.

D. An airport shall not receive state funding from DOTD if affirmed to be in noncompliance with federal and/or state laws, regulations, rules, policies by the FAA, the Louisiana Legislative Auditor, or DOTD. Written notification may be provided to the airport sponsor by DOTD.

**AUTHORITY NOTE:** Promulgated in accordance with USC 49:47101 through 49:47107, USC 49:48103, SCR 67 (1997) and R.S. 2:6.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1505 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:519 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:105 (January 2013), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1417 (August 2023).

### **§307. Project Prioritization Process**

A. The prioritization of a project is a two-step process. The first step is to determine whether the project should be included in the priority process. The second step is to determine whether the information necessary for prioritization is available.

1. **Project Pre-Applications.** Pre-applications may be submitted annually to DOTD by close of business on September 1. DOTD may provide a cursory review of the airport sponsor's pre-application. Further, DOTD may discuss and provide comments relative to the project application, pertaining to any insufficient information or requirement for any additional documentation needed to ensure an efficient and successful prioritization of the requested project. Projects with insufficient information may be returned to the airport sponsor until required information is provided.

2. **Project Applications.** Project application documentation shall include the following:

a. project resolution from the airport sponsor requesting state assistance for the project and documenting any commitment from the airport sponsor to participate in the cost of the project financially (if applicable);

b. project scope, estimated cost, justification, and description of project area;

c. environmental clearance documentation or viable commerce benefits (if applicable);

d. any additional information from the airport sponsor necessary for prioritization of the project;

e. verification/documentation that the airport sponsor has a consultant/engineer under a professional service agreement to conduct the applied for work.

3. The airport sponsor shall hold a current agreement with an engineer or consultant to perform the work for the project(s) identified in the project application. If the airport sponsor does not hold a professional service agreement with an engineer or consultant to perform the work by November 1 of the application year, the project will not be prioritized for funding. Additionally, if the airport sponsor does not hold a professional service agreement with an engineer or consultant to perform the work by November 1 of the application year, the project may not be prioritized in the subsequent unfunded year. If additional information is required, DOTD may provide written notification to the airport sponsor. Additional information and official project applications shall be submitted to DOTD no later than close of business on November 1. If all of the necessary documents are not received by DOTD on November 1, the proposed project shall not be prioritized for funding consideration within the Airport Construction and Development Priority Program. For any project or projects that are not allowed to compete for funding based on the above criteria, those projects will need to be reapplied for during the next fiscal year program.

B. Once it has been determined that the project is eligible for state funding and all documentation has been provided, the next step is the assignment of point values to determine their relative priority. When point values are finalized, the project is placed into the priority system where it is ranked in relation to all other projects in the system.

C. The project components are also reviewed to determine if the project can be prioritized as one project or requires restructuring into more than one project. The project will be restructured into usable units if necessary. An example would be a request to lengthen a runway and extend the corresponding taxiway. The runway can be lengthened and is usable without the extension of the taxiway, so these may be considered as two projects in the priority system. An

alternate example would be the extension of the runway's lighting system. This would be included with the runway extension as one project because the additional runway length cannot be used at night without the extended lighting.

D. The structure of the priority rating system is based on an evaluation of four categories:

1. Category I—project type;
2. Category II—facility usage;
3. Category III—sponsor compliance;
4. Category IV—special considerations.

E. Points are awarded to a project based on evaluation criteria in each category. The total evaluation score for the project is the sum of points in each category. Based on priority ratings of projects, a prioritized program of projects is developed by DOTD and submitted to the Joint Legislative Committee for Transportation, Highways and Public Works. This committee approves the program of projects, which becomes the capital improvement projects that will be implemented by DOTD in the next fiscal year. A project submitted after this approval, with a ranking high enough to place the project on the program of projects, cannot be added until a new program of projects is submitted to the committee the following year. A project submitted after this approval shall follow the project prioritization process for the following fiscal year. However, a project receiving "other than" state funds may receive a state match in accordance with R.S. 2:803(B), if funds are available as determined by DOTD. If DOTD determines that funds are not available, but all required documentation for this project are complete, the project can be placed on the following fiscal year priority program for funding.

F. Legislation requires a priority system to prioritize projects in a logical order for addressing documented needs in the state's public airport system. The priority system is a process that has been developed to allocate state aviation funding to address these needs. The system reflects the state's development policy for the airport system, assigning higher values to projects, which are consistent with the policy.

G. Prioritized projects which have been approved for state funding but due to lack of federal matching funds or other reasons, do not have an executed sponsor-state agreement within six months, beginning July 1 of the fiscal year in which the project was approved by the legislature, shall be canceled from the funded program. The project shall be resubmitted under the project prioritization application process to compete for funding in subsequent years. Funds which had been approved for a canceled project will be reallocated to any other prioritized project the legislature has approved as needed. Such funds may be used to cover project overruns. Project overrun funding eligibility shall not exceed fifteen percent of the total construction portion of the grant for construction related overages or exceed fifteen percent of the total engineering portion of the grant for engineering and consultant related overages. The airport sponsor does not have to obtain prior DOTD concurrence for contract changes, but if an airport sponsor proceeds with a contract change it will be at the airport sponsor's own risk. However, if the airport sponsor requests prior DOTD concurrence, this shall not indicate any commitment or guarantee of funding reimbursement, nor shall it delay or affect any contractual workday obligations during DOTD's

review of the proposed contract changes. Further, a subsequent review by DOTD of the contract changes completed by the airport sponsor may be necessary and may lead to the determination that the costs in the contract change cannot be funded under a state grant. Airport sponsors have the option to request DOTD review and concurrence of any contract changes; however, any funding determinations and grant amendments may not be processed until the end of the state fiscal year.

H. Funds recovered may also be used to fund the next-in-line or appropriate project on the subsequent fiscal year prioritized unfunded list and the three-year unfunded portion of the priority list, if that project has received funding or for projects funded by other than state funds not covered by the future FAA obligations funds. As a general rule, funds originally allocated to commercial service airports will, whenever practical, be used to fund projects on the commercial service airport unfunded list. Funds allocated to general aviation airports will likewise be used to fund projects on the general aviation airport unfunded list.

I. Airport sponsors shall carry insurance on all airport facilities and equipment for which the state provides funding assistance. The insurance coverage shall provide for replacement value, if applicable. If a sponsor is applying for funding to rebuild or repair airport facilities or equipment covered by insurance, insurance proceeds should be used against the costs first, and the state's participation may be no more than eighty percent of the remaining eligible project costs. For terminal buildings, the state's participation is based on the public-use space ratio. If only a portion of the terminal building is involved, the state's participation is based on the public-use ratio. When requesting funding related to an insured facility or equipment, airport sponsors shall provide DOTD with supporting documentation that shall include a written response from the airport sponsor detailing what work and/or equipment are covered, or if the insurer declines a sponsor's request, a copy of said declination.

J. State Fiscal Year Important Milestones. The following is a listing of important deadlines and milestones utilized by DOTD for program planning purposes.

1. July 1—Planning and Development Program Begins.
2. September 1—Project Pre-Application Deadline.
3. November 1—Project Application Deadline.
4. November to February—Program Development.
5. February to April—Program Submittal to Legislature.
6. June 30—Capital Improvement Plan (CIP) Submittal Deadline or as established by DOTD.

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### §309. Nonprioritized Programs

A. Through the legislative approval process for the Priority Program, DOTD may specify nonprioritized programs as needed on the Priority Program.

1. Such statewide programs may include, but are not limited to: planning, navigational aids, discretionary projects, maintenance reimbursement, obstruction removal safety programs, future FAA obligations, the Statewide Marking Program, the Statewide Pavement Surface Treatment Program, the General Aviation Enhancement Program, and the Rural Airport Program.

2. Projects cannot reach the facility improvement stage without going through the planning phase. The following programs are an integral element of the state's aviation program.

a. Navigational aid projects enhance use of the overall state system by providing an increased level of safety.

b. Discretionary projects provide the Aviation Section with the latitude to fund emergency or safety related projects on a real-time basis and to undertake projects which are too small to be eligible for funding through the priority program. The state's airport system would be stagnated without these types of projects.

c. The Maintenance Reimbursement Program assists the general aviation and commercial service airports in the high cost of maintaining an airport, and allows the airport to maintain a safe and operational status.

d. The Obstruction Removal Safety Program is needed to keep the state's airports safe from obstructions that penetrate the airports approach slopes, runway protection zones, and FAR Part 77 surfaces.

e. The future FAA obligations are needed to meet the funding requirements for projects the FAA has funded after the priority program has been approved. This is caused by the state's fiscal year being out of synchronization with the federal fiscal year by approximately three months. This special program precludes the loss of federal funds and improves the state's timely response.

f. The Statewide Marking Program assists airports in maintaining a safe visual marking aid environment on the airfield.

g. The Statewide Pavement Surface Treatment Program and pavement condition index study assists airports in maintaining their pavement in good condition.

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### §311. Air Carrier Airports versus General Aviation Airports

A. One of the basic objectives of a priority process is to identify projects that benefit the highest number of aviation system users; however, it primarily identifies projects that have the greater need, even if the airport serves less users than another airport. When airports are compared based on persons served, airports offering scheduled or unscheduled passenger airline service to the public serve more persons than airports that support general aviation activity. Differences in the size, revenue generation capability, and usage of commercial service air carrier airports—those airports that enplane 2,500 or more passengers annually—as compared to general aviation airports make it difficult to compare the need for projects between the commercial service air carrier and general aviation airports.

B. Due to aircraft size, weight, speed, operational characteristics, and FAA design standards, facilities at air carrier airports have more demanding requirements, resulting in costlier engineering and construction. Because of the significant differences between air carrier and general aviation airports project standards, each group's projects are prioritized separately.

C. The air carrier airports priority projects must have an established funding level, just as the general aviation priority projects must have an established funding level. To accomplish this, the total funds available for airport improvement projects in a given year are allocated between air carrier and general aviation airport projects in a ratio of 65 percent for air carrier airports and 35 percent for general aviation airports. This balance is adjusted if there are insufficient projects in either category to fully utilize available funding. This 65 percent/35 percent allocation is based on past experiences in the state's aviation program and the levels of state funding allocated to each type of airport. It also reflects the fact that air carrier airports have a greater capability of generating revenue through means unavailable to general aviation airports such as: concessions, vendor leases, landing fees, airline contracts, passenger facility charges, rental car lease agreements, and consolidated rental car facility charges. Passenger facility charges (PFC) are charges passed on to a commercial service passenger, which can be collected by the airport to fund projects not otherwise funded. These projects are eligible to be approved by the FAA for 100 percent funding through the PFC collection. Therefore, those portions of projects using PFC funds are not eligible to receive matching funds from the state.

D. The division of projects by air carrier or general aviation airport categories results in two project priority lists, one for each of the two types of airports.

E. LAS has air carrier airports that are FAR Part 139 certificated. Due to this federal certification standard, these airports are required by the FAA to meet all standards set forth in FAR Part 139. Therefore, each of these airport's projects will be prioritized in accordance with the Air Carrier Enhancement Program. Programmed projects shall receive a calculated percentage of the Airport Construction and Development Priority Program for Air Carrier Airports each year based on the annual aviation appropriation approved by the Louisiana State Legislature. The percentage shall be reviewed and recalculated/revised every two years by DOTD

in accordance with the Air Carrier Enhancement Program. The projects included in the Air Carrier Airport Construction Program may be prioritized and selected utilizing a process based system. That system includes, but may not be limited to, objective analysis and public data that considers, at a minimum, aviation factors relative to project eligibility for funding within the air carrier airport construction program, hub classification status, economic analysis, studies by DOTD, FAA data for enplanements, operations, historical funding, and financial/grant management practices.

1. Air Carrier Enhancement Pilot Program (ACE Program)—The ACE Program is designed to allow maximum flexibility in construction and development project requests while retaining the need and integrity of continuing the process to compile and develop a prioritized list of projects to be complete at air carrier airports. The program shall foster operational safety and provide for the optimal use and efficiency of existing transportation facilities and funding strategies. Further, it may support resiliency in the transportation system and promote diverse economic development, job growth, commerce, and tourism. It shall encourage innovation, support environmental practices, and improve the quality of life for Louisiana citizens. The primary objective of the ACE Program is to prioritize airport improvement and development projects in accordance with the air carrier airport sponsor capital improvement plans (CIP), and the desired necessity to adapt to air carrier airport operational requirements. Percentage formulas derived through the program process shall include, but may not be limited to, FAA hub classification, enplanements, and operations in accordance with the air carrier entitlement program. Projects shall be included in the priority system evaluation as individual projects, but shall be funded through the total approved percentage amounts for each airport the category of projects requested. Differences in the criteria for assessing these types of projects, the costly amount of these projects, and the complex nature of the project timelines require state funding to be available to ensure practicality and inclusion in the same process with FAA and other federally funded airport improvement projects and processes. State statutes require a priority system to document and prioritize projects in logical order for addressing documented needs at the state's air carrier public airport system. The priority system is a process that has been developed to allocate planned consistent and reliable funding to air carrier airports to ensure they are able to address their critical needs and the needs of the LAS. The system reflects the state's development policy for the airport system, assigning higher values to projects which are consistent with the policy and the LASP.

a. From the estimated percentage of allocation amount, air carrier airports shall first provide funding for all match requirements to FAA grants received during each fiscal year the ACE is allocated.

b. Any remaining funds may be used for the next highest priority or appropriate project as identified by the airport sponsor through project support documentation submitted to DOTD.

c. Air Carrier airports may state their intent in writing to enhance their larger project requests by merging the previous year funded allocation amount and/or any

remaining funds from previously approved projects for a legislatively approved project with their planned allocated amount and the request on file for the next fiscal year program to ensure and have the ability to fund a larger multi-year project.

d. If the air carrier airport elects to change a project that was previously prioritized or submitted as a merger project, the air carrier airport shall submit their intent to do so to DOTD in writing. The current project shall be canceled, and the new project shall be submitted in accordance with the prioritization process in the Airport Construction and Development Program. Funds, which had been approved for the canceled project will be reallocated to any other prioritized project the legislature has approved as needed in accordance with reallocation compliance procedures statutorily or by DOTD.

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### §313. Preliminary Evaluation

A. The preliminary evaluation is used to screen potential projects and determine those that can realistically be implemented, assuming funding is available.

1. The first step is to determine whether the project should be included in the priority process. There are three basic criteria:

- a. project type;
- b. project size; and
- c. eligibility for federal matching funds.

2. The second step is to determine whether the information necessary for prioritization is available.

B. A DOTD review committee will make an initial determination of whether there is sufficient information to prioritize a project when a project request is received. Some of the information considered by the committee is required by either the Federal Regulations or Title 2 of the Louisiana Revised Statutes.

C. DOTD is responsible for assigning priority values to projects, and determining if they are consistent with development plans in the master plan, action plan, or airport layout plan for the airport. If insufficient data is sent to DOTD, correct prioritization of the project will not be possible. When insufficient data is provided, a request will be made for the additional information needed. Therefore, project pre-applications and necessary documentation should be sent to DOTD no later than September 1 to allow time for processing and possible return for additional information before the project application deadline is November 1. Any document package not meeting all requirements and/or not submitted to DOTD by November 1, shall not be prioritized or included in the upcoming fiscal year's program.

D. Project Type. Generally, only airport improvement or preservation projects are included in the priority program. Some exceptions are land acquisition for obstruction removal or airport expansion and aircraft rescue and firefighting (ARFF) vehicles and equipment.

E. Some projects may be of a type in which DOTD does not participate. For example, the construction of roads and utilities for an air industrial park development or other similar landside projects are not undertaken by the priority system and will not be funded by DOTD.

F. Project Cost. Some projects may be too costly for funding from a single year's budget without denying funding to other needed projects at other airports. Therefore, no more than \$1,000,000 in 100 percent state funding may be programmed to a single general aviation airport through the Airport Construction and Development Priority Program per fiscal year. Projects in excess of these amounts may be funded in phases of usable units over two or more fiscal years. For example, a project for a general aviation airport may have a total cost of \$3,000,000. A usable unit phase for the project may be prioritized in the upcoming budget cycle for no more than \$1,000,000, but the remaining \$2,000,000 may receive priority in the following yearly budgets to insure project completion. This does not include projects that are prioritized as an FAA AIP grant unless it is known that the FAA will use a multi-year funding approach. Regardless of the project size, if the FAA uses multi-year funding, the state will also use a multi-year approach. Projects for general aviation airport requiring a match will be prioritized in addition to any 100 percent state funding request.

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### **§315. Project Support Documentation**

A. Once it has been determined that a project is of the type and cost to be considered in the priority system, an evaluation of required supporting documentation will be made. The project application support documentation is a combination of documents and information necessary for DOTD to determine if the project is developed sufficiently for inclusion in the priority listing. Documentation shall include the following items.

1. Project Resolution. The initial document DOTD needs for consideration of any project is a resolution from the public body operating the airport requesting assistance in the development of the project. Generally, the assistance requested would be for both funding and technical assistance. Any commitment from the airport sponsor to participate in the cost of the project is also documented in the resolution. The resolution from the airport sponsor of the airport initiates an agreement between the two parties for joint sponsorship of the project and authorizes state participation in a local project pursuant to applicable

provisions of state law. It is also considered a written commitment of support for the project by the airport sponsor. DOTD requires a resolution from the airport sponsor or owner before a project can receive state funds.

2. Funding Sources. Since available state funding historically falls far short of the requested airport needs, it is especially important to use every opportunity to take advantage of the FAA/AIP program, which provides funding grants for eligible projects at eligible airports. A request for 100 percent state funding may be processed for a project that is eligible for AIP funding. Those projects that are requested as FAA/state matching funds will remain on the program as FAA/state matching funds until the airport sponsor requests the project be converted or the airport sponsor submits a new project request with resolution prior to November 1 of each year to have the project prioritized as a 100 percent state funded project. An airport sponsor may request in writing to DOTD to have the project converted from an FAA matching funds project to a 100 percent state funded project.

B. Project Components. In the priority system, projects are prioritized on a generic basis. For example, projects that affect the primary runway are all considered under the heading "primary runway." This could include lengthening, widening, lighting, grooving, resurfacing, rehabilitating, or reconstruction of the primary runway. Projects are defined on a usable basis or unit. This means that if a runway is widened, the relocation of runway lighting and striping are all included in the project. Another example is a request to lengthen a runway and to extend the corresponding taxiway. The runway can be lengthened and usable without the extension of the taxiway, so these may be considered as two projects in the priority system. Development of projects as a usable unit prevents projects of a lower priority being tagged onto a high priority project and resulting in a higher rank. This focuses the priority system on those projects with the highest priority ranking, maximizing the effectiveness of aviation program funds. However, it is sometimes advantageous in terms of safety, operational effectiveness, and fiscal responsibility to include lower ranking projects and otherwise unrelated higher projects. For instance, if there is a high priority project to overlay a runway, it may be appropriate to include a stub taxiway leading from the runway to a parking apron, or the apron itself, if it is in poor condition. This can prevent damage to aircrafts, provide a safe operational area for the necessary movement of aircrafts, and provide significant cost reductions for the lesser priority projects. This blending of otherwise nonrelated projects, is an exception which will be authorized only in exceptional cases. The aviation director is responsible for the organization of projects into usable units when projects are developed, and for determining if special circumstances exist which would warrant combining unrelated projects.

C. Planning Data. The priority process depends heavily on planning data to evaluate the relative merits of a project. Usually the justification for a project is in the master plan or airport layout plan for the airport but there are exceptions. Engineering inspections may identify the need for reconstruction of a runway or a 5010 inspection may reveal a safety problem. Regardless of the means by which a project is identified, written documentation describing the need for the project and the justification for the action to be

taken must be provided. The justification for the project should be brief and to the point. An airport shall have an approved airport layout plan on file with DOTD in order for projects to be eligible for funding using state aviation appropriations funding.

1. Submitting a master plan or airport layout plan document as sole justification is unacceptable. The pertinent section of the master plan or action plan should be submitted with a narrative to explain the project and demonstrate that it is consistent with the master plan or action plan recommendations.

2. The planning data for a project, at a minimum, must:

- a. document the need for the project;
- b. explain how the project meets the need;
- c. give the estimated cost; and
- d. identify the project on the airport's approved layout plan.

D. Project Scope, Costs, and Justification. The estimated cost and justification for the action to be taken is necessary for proper prioritization. The documentation for the justification need not be lengthy; but, it should focus on what has generated the need. For example, if an aircraft parking apron is to be expanded, the number of existing parking spaces versus the number of aircrafts that need to be parked on the apron would be adequate documentation. In this instance, a description of the size for the proposed apron expansion, and how many additional parking spaces the expansion would create should be submitted. The expansion should also be shown on the airport's approved layout plan to illustrate how it fits in the overall master plan or airport layout plan recommended for the airport. If the expansion of the apron is not consistent with the master plan or action plan, an explanation for the proposed deviation is necessary.

E. Environmental Requirements. Because of their potential environmental impact, some proposed projects may require environmental clearance before they can be constructed. During the preliminary evaluation of a project, there should be a determination whether or not environmental clearance is required. If the FAA Airports District Office or DOTD indicates environmental clearance is required, documents that show environmental requirements have been met should be provided. If some type of environmental document needs to be developed for the project, this should be completed before the project is placed in the priority system unless the environmental delineation and/or mitigation is part of or included in the project to be funded. Environmental clearance of projects can be a lengthy process, and allowing a project to be dormant in the priority system while waiting for clearance could preclude other projects from being implemented.

F. Two of the evaluation criteria in the "sponsor compliance" category are whether the airport sponsor has height limitation zoning and land use zoning in effect around the airport. If DOTD does not have a copy of the airport's zoning ordinances on file, the airport sponsor is required to provide this. The lack of zoning around the airport will cause a lower ranking of the proposed project.

1. The presence of zoning ordinances, an implemented pavement maintenance plan, compliance with the current airport specific operations manual, airport minimum standards, and adequate airport maintenance are evaluated in

the preliminary evaluation of a project. If they are not being done at an airport, the local sponsor should be given an opportunity to rectify the situation before the project is prioritized. The airport owner will be advised of the corrective actions that can be taken to improve the project score. If the owner does not initiate and document corrective action that clearly shows action being taken to address these items and correct deficiencies in these areas, the project will not receive points in this category.

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### §317. Project Priority Rating System

A. There are four categories of evaluation. The categories are as follows:

1. Category I—project type;
2. Category II—facility usage;
3. Category III—sponsor compliance;
4. Category IV—special considerations.

B. Points are awarded to a project based on evaluation criteria in each category, and the total evaluation score for the project is the sum of the points in each category. The point values are designed to award points in a weighted manner. Each area of evaluation receives points in proportion to the relative importance as determined by DOTD.

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### §319. Category I—Project Type (see Exhibit 1)

A. This category is designed to segregate projects by type, defined by the primary purpose of the project. To accomplish this, four subcategories have been designated for project type. These subcategories are:

1. safety;
2. airside preservation;
3. airside improvements; and
4. landside improvements.

B. The subcategories are listed in order of descending importance and point values have been assigned accordingly.

1. Development of projects directly related to safety of aircraft operations is the highest priority because of the potential for loss of life/property should safety needs not be addressed.

2. Next is preserving the existing airport system since the existing facilities represent an investment of public dollars, and there is a commitment to maintain those facilities that are in use.

3. The airside improvements reflect a policy by DOTD to develop facilities to the design standards established by DOTD and the FAA to accommodate existing aviation activity at an airport.

4. Projects for landside improvements at an airport are last in the project type priority as safety, airside preservation, and airside improvements are all types of projects that need to be addressed in order to maintain a safe and operational airport.

C. Except for the "safety" subcategory, the general approach to assigning points to projects within these subcategories is to give highest priority to addressing needs of the primary runway first and then decreasing priorities the farther the project is removed from the primary airside facilities. For example, a project on a primary runway has a higher priority than an apron project, but the apron project has a higher priority than a vehicle parking lot project. Safety projects, because of their importance, are addressed equally, regardless of what area of the airport they impact. The program safety subcategory type for primary runways at rural airports, pertains only to runway pavement projects at airports classified within the rural airport program as defined in this part. For a rural airport to receive points in this category, the airport shall apply for funding assistance for runway pavement work before the runway pavement deteriorates below the state standard specified level for safe aeronautical operations in the airport construction and priority program.

D. Project types listed are generic. For instance, any project dealing with the primary runway that is designed to preserve its integrity falls under the "preservation of existing system" subcategory. This means that overlaying of the primary runway receives the same number of points as reconstructing the primary runway because both are designed to preserve the integrity of the runway. The subcategories in the "project type" category are displayed in Exhibit 1, including the type of project within each subcategory and its corresponding point value.

E. DOTD may participate in revenue-generating projects such as fueling systems and hangars. Such projects are usually done after all other airside projects or issues have been completed. Certain areas of terminal buildings at general aviation airports may be eligible. Areas such as the airport manager's office, flight planning area, pilot's lounge, and a small conference room would be considered eligible for funding. Areas such as a location for rental car agencies, restaurants, and fixed base operators (FBO's) would not be considered eligible for funding. The size of the terminal building eligible for funding would also be limited to the needs for the size of the airport in which it would be located.

F. Safety (see Exhibit 1.A). Projects in this subcategory are limited to those that only affect aircraft operational safety. These are projects such as obstruction removal, runway grooving, aircraft rescue and firefighting (ARFF)

equipment, and lighting. For example, lengthening of a runway improves safety, but its primary purpose is to allow utilization by larger or faster aircraft. In the case of ARFF vehicles, a request for a new ARFF vehicle must have adequate justification. For example: If an airport's ARFF index requires, as part of its certification, one 1,500 gallon ARFF vehicle, and this vehicle was purchased within the last two years, the ARFF vehicle's life cycle is expected to last approximately 10-12 years. Therefore, if the sponsor requests a newer ARFF vehicle within this 10-12 year time frame, the ARFF vehicle will not be scored in the 'safety' category. Rather, the ARFF vehicle will be scored in the 'airside improvement' category due to the age of the recently purchased vehicle, if it is justified by the airport's current ARFF index. If the airport sponsor requests to continue with an application for an ARFF vehicle that exceeds the airport's index requirements, the airport sponsor may elect either of the following options:

1. application may be submitted for 100 percent reimbursement for refurbishment of an existing ARFF vehicle; or

2. application may be submitted for 25 percent state funding, and the airport sponsor will provide the remaining 75 percent for a new ARFF vehicle. However, after completion of either option, this ARFF vehicle will be categorized as a new vehicle and must comply with the requirements specified in this section. If the ARFF vehicle that is currently allowing the airport to meet its ARFF index requirement is expected to exceed 10-12 years of age by the time of the request, the vehicle can be scored in the 'safety' category. Projects in the "safety" category are those developed specifically to address an unsafe condition, and receive the highest evaluation points possible. Only airports that hold current FAR Part 139 Airport Operating Certificates (AOC) with the FAA are eligible for funding in the airport construction and priority program.

G. Airside Preservation (see Exhibit 1.B). Projects that are required to maintain the functional integrity of existing facilities are evaluated in this subcategory. Reconstruction of a runway or taxiway and rehabilitation of an existing lighting system are the types of projects included under this subcategory. The point values are assigned with the highest value to projects that maintain the integrity of the primary runway and decrease in value as the facility being maintained moves from preservation of existing facilities toward making improvements to airside facilities.

H. Airside Improvements (see Exhibit 1.C). Projects evaluated in this category upgrade a facility to a design standard, based on current needs. The required design standards for facilities are determined by the role the airport plays in the state airport system, and DOTD facility development standards. The airport role and standards are found in the LASP, appropriate FAA and state airport design advisories, and engineering briefs.

I. Landside Improvements (see Exhibit 1.D). Projects in this subcategory are designed to facilitate the handling of issues dealing strictly with landside improvements. These projects receive the least amount of points in the prioritization process due to the fact that emphasis must be put on airside to maintain safe and operational airports. Projects in this subcategory may be addressed once the airside issues have been addressed and resolved.

AUTHORITY NOTE: Promulgated in accordance with USC 49:47103, SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1510 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:524 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:109 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:760 (May 2016), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1422 (August 2023).

### **§321. Category II—Facility Scoring (See Exhibit 2)**

A. This category weighs the use of an airport relative to the use of other airports in the system. The basic objective is to support projects that serve the most aviation users. This objective has to be balanced with DOTD's goals of maintaining a viable statewide system of public use airports, and maintaining aviation and public safety. For this reason, air carrier and general aviation airports are prioritized separately.

B. Points are awarded based on the number of aircraft based at the airport and/or the number of commercial enplanements. The point values have been developed to attempt to recognize higher use of an airport while not eliminating a low use airport from consideration for projects. Exhibit 2 shows the point rating structure for this category.

C. The number of based aircraft at an airport, as indicated in the latest 5010 inspection report, or the national based aircraft inventory, is used to determine the relative level of use at an airport. However, the number of operations for each based aircraft is not accounted for by using only the based aircraft numbers. For instance, itinerant operations are not recognized, nor are other operations by aircrafts not based on the field, such as agricultural and military aircraft. All of these factors will affect the overall number of operations at an airport, which is a more accurate measure of airport use. General Aviation airports can confirm their airport's aircraft operations through the utilization of airport operation communication devices that will collect annual data to verify their operational capacity. The airport may incentivize their project scores within the facility usage category of the project scoring criteria through participation in this data collection program.

AUTHORITY NOTE: Promulgated in accordance with USC 49:47103, SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1511 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:525 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:110 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:760 (May 2016), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1424 (August 2023).

### **§323. Category III—Sponsor Compliance (See Exhibit 3)**

A. The "sponsor compliance" category evaluates how effectively the airport owners are operating the airport with

respect to established standards and good management practices. Several areas are evaluated in this category that are critical to providing safe and efficient public services. Exhibit 3 shows the evaluation criteria and point values for this category.

B. Airports are affected by the use of the land surrounding them. Certain land uses in the vicinity of an airport can result in restrictions on use of the airport and, in extreme cases, the total closure of the airport.

1. Height Ordinances. Restrictions to prevent the penetration of tall objects into the approach surfaces for aircraft at an airport are very important. Generally referred to as "height hazard zoning," this type of zoning prevents tall objects that affect the safety of aircraft operations from being built around the airport. Tall objects can cause the displacement of thresholds and the raising of "minimums" for instrument approaches at an airport, thus decreasing the utilization of the airport. The airport represents a substantial public investment and implementation of height hazard zoning by the appropriate local governing body protects the investment by allowing the airport to be used to its full capacity. Points are awarded in this category for having height hazard zoning ordinances in effect at an airport.

2. Compatible Land-Use. Compatible land use zoning is necessary to protect the airport from restrictions placed on it when aviation uses conflict with surrounding land uses. Certain land uses around an airport are incompatible with airport operations because of safety considerations or impacts on landside activities. Noncompatible uses can create conflicts between the community and the airport which may create pressures to restrict use of the airport. Within this category, the implementation of land use zoning is evaluated, and points are awarded for having land-use compatibility zoning in effect around an airport.

C. The final evaluation area in the "sponsor compliance" category is maintenance. The sponsors of the airport are responsible for routine maintenance, such as cutting the grass, changing light bulbs, maintaining proper drainage, sealing/filling pavement cracks, and refurbishing, marking and painting stripes. If regular maintenance is not completed, the airport will not receive full points in this category. If maintenance is cited as a problem, the airport will be notified in writing of the problem and corrective actions recommended. Current open discrepancies shall affect the prioritization of future project requests from the airport sponsor as noted in Chapter 1 of this Part. DOTD may schedule and conduct supplemental or special airport inspections, as needed to ensure the safety of aircraft operations at any public-use airport in the LAS without notice. Point values shall be assigned in accordance with the airport construction and priority program regarding the airport discrepancy corrections.

AUTHORITY NOTE: Promulgated in accordance with USC 49:47103, SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1512 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:525 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:110 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:760 (May 2016), amended by the Department of Transportation and

**§325. Category IV—Special Considerations**  
(see Exhibit 4)

A. The first three evaluation categories cover those evaluation areas (project type, facility use, and sponsor compliance) for which all projects prioritized will receive an evaluation score. The "special considerations" category allows projects of special significance to receive additional evaluation points when being prioritized. The items evaluated in this category bear no relationship to one another and thus each project is evaluated to determine if it should receive bonus points in its prioritization score. Exhibit 4 shows the criteria and point values for bonus point evaluation.

B. Special Programs. At times, certain improvements at an airport may be mandated by federal or state law and thus require a higher prioritization. DOTD may determine that special emphasis should be placed on a certain type of project. All projects of the designated type will receive additional bonus points under these evaluation criteria. An example would be a phased project. Additional points will be awarded to ensure that a consecutive phase of a project receives a higher priority than a project that is not phased.

C. Economic development potential is another evaluation area under the "special considerations" category. Any construction project generates economic development; however, there some projects are designed to address a specific economic need at the airport or in the community. To receive points in this area, the economic development of the project must be well documented, and clearly demonstrate the potential economic impact of the project. An example of an economic development type of project would be facilities developed to accommodate the aviation needs of a business moving to the community. The facilities would have to constitute a major factor in the decision of a business to be located in the community. To receive bonus, an economic impact study may be required the cost of which is the responsibility of the airport sponsor. Another example would be a taxiway to an open industrial airpark access. This would get bonus points, but a taxiway to a T-Hangar area would not. A runway project to accommodate corporate aircraft would need to be thoroughly documented that it was a major factor in the location of the business.

D. Airline service to a community is an important element in the community's overall economic development. Under the "special considerations" category, projects are evaluated to determine if their primary justification is to maintain or attract airline service to the airport. For a project to receive points under this category, it must be directly responsible for effecting airline service at the airport. Documentation of the project justification is essential for prioritization rating points to be awarded under this evaluation criteria.

E. Another "special considerations" category is the provision of local matching funds contributed to the project request by the local airport sponsor. This is designed to incentivize an airport sponsor to identify and provide local financial assistance for preference to projects that are supported and highly valued by the local airport sponsor. No matching funds from other state sources will qualify for bonus points. Commitment for airport sponsor funding

support shall be included in the project requesting resolution submitted by the airport sponsor requesting assistance from DOTD for the project. Airport sponsor contributions to projects will be scored using a percentage-based system, in accordance with Exhibit 4 of this Chapter. Airport sponsors shall have all airfield safety discrepancies or conditions corrected in accordance with the airport construction and development program to be eligible to compete for points in this category.

AUTHORITY NOTE: Promulgated in accordance with USC 49:47103, SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1513 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:526 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:111 (January 2013), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1425 (August 2023).

**§327. New Airports**

A. An airport that is constructed on a new site presents different prioritization issues than improvements to existing airports. Generally, a new airport will fall into either of two categories.

1. First, an airport that is proposed for an area of the state not served by a public airport.

2. Second, a new airport proposed to replace an existing public airport which, for any number of reasons, is not considered a suitable public airport.

B. Prioritization of projects for the development of a new airport requires a slightly different process than that for an existing airport. There are some special considerations that must be made in each of the four prioritization categories.

C. Initially, it must be determined if the project under consideration is for a "new" airport. For purposes of the priority process, an airport will be considered "new" until land is purchased for the airport, a primary runway is constructed, and an apron for aircraft parking is constructed. This includes clearing of runway approaches. At some point during its development, a new airport becomes an existing airport. The completion of these elements allows aircrafts to operate at the airport and, at that point, the airport is no longer considered "new". As such, future projects would be prioritized using the standard prioritization process. The land acquisition, runway, and apron construction will be prioritized using the following special considerations in each category.

D. Under the "project type" category, new airport projects will be categorized in either of two project type categories. Those new airports that are replacing an existing airport are categorized as upgrades to standards type projects. This type of new airport allows construction of an airport that meets all DOTD design standards and allows for future expansion to continue to meet these standards. It should be noted that land purchased for a new airport is often funded with state funds, but when the FAA begins funding other improvements such as the primary runway, the state is reimbursed for land acquisition costs. If this is the case, land acquisition should be treated as a federally funded project and prioritized accordingly.

E. New airports constructed in areas of the state not being served by a public airport are prioritized under the

project type “airside improvements” subcategory. These airports are primarily constructed to increase the capacity of the Louisiana public airports system, and after construction will be prioritized in the “airside preservation” subcategory similar to existing airport’s projects. The FAA usually reimburses land acquisition costs; thus, these projects should be prioritized accordingly. Where land acquisition is a prerequisite to construction, the Sponsor shall provide DOTD with proof of ownership, prior to starting construction. The Sponsor Certification shall be submitted to DOTD after real property is acquired/leased or a contract has been executed. The Sponsor shall assume ownership of the improvements and assume all operations and maintenance costs of the facilities for a period of not less than 20 years. Non-aeronautical activities shall require written approval from DOTD.

F. For the “facility scoring” category, the based aircraft and enplanements numbers that determine the points awarded for the new airport project will be those cited in the supporting planning document for the first planning phase. This will usually be the numbers cited for the first year of operation.

G. Under the “airport sponsor compliance” category, there are two areas that can be included in the prioritization process. The presence of height limitation zoning/ordinances and land use zoning along with subsequent local enforcement policies and procedures should be documented and points assigned accordingly.

H. In the “special considerations” category, a new airport can be assigned points in the same manner as an existing airport. If an airport is the first public airport in an area, the airport should receive bonus points for its economic development potential. The airport represents a totally new mode to the local transportation system and should have a significant long-term economic impact on the area served. Remaining bonus point areas can be assigned in the same manner they are assigned for existing airports.

AUTHORITY NOTE: Promulgated in accordance with USC 49:47103, SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1513 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:526 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:112 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:761 (May 2016), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 49:1425 (August 2023).

### **§329. Prioritization of Projects**

A. Once a determination has been made by DOTD that a project is eligible to be included in the prioritization system, the project will be prioritized using the rating system. The preliminary evaluation of the project should provide the information necessary to complete the process. If adequate information is not available, it will be requested before the project is prioritized. Prioritizing a project without sufficient information may cause a project to receive a higher or lower ranking than it deserves.

B. Point values are assigned in each category using an electronic entry of the worksheet that is included as Exhibit 5. The entry follows the priority rating system and provides

the documentation of how the total score for a project was derived. The entry with any subsequent edits is maintained with the project file so that documentation of the value assigned in each category is available.

C. As part of the evaluation of the project, the eligibility of the project for federal funding is noted on the worksheet. If federal funds are already committed, this is also included on the worksheet. When the project is entered in the automated priority system, the eligibility or commitment of federal funding for the project is noted.

D. Some projects will have equal scores after they are evaluated. If these projects fall at a point in the ranking list where a tiebreak is necessary (funded program versus four-year unfunded program), projects with the same score will be ranked based on the highest score in Category I. The project with the higher score in Category I will be ranked higher. If the projects are tied in Category I, Category III is used to break the tie and, if still tied, Category II is used. Should the projects still be tied after examining all four categories, DOTD will review all information submitted, and all future projects on the sponsor’s Capital Improvement Plan (CIP) to determine which project will provide the safest and best support to the State’s Aviation System.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1514 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:527 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:112 (January 2013), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1426 (August 2023).

### **§331. Priority Ranking System**

A. After the total evaluation score for a project is determined, it is entered into a priority ranking system and its relative ranking is determined. This system ranks projects by descending score in the commercial service airport or general aviation airport priority program, as appropriate.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1514 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:527 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:113 (January 2013), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1426 (August 2023).

### **§333. Program of Projects**

A. The list of projects for air carrier and general aviation airports, prioritized by evaluation score, represent the program of projects that DOTD will implement through its development program. The actual number of projects from each list that will ultimately be constructed is dependent upon the level of funding that DOTD receives each year.

B. The priority system has been designed to allow inclusion of a cost estimate for each project. The estimate is broken down by federal share, state share, and local sponsor share. Since the system is designed to prioritize the use of state monies, the state funds required for a project are key to developing a program of projects.

C. Most projects will require more than one year to design, acquire land (if necessary), and construct. When a project that is programmed to be funded over two or more fiscal years is included in the program, the phase of work (design, construction phase I, construction phase II) will be noted along with the cost of that phase. Subsequent phases may be shown at the top of the four-year unfunded list. As projects are constructed and more funding becomes available, remaining projects with the highest scores will be placed in the construction program to the extent that funding is available. The projects for which funding is available will not be changed until more funds become available. Projects on the four year unfunded list recompile for funding each fiscal year until they are funded or canceled from the list in accordance with the Airport Construction and Development Priority Program. Due to needs, cost estimates, airport operational situations, and other regular data changes, after three years all projects which have not received an executed grant may be canceled from the program. Written notice may be provided to the airport sponsor to ensure the sponsor understands that any canceled projects will need to be reapplied for to recompile in the program for funding consideration. If projects are canceled from the program, they must be resubmitted with updated information. They will then be reviewed and reentered into the priority system.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997), R.S. 2:6, and R.S. 2:802.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1514 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:528 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:113 (January 2013), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1426 (August 2023).

### **§335. Project Available for FAA Funding**

A. Special consideration for projects that will receive FAA funding is included in the priority system. The priority system is a listing of the projects in the order that the state considers implementation desirable based on the state's overall aviation development policies.

B. There are two decisions that DOTD makes when seeking FAA funding for its program. Projects planned at NPIAS airports that are types in which FAA will participate are noted in the CIP. This enables DOTD to present a proposed program of projects to the FAA that are eligible for FAA funding and that reflect state priorities. The Aviation Section then negotiates with the FAA to secure federal funding for top ranked projects. The second consideration for FAA funding is projects the FAA will fund, that do not appear in the implementation program based on priority rankings. DOTD cannot reject a project that will receive funding from the FAA. In these cases, a project that has received a commitment for federal funds is to be automatically included in the list of projects for implementation in the current year. If the current year program is already developed, the project is given top priority in the next year program or may be funded by future FAA obligation funds or funds available from cost underruns. Therefore, it is important that airports seeking federal funding for projects that are eligible for matching

funds from the aviation program coordinate their application with both the FAA and DOTD.

AUTHORITY NOTE: Promulgated in accordance with USC 49:47103, USC 49:47109, SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1515 (August 1998), amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:528 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:113 (January 2013), amended by the Department of Transportation and Development, Office of Multimodal Commerce LR 49:1427 (August 2023).

### **§337. General Aviation Airport Certification (GAAC) Pilot Program**

A. The GAAC Pilot Program is a program designed to enhance the economic impact, development, and marketing strategies of the general aviation airports who elect and are approved to participate in the program. This shall be an opt-in program, which means the airport sponsor has the option of participating in a value adding and strategically based program. The prioritization of additional point values within this program are reflected in Exhibit 4. The state considers implementation based on the airport's overall safety strategies, airport development policies, revenue procedures, documented inspection practices, and utilization of infrastructure improvements, which are consistent with the overall development objectives of the LASP and the GAAC Program.

#### **B. Program Application Requirements**

1. Applications in writing for the GAAC shall be filed with DOTD, in accordance with this Chapter and the GAAC, prior to the beginning of participation in the program. Failure to file the application in its entirety may result in the application being delayed, suspended, or denied.

2. Once a fully executed application is received, DOTD may assign a program number to the airport sponsor/airport to complete the review and provide advance notification to the airport sponsor confirming receipt and a qualification determination. The airport sponsor shall be notified of the program number and estimated timeframe for review of the application packet.

3. The airport sponsor shall provide all information for the GAAC Policy Program to verify the airport qualifications including, but not limited to, airport operations, safety protocols, security, revenue practices, audits, pavement management plan, airport self-inspection program, maintenance practices, minimum standards, rates/charges, wildlife mitigation plan, airport emergency operation plan, training requirements, grant management performance, and airport compliance procedures.

4. Determination. DOTD shall make an initial determination of whether the airport sponsor and airport qualify for the GAAC Pilot Program. If additional information is required after the initial review is completed, DOTD may request, in writing, additional information from the airport sponsor.

5. If the airport sponsor and airport are qualified by DOTD to participate in the GAAC Pilot Program, DOTD will provide guidance in writing to the airport sponsor regarding the next steps to proceed in the certification process of the airport sponsor and airport, in accordance

with the GAAC Policy Program and the Airport Construction and Development Program.

C. Program Agreements. Upon DOTD approval of the airport sponsor and airport to participate in the program, DOTD may develop the following documents to complete the certification process. The documents may contain, but not be limited to the following.

1. DOTD and Airport Sponsor Contractual Agreement. This agreement will contain the approvals by DOTD for the airport sponsor to participate in the program. The agreement will also contain the requirements that the airport sponsor shall uphold and not deviate from during the agreement period. There may be separate and various levels of certification and agreement periods with distinctive requirements for each. DOTD may discuss these levels of certification with the airport sponsor prior to issuing a contractual agreement.

2. Airport Sponsors shall agree to participate in the program for a period of not less than one year.

3. There may be a one year extension granted to the airport sponsor by DOTD without further certification requirements.

4. The airport sponsor shall agree that the program will be completed in accordance with all applicable federal, state, and local laws, regulations, and policies. It is the sole responsibility of the airport sponsor to certify the appropriate development, completion, and authenticity of all work documents required from the airport sponsor throughout program participation.

5. Upon successful approval into the program, DOTD may issue a State Certification Operations Document to the airport sponsor to reflect the airport sponsor's participation in the program in accordance with this chapter, the GAAC Policy Program and the Airport Construction and Development Program.

6. DOTD reserves the right and authority to terminate the contractual agreement under any circumstances without advanced written notice to the airport sponsor.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1427 (August 2023).

**§339. Exhibits**

**[Formerly §337]**

A. Exhibit 1

Exhibit 1	
Category I—Project Type	
Points	
A. Safety—Projects Directly Affecting Operational Safety	
50	Correction of runway failures severe enough to be an obvious safety problem. Runway friction surface or grooving or other action directly related to safety. Primary runway at rural airports.
49	Repair of primary runway lighting system or approach lighting system which is not functional and is deemed to be a safety hazard.
48	Obstruction removal which is requiring the displacement of the runway threshold and relocation of runway lighting.
47	Obstructions within the Runway Protection Zone (RPZ) or Penetrations to the Required FAR Part 77 20:1 Approach Slope Surface.

Exhibit 1	
Category I—Project Type	
Points	
46	FAR Part 139 Certificated Airport ARFF vehicles and equipment required at commercial service airports or minimum safety equipment at GA airports to maintain current certificated FAA ARFF Index. Security fencing to correct a specific safety problem (does not include general perimeter fencing).
45	Safety condition identified by professional evaluation or accident statistics.
B. Airside Preservation—Preserving the Infrastructure of the Airport Dealing with Air Operations. Examples are preserving and maintaining the infrastructure of the runways, taxiways, aircraft aprons, airfield lighting, NAVAIDs, Fuel Farms, T-Hangars, Sustainability Projects.	
30	Primary runway
25	Taxiway serving primary runway
18	Apron/Navigational Aids (NAVAIDS)/Sustainability and Innovation Projects
17	Secondary runway/ Wildlife/Safety Fencing*
16	Taxiway serving secondary runway
15	Stub taxiways and taxi-lanes
*Justification and supporting airport documentation of wildlife hazards and prevention plans are required to receive points in this category.	
C. Airside Improvements—Improving the Infrastructure of the Airport Dealing with Air Operations. Examples are improving and upgrading the infrastructure of the runways, taxiways, aircraft aprons, airfield lighting, NAVAIDs, Fuel Farms, T-Hangars, Approaches.	
14	Primary runway / Obstructions within the FAR Part 77 7:1 Transitional Slope Surfaces
13	Primary taxiway
12	Apron/Sustainability and Innovation Projects
11	Perimeter fencing
10	Navigational Aids (NAVAIDS)
9	Secondary runway
8	Secondary taxiway
7	Agricultural loading area
6	Noise Mitigation / Terminal Building for Air Carrier and General Aviation Airports / Hangars / Fuel Systems
5	New airport construction including runway, taxiway, and apron/Any additional ARFF vehicles or equipment beyond minimum requirements to meet current ARFF Index, Masterplans, Airport Layout Plans (ALPs), Preliminary Engineering Reports (PERs), and Action Plans.
D. Land Side Improvements—Improvements That Enhance an Airport's Infrastructure Not Related to the Air Side.	
4	Land acquisition not related to Airside Improvements for future expansion
3	Primary vehicle access road
2	Primary vehicle nonrevenue-generating parking.
1	Other Land Side Improvements

B. Exhibit 2

Exhibit 2	
Category II—Facility Scoring	
Based Aircraft*	Points
91 or More	20
81 to 90	18
71 to 80	16
61 to 70	14
51 to 60	12
41 to 50	10
31 to 40	8
21 to 30	6
11 to 20	4
1 to 10	2
Based Aircraft Type	Points
5 or more Based Jet Aircraft	10
>2 Based Jet Aircraft	7

<b>Exhibit 2</b>	
<b>Category II—Facility Scoring</b>	
At Least 1 Based Jet Aircraft	3
0 Based Jet Aircraft	0
<b>Based Aircraft Type</b>	<b>Points</b>
>60,000 Annual Operations	9
>25,000 but < 59,999 Annual Operations	7
>15,000 but < 24,999 Annual Operations	5
> 10,000 but < 14,999 Annual Operations	3
< 9,999 Annual Operations	1
<b>Airport Grant Performance Management**</b>	<b>Points</b>
No Grant Performance Discrepancies	10
3 or Less Grant Performance Discrepancies	5
More than 3 Grant Performance Discrepancies	0
<b>Airport Sponsor Responsiveness Management</b>	<b>Points</b>
Airport Sponsor Responsiveness (>=/ > 80 percent)	20
Airport Sponsor Responsiveness (>=/ > 50 percent but < 80 percent)	10
Airport Sponsor Responsiveness (>=/ > 0 percent but < 50 percent)	0
*Taken from latest 5010 Inspection or the national based aircraft inventory	
**Airport Grant Performance Management History will score an airport sponsor on the proper state grant management including, but not limited to—promptness, accuracy, grant activity, and compliance with state grant assurance articles. Additionally, if an airport sponsor is declared in non-compliance with federal or state laws, regulations, rules or policies by the FAA, Louisiana Legislative Auditor, or DOTD within the previous fiscal year, the airport sponsor shall not be eligible to receive points in this category. Grant discrepancies will be recorded by the Operations Program. The timeframe for review will be over the prior two years of grant performance based on the state’s fiscal year.	

C. Exhibit 3

<b>Exhibit 3</b>	
<b>Category III—Airport Sponsor Compliance</b>	
Height Limitation Zoning Ordinance < 10 Years Old	10
Height Limitation Zoning Ordinance < 20 Years Old	5
Height Limitation Zoning Ordinance > 30 Years Old	1
Land Use Compatibility Zoning	5
<b>5010 / Safety Inspection</b>	<b>Points</b>
5010 Inspection-Airport Basic Maintenance Scoring	
No Basic Maintenance 5010 Repeat Discrepancies	15
2 or Less Basic Maintenance Repeat Discrepancies	7
More than 2 Basic Maintenance Repeat Discrepancies	0
5010 Inspection-Airport Self-Inspection Scoring	
Daily Pavement Inspections (Documented)	20
3 Times per week Pavement Inspections (Documented)	15
Monthly Pavement Inspections (Documented)	10
Annual Pavement Inspections (Documented)	5
No Pavement Inspections (Documented)	0
<b>5010 Inspection-Maintenance Items Repaired Scoring</b>	<b>Points</b>
Maintenance Discrepancy Items Repaired within required time frame	20
Maintenance Discrepancy Items Repaired outside of time frame	10
Maintenance Discrepancy Items Not Repaired	0
<b>Louisiana Aviation System Plan Standards</b>	<b>Points</b>
Improves LASP Performance Measure	10
Meets LASP Standard Performance Measure	3
<b>Airport CIP and Planning Sustainability</b>	<b>Points</b>
CIP Consistency Maintained-Airport Project Adheres to 3 Year Planning Cycle*	15
*Planning cycle shall be verified and certified by DOTD to award points in this category to an airport project application.	

D. Exhibit 4

<b>Exhibit 4</b>	
<b>Category IV—Special Considerations</b>	
Designated as Special Program*	15
Economic Development Potential**	10
Airport Sponsor Local Funding Contribution ***	1-59
General Aviation Airport Certification Program****	0-30
*Special Program—Certain types of projects mandated by Federal or State law or identified in a policy decision by DOTD. For example, if the EPA requires a certain kind of wash down facility, it could be given added priority with bonus points. DOTD may place emphasis on a particular type of project, e.g., hazard removal around the state, subsequent phase of a project continuation, project supported and encouraged by the Louisiana Airport System Plan, these types of projects could receive Special Program points.	
**Economic Development—Clearly demonstrated impact on economic development in an industrial airpark or around the airport locale. For example, a taxiway to open industrial airpark access would get bonus points, but a taxiway to a T-Hangar area would not. A runway project to accommodate corporate aircraft would need to be thoroughly documented that it was a major factor in the location of the business. To receive bonus points in this category an economic impact study may be required, the cost of which is the responsibility of the airport owner.	
***Airport Sponsor Local Funding Contribution- Airport Sponsors that clearly demonstrate their intention of providing local financial support for a project through documentation via a resolution shall receive incentive points toward a single project request in accordance with the following criteria:	
For every percent that an airport sponsor contributes to the total amount of the project (including all phases of the project) in accordance with the airport construction and development priority program, 1 point will be awarded for percentages between .02 percent - .08 percent and will be calculated as 0.2 percent = 1 point; 0.4 percent = 2 points; 0.6 percent = 3 points; 0.8 percent = 4 points; For every percentage point from 1 percent to 50 percent, beginning at 1 percent = 10 points and 1 point thereafter will be awarded for each percentage. For example—if an airport is requesting a \$500,000 total project, and contributes 0.6 percent or (\$3,000), then the project will be awarded 3 points toward the total project score. Another example is, if an airport is requesting a \$500,000 project and contributes 12 percent (\$60,000), then the project will be awarded 21 points toward the total project score.	
****Airports that elect to and are approved to participate in the GAAC Pilot Program will be eligible for points awarded under this category in accordance with the GAAC Pilot Program.	

E. Exhibit 5

<b>Project Priority Evaluation Worksheet</b>	
<b>Project Number*</b>	<b>Date Evaluated</b>
Airport Name	
Description of Work	
<b>Category I: Project Type</b>	<b>Score</b>
Safety	
Airside Preservation	
Airside Improvements	
Landside Improvements	
	<b>Total</b>
<b>Category II: Facility Score</b>	
Based Aircraft	
Based Aircraft Type	
Airport Operations	
Airport Grant Performance	
Airport Sponsor Responsiveness Management	
	<b>Total</b>

<b>Project Priority Evaluation Worksheet</b>	
<b>Category III: Airport Sponsor Responsibility</b>	
Height Limitation Zoning	
Land Use Zoning	
5010 / Safety Inspection	
Louisiana Aviation System Plan Standards	
	<b>Total</b>
<b>Category IV: Special Considerations</b>	
Special Program	
Economic Development	
Commercial Service	
Airport Sponsor Local Funding Contribution	
General Aviation Airport Certification Program	
	<b>Total</b>
<b>Project Total Evaluation Score</b>	<b>Total</b>

F. Exhibit 6

<b>Louisiana Airport Construction and Development Priority Program Project Application Form</b>		
Airport Sponsor: Airport: No. and Street/P.O. Box: City, State, Zip Code:		
<b>Project Title/Description</b>	<b>Funding Year Requested:</b>	
(As listed on CIP)	(As listed on the CIP)	
<b>Project Scope and Justification</b>		
(Provide detailed explanation documenting the need and how the project meets the need. (Refer to Louisiana Administrative Code Title 70, Part IX § 315.C for additional guidance.)		
<b>Estimated Project Cost (If applicable, attach a detailed construction cost estimate)</b>		
Classification	Estimated Cost	
Administrative Expenses	\$	
Land Acquisition Cost	\$	
Engineering Fees	\$	
Survey	\$	
Geotechnical	\$	
Estimated Construction Cost	\$	
Construction Inspection	\$	
Construction Administration Fees	\$	
Construction Testing	\$	
Equipment Purchase Cost	\$	
Other: (define)	\$	
Other: (define)	\$	
Total Estimated Project Cost	\$	
<b>Funding Sources</b>		
Source	percent Contribution	Funds
Federal Funds		\$
State Funds		\$
Local Contribution		\$
Other: (define)		\$
Total Estimated Project Cost		\$
<b>Attach the Following: (as identified in LAC 70:IX.307 and 315)</b>		
Sketch of Project(s) on the airport's approved Airport Layout Plan Any additional information necessary for prioritization, i.e., Detailed Construction Cost Estimate, Resolution for Local Funds Contribution, Additional Documentation providing Justification for the Project, Environmental Clearance Documentation.		

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 16:538 (June 1990), amended LR 24:1515 (August 1998),

amended by the Department of Transportation and Development, Intermodal Transportation Division, LR 33:528 (March 2007), repromulgated by the Department of Transportation and Development, Aviation Section, LR 39:113 (January 2013), amended by the Department of Transportation and Development, Intermodal Transportation Division, Aviation Section, LR 42:761 (May 2016), amended by the Department of Transportation and Development, Office of Multimodal Commerce LR 49:1428 (August 2023).

**Chapter 5. Airport Project and Grant Management Procedures**

**§501. Introduction**

A. Pursuant to Title 2 of the Louisiana Revised Statutes, the Louisiana Department of Transportation and Development, specifically the Aviation Division, hereafter DOTD, manages and administers the airport project process and grant award procedures.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1430 (August 2023).

**§503. Airport Project Grant Application**

A. Application Requirements. Airport sponsors shall submit an Airport Project Grant Application to DOTD for review and funding protocol, upon request, notification of Airport Construction and Development Priority Program approval, or otherwise in accordance with the Louisiana Aviation Program. The grant application shall be executed and approved by the airport sponsor or the authorized designee. The authorized designee shall not be the airport's engineer or consultant. Additionally, an airport's engineer or consultant may not execute the grant application on the airport's behalf.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1430 (August 2023).

**§505. Grant Awards**

A. Upon receipt and successful review of the airport's grant application, DOTD will develop and transmit an eligible grant award through a Sponsor State Agreement to the airport sponsor for the DOTD approved funding amount for the project. The grant shall be fully executed with the airport sponsor official's authorized signature. A fully executed grant resolution passed by the airport sponsor authorizing the execution of the grant shall be attached when the grant is returned to DOTD. DOTD may furnish a grant resolution or an airport sponsor may elect to use its own grant resolution. The airport sponsor may download a grant resolution form from the DOTD website to adhere to the minimum required language. If the airport sponsor elects to use its own grant resolution, the minimum resolution language required by DOTD shall be included. An incomplete grant resolution or incomplete grant document shall not be processed by DOTD. The grant document and/or grant resolution may be returned to the airport sponsor for correction or full execution before processing.

B. Grant resolutions executed to authorize a grant award shall be dated within one calendar year from the date of the executed grant award.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1430 (August 2023).

#### **§507. Project Contracts**

A. Within 15 business days, the airport sponsor shall notify DOTD of any legal disputes or contract breaches on any projects that have state funds allocated to them through the Airport Construction and Development Priority Program.

B. DOTD's participation in the project shall in no way be construed to make DOTD a party to any contractual agreements between the airport sponsor and its consultants, engineers, contractors, or any other local binding agreements.

C. The sponsor is responsible for assuring all necessary surveys, engineering reports, plans, specifications and cost estimates for the project are in accordance with the applicable FAA/DOTD requirements, and the sponsor shall submit one copy of the executed engineering service agreement to DOTD along with Sponsor Certification #1.

D. It is the policy of the U.S. Department of Transportation that small business firms owned and controlled by socially and economically disadvantaged persons and other persons defined as eligible in Title 49 Code of Federal Regulations, Part 26 (49 CFR 26) shall have maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1431 (August 2023).

#### **§509. Payments and Reimbursements**

A. The airport sponsor shall submit the request for reimbursement to the DOTD. The request shall only be submitted for work that has been completed and eligible expenses incurred that have been paid in full by the airport sponsor. The request for reimbursement shall not exceed one submittal per month. All payment request amounts shall be submitted to ensure all amounts and information are within the limits of the Airport Construction and Development Priority Program, as approved by the Legislature for the program.

B. The airport sponsor shall maintain invoices and copies of the checks for invoice payments for reimbursement by DOTD. Both the engineer and the airport sponsor shall certify that the completed work shown on each payment request is an accurate representation of the work accomplished during the estimated period and that the work substantially complies with the plans and specifications. All charges shall be subject to verification, adjustment, and/or settlement by DOTD. The airport sponsor shall withhold retainage in accordance with state law (e.g., 10 percent up to \$500,000 and 5 percent thereafter).

C. The airport sponsor shall reimburse all amounts cited by DOTD due to the airport sponsor's non-compliance with federal laws, state laws, regulations and policies. The cited amounts reimbursed by the airport sponsor shall be returned to the airport sponsor upon clearance of the citation(s). No new projects will be approved until the cited amount is reimbursed to DOTD, or the citation is cleared.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1431 (August 2023).

#### **§511. Project Completion and Close Out**

A. The airport sponsor shall submit all final billings for all phases of work within three months after the final inspection of the project, unless prior arrangements have been made with DOTD. Failure to submit these billings prior to the completion of this three-month period shall result in the project being closed on previously billed amounts, and any unbilled cost shall be the responsibility of the airport sponsor.

B. DOTD will not approve the Sponsor's request for the final reimbursement until each of the below items are received and are satisfactorily completed.

1. Within 45 days after recording the final acceptance of the project, the contractor shall submit to the sponsor a clear lien certificate from the recorder's office of the parish or parishes in which the work was performed. If the contractor is unable to obtain a clear lien certificate, the sponsor may deposit the retainage with a court of competent jurisdiction.

2. Upon successful completion of the project, the airport sponsor shall submit to DOTD the following information in Airport Construction and Development Priority Program:

- a. the airport sponsor letter of acceptance;
- b. a final reimbursement request;
- c. an updated airport layout plan (ALP), if applicable;
- d. as-built construction plans and specifications;
- e. the final quantities including any changes; and
- f. airport sponsor certifications.

3. Upon successful completion of pavements projects, the airport sponsor shall submit to DOTD close out documents, including but not limited to the title page, project overview/layout page, the quantities page (used to identify material specifications if not in the cross section information), demolition plan, the typical cross-section page, the paving/geometry page, and joint layout/details page (if applicable).

C. The sponsor and others employed by it in connection with an airport project of which DOTD funds are allocated shall maintain all books, documents, papers, accounting records and any other evidence pertaining to costs incurred relative to this project. They shall keep such material available at their respective offices at all times during the contract period and for three years from the date of final payment for the project. Additionally, all such materials shall be available for inspection by DOTD, the Legislative Auditor, the FAA, or any authorized representative of the federal government under applicable state and federal regulations, at all reasonable times during the contract period and for three years from the date of final payment.

D. The project overrun funding eligibility shall not exceed 15 percent of the original grant amount. The airport sponsor does not have to obtain prior DOTD concurrence for contract changes. If an airport sponsor proceeds with a contract change it is at the airport sponsor's own risk. However, if the airport sponsor has requested prior DOTD concurrence, this shall not indicate any commitment

or guarantee of funding reimbursement, nor shall it delay or affect any contractual workday obligations during DOTD review of the proposed contract changes. Further, a subsequent review by DOTD of the contract changes completed by the airport sponsor may be necessary, and may result in a finding that the costs in the contract change cannot be funded under a state grant. Airport sponsors have the option to request DOTD review and concurrence of any contract changes; however, any funding determinations and grant amendments may not be processed until the end of the state fiscal year.

E. The airport sponsor may request a grant amendment in writing from DOTD. The grant amendment request shall include the following:

1. a cost analysis for all change orders and contract modifications;
2. all change orders and contract modifications;
3. justification for the change/amendment;
4. an executed change order form signed by the airport sponsor;
5. any other support documentation requested by DOTD.

F. Airport grant amendments shall be in accordance with the Airport Project and Grant Management Procedures or this section. For airport development projects, the total grant amendments shall not exceed fifteen percent of the original grant amount.

G. The airport sponsor shall assume ownership of the improvements and assume all operations and maintenance costs of the facilities or improvements for a period of not less than twenty years.

AUTHORITY NOTE: Promulgated in accordance with SCR 67 (1997) and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1431 (August 2023).

### **§513. Violation; Cancellation of Grant**

A. Airport grant awards may be terminated under the following conditions:

1. by the mutual agreement and consent of DOTD and the airport sponsor.
2. by the airport sponsor, should they desire to cancel the project, up to the receipt of bids, provided that any costs incurred for the preparation of plans shall not be eligible for reimbursement by DOTD.
3. by DOTD, due to lack of available state funding for the projects.
4. by DOTD, if the airport sponsor does not transmit an executed agreement within twelve calendar months.
5. by DOTD, if the grant has no activity within 12 calendar months.
6. upon review by DOTD, if the airport is officially declared in noncompliance with federal or state laws, regulations, rules, or policies by the FAA, the Louisiana Legislative Auditor, or DOTD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 2:6 and R.S. 2:807.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1432 (August 2023).

## **Chapter 7. Unmanned Aircraft Systems (UAS) Program**

### **§701. Introduction**

A. Program Intent. The intent of the program is to manage the Unmanned Aerial Systems (UAS) Program for the Louisiana Department of Transportation and Development, and to stimulate innovation and provide efficiencies for project delivery and program development. The Louisiana Department of Transportation and Development, Aviation Division, hereinafter referred to as (DOTD), will foster UAS operational safety and protect the health and safety of persons and property of the citizens of Louisiana and those engaged in UAS operations. Further, the program will promote UAS statewide, assist with inspection of facilities, and provide guidance for operational safety protocols to local governments, which operate their own UAS equipment.

#### **B. Definitions**

*Unmanned Aircraft System (UAS)*—unmanned aircraft and its associated elements (including communications links and the components that control the small-unmanned aircraft) that are required for the safe and efficient operation of the unmanned aircraft in the national airspace system.

*Unmanned Aircraft Vehicle (UAV)*—aircraft operated without the possibility of direct human intervention from within or on the aircraft.

C. Purpose. The primary role of the UAS Program is to obtain terrestrial imagery of the state's infrastructure to inform various workflows within the Department.

D. Flight/Mission Request Procedures. A request may be submitted to the UAS Program through the online "Drone Flight Request" Form or the UAS Program GIS Portal.

1. The link to the online Drone Flight Request Form and the UAS Program GIS Portal may be found on the Drone's and Unmanned Aircraft System's (UAS) area of the DOTD Aviation Website.

2. Flight information to be submitted shall include:
  - a. name;
  - b. agency/section;
  - c. contact information;
  - d. date/time/location;
  - e. expected deliverables;
  - f. mission description;
  - g. special areas of concern; and
  - h. an area map.

AUTHORITY NOTE: Promulgated in accordance with R.S. 2:2 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1432 (August 2023).

Eric Kalivoda  
Secretary

2308#022

**RULE**

**Department of Transportation and Development  
Office of Multimodal Commerce**

Louisiana Port Construction and Development  
Priority Program (LAC 56:III.Chapter 21)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 34:3451, et seq., the Department of Transportation and Development, Office of Multimodal Commerce, Ports and Waterways Section, has amended Part III, Chapter 21, Title 56 entitled "Louisiana Port Construction and Development Priority Program", to reflect current DOTD policies, update data from the U.S. Department of Labor, and revise outdated tables and figures. There should be no significant adverse impact to the public, businesses, local or state governmental entities resulting from this amendment. This Rule is hereby adopted on the day of promulgation.

**Title 56  
PUBLIC WORKS**

**Part III. Flood Control and Water Management  
Subpart 2. Port Construction and Development Priority  
Program  
Chapter 21. Louisiana Port Construction and  
Development Priority Program**

**§2101. Definitions  
[Formerly §2103]**

*Committee*—Joint Legislative Committee on Transportation, Highways and Public Works.

*Council*—Legislative Audit Advisory Council.

*Deep Draft Port*—a port capable of accommodating vessels of at least 25 feet of draft and of engaging in foreign commerce.

*Department*—the Louisiana Department of Transportation and Development.

*Joint Legislative Committee*—see Committee.

*Port*—a harbor town or city where ships may take on or discharge cargo.

*Port Authority*—the governing body of any port area or port, harbor, and terminal district.

*Procedural Manual*—a manual entitled, Louisiana Port Construction and Development Priority Program Procedural Manual for Funded Projects, which is used to implement projects funded by the program.

*Program*—Louisiana Port Construction and Development Priority Program.

*Project*—that activity that derives benefits to the state after an investment of program and port funds. The port funds may include federal monies.

*Project Agreement*—the agreement between the department and port authority that states the authorities and responsibilities of each party in implementing a project that is funded in part by the Louisiana Port Construction and Development Program. The format is as shown in the procedural manual.

*Shallow Draft Port*—a port that is not capable of accommodating vessels of 25 feet of draft or is not engaged in foreign commerce.

*Total Project*—that activity that derives benefits to the state after an investment of program, port, and other public and private funds.

*Transportation Trust Fund*—a fund created by a constitutional amendment passed by the voters on October 7, 1989 which dedicated 16 cents of the gasoline/motor fuel tax to construction and maintenance of state and federal highways and bridges, statewide flood control, ports, airports, transit, state police for traffic control, and parish roads.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 34:3451-3463.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 17:274 (March 1991), amended LR 18:750 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), LR 34:1039 (June 2008), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1433 (August 2023).

**§2103. Creation of Priority Program  
[Formerly §2101]**

**A. Creation of Priority Program**

1. The Louisiana Port Construction and Development Priority Program was created by Act 452 of the 1989 Regular Session. Before this program, the state funded ports projects through the Capital Outlay Program without requiring any feasibility studies. From 1977 to 1984 Louisiana expended more funds for ports than any other state in the union. For this period Louisiana spent \$25,985,000 on shallow draft ports and \$173,424,000 on deep draft ports for a total of \$199,409,000.<sup>1</sup>

2. The creation of the Port Construction and Development Priority Program changed the method by which Louisiana participated in port improvements. The feasibility of proposed port projects must now be determined and the projects must be prioritized. The source of state funds for the Louisiana Port Construction and Development Priority Program is the Transportation Trust Fund. Revenue accrues to the Transportation Trust Fund through the collection of taxes placed on the sale of gasoline.

3. In general, the purpose of a priority program is to disburse funds to projects that have the highest prospects of success as determined by objective standards such as technical and financial feasibility and overall impacts. A priority program also defines the standards by which these projects are evaluated and provides the mechanisms to conduct the evaluation according to an accepted methodology. Moreover, a priority program's application process may serve as a means to determine whether proposed projects are even eligible for funding under the program as well as provide the basis for maintaining a current inventory of facilities that can be used for future purposes.

4. The components of a typical priority program includes legislative authorization, a set of rules and regulations governing the program's implementation, an application process, an evaluation procedure, a prioritization of projects, funding, and finally implementation.

5. With regard to Louisiana's port priority program, many of the overall requirements and procedures are similar to other priority programs. However, Louisiana's program

specifically emphasizes the need of equitable rationalization of state expenditures in order to avoid duplication of port infrastructure. In addition, because ports are dynamic economic entities, Louisiana's port priority program provides for rigorous analysis of forecasted project benefits in order to ensure the overall impact of the project on the state will be positive, providing maximum benefits for the state. Finally, because effective project implementation is as important to the success of the program as project prioritization, the Louisiana port priority program stipulates strict procedures for the planning and construction of funded projects as well as the operation of maintenance of the completed project.

#### B. Port Project Evaluation Methodology

1. R.S. 34:3451 et seq., requires that the Department of Transportation and Development (department) develop procedures for review and a methodology to evaluate port projects which are seeking state funds.

2. Procedures to review and evaluate port project applications for funding shall be submitted to the Joint Legislative Committee on Transportation, Highways and Public Works. Before implementing these procedures, the approval of the committee shall be obtained in accordance with the Administrative Procedure Act.

3. The department may contract with the Louisiana State University National Ports and Waterways Institute for any of the duties associated with the development of the port priority program. These activities may include but are not limited to the development, review, and evaluation of plans and specifications and the development of the port program list. However, the final determination of the port priority list shall remain with the department and the Joint Legislative Committee as provided by Act 452.

4. An inventory of ports, navigable waterways, and water transportation facilities shall be maintained. Both private and public facilities shall be included. Information such as location, capacities, and capabilities shall be included. The department shall also serve as a clearinghouse for inquiries for ports and waterways information.

5. Each year, the department shall prepare a summary report of financial requirements for expanding or renovating existing ports and waterways facilities and constructing new ones. The financial requirements shall be separated into state, federal, local and private funds required.

#### C. Program Procedures

1. Any port authority may submit an application for funding to the department except as provided below. Applications shall be submitted by the first of March, June, September and December of each calendar year for consideration in the following fiscal year. The application shall include a description of the project, demonstration of immediate need, preliminary design, cost estimate, and a description of the project area.

2. Except as provided herein, port authorities cannot submit an application if any of the following are true.

a. On the recommended construction program, the port authority has a balance of Louisiana's funding share equal to or more than the single project maximum legislative funding authority established by the department.

b. The application to be submitted will cause the port authority to have a balance of Louisiana's funding share greater than the single project maximum legislative funding authority established by the department.

c. The port authority has a project that may be canceled under the Section on distribution of funds.

3. If a port authority or its application meets one of the aforementioned factors, it may submit an informal application by December 1 and request that it be reviewed and evaluated in the event that the department has not received sufficient project applications to meet the estimated funding level for the fiscal year. Projects submitted under this provision will receive a lesser priority than other projects on the list. If more than one port authority submits an application under this provision, then the applications that were submitted as informal with the highest evaluation scored will be recommended in their order of score until the estimated funding level has been met. The remaining applications will not be eligible for the Recommended Construction Program.

4. The Louisiana Department of Transportation and Development shall review the applications. Applications shall not be subjected to a formal review and evaluation until the information required in the application has been submitted. Applications shall also be reviewed by any appropriate state agencies.

5. The act provides for the submittal of a list of recommended projects in prioritized order to the Joint Legislative Committee. The committee will hold public hearings to obtain public input concerning the priority list. After the hearings and before the convening of the regular session, the department shall prepare a recommended construction program for the coming fiscal year and submit it to the joint legislative committee. When the recommended construction program is presented to the legislature for funding, the legislature cannot add any projects to the program.

6. Upon funding by the legislature, the department shall enter into an agreement with the port authority to participate in the construction of the project. The port authority shall provide 10 percent local match for the cost of constructing the project, and shall furnish all lands, easements, rights-of-ways, and spoil disposal areas at no cost to the state unless said items are critical to the project. The port authority also shall operate and maintain the facility without cost to the state.

7. Port authorities domiciled in a parish with a population of 50,000 or more shall be responsible for the preparation of plans and specifications, for letting of bids for construction, and for construction observation. Port authorities domiciled in a parish with a population less than 50,000 may request the department to prepare plans and specifications, to let the project for bids, and to observe construction. The engineer that prepared the plans will inspect the work and certify that the project complies with the plans and specifications upon completion.

a. Applications/projects shall conform to all local ordinances and requirements for Disadvantaged Veteran-owned/Women-owned Business Enterprises (DBE) set forth by local, regional, and State political subdivisions.

8. All contracts for construction shall be advertised and awarded in accordance with R.S. 38:2212 et seq.

9. Projects which are funded by this program shall begin in the fiscal year that the appropriation is made. Execution of an agreement with the department and receipt of preliminary plans by the department shall indicate that the project has begun. These preliminary construction plans differ from the plans submitted in the application in that they are more advanced.

D. Auditing Funds. Funds shall be audited biannually by legislative auditor or certified public accountant in accordance with R.S. 24:513(A) and distributed in accordance with R.S. 24:516(A). The audit shall include an investigation of any failure to comply with the recommendations of the department in planning, design, and construction of the port project. Port authorities shall certify annually that the funds made available have been expended according to law.

E. Misuse of Funds. The legislative auditor shall report any misuse of funds to the Legislative Audit Advisory Council. The council shall determine if in fact funds have been misused. If funds have been misused, the council will instruct the state treasurer to suspend the distribution of funds. The council shall also advise the local district attorney of the misuse. The district attorney will take appropriate actions.

<sup>1</sup>Port and Waterways Institute, Louisiana Statewide Ports Assessment, 2 vols., (Baton Rouge: Louisiana State University, 1986), 11, 88.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 17:274 (March 1991), amended LR 18:749 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), LR 34:1040 (June 2008), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1433 (August 2023).

## **§2105. Program Procedures**

### **A. Application**

1. Any Louisiana port authority may submit an application for funding to the department, except as provided below. Applications may be submitted on a quarterly basis to the department no later than the first of March, June, September and December of each calendar year for consideration of funding or funding obligation authority in the following fiscal years. The application shall include a description of the project, demonstration of immediate need, benefits to be derived, preliminary design, cost estimate, and a description of the project area.

2. Except as provided herein, port authorities cannot submit an application if any of the following are true.

a. On the recommended construction program, the port authority has a balance of Louisiana's funding share equal to or more than the single project maximum Legislative Funding Authority established by the department.

b. The application to be submitted will cause the port authority to have a balance of Louisiana's funding share greater than the single project maximum Legislative Funding Authority established by the department.

c. The port authority has a project that may be canceled under the Section on distribution of funds.

3. If a port authority or its application meets one of the aforementioned factors, it may submit an informal application by December 1 and request that it be reviewed and evaluated in the event that the department has not received sufficient project applications to meet the estimated funding level for the fiscal year. Projects submitted under this provision will receive a lesser priority than other projects on the list. If more than one port authority submits an application under this provision, then the applications that were submitted as informal with the highest evaluation scores will be recommended in their order of score until the estimated funding level has been met. The remaining applications will not be eligible for the Recommended Construction Program.

B. Review and Evaluation of Applications. The Louisiana Department of Transportation and Development shall review the applications. Only applications which are complete, as determined by the department, shall be reviewed and evaluated. Applications shall also be reviewed by any appropriate state agencies.

### **C. List of Recommended Projects and Public Hearings**

1. After receipt of applications by the department, the applications shall be reviewed. Only applications which are complete shall be evaluated and prioritized. Each quarter the department shall prepare furnish a prioritized list of projects, based on the applications received for that quarter, to the Joint Legislative Committee. Only projects that have met all program requirements as described herein under "Program Requirements" will be recommended. Multi-year projects that have been partially funded by the program shall receive higher priority than new projects in the next funding cycle. The Joint Legislative Committee will receive the prioritized list of projects from the department for each of the first three quarters of the year and shall call a public hearing within 30 days of receiving the list in order to receive public testimony regarding any project on the list. At such hearing, the joint committee will vote to accept, reject or modify the list. Each quarter, the department shall reprioritize the list of projects to reflect the cumulative list of projects recommended by the department.

2. After application recommendations for the last quarter are made, the department shall submit the final Port Construction and Development Priority Program to the joint committee for approval. Multi-year projects that have been funded by the program shall receive higher priority than new projects.

3. Prior to the convening of the regular session of the legislature, the Joint Legislative Committee shall hold a public hearing for the purpose of reviewing the final program for the ensuing fiscal year. Prior to such hearing, the department shall publish the appropriate official notice in the necessary journals. Projects recommended but not funded will be included in the list of recommended projects for the following year and will receive priority over newly funded projects.

### **D. Construction Program**

1. After reviewing the public input, the Joint Legislative Committee shall recommend to the legislature a construction program prepared by the department from the list of recommended projects. Projects recommended but not

funded will be included in the list of recommended projects for the following year. If a recommended project remains unfunded after four years and has not begun construction under the reimbursement provisions set forth in the Section on "reimbursement" and the port authority still desires to proceed with the project, a new application will be required.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 16:695 (August 1990), amended LR 18:751 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 34:1041 (June 2008), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1435 (August 2023).

### **§2107. Program Requirements**

A. General Requirements. In order for the department to be able to adequately assess the merits of the proposed project, applications must be complete and verifiable. The responsibility to provide complete, accurate, and documented data on each project, as defined herein, rests solely with the port authority submitting the applications for funding.

#### B. Specific Requirements

##### 1. Project and Total Project

a. For purposes of this program, a *project* is that activity that derives benefits to the state after an investment of program and port funds. "Project" refers to that portion of the total project for which the port is seeking program funds from the department. The amount of program funds required is used in calculating the cost benefit ratio which is used for ranking projects.

b. The "total project" is that activity that derives benefits to the state after an investment of program, port and other public and private funds and its cost is used to determine if the requirement for a minimum cost benefit ratio of one is met except as provided herein in references to benefit-cost ratio for projects with a private investment equal to or greater than the program share. The "total project" includes all improvements that are necessary for both the public and private sectors in order to derive the benefits identified in the application.

##### 2. Local Match

a. Each port authority shall provide a local match of at least 10 percent of the cost of constructing the project. Funds obtained from federal or other non-state sources (i.e., private donations) may be used for the local match. State funds cannot be used as local matching funds. Prior to advertisement for bids, verifiable evidence shall be submitted indicating that all non-program funds are in hand or are readily available.

b. A port authority may provide a local match greater than 10 percent. Since the state's investment is the cost in calculating the benefit-cost ratio, the cost/benefit will be greater if the port elects to provide a larger local match. A higher cost/benefit will result in a higher evaluation score.

##### 3. Land Acquisition

a. Land acquisition shall be eligible for funding only when in the judgment of the department it is an integral

component of a project and critical to its development. Land acquisition that is not a critical component of a project or that is intended to be used for future expansion of port facilities is not eligible for funding. An application must be developed which presents costs, benefits and other data for the total project.

#### 4. Port-Owned or Public Land

a. Port improvements funded through the Port Construction and Development Priority Program shall be built, installed, and/or implemented only on port-owned lands or public lands. Public lands are lands owned by public organizations which are authorized by law to perform governmental functions.

b. Prior to advertisement for bids, port authorities shall submit verifiable evidence that they either own the land or they have entered into an agreement with the public body that owns the land.

5. Number of Applications. An application shall be prepared for each project. If a port authority submits more than one application in a given quarter, the port authority shall prioritize them for review purposes. The top priority project shall be labeled "Priority One" on the title sheet of the application. The next priority project shall be labeled "Priority Two", etc. Due to time constraints and available personnel to evaluate the applications, the department may restrict the evaluation to only the top two priority projects per port in a given application year.

6. Types of Projects. The types of projects that shall be funded by the program shall be limited to the construction, improvement, capital facility rehabilitation, and expansion of publicly-owned port facilities including intermodal facilities and maritime-related industrial park infrastructure development, such as wharves, cargo handling capital equipment, utilities, railroads, primary access road, and buildings which can be shown to be integral components of any port project submitted for funding.

7. Navigation Projects. Funding from the program will not be integrated with or used for the state sponsorship (state matching basis for federal appropriation) for new construction and/or maintenance dredging on federally authorized navigable waterways.

8. Project Commencement. At the application state, projects must be developed sufficiently to allow them to commence within the fiscal year that they are funded. Execution of the project agreement with the department and receipt of preliminary plans by the department shall constitute commencement. Preliminary plans at this stage must be more advanced than plans submitted with the application. Projects that do not commence within the fiscal year that they are funded will result in forfeiture of program funds.

#### 9. Forfeiture of Program Funds

a. If a port authority does not execute the project agreement furnished by the department and return it to the department within 90 days of being mailed to the port authority, then the state funds authorized from the Port Construction and Development Priority Program may be forfeited.

b. If a project is not commenced within the fiscal year that it is funded, then the state funds authorized by the

program may be forfeited. A project is considered to have commenced upon delivering the executed project agreement and the preliminary plans to the department. Preliminary plans submitted with the application shall not meet this requirement.

c. If a project is canceled due to not beginning construction within the time frames provided for under the Section on distribution of funds, program funds may be forfeited. Projects which are canceled and program funds forfeited in this manner shall be treated in accordance with the provisions of R.S. 34:3456(A).

d. Advertising a project for bids to construct the project prior to obtaining written notice from the department may result in forfeiture of program funds.

10. Selling Lands, Facilities, or Equipment. Should a port authority sell or dispose of any facilities or equipment, that have been funded in part by the Port Construction and Development Priority Program, the port authority shall reimburse the department for the percentage of project life remaining at the time of the sale. The project life shall be 20 years for structures and 10 years for equipment unless a different period of time is specified in the evaluation of the project. If the land obtained through the program funds is sold at any time DOTD shall be reimbursed at one hundred percent of the original funds dispersed for the purchase of the land including change orders unless the land is transferred to another Public Port subject to the Port Construction and Development Priority Program Rules and Regulations.

11. Maintenance. The port authority is responsible for maintenance and will structure its revenue rates to adequately fund maintenance costs. The port authority may execute an agreement with a tenant providing for maintenance of the project to be funded by the tenant. If such an agreement is executed, then the expenses used for the evaluation of the project will be reduced as explained herein in the Section entitled "Minimum Return on the State's Investment."

12. Discount Rate. The discount rate used in the evaluation process shall be based on the interest rate paid on 20-year U.S. Treasury Inflation Protected Securities (TIPS) which is currently 2.375. The rate will be evaluated every two years and may be adjusted by agreement between the department and the Ports Association of Louisiana (PAL). The adjusted rate will be available from the department upon request.

13. Minimum Return on State's Investment. The minimum rate of return for the state's investment shall be the discount rate as stated herein. This evaluation shall be based on no growth. In calculating the rate of return for this criteria, the cost shall be the total program funds invested. The benefits for this calculation shall be the port revenues less expenses associated with the proposed project. Expenses shall include maintenance and expected operational costs. Generally, the minimum allowance for expenses will be no less than the project cost divided by the project life. If the port authority executes a conditional lease with the tenant and the tenant provides all maintenance, then the minimum expense may be one-half of the project cost divided by the project life. Also, see "Private Investment." The evaluation period shall be the life of the project. If the port sells bonds in order to finance all or a portion of the private investment,

only revenues in excess of debt service, operating expenses and satisfaction of bond buyer reserve accounts may be used to determine the return on the state's investment. The minimum rate of return is calculated without growth and without additional inflation. The port should establish its fees based upon inflation and market conditions.

14. Benefit-Cost Ratio. Only projects that have a benefit-cost ratio equal to one or more shall be funded by the Port Construction and Development Priority Program. In calculating the B/C for this criteria, the cost is the total investment, both public and private, required to implement the total project and derive the benefits. For projects that have a private investment that is equal to or greater than the amount of program funds required, the project may be exempted from this requirement. If exempted the project must meet a program benefit-cost ratio equal to one or more. The cost for the program benefit-cost ratio is equal to the amount of program funds required for the project.

15. - 15.a. ...

b. Port authorities that do not comply with this provision will be ineligible to participate in the program until they are determined to be in compliance by the department. The department may audit the reports at program expense.

16. Private Investment. If the private investment exceeds the program investment, then the deduction for expenses may be reduced by the factor derived by dividing the program investment by the private investment. Also, refer to Paragraph 14 "Benefit-Cost Ratio" for possible exemptions to the benefit-cost ratio required for funding.

17. Conditional Projects

a. Projects that meet all of the following conditions may be considered conditional projects:

i. the project must have a total project cost of at least \$15 million;

ii. the private investment must meet or exceed the program share;

iii. the participation of the private sector is contingent upon the availability of program funds, and

iv. the application must demonstrate that all parties worked diligently to submit a complete proposal, but due to factors beyond their control, private sector/local share of funding is not assured.

b. A project that meets the above criteria may be evaluated as having immediate need if all other program requirements are met except the availability of the local and/or private share. If it meets all other requirements and is incorporated into the priority list recommended to the legislature, it will be designated as a conditional project. The sponsor will have 18 months from the date of the letter from the department notifying them of the project's funding to submit documentation that arrangements for the private sector and local share have been finalized. If after 18 months the documentation has not been submitted to and approved by the department, project funding will be withdrawn. If the sponsor desires to seek funding for the project, it will have to submit a new application and compete as a new project. The department may limit funding for these projects to a token amount based on availability of funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and

Water Management, LR 18:751 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 34:1042 (June 2008), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1436 (August 2023).

## §2109. Application

### A. General Instructions

1. Applications may be submitted to the department quarterly no later than the first of March, June, September and December of each calendar year for consideration for funding the following fiscal year. If said day falls on a weekend or holiday, the next working day is the deadline. Contact the Office of Multimodal Commerce for the current address. The application shall be submitted in the format as shown and as follows:

Number of copies: Original and three copies

Time: Before 4 p.m. on the 1st of March, June, September and December

B. Contents. All pages in the application shall be numbered and the application shall be bound. Applications shall be submitted in the following format.

#### Application Format

All applications submitted for funding through the Port Construction and Development Priority Program shall be prepared in accordance with the following format:

1. Title Page
  - a. Parish
  - b. Project Name
  - c. Priority
  - d. Application Title
  - e. Name of Port Authority
  - f. Legislative Delegation
  - g. Preparer
  - h. Date
2. Description of Proposed Project
  - a. Nature and Goals
  - b. Funds Requested
  - c. Alternatives
  - d. Adequacy of Components
3. Demonstration of Immediate Need for Project
  - a. Cargo History
  - b. Market Analyses
    - i. Extrapolation from Past Trends
    - ii. Diverted Cargo
    - iii. Generated Cargo
    - iv. Origins/Destinations
    - v. Cargo Handling Revenue
  - c. Industrial Development
  - d. Prospective Industrial Tenants
  - e. Letters of Commitment
  - f. Other Factors
4. Preliminary Design, Plans and Cost Estimate
  - a. Design Criteria
  - b. Design Calculations
  - c. Preliminary Construction Plans
  - d. Cost Estimate
  - e. Progress Schedule
5. Determination of Benefits to the State
  - a. Revenues and Expenses
  - b. Number of Jobs
  - c. Payroll Benefits
  - d. Spin-off Benefits of Payroll
  - e. Shipping Costs
  - f. Other Benefits
  - g. Benefits-Costs Tabulation
6. Description of Project Area

7. Impacts of Implementing Proposed Project
8. Master Plan for Port
9. Other Information
  - a. Funding Sources
  - b. Local Share
  - c. Multi-Year Projects
  - d. Permits

#### Attachments

- A. Resolution
- B. Design Criteria
- C. Design Calculations
- D. Engineering Report
- E. Layout of Existing and Proposed Facilities
- F. Preliminary Construction Plans
- G. Financial Statements
- H. Cargo Tonnage
- I. Port's Master Plan
- J. Commenting Agencies
- K. Other Attachments

1. Title Page. The title page of the application shall be as follows.

a. Parish. In the upper right hand corner of the title page indicate the name of the parish in which the project is proposed to be built.

b. Project Name. Directly below the parish name, enter the project name. The name should have some identifying characteristic of the work that is proposed and should not be an exact duplicate of a project name used in a previous year. If the application is for an extension of a previous project, then the same project name may be used if additional information is incorporated into the name such as Phase I, Phase II, etc.

c. Priority. If more than one application is submitted, then indicate the priority directly under the parish. The top priority project should be indicated as "Priority One".

d. Application Title. Approximately one-third from the top of the page and centered place the title, "Application to Louisiana Port Construction and Development Priority Program".

e. Name of Port Authority. In the middle of the page from the top indicate the legal name of the port authority, address, telephone and fax numbers, and authorized representative.

f. Legislative Delegation. In the lower one-third of the page, provide the names and district numbers of the senators and representatives within whose districts the project is proposed.

g. Preparer. If different from the authorized representative, provide the name, address, telephone, and fax number of the person who prepared the application.

h. Date. Centered at the bottom of the page, state the month and year in which the application was submitted.

#### 2. Description of Proposed Project

a. Nature and Goals. Provide a narrative description of the proposed project and the total project. The descriptions are to be in sufficient detail to clearly convey the purpose, design, and major components of the project and the total project.

b. Funds Requested. Indicate the amount of funds needed for the project and the total project. Also show the

expected funding sources such as programs, port authority, federal, and other. If the project will be implemented in two years, the amounts needed for each year shall be shown.

c. Alternatives. Discuss alternatives, and state the reason they were not selected. At least one alternative solution shall be discussed and developed in sufficient detail to ensure that the proposed project was selected as the result of an objective analysis. Explain why the proposed project was selected over the alternatives.

d. Adequacy of Components. New port projects often create operational bottlenecks in supporting infrastructure such as access roads, warehouses, and yard spaces. Identify all the components necessary to derive the benefits stated. Go from a logical terminus, through the port to another logical terminus. For example, the discussion of the necessary project components may begin in the gulf, go through the navigational channels to the port, unload at the port, reload at the port onto a railroad car, and from the rail spur to a main line. A trucking operation may terminate at a state highway that is capable of handling the added traffic satisfactorily. Indicate whether these components are existing or proposed. For all existing components, discuss the adequacy of the components. For all proposed components, indicate what is proposed, by whom, when, and what is the estimated cost. Verifying documentation may be included in §2109.B.

3. Demonstration of Immediate Need for Project. Provide a demonstration of the immediate need for the project and supply supporting documentation. This portion of the application is extremely important. Most of the information provided in this section are forecasts and estimates. Therefore, sufficient attention should be given to adequately communicate and document the need for the proposed port project through detailed market analyses and commitments by port users to utilize the expanded project facilities.

a. Cargo History. Indicate the total cargo and revenue cargo that was handled by the port in the last five years. List the cargo by type (bulk, break-bulk, neo-bulk, containers) and volumes. Analyze trends of cargo growth and the underlying reasons. Establish the level of utilization of existing facilities in relation to cargo volumes handles. If congestion was experienced, identify facility bottlenecks and describe how they were overcome. Also indicate the sources of all data.

i. If the project is expected to be leased to a tenant, then the cargo history is for the tenant and not the port. If the tenant has no cargo history or will only move a minimal amount of cargo, the port's history may be listed. However, information regarding both the tenant's business history and their business plan should be included to support the project.

ii. Provide a summary in this section of the application. A detailed list of cargo history shall be provided as Attachment H (see §2109.B).

b. Market Analyses. Forecast the cargo which will use the project for the next 10 years. List the type of cargo and volumes expected, along with the market analysis and estimate of the market share. Cargo forecasts and market analyses have to be complete with detailed underlying assumptions and justifications. If cargo forecasts exceed historical trends, provide justification in terms of significant

economic and technological developments occurring in the ports service area. If the port facility expansion is in response to increased demand from new industries locating in the area, these location decisions have to be substantiated by comparative cost analyses. As port projects cover diverse types of investments, it is difficult to provide exact industry norms to cover all situations. Some general guidelines on cargo forecasts are provided in this section. These must be considered as general industry norms. Variation from these norms must be analyzed and justified. If the project is expected to be leased to a tenant which does not specialize in cargo movement, then the market analyses is for the tenant's business and not the port's cargo. This also applies to the following: extrapolation from past trends, diverted cargo, generated cargo, origins and destinations, and cargo handling revenue.

i. Extrapolation from Past Trends. The simplest method of cargo forecasting is to extrapolate from past trends, making whatever adjustments that may be necessary to take into account change that are likely to modify these trends. The freight analysis framework provides growth estimates for the movement of freight by all modes of transportation and commodity type through the year 2050. These growth estimates are to be used to forecast traffic growth unless adequate justification is provided to support any deviation. If a particular commodity is not included, then use the total waterborne commerce trend.

ii. Diverted Cargo. Cargo may be diverted to a port facility either from other modes of transportation or from other routes. As cargo diversion can occur due to cost differentials in competing modes or routes, comparative cost studies must be presented to justify these cargo flows. If cargo diversion occurs due to establishment of new industries at the waterfront, these location decisions have to be analyzed and justified.

iii. Generated Cargo. New industrial and agricultural developments in an area can increase output and these developments may translate into new traffic. In such cases, these sources must be identified and new cargo must be analyzed in terms of volumes, origins and destinations. The total traffic generated must be distributed to different transport modes based on cost considerations.

iv. Origins/Destinations. Identify the major origins, routes, and destinations of the forecasted cargos which will use the project. Indicate what route the goods would move if the project is not built. Would the cargo be routed to another facility at the port, via another port in Louisiana, via a port outside of Louisiana, or via a non-water transport means?

c. Cargo Handling Revenue. Once the new cargo has been forecast, the revenue to be derived may be estimated. Use existing port tariff rates to make these estimates.

d. Industrial Development. What new industrial development would result from the project; without the project, where would this development otherwise occur?

e. Prospective Industrial Tenants. List prospective industrial tenants, indicate if confidential. If tenants are to be located at the waterfront, sufficient reasons have to be provided that such a location is critical to their operations.

f. Letters of Commitment. Include letters of commitment from users, indicate if confidential. Discuss

whether commitments have already been made in terms of investments and planning and what other assurances (for example, executed lease agreements) are available to the port that the commitments will be met. If the viability of the project depends on these commitments, sensitivity analyses should be conducted to analyze the alternatives available to the port in the event the commitments are not met by the port users. The inclusion of the following types of information into the letter will be useful:

- i. the amount that the user/tenant is willing to pay for use of the project;
- ii. anticipated cargo tonnages;
- iii. number of jobs created/saved by the project;
- iv. amount of investment the user is expecting to make on the project; and
- v. length of time to which the user is willing to commit.

g. Other Factors. Discuss other factors that may justify the proposed project.

4. Preliminary Design, Plans and Cost Estimate. To further describe the proposed port improvement, provide a brief discussion of the design, preliminary plans, and cost estimate. The level of detail of the design, plans, and cost estimate should be adequate to allow developing final plans in approximately six to eight months since a construction contract should be awarded within one year of project funding.

a. Design Criteria. The design criteria needed to obtain the stated benefits are to be submitted as Attachment B (see §2109.B).

b. Design Calculations. Design calculations are to be submitted as Attachment C (see §2109.B).

c. Preliminary Construction Plans. The plans shall be included as Attachment F (see §2109.B) The level of detail shall be sufficient to conceptually convey the project components and requirements.

d. Cost Estimate. The detailed cost estimate for the project shall identify construction costs, land, mitigation, engineering, legal and administration. Recurring maintenance costs shall also be estimated and included in this section. The estimate should also detail the costs of equipment and construction activities to at least the level to allow verification of the estimate. For each component, provide the description, quantity, unit of measure and unit price. Avoid the use of lump sum where possible.

i. In addition to the above, estimates of related investments made by the industrial tenants also have to be included to take into account the cost of the total project. If, for example, an industrial development is anticipated consequent to the project and benefits are claimed, associated costs should also be included as total project costs. The estimate should be of similar detail to that required for the portion of the project to be funded by the program.

e. Progress Schedule. Provide an anticipated progress schedule for plan preparation and construction of the project, by phases if applicable. Indicate the beginning and ending dates for both.

## 5. Determination of Benefits to the State

a. General. Benefits from the proposed project will be evaluated from the state's point of view, which includes the taxpayer's point of view and the port's point of view. All of the benefit will not be derived until the investment for the total project has been made and all of the necessary components are adequate. Estimating these benefits is a key element in the application process. Sufficient attention should be given to substantiate procedures adopted in quantifying benefits and in providing supporting documents. Overall, benefit estimates should be logical, verifiable, and based on sound judgment and acceptable industry norms. Claimed benefits will be adjusted to conform to industry norms unless adequate justification is provided. In order to make a proper allocation of funds among the requests, it is necessary to have a clear understanding of each project's expected net benefits to the state. The term *net benefits* means the difference in the benefits to be derived "with the project" and those to be derived "without the project". For example, when port improvements are implemented, there is usually a higher level of facility costs, mostly for construction. This is offset by the benefits including a reduced level of other costs (vessel operating costs, cargo handling costs, maintenance costs, etc.). There may be an increase in economic activities, improved (or worsened) environmental consequence, etc. All of these benefits are relative, i.e., they are based on the spread between what would happen with the new project vs. what would happen without the new project. In other words, to determine the benefits, it is necessary to evaluate the cargo flow projection, transportation costs savings, impact on other Louisiana ports, etc., without the project as well as with the project. Only then can the costs and gains under both scenarios be compared. The difference is the net benefits to be derived.

b. Revenues and Expenses. Estimate the port revenues for both with and without project conditions. Also estimate the operating expenses with and without the proposed project (e.g., labor, utilities, etc.). These estimates have to be based on present and future port tariff rates to conform to industry norms. Only projects that will realize the minimum return on the state's investment as defined herein will be funded by the program.

c. Number of Jobs. Indicate the number of permanent jobs that would be created and/or existing jobs saved from implementing the project. How many of these jobs are port related and how many are industrial jobs, what is the total payroll for each; without the project, where would these jobs otherwise be created? Do not include temporary jobs created by construction activities. The estimate of number of new jobs created shall conform to industry norms such as capital investment/worker and volume of cargo handled/worker and number of employees per firm. If jobs are displaced elsewhere in the state, these jobs shall be subtracted from the jobs created or saved by the project. Figure 1 below indicates the employment profile for major port related industries in Louisiana. The average number of employees per firm provides the typical characteristics of a firm. It should be noted that a large percentage of firms employ less than 50 workers. Therefore,

employment estimates must be justified on a case-by-case basis analyzing the nature of operations of the prospective industrial tenants. In general, it is likely that ports in rural

areas with less populations support smaller firms and the few large firms are supported by large metropolitan areas. There may be exceptions to this general rule.

**Figure 1: Classification of Commercial Firms in Louisiana by Employment Size**

Industry Category	Total Employees	Total Firms	Average per Firm	Number of Firms by Employee Size								
				1-4	5-9	10-19	20-49	50-99	100-249	250-499	500-999	1,000+
Agriculture Services, Forestry, Fishing and Hunting	3,645	534	7	299	90	29	10	0	0	0	0	0
Mining	40,123	1,310	31	591	145	144	186	57	35	3	0	5
Manufacturing	118,959	3,062	39	1,010	539	476	443	214	137	23	6	0
Transportation and Warehousing	72,521	3,701	20	1,904	575	445	378	153	78	10	4	0

Source: County Business Patterns: 2020 Louisiana – U.S. Census Bureau

d. Payroll Benefits. Standard payroll estimates provided in Figure 2 shall be used in estimating payroll benefits in order to equitably evaluate applications for funding through the program. The department will adjust the payroll and spin-off benefits for inflation using the U.S. Department of Labor's Consumer Price Index. If job benefits are assumed to continue unchanged into the future, then an implication is made that those individuals employed as a result of the project would not otherwise find employment. This is not reasonable, as employment will ebb and flow over time. As true net benefits from employment diminish over time, the payroll benefits resulting from the project have to be allowed to decay in a linear fashion annually, reaching zero at the end of the project life.

project. Cost estimates should conform to general industry norms.

g. Other Benefits. Identify any other benefits that would result from the project.

h. Benefits-Costs Tabulation. Tabulate the project's benefits and costs over the project's life. Remember that all the benefits will not be derived until all of the components that are identified in "Adequacy of Components" are implemented and are adequate.

6. Description of Project Area. Provide a narrative description of the project area. The description shall include the location of the existing port, navigable waterways to the port, rail and highway access, location of neighboring ports competing for cargo, unemployment rate, land use adjacent to the port, and soil conditions in and around the port. Identify all major commodities which are handled by competing ports.

7. Impacts of Implementing Proposed Project

a. An assessment of the impacts associated with the implementation of the proposed project shall be submitted. Usually the economic, environmental, and other impacts shall be identified. A detailed environmental assessment is not required by this program but may be required to obtain certain permits.

b. The economic impacts may be indicated by the number of permanent jobs created or saved and the annual payroll resulting from the proposed port improvement. This information is reported in §2109.B.5, "Determination of Benefits to the State."

c. The environmental impacts shall be identified as to the effects on the following:

- i. water quality;
- ii. habitat modification;
- iii. fish and wildlife resources;
- iv. cultural, historical, and archeological features.

d. Any other impact(s) shall also be identified. The impact of the proposed project on other ports in the state, (e.g., diversion of cargoes or industrial activities, etc., from other state's ports) shall be stated.

e. If the project is expected to generate over one hundred inbound and outbound trips in an hour or more than 750 trips a day, then a traffic impact study with comments from the Metropolitan Planning Organization and/or the

**Figure 2. Average Annual Earnings by Category for Port Related Industries**

Work Category	Average Annual Earnings
Transportation, Storage, and Distribution Managers (11 - 3071)	\$98,850
First-line Supervisors of Transportation and Material Moving Workers, Except Aircraft Cargo Handling Supervisors (53 -1047)	\$57,550
Structural Metal Fabricators and Fitters (51 - 2041)	\$43,840
Laborers and Freight, Stock, and Material Movers, Hand (53 - 7062)	\$30,170

Source: Louisiana - May 2021 OES State Occupational Employment and Wage Estimates – United State Department of Labor, Bureau of Labor Statistics, May 2019.  
[https://www.bls.gov/oes/current/oes\\_la.htm#53-0000](https://www.bls.gov/oes/current/oes_la.htm#53-0000)  
 Data released March 31, 2022

e. Spin-Off Benefits of Payroll. New payroll generated by the project results in spin-off benefits in the local economy. In order to calculate the spin-off benefits, assume that they are equal to the payroll benefits directly created or maintained by the project. If a project will have \$100,000 payroll benefits in a year, then the spin-off benefits also equal \$100,000. Spin-off benefits will also decay in a linear fashion annually, reaching zero at the end of its project life.

f. Shipping Costs. If the proposed project will alter shipping costs, identify these costs with and without the

Regional Planning Commission is required. Said study is to identify adverse impacts on the transportation network and to mitigate negative impacts.

f. The assessment is to indicate whether the impacts are short-term or long-term, direct or indirect, and adverse or beneficial. Applicants may seek comments from appropriate state and federal agencies.

8. Master Plan for Port. Discuss how the proposed project complies with the port's master plan or why it does not. Indicate when the master plan was adopted by the port authority. Copies of the master plan are to be submitted with the application as Attachment I. (Refer to Page Application 22, I. Port's Master Plan.)

9. Other Information

a. Funding Sources: Identify all sources and amounts of funding, such as port, program, federal, state, parish, private and other. Clearly indicate if any type of bonds will be sold to assist in financing the project. Indicate if an application for other funds has been submitted and if a commitment has been received. Provide a status of the port authorities' 10 percent local match.

b. Multi-Year Projects. If the project will require more than one year to complete, summarize the anticipated investment schedule required for full completion of the proposed project.

c. Permits. List all necessary permits, indicate the status of permit acquisition, and indicate project compliance with permit requirements.

C. Attachments

1. Resolution. Provide certified copies of the resolution adopted by the port authority similar to the sample resolution in the appendix indicating that the port authority is knowledgeable and is agreeable to its duties and responsibilities in participating in the Port Development and Construction Priority Program.

2. Design Criteria. Include the design criteria necessary to properly design the project.

3. Design Calculations. Include the design calculations and soil investigations; the level of detail of the design should be sufficient to allow the award of a construction contract within the year of funding.

4. Engineering Report. Provide copies of the engineering report and geotechnical report, if applicable.

5. Layout of Existing and Proposed Facilities. Submit a layout of existing and proposed facilities.

6. Preliminary Construction Plans. Enclose preliminary construction plans in sufficient detail to allow the award of a construction contract within a year of funding.

7. Financial Statements. Provide financial statements for the last five years. The financial statements shall show assets, liabilities, profit and loss and include the accountant's letter transmitting the statement to the port authority and notes of explanation.

8. Cargo Tonnage. List the total amount of cargo by commodity for the port for the same periods covered by the financial statements. The commodity classification shall be the commodity classification for domestic waterborne commerce.

9. Port's Master Plan. The port's master plan is to be submitted with the application. If the port does not have a master plan, then it should submit a layout of existing

facilities and an explanation why the port does not have a master plan. If the port has submitted a current copy with an application that was recommended by the department in the last three years, the port does not have to submit a master plan.

10. Commenting Agencies. Letters of comment from appropriate state and federal agencies responding to applicant's solicitation of views, if appropriate.

11. Other Attachments. Any other attachments that may be helpful in evaluating the proposed project may be included as other attachments.

D. Information Sources. Information and data that may be useful in estimating the costs and benefits and in completing the project application is available from a number of sources. Some of these sources are local records from engineers, marketing surveys conducted by private firms, local industry performance standards, and performance records of the port. Selected references from federal, state, and local agencies are listed and described below.

1. Louisiana Labor Market Information, Louisiana Workforce Commission, Baton Rouge, Louisiana. A monthly publication providing the following labor market information by parishes and by major metropolitan statistical areas (MSA) in Louisiana:

- a. the Louisiana economic situation;
- b. non-agricultural wage and salary employment;
- c. average hours and earnings in manufacturing;
- d. consumer price index;
- e. employment and payroll trends.

2. Directory of Louisiana Manufacturers, Louisiana Department of Economic Development, Baton Rouge, Louisiana. Presents data on the following:

- a. companies located in Louisiana and products manufactured;
- b. companies employing more than 250 workers;
- c. manufacturers of specific products in Louisiana by standard industrial classification (SIC) codes;
- d. parent firms of companies.

3.a. U.S. Army Corps of Engineers, Waterborne Commerce of the United States, Part 1-5, Department of the Army, Water Resources Support Center, Fort Belvoir, Virginia. The data collected in this publication consists of vessel and cargo movement information reported to the Corps of Engineers by carriers engaged in commercial transportation of goods on the navigable waterways and international trade and also international trade data provided by the Bureau of the Census. Part 2 of this publication covers waterways and harbors in the Gulf Coast and Mississippi River System. Current issues of this publication can be obtained from the Commander, U.S. Army Engineers District, Box 60267, New Orleans, LA 70160-0267.

b. U.S. Army Corps of Engineers, Other Data Sources.

c. Public Domain Database: Contains aggregated information which depicts waterborne commodity movement between different regions and states sorted by origin, by destination, and by commodity. Special Requests for Waterborne Commerce Statistics: The Waterborne Commerce Statistics Center (WCSC) handles special requests for statistics on a case-by-case basis. These requests

are characterized by the need for information not contained in the aforementioned Waterborne Commerce of the United States.

d. For more information on data sources available to the public from the U.S. Army Corps of Engineers, request a free copy of Products and Services Available to the Public from Data Request Office, Waterborne Commerce Statistics Center, U.S. Army Corps of Engineers, Box 61280, New Orleans, LA 70161-1280.

4. Port Import/Export Reporting Services (PIERS), Journal of Commerce, Inc., New York. PIERS data services provides detailed information on foreign trade, identifying commodity descriptions, origins and destinations, consignees and shippers, and tonnage of individual shipments. This data can be selected to suit individual specifications and obtained on tape, diskette, or hard copy reports.

5. County Business Patterns, 2022 Louisiana, U.S. Department of Commerce, Bureau of Commerce, Bureau of the Census, U.S. Government Printing Office, Washington, D.C., 2022. Provides information on industrial establishments, number of employees, payrolls by major groups of industries and by individual parishes.

6. 2022 Census of Manufacturers—Geographic Area Series—Louisiana, U.S. Department of Commerce, Bureau of the Census, U.S. Government Printing Office, Washington, D.C., 2022. This publication provides the following aggregate data on commercial establishments by parishes and metropolitan areas:

- a. number of companies, employment and payroll, production worker-hours, and worker-wages;
- b. value of shipments, cost of materials, and value added;
- c. beginning and end of year inventories;
- d. expenditures, assets, rents, and purchased services.

7. Agricultural Statistics and Prices for Louisiana, Louisiana Agricultural Experiment Station, Louisiana State University Agricultural Center, Baton Rouge, Louisiana—This publication provides data on agricultural product prices, average value of farm assets, acreage, and production.

#### 8. Other Publications

a. Moving America—New Directions, New Opportunities, a statement of National Transportation Policy Strategies for Action, U.S. Department of Transportation, Washington, D.C., February 1990.

b. National Transportation Strategic Planning Study, U.S. Department of Transportation, Washington, D.C., March 1990.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 16:695 (August 1990), amended LR 18:752 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 34:1044 (June 2008), amended LR 34:1042 (June 2008), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1437 (August 2023).

## §2111. Evaluation

A. Analysis. In determining a score to prioritize the request for funds, the following factors will be considered:

1. technical feasibility;
2. economic feasibility;
3. economic impacts; and
4. port management.

a. Technical Feasibility. Indicators of technical feasibility are as follows:

- i. completeness of project design;
- ii. appropriate consideration of alternatives;
- iii. compatibility of project to port's master plan;
- iv. level of detail of preliminary plans (should be adequate to allow award of a construction contract within a year but still allow input from the department);
- v. items of work as shown in the cost estimate are at a level of detail that may be readily verified.

b. Economic Feasibility. The primary factor in determining economic feasibility is the benefit-cost ratio. For purposes of evaluation, the investment is the amount of program funds needed for the proposed port improvement project.

c. Economic Impacts. The economic impacts are to be analyzed by the number of permanent jobs created or saved by the port improvement project after construction.

d. Port Management. The primary factor in appraising the management of the port is the average return on investment for the last five years.

e. Location. The elements in assessing the port's location are as follows:

- i. adequacy of the navigable waterways;
- ii. suitable railroad access;
- iii. ample highway facilities;
- iv. location of nearest competing port.

f. Multi-Year Projects. Multi-year projects will receive priority over new projects after the initial year of funding, provided the years are consecutive and the implementation of the previous year components was in accordance with the Program Procedure Manual.

### B. Methodology

1. The procedure for evaluating applications for funding is as follows.

a. Completeness. If an application is complete, then proceed, otherwise advise applicant so that he may provide missing data for funding consideration next submittal date.

b. Need. Is the need verifiable and real? If not then application will be rejected.

c. Location. The port must be located on an adequate navigable waterway, and upon completion of the proposed port improvement, have sufficient rail and/or highway access. Also, the port must be situated so that the improvement will not just shift trade from one Louisiana port to another. Noncompliance will result in rejection.

d. the minimum rate of return for the state's investment as defined herein or more shall be funded by the program.

e. Benefit-Cost Ratio. Only projects that have a benefit-cost ratio equal to one or more shall be funded by the program. In calculating the B/C for this criteria, the cost shall be the total investment, both private and public, needed

to implement the total project and derive the benefits. Note that the B/C used in the economic feasibility is based on program funds in lieu of total investment.

i. For projects that have a private investment that is equal to or greater than the amount of program funds required, the project may be exempted from this requirement. If exempted, the project must meet a program benefit-cost ratio equal to one or more. The cost for the program benefit-cost ratio is equal to the amount of program funds required for the project.

f. Technical Feasibility (60 points) To proceed, the technical feasibility score must be 40 or more.

g. Economic Feasibility (250 points) Projects with benefit-cost ratios greater than 10 are scored from 100 to 250 points with the highest of those ratios receiving 250 points. The remaining projects with benefit-cost ratios greater than 10 are pro-rated. Projects with benefit-cost ratios of 10 or less are scored from 0 to 100 points with the highest of those ratios receiving 100 points. The remaining projects with benefit-cost ratios of 10 or less are pro-rated.

h. Economic Impacts. (20 points) The project which creates or saves the most jobs per state investment receive the maximum points. The others are pro-rated.

i. Management of Port. (20 points) The port with the highest rate of return on investment for the last five years will receive 20 points. The others are pro-rated.

2. After the applications have been analyzed, they shall be graded by the department according to the point system above. The projects will then be prioritized by score.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 18:758 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 34:1046 (June 2008), amended LR 34:1042 (June 2008), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1443 (August 2023).

### **§2113. Distribution of Funds**

A. Funding. Program funds shall be distributed in accordance with the approved construction program. The funding for any single project that is submitted to the legislature for funding may be limited to a maximum legislative funding authority of \$9 million. The department may increase the funding limit for a fiscal year based on the availability of funds. The department may consult with PAL regarding the limit; but, the final limit shall be at the sole discretion of the department.

i. The actual distribution of these funds to the ports for each approved project shall be at the sole discretion of the department. The department may consult with PAL in determining this distribution.

ii. The department may limit the funding distribution to each port authority to no more than one-third 1/3 per year of the single project maximum legislative funding authority established by the department for the fiscal year.

B. Construction. Should the funding level be insufficient to fund all the projects that have been recommended, then the unfunded projects will be included in the recommended list of projects the following year. An unfunded project may be included in the recommended list of projects up to four

years without port authority re-submitting an application. If a reimbursement agreement has been executed with the department and the project has begun construction prior to the expiration of the four year period, then the project will remain on said list until all program funds have been authorized.

C. Cancellation. The department may cancel any project that is not under construction with the below mentioned time limits and any unexpected proceeds may be reallocated to another port project: (The award of a construction contract shall satisfy the requirement to be "under construction.")

1. for projects that are completely funded in one fiscal year, within 18 months of the date of notification from the secretary of the department or his designated representative, that the project has sufficient funding to be completed;

2. for projects that are completely funded over two fiscal years, within 12 months of the date of notification from the secretary of the department, or his designated representative, that the project has sufficient funding to be completed;

3. for projects that are completely funded over three or more fiscal years, within six months of the date of notification from the secretary of the department or his designated representative, that the project has sufficient funding to be completed;

4. for projects that have approval from the department to be divided into more than one construction contract, the above time frames apply to each independent contract that has sufficient funding to be completed. An independent contract shall be a contract that does not require the completion of another contract in order to be constructed. Each additional dependent contract shall be constructed within six months from completion of the contract that it is dependent upon;

5. if a port authority has a project that is eligible for cancellation under the provisions of this Section, the port shall not be eligible to submit an application for funding or to receive additional funding for previously recommended projects until the port authority officially withdraws its project, or until the project, including all approved phases, has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Flood Control and Water Management, LR 18:759 (July 1992), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 34:1046 (June 2008), amended LR 34:1042 (June 2008), amended by the Department of Transportation and Development, Office of Multimodal Commerce, LR 49:1444 (August 2023).

### **§2115. Reimbursement**

A. - A.3. ....

B. If the sponsoring port authority desires to construct the project or approved phase of the project under the reimbursement option, it must submit a request to the department and execute a project agreement prior to commencement of any work. Projects or approved phases that are advertised for bids under the reimbursement option shall be completed under the reimbursement option whether or not funding or funding obligation authority has been made available by the legislature prior to the completion of the project or approved phase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3451-3463.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 34:1047 (June 2008), amended LR 49:1444 (August 2023).

Eric Kalivoda  
Secretary

2308#023

**RULE**

**Department of Transportation and Development  
Office of Operations**

Toll Exemptions—Roads and Bridges  
(LAC 70:XXXI.101)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:961 et seq., and through the authority granted in Title 17:157 of the Revised Statutes the Department of Transportation and Development, Office of Operations, Tolling Section, has adopted Part XXXI and Chapter 1 of Title 70 entitled "Toll Exemptions—Roads and Bridges" for the purpose of defining and clarifying exemptions for toll roads and toll bridges. This Rule is hereby adopted on the day of promulgation.

**Title 70**

**TRANSPORTATION**

**Part XXXI. Tolls**

**Chapter 1. Toll Exemptions—Roads and Bridges**

**§101. Students in School Buses**

A. All students in a school bus shall have the right of free passage to and from school, during certain hours, over all toll bridges and toll roads leased out or controlled by the state, parish, or municipality. This free passage shall exclude the Greater New Orleans Expressway.

B. Free passage is offered to students in clearly marked school buses and to the school bus and driver.

C. The right of free passage for students in school buses and the bus and driver shall be exercised only by means of automatic vehicular identification toll tags.

D. The free passage provided shall be limited to school buses carrying students to and from school between the hours of 6 a.m. and 9:30 a.m., and between 2:30 p.m. and 9:30 p.m.

E. Upon the written request of the appropriate school district and payment of a deposit to open the account, the department or its agents when so designated or authorized by the secretary of the department, shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

F. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by the students in school buses. The appropriate school district shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:157.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Operations, LR 49:1445 (August 2023).

Eric Kalivoda  
Secretary

2308#021

**RULE**

**Department of Transportation and Development  
Office of Operations  
Weights and Enforcement Section**

Combination or Double Tandem Load Permit  
(LAC 73:I.Chapter 21)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:961 et seq., and through the authority granted in Title 32:387.2 of the Revised Statutes the Department of Transportation and Development, Office of Operations, Weights and Enforcement Section, has adopted Part I, Chapter 21, of Title 73 entitled "Combination or Double Tandem Load Permit", allowing the issuance of a Combination or Double Tandem Load Permit, a special biannual permit for the operation of a combination of vehicles or tandem loads hauling divisible or non-divisible container imports or exports to and from any port facility in the state. This Rule is hereby adopted on the day of promulgation.

**Title 73**

**WEIGHTS, MEASURES AND STANDARDS**

**Part I. Weights and Standards**

**Chapter 21. Combination or Double Tandem Load Permit**

**§2101. General Information**

A. Authority. DOTD has statutory authority to issue a special biannual permit for the operation of a combination of vehicles or tandem loads hauling divisible or non-divisible container imports or exports to and from any port facility in the state.

B. Definitions. Terms as defined in R.S. 32:1 shall retain their definitions, unless the term is specifically defined in this Subsection. As used in this Section, unless the context clearly indicates otherwise, the following terms shall have the following meanings.

*Axle Group*—a combination of two or more consecutive axles considered together in determining their combined load effect on a highway (as tandem, tridem, or quadrum axle groups).

*Department*—refers to the Louisiana Department of Transportation and Development (DOTD).

*Destination Point*—the location where the packer's seal is broken.

*Divisible Container Import/Export*—a load consisting of two non-divisible containers, hauled in tandem, rendering the load divisible.

*Gross Weight*—the weight of a vehicle and/or combination of vehicles plus the weight of any load thereon.

*Hazardous Material*—per CFR 49:385.402(b), a substance or material that the U.S. Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce that has been designated as hazardous in 49 U.S.C. §5103 (Revised October 2015). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table detailed in 49 CFR §172.101 (Revised December 2022) and materials that meet the criteria for hazard classes and divisions detailed in 49 CFR §173.1 (Revised September 2005).

*Individual Axle*—any of the two, three, or four axles which make up the tandem, tridem, or quadrum axle groups.

*Interstate Highway*—a fully controlled access highway which is a part of the National System of Interstate and Defense Highways.

*Length*—the total longitudinal dimension of a single vehicle, a trailer, or a semi-trailer. Length of a trailer or semi-trailer is measured from the front of the cargo-carrying unit to its rear and includes load-holding devices thereon.

*Non-divisible Container Import/Export*—a freight container, as defined by 49 U.S.C. §5901(4), that retains the original unbroken official seal throughout transit from the point of origin until reaching the destination point.

*Point of Origin*—the location where the packer's seal is affixed.

*Quadrum Axle*—any four consecutive axles whose centers are more than 40 inches but not more than 96 inches apart. A quadrum axle shall be designed to equalize the load between axles.

*Sealed Containerized Load*—sealed containers being used in international transport in conjunction with a maritime shipment. Pursuant to 49 U.S.C. §5901(4), containers used in providing transportation in interstate commerce.

*Tandem Axle*—any two consecutive axles whose centers are 40 or more inches but not more than 96 inches apart. A tandem axle shall be designed to equalize the load between the axles.

*Trailer*—an unpowered vehicle towed by a powered vehicle, commonly used for the transport of goods and materials.

*Tridem Axle*—any three consecutive axles whose centers are 40 or more inches but not more than 96 inches apart. A tridem axle shall be designed to equalize the load between axles.

*Truck Tractor*—a non-cargo carrying power unit used in combination with a semitrailer.

*Vehicle*—any device by which a person or things may be transported upon a public highway or bridge. A trailer or semi-trailer shall be a separate vehicle.

*Width*—the total outside transverse dimension of a vehicle including any load or load holding devices thereon, but, excluding approved safety devices and tire bulge due to load.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1, R.S. 32:2, R.S. 32:387 and R.S. 32:387.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Operations, Weights and Enforcement Section, LR 49:1445 (August 2023).

### **§2103. Obtaining the Combination or Double Tandem Load Permit**

A. General. The permit shall be obtained prior to the movement of the vehicle begins or the vehicle enters Louisiana.

B. Location. The permit shall be issued by the truck permit office at DOTD in Baton Rouge.

C. Application Procedure

1. The permit may be obtained by appearing in person at the permit office in Baton Rouge, by calling the permit office and providing the requisite information, or by completing the form electronically through the online permitting system.

2. All information required on a permit form shall be furnished at the time the permit is requested.

3. The applicant shall have the exact amount for payment.

4. The permit will be issued to the truck tractor, either physically or electronically. It shall be available for inspection at all times by the proper authorities.

D. Routes

1. All routes shall be approved by DOTD.

2. Only one route will be approved per application, and the permit is only valid for the approved route.

3. Each additional route requires an additional permit application, subsequent approval, and payment of the permit fee.

E. Fees. The permit fee is \$3,000 biannually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:2, R.S. 32:387 and R.S. 32:387.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Operations, Weights and Enforcement Section, LR 49:1446 (August 2023).

### **§2105. Regulations**

A. The permit authorizes a driver to operate on state maintained roads only (excluding the interstate) provided the vehicle has the required number of axles and does not exceed the maximum gross weight or axle limit (See §107 for Limitations).

B. Either the truck tractor or one of the trailers shall contain a tridem axle.

C. The permittee shall have a copy of the international bill of lading, present in the vehicle and available for inspection, at all times.

D. Containers shall be transferred to or from a ship, vessel, or a rail system designated for international travel.

E. Containers shall remain sealed from the point of origin to the point of destination.

F. Routes. The routes shall be completed via state and federal roadways, excluding the interstate system. Routes shall originate or terminate at one of the following port facilities which are recognized by the Ports Association of Louisiana.

1. Central Louisiana Regional Port (CLRP);
2. Avoyelles;
3. Port of Greater Baton Rouge;
4. The Port of Caddo—Bossier;
5. Columbia;
6. Port Fourchon;
7. Grand Isle Port;
8. Greater Ouachita Port;
9. Port of Iberia;

10. Port of Krotz Springs;
11. Port of Lake Charles;
12. Lake Providence Port;
13. Louisiana International Deep Water Gulf Transfer Terminal Authority (LIGTT);
14. Madison Parish Port;
15. Manchac;
16. Mermentau;
17. Port of Morgan City;
18. Natchitoches Parish Port;
19. Port of New Orleans;
20. Plaquemines Port;
21. Port of Pointe Coupee;
22. Red River;
23. Port of South Louisiana;
24. St. Bernard Port;
25. The Port of Terrebonne;
26. Port of Delcambre (Twin Parish Port District);
27. Port of Vermillion;
28. Port of Vidalia;
29. Port of Vinton;
30. West Calcasieu Port;
31. Cameron Parish Port; and
32. Port of West St. Mary.

**G. Safety.**

1. The primary concern of the department is the safety of the motoring public and protecting the state’s highway infrastructure system.

2. The registration certificate issued to a vehicle shall be carried at all times in the vehicle and be available for inspection.

3. All traffic and safety laws and regulations shall be obeyed.

4. It shall be the responsibility of each permittee to review the DOTD online route planner to determine if there are any limitations to their approved route(s), prior to traveling.

5. Permittee shall adhere to any and all signage limitations posted in construction zones.

6. The vehicles are not allowed to operate on a load posted bridge.

7. The permit does not authorize the transport of hazardous material or any substances or materials that may pose an unreasonable risk to health, safety, and property when transported in commerce.

a. DOTD reserves the right to decline to issue a permit that would result in the transportation of materials deemed hazardous or that would impose an unreasonable risk to health, safety, and property when transported.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:2, R.S. 32:387 and R.S. 32:387.2.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Office of Operations, Weights and Enforcement Section, LR 49:1446 (August 2023).

**§2107. Limitations**

A. All combination vehicles or tandem loads shall meet each of the following requirements.

1. It cannot exceed 140,000 pounds (gross weight).
2. It cannot exceed 40,000 pounds per tandem axle spread and 60,000 pounds per tridem axle spread.
3. It cannot exceed 83 feet in length.

4. It shall be equipped with a dual-axle dolly and a dolly safety system with tilt sensors attached to the dolly that provide feedback on tilt information to the driver of the vehicle to ensure safe operations.

5. The truck tractor shall be licensed for 88,000 pounds.

B. The permits issued are not valid on local roads. An applicant requesting a permit shall contact local authorities and provide to DOTD written proof of approval to travel on local roads by the appropriate parish or municipal governing authority, prior to issuance of the permit.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:2, R.S. 32:387 and R.S. 32:387.2.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Office of Operations, Weights and Enforcement Section, LR 49:1447 (August 2023).

**§2109. Liability for Damages**

A. Every special permit is issued on the condition that the permittee accepts and uses it at their own risk, even though all instructions, directions, and requirements of the department have been followed. Neither the State of Louisiana nor the Department of Transportation and Development or its employees shall incur any liability of any nature from the use of the permit.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:2, R.S. 32:387, and R.S. 32:387.2.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Office of Operations, Weights and Enforcement Section, LR 49:1447 (August 2023).

**§2111. Permit Restrictions**

A. Permits are issued on the condition that all requirements and restrictions will be complied with by the permittee. Any additional cost(s) necessitated to comply with these restrictions is to be borne by the permittee.

B. Penalties for any violation of the permit will be assessed in accordance with R.S. 32:388 and R.S. 32:388.1, as well as any other applicable federal or state regulations.

C. If a permittee travels outside of their approved route, DOTD reserves the right to revoke and/or rescind their permit, resulting in the permit being null and void.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 32:2, R.S. 32:387, R.S. 32:387.2, R.S. 32:388, and R.S. 32:388.1.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Office of Operations, Weights and Enforcement Section, LR 49:1447 (August 2023).

Eric Kalivoda  
Secretary

2308#020

**RULE**

**Department of Public Safety and Corrections  
Uniform Construction Code Council**

**Uniform Construction Code—Freeboard Requirements  
(LAC 17:I.103 and 107)**

Editor’s Note: This Rule is being repromulgated to correct a typographical error wherein the effective date was left out of the preamble and historical notations. The original rule may be viewed in its entirety on pages 1141-1142 of the June 20, 2023 *Louisiana Register*.

In accordance with the provisions of R.S. 40:1730.26 and R.S. 40:1730.28, relative to the authority of the Louisiana

State Uniform Construction Code Council (LSUCCC) to promulgate and enforce rules and in accordance with R.S. 49:953(B), the Administrative Procedure Act, the Department of Public Safety and Corrections, Office of the State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC) has amended and adopted the following Rule to be effective August 1, 2023. The purpose of adopting and amending the currently adopted construction codes is to replace them with more recent technology, methods and materials for the 2021 editions of the *International Residential Code and International Building Code* and to also comply with more current FEMA regulations. This Rule is hereby adopted on the day of promulgation.

**Title 17  
CONSTRUCTION**

**Part I. Uniform Construction Code**

**Chapter 1. Adoption of the Louisiana State Uniform Construction Code  
(Formerly LAC 55:VI.Chapter 3)**

**§103. International Building Code  
(Formerly LAC 55:VI.301.A.1)**

A. *International Building Code* (IBC), 2021 Edition, not including Chapter 1, Administration, Chapter 11, Accessibility, Chapter 27, Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. Furthermore, IBC shall be amended as follows and shall only apply to the *International Building Code*.

***		
Amend	Item (3.)	(3.) Glazing in Risk Category II, III or IV buildings located over 60 feet (18 288 mm) above the ground and over 30 feet (9144 mm) above aggregate surface roofs located within 1,500 feet (458 m) of the building shall be permitted to be unprotected.
Amend	Section 1612.42, Design and Construction.	The design and construction of buildings and structures located in flood hazard areas, including coastal high hazard areas and coastal A zones, shall be in accordance with Chapter 5 of ASCE 7 and ASCE 24. The local jurisdictions, utilizing flood plain manager, shall have the authority to adopt higher freeboard amounts as needed (CRS, etc.) but shall not have the authority to adopt freeboard amounts less than those required in ASCE-24.
Amend	Section 1613.1, Scope.	Every structure, and portion thereof, including nonstructural components that are permanently attached to structures and their supports and attachments, shall be designed and constructed to resist the effects of earthquake motions in accordance with ASCE 7, excluding Chapter 14 and Appendix 11A. The seismic design category for a structure is permitted to be determined in accordance with Section 1613 or ASCE 7-10. Figure 1613.5(1) shall be replaced with ASCE 7-10 Figure 22-1. Figure 1613.5(2) shall be replaced with ASCE 7-10 Figure 22-2.
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AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512

(September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 41:2380 (November 2015), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 44:75 (January 2018), repromulgated LR 45:912 (July 2019), amended LR 45:1786 (December 2019), LR 48:2578 (October 2022), LR 49:1142 (June 2023), effective August 1, 2023, repromulgated LR 49:0000 (August 2023).

**§107. International Residential Code  
(Formerly LAC 55:VI.301.A.3.a)**

A.1. ...

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Amend	Section R322.2.1, General	Buildings and structures constructed in whole or in part in flood hazard areas, including A or V Zones and Coastal A Zones, as established in Table R301.2, and substantial improvement and repair of substantial damage of buildings and structures in flood hazard areas, shall be designed and constructed in accordance with the provisions contained in this section. Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area. Buildings and structures located in whole or in part in identified floodways shall be designed and constructed in accordance with ASCE 24. The local jurisdictions, utilizing flood plain managers, shall have the authority to adopt higher freeboard amounts as needed (CRS, etc.) but shall not have the authority to adopt freeboard amounts less than those required in ASCE-24
Amend	Section R506.2.3	A minimum 6 mil (0.006 inch) vapor retarder conforming to ASTM E1745 Class A requirements with joints lapped not less than 6 inches (152 mm) shall be placed between the concrete floor slab and the base course or the prepared subgrade where a base course does not exist.
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AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010),

effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the

Department of Public Safety and Corrections, Office of State Fire Marshall, LR 41:2383 (November 2015), amended LR 42:1672 (October 2016), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 44:79 (January 2018), amended LR 44:2218 (December 2018), repromulgated LR 45:916 (July 2019), amended LR 45:1789 (December 2019), amended LR 48:2582

(October 2022), LR 49: 1142 (June 2023), effective August 1, 2023, repromulgated LR 49:0000 (August 2023).

Chief Daniel H. Wallace  
State Fire Marshal

2308#064

# Notices of Intent

**NOTICE OF INTENT**  
**Department of Agriculture and Forestry**  
**Office of Agro-Consumer Services**  
**and**  
**Agricultural Commodities Commission**

Certified Grain Graders  
(LAC 7:XXVII.135)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and pursuant to the authority set forth in R.S. 3:3405, et seq., notice is hereby given that the Department of Agriculture and Forestry (“Department”), through the Office of Agro-Consumer Services, and the Louisiana Agricultural Commodities Commission (“Commission”), intends to amend LAC 7:XXVII.135, relative to certified grain sampling and grading and to provide for state certification of grain samplers and graders by the Department and Commission. The proposed Rule changes are being made pursuant to the amendments to R.S. 3:3414 in ACT 202, of the 2023 Regular Legislative Session.

The amendments to LAC 7:XXVII.135 clarifies the standards adopted by the Commission for sampling and grading grain are consistent with the standards adopted by the United States Department of Agriculture, Federal Grain Inspection Service, requiring grain to be graded by a state or federally certified grader, and further authorizes the Commission to certify grain samplers and graders. Further, the Commission will be authorized to suspend or revoke a state certification for failure to comply with the provisions of the laws, rules, and regulations of the Department and state of Louisiana. The amendments further require the Department to inspect, classify, and grade grain in accordance with the standards adopted by the United States Department of Agriculture, Federal Grain Inspection Service, for sampling and grading grain.

## **Title 7**

### **AGRICULTURE AND ANIMALS**

#### **Part XXVII. Agricultural Commodity Dealer and Warehouse Law**

##### **Chapter 1. Agricultural Commodities Commission** **Subchapter H. Grading; Sampling; Out-of-Condition Commodities**

##### **§135. Elevators: Official Grades and Sampling**

A. - B. ...

C. Requirements for Certification as an Elevator Grain Sampler and/or Grader

1. All grain shall be graded by a state or federally certified grader.

2. The commission shall be responsible for the certification of grain samplers and graders.

3. All persons interested in being certified to grade or sample grain for an elevator shall apply on a form which shall be provided by the commission.

4. All applicants shall be trained by a federally certified grader employed by the department.

5. All applicants shall pass an examination which shall be given by the department. The examination fee shall be \$5 and shall be submitted with the application. If the applicant successfully completes the examination, he will be required to pay a \$25 fee in order to be certified.

6. Each person that has been certified and whose certification has not been revoked or suspended may renew that certification by applying to renew with a fee of \$25.

7. All certifications shall expire on December 31 of each year and shall be renewed annually.

8. The grain grader license number issued by the department shall be displayed at the grain elevator at all times.

9. The grain grader license number as well as the weighmaster license number that verified the weight of the grain load shall be displayed on each grain grading and scale ticket.

D. Grain samplers and graders may have his or her state certification suspended or revoked for failure to comply with the provisions of this Section by a ruling of the commission based upon an adjudicatory hearing held in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

E. The commission shall be required to provide each grain dealer with a copy of all changes to USDA standards prior to the effective date of such changes.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:3405 and R.S. 3:3414.3

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, and Agricultural Commodities Commission, LR 37:507 (February 2011), LR 49:

#### **Family Impact Statement**

The proposed Rule should not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

#### **Poverty Impact Statement**

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

**Small Business Analysis**

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule. This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

**Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

**Public Comments**

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rules via U.S. Mail or hand delivery. Written submissions must be directed to Dr. Bobby Fletcher, Assistant Commissioner, Office of Agro-Consumer Services, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 5000, Baton Rouge, LA 70806, and must be received no later than 4 p.m. on September 10, 2023. All written comments must be signed and dated.

Mike Strain, DVM  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Certified Grain Graders**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes are not anticipated to have any costs or savings to the Louisiana Department of Agriculture and Forestry ("LDAF"), other than the cost of promulgation for FY24, which is normally included in the agency's operating budget. The proposed rule changes will make the training to become a certified grain grader and sampler mandatory instead of voluntary, as well as institute possible sanctions or penalties pursuant to the Administrative Procedure Act (La. R.S. 49:950, et seq.). The proposed rule changes bring the existing rule in compliance with Act 202 of the 2023 Regular Legislative Session.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule changes may increase revenue collections for LDAF, though any increase is likely to be minimal. The proposed changes make testing and certification for grain graders mandatory. To the extent there are graders who are not certified and will have to be tested and certified under the proposed rule, revenues may increase accordingly. The testing fee is \$5 and the applications fee is \$25 with an annual renewal fee of \$25. The department estimates that 30 individuals currently get certified under the voluntary system

and anticipate 120 new individuals will get certified under the mandatory system. The revenue increase for 120 individuals is estimated to be \$3,600 (\$30 x 120) in FY 24 and \$3,000 (\$25 x 120) in the out years.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule changes require anyone sampling or grading grain to be trained, tested, and licensed by a federally certified grader with the State of Louisiana. Currently, the application and testing fees are \$25 and \$5, respectively, and will not be increased. Grain graders who did not voluntarily get certified will now be subject to the application and testing fees.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule changes will only effect competition in that it requires anyone sampling or grading grain to be trained, tested, and licensed by a federally certified grader with the State of Louisiana.

Dane Morgan  
Asst. Commissioner  
2308#035

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences**

Medical Marijuana Program  
(LAC 7:XLIX.Chapters 1-31)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Agriculture and Forestry ("Department"), intends to repeal LAC 7:XLIX.Chapters 1-31 regarding the regulation of medical marijuana. The proposed rules are being repealed pursuant to R.S. 40:1046 and the enactment of Act 491 of the 2022 Regular Legislative Session which moves the regulation of medical marijuana to the Department of Health instead of the Department of Agriculture and Forestry. The Department of Health published its notice of intent for medical marijuana rules on September 20, 2022. The medical marijuana regulations of the Department of Agriculture and Forestry are in effect only until the Department of Health adopts permanent rules.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XLIX. Medical Marijuana**

**Chapter 1. General Provisions**

**§101. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1251 (July 2017), amended LR 48:23 (January 2022), repealed LR 49:

**Chapter 3. Administrative Procedures and Authority**

**§301. Policy**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1253 (July 2017), repealed LR 49:

**§303. Construction of Regulations and Administrative Matters**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1253 (July 2017), repealed LR 49:

**§305. Louisiana State University Agricultural Center and/or Southern University Agricultural Center is Licensee**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1253 (July 2017), repealed LR 49:

**Chapter 5. License and Permits**

**§501. Procedure for Issuing the License**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1254 (July 2017), amended LR 48:23 (January 2022), repealed LR 49:

**§503. General Authority of the Department**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1254 (July 2017), repealed LR 49:

**§505. Applications in General**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1254 (July 2017), repealed LR 49:

**§507. Investigations; Scope**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1254 (July 2017), repealed LR 49:

**§509. Ownership of License and Permits**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1254 (July 2017), repealed LR 49:

**§511. Transfer of License or Permits**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1254 (July 2017), repealed LR 49:

**§512. Transfer of Interest; Prior Approval**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 48:24 (January 2022), repealed LR 49:

**§513. Eligibility Suitability Standards**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1255 (July 2017), amended LR 48:24 (January 2022), repealed LR 49:

**§515. Suitability Determination**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1255 (July 2017), repealed LR 49:

**§517. Form of Application**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1255 (July 2017), repealed LR 49:

**§519. Information Required from an Applicant for a License**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1256 (July 2017), repealed LR 49:

**§521. Fingerprinting**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1256 (July 2017), repealed LR 49:

**§523. Employee Permits Required**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1256 (July 2017), repealed LR 49:

**§525. Display of Identification Badge**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1256 (July 2017), amended LR 48:24 (January 2022), repealed LR 49:

**§527. Permit Renewal Applications**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1256 (July 2017), repealed LR 49:

**Chapter 7. Fees**

**§701. Fees**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1256 (July 2017), amended LR 48:24 (January 2022), repealed LR 49:

## **Chapter 9. Compliance and Inspections**

### **§901. Applicability and Resources**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1256 (July 2017), repealed LR 49:

### **§903. Conduct**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1257 (July 2017), repealed LR 49:

### **§905. Compliance with Laws**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1257 (July 2017), repealed LR 49:

### **§907. Inspections and Observations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1257 (July 2017), amended LR 48:24 (January 2022), repealed LR 49:

### **§909. Production Facility Agent-In-Charge**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1258 (July 2017), repealed LR 49:

### **§911. Waivers and Authorizations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1258 (July 2017), repealed LR 49:

## **Chapter 11. Internal Controls**

### **§1101. Internal Control for Production Facility**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1258 (July 2017), amended LR 48:25 (January 2022), repealed LR 49:

### **§1103. Application Control**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1259 (July 2017), repealed LR 49:

## **Chapter 13. Reporting and Record Keeping**

### **§1301. Reporting and Record Keeping**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1259 (July 2017), repealed LR 49:

### **§1303. Annual Report**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1260 (July 2017), repealed LR 49:

## **Chapter 15. Production Facility**

### **§1501. Production Facility and Areas**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1261 (July 2017), repealed LR 49:

### **§1503. Age Restrictions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1261 (July 2017), repealed LR 49:

### **§1505. Restricted Areas**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1262 (July 2017), amended LR 48:25 (January 2022), repealed LR 49:

### **§1507. Pesticide Usage on Medical Marijuana Plants**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1262 (July 2017), amended LR 48:25 (January 2022), repealed LR 49:

## **Chapter 17. Surveillance and Security**

### **§1701. Required Surveillance Equipment**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1262 (July 2017), amended LR 48:25 (January 2022), repealed LR 49:

### **§1703. Surveillance System Plans**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1263 (July 2017), repealed LR 49:

### **§1705. Surveillance Personnel Employment Provisions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1263 (July 2017), repealed LR 49:

#### **§1707. Storage and Retrieval**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1263 (July 2017), repealed LR 49:

#### **§1709. Security Plan Requirements**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1263 (July 2017), repealed LR 49:

#### **§1711. Security Alarm System**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1263 (July 2017), amended LR 48:25 (January 2022), repealed LR 49:

#### **§1713. Security of Premises and Production Facility**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1263 (July 2017), repealed LR 49:

#### **§1715. Security Log/Notification/Reports**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1264 (July 2017), repealed LR 49:

### **Chapter 19. Inventory**

#### **§1901. Medical Marijuana Inventory; Inventory Tracking System Required**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1264 (July 2017), repealed LR 49:

#### **§1903. General Inventory Tracking System Use**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1264 (July 2017), repealed LR 49:

#### **§1905. Inventory Tracking System Access**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1264 (July 2017), repealed LR 49:

#### **§1907. ID Tags Required**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1264 (July 2017), repealed LR 49:

#### **§1909. Conduct While Using Inventory Tracking System**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1265 (July 2017), repealed LR 49:

#### **§1911. System Notifications**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1265 (July 2017), repealed LR 49:

### **Chapter 21. Quality Control/Assurance Program**

#### **§2101. Quality Control**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1265 (July 2017), repealed LR 49:

### **Chapter 23. Laboratory Approval and Testing**

#### **§2301. Laboratory Approval**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1266 (July 2017), amended LR 48:25 (January 2022), repealed LR 49:

#### **§2303. Laboratory Testing**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1266 (July 2017), amended LR 48:26 (January 2022), repealed LR 49:

### **Chapter 25. Transportation**

#### **§2501. Transportation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1267 (July 2017), amended LR 48:26 (January 2022), repealed LR 49:

### **Chapter 27. Sanitation and Disposal**

#### **§2701. Production Facility Sanitation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1269 (July 2017), repealed LR 49:

### §2703. Potable Water Supply

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1269 (July 2017), repealed LR 49:

### §2705. Disposal of Waste

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1269 (July 2017), amended LR 48:27 (January 2022), repealed LR 49:

## Chapter 29. Labeling

### §2901. Labeling Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1269 (July 2017), amended LR 48:27 (January 2022), repealed LR 49:

### §2903. Packaging Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1270 (July 2017), amended LR 48:27 (January 2022), repealed LR 49:

### §2905. Product Dosage Identification

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1270 (July 2017), repealed LR 49:

### §2907. Advertising

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1270 (July 2017), repealed LR 49:

## Chapter 31. Enforcement

### §3101. Enforcement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 43:1270 (July 2017), repealed LR 49:

#### Family Impact Statement

The proposed Rule should not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;

4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

#### Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable impact on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### Small Business Analysis

The proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable impact on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule via U.S. Mail or hand delivery. Written submissions must be directed to Tabitha Irving, Director of the Medical Marijuana Program, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 2000, Baton Rouge, LA 70806 and must be received no later than 4:00 p.m. on September 10, 2023. All written comments must be signed and dated.

Mike Strain, DVM  
Commissioner

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medical Marijuana Program

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no costs or savings to state or local governmental units as a result of the proposed rule change. The proposed rules will repeal the medical marijuana rules set forth in LAC 7:XLIX, as they relate to regulation of medical marijuana by the Louisiana Department of Agriculture & Forestry (LDAF) in order to comply with legislative changes (Act 491 of the 2022 RLS), which reassigned regulatory authority over medical marijuana from LDAF to the Department of Health (LDH). LDH published administrative rules in September 2022 that sets up the regulatory framework for medical marijuana. The cost of regulating the medical marijuana was shifted from LDAF to LDH.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules are not anticipated to impact revenue collections of local government units. Upon promulgation of these rules, LDAF will no longer have any medical marijuana regulations. The Louisiana Department of Health is the current regulator pursuant to legislative changes. All regulatory revenues (permits to cultivate, extract, process, produce, and transport therapeutic marijuana) collected by LDAF have been shifted to LDH, which is approximately \$200,000.

Note: LDAF is currently responsible for lab testing of medical marijuana products until LDH has approved two additional laboratories and both laboratories have been operating for a minimum of six months. Revenues collected for lab testing will remain with LDAF.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule is not anticipated to have any economic impacts on directly affected persons, small businesses, or nongovernmental groups. The proposed rule shifts the regulatory framework from LDAF to LDH for medical marijuana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules are not anticipated to impact competition and employment.

Dane Morgan  
Asst. Commissioner  
2308#034

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Civil Service  
Board of Ethics**

Electronic Communication  
(LAC 52:I.1807)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Board of Ethics, has initiated rulemaking procedures and is proposing to adopt a Rule regarding electronic communication and notices pursuant to R.S. 42:1160. The proposed Rule facilitates procedures for the board to send communications electronically and codifies the Board of Ethics rules in statute.

**Title 52  
ETHICS**

**Part I. Board of Ethics**

**Chapter 18. Electronic Filing**

**§1807. Notices sent Pursuant to R.S. 42:1160**

A. For purposes of R.S. 42:1160, the board shall send the communication electronically:

1. when the filing party is a candidate filing campaign finance disclosure reports or candidate personal financial disclosure reports, the communication will be sent to the email address provided by the candidate on the notice of candidacy filed in connection with the most recent election, unless the candidate has submitted, on an electronic filing affidavit or through the agency's computerized data management system, a new email address to which notices should be sent.

2. when the filing party is a political committee or other person filing campaign finance disclosure reports, the communication will be sent to the email provided on the electronic filing affidavit or through the agency's computerized data management system, whichever was submitted more recently.

3. when the filing party is a lobbyist filing lobbying registrations, supplemental registrations, or expenditure reports, the communication will be sent to the email provided through the agency's computerized data management system.

4. when the filing party is a public servant who is filing reports pursuant to the Code of Governmental Ethics, the communication will be sent to the email address provided by the public servant, on the notice of candidacy filed in connection with the most recent election, if one exists, unless they have submitted, on an electronic filing affidavit or through the agency's computerized data management system, a new email address to which notices should be sent.

B. If the board has been provided with a valid email address as provided in #1, the following communications shall be sent electronically:

1. reminder notices and notices of delinquency for reports required by the Campaign Finance Disclosure Act.

2. reminder notices for reports and notices of delinquency for reports required to be filed pursuant to R.S. 42:1113D, 42:1114, 42:1114.2, 42:1114.3, 42:1119B and 1123(22) and R.S. 27:63A.

3. reminder notices for reports required to be filed pursuant to R.S. 42:1124, 42:1124.2, 42:1124.2.1 and 42:1124.3.

4. reminder notices and notices of delinquency for reports required pursuant to the Lobbyist Disclosure Acts.

C. If a filing party does not provide a valid email address the communication will not be delivered electronically. A valid email address is an email address provided by the filing party, unless the board receives a response that the communication sent to the email address was not delivered.

D. It is the filing party's responsibility to ensure the board has an updated email address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 49:

**Family Impact Statement**

The proposed rule changes have no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed rule changes have no known impact on poverty, as described in R.S. 49:973.

**Small Business Analysis**

The proposed Rule should not have any known or adverse impact on small business as described in R.S. 49:978.5.

**Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session.

**Public Comments**

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton Rouge, Louisiana 70821, telephone (225) 219-5600, until 4:45 p.m. on September 10, 2023.

Kathleen M. Allen  
Ethics Administrator

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Electronic Communication**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule facilitates procedures for the Board of Ethics to send communications electronically and codifies the Board of Ethics rules in statute. Act 241 of the 2023 Regular Session added R.S. 42:1160, which requires the Board of Ethics to send communications electronically to a filing party who files a report through the Board of Ethics Computerized Data Management System.

The proposed rule will result in increased costs to the Board of Ethics of approximately \$1,570 in FY 24, which includes the cost to acquire software that will provide the electronic notices (\$1,250) and a one-time cost (\$320) to publish the Notice of Intent and the proposed rule in the State Register. Ongoing annual costs are estimated at \$1,250 for the required software.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Parties filing reports through the Board of Ethics Computerized Data Management System may benefit from receiving electronic communications in addition to certified mail from the Board of Ethics, as they may be able to respond to such communications in a timelier manner.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will have no effect on competition and employment.

Kristy Gary  
Deputy Ethics Administrator  
2308#033

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Clean Air Interstate Rule Requirements  
(LAC 33:III.506)(AQ392)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.506 (AQ392).

On August 8, 2011, the United States Environmental Protection Agency (EPA) issued the Cross-State Air Pollution Rule (CSAPR) to address Clean Air Act requirements concerning interstate transport of air pollution and to replace the previous Clean Air Interstate Rule (CAIR), which the D.C. Circuit remanded to EPA for replacement.

Per EPA's "Rulemaking to Amend Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter" promulgated on December 3, 2014, when CSAPR was implemented in 2015, CAIR sunset in compliance with the terms of the 2008 remand, effective December 31, 2014.

Accordingly, LAC 33:III.506, which prescribes how CAIR annual NO<sub>x</sub> and ozone season NO<sub>x</sub> allowances are to be allocated and incorporates the federal SO<sub>2</sub> model Rule under 40 CFR 96 by reference, is no longer necessary. This Rule will repeal LAC 33:III.506 (Clean Air Interstate Rule Requirements). The basis and rationale for this Rule are to repeal LAC 33:III.506. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:963.B(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY  
Part III. Air**

**Chapter 5. Permit Procedures  
§506. Clean Air Interstate Rule Requirements**

Repealed.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006), amended LR 33:1622 (August 2007), LR 33:2083 (October 2007), LR 34:978 (June 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), repromulgated LR 36:2551 (November 2010), amended LR 37:2989 (October 2011), LR 38:1229 (May 2012), amended by the Office of the Secretary, Legal Division, LR 39:1276 (May 2013), LR 40:1334 (July 2014), LR 42:1085 (July 2016), repealed by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Small Business Analysis**

This Rule has no known impact on small business as described in R.S. 49:974.1 - 974.8.

**Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ392. Such comments must be received no later than October 5, 2023, at 4:30 p.m., and should be sent to William Little, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or by fax (225) 219-4068 or by e-mail to DEQ.Reg.Dev.

Comments @la.gov. Copies of these proposed regulations can be purchased by contacting the LDEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ392. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

### Public Hearing

A public hearing will be held via Zoom on September 28, 2023, at 1:30 p.m. Interested persons are invited to attend and submit oral comments via PC, Mac, Linux, iOS or Android at <https://deqlouisiana.zoom.us/j/86752253289?pwd=YWkwN1J0LzZ6N3NVenUyTmJFZ1plZz0,password436469> or by telephone by dialing 636-651-3182 using the conference code 725573. Should individuals with a disability need an accommodation in order to participate, contact William Little at the address given below or at (225) 219-3985.

These proposed regulations are available for inspection at the following LDEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Courtney J. Burdette  
Executive Counsel

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Clean Air Interstate Rule Requirements

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule. In light of EPA's replacement of the Clean Air Interstate Rule with the Cross-State Air Pollution Rule (CSAPR), the proposed rule repeals LAC 33:III.506, the Clean Air Interstate Requirement (CAIR). LAC 33:III.506, which prescribes how CAIR annual NO<sub>x</sub> and ozone season NO<sub>x</sub> allowances are to be allocated and incorporates the federal SO<sub>2</sub> model rule under 40 CFR 96 by reference, is no longer current or necessary.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated increase or decrease in revenues to state or local governmental units as a result of the proposed rule.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no costs or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

Courtney J. Burdette  
Executive Counsel  
2308#027

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Freshwater Ammonia Aquatic Life Criteria  
(LAC 33:IX.1105, 1109, 1113, 1115, and 1117)(WQ112)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.1105, 1109, 1113, 1115, and 1117 (WQ112).

This proposed Rule will revise Chapter 11 of the Water Quality regulations to add freshwater ammonia criteria. LDEQ has the regulatory obligation to evaluate and adopt, where appropriate, federally recommended water quality criteria. This revision will adopt and clarify the applicability of freshwater ammonia criteria. The basis and rationale for this proposed Rule are to conform to Section 303 of the Clean Water Act and to maintain and protect state waters. In accordance with R.S. 49:963(B)(1), a report regarding the environmental/health benefits and social/economic costs has been prepared and can be found on pages 1521-1523 of the August 20, 2023, *Louisiana Register*.

### Title 33

### ENVIRONMENTAL QUALITY

### Part IX. Water Quality

### Subpart 1. Water Pollution Control

### Chapter 11. Surface Water Quality Standards

### §1105. Definitions

*1Q10 Flow*—the minimum 1-day average stream flow with a recurrence level of once every 10 years.

\*\*\*

*30Q10 Flow*—the minimum 30-day average stream flow with a recurrence level of once every 10 years.

\*\*\*

**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), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:456 (March 2007), LR 33:827 (May 2007), LR 35:445 (March 2009), amended by the Office of the Secretary, Legal Division, LR 40:2243 (November 2014), LR 42:736 (May 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Divisions, LR 46:1545 (November 2020), LR 49:

### §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 classification, compliance schedules, variances, short-term activity authorization, errors, severability, revisions to standards, and sample collection and analytical procedures are described.

A. - K.4.e. ...

f. The numeric ammonia criteria found in LAC 33:IX.1113.C.7 shall not apply.

5. - 6. ...

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 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), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:828 (May 2007), amended by the Office of the Secretary, Legal Division, LR 40:2243 (November 2014), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:1546 (November 2020), LR 49:

**§1113. Criteria**

A. - C.6.f. ...

7. Ammonia

a. Water quality criteria for ammonia are for the protection of aquatic life. Toxic effects of ammonia are dependent on pH and temperature. Ammonia is expressed in terms of total ammonia nitrogen (TAN), which includes its un-ionized (ammonia) and ionized (ammonium) fractions. TAN is measured in units of mg/L and referenced with Chemical Abstracts Service (CAS) Registry Number 7664-41-7.

i. Freshwater criteria for ammonia are structured on the presence or absence of freshwater mussels at a site, and are expressed as formulas for both acute and chronic criteria. Due to the ubiquity of freshwater mussels of the family Unionidae in Louisiana waters, mussels present

criteria formulas are considered protective of aquatic life and apply to all freshwater water bodies, except as provided below. If it can be demonstrated that Unionidae mussels are absent through a mussel survey with approval from both the administrative authority and EPA, then mussels absent criteria formulas that are protective of aquatic life in the absence of mussels may apply on a site-specific and/or water body basis.

(a). Mussels Present

(i). Freshwater Acute Criterion

$$\text{mg (TAN)/L} = 0.7249 * \left( \frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}} \right) * \text{MIN}(51.93, 23.12 * 10^{0.036 * (20-T)})$$

(ii). Freshwater Chronic Criterion

$$\text{mg (TAN)/L} = 0.8876 * \left( \frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}} \right) * (2.126 * 10^{0.028 * (20-\text{MAX}(T, 7))})$$

(b). Mussels Absent

(i). Freshwater Acute Criterion

$$\text{mg (TAN)/L} = 0.7249 * \left( \frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}} \right) * \text{MIN}(51.93, 62.15 * 10^{0.036 * (20-T)})$$

(ii). Freshwater Chronic Criterion

$$\text{mg (TAN)/L} = 0.9405 * \left( \frac{0.0278}{1+10^{7.598-pH}} + \frac{1.1994}{1+10^{pH-7.598}} \right) * \text{MIN}(6.920, 7.347 * 10^{0.028 * (20-\text{MAX}(T, 7))})$$

ii. Formula Calculations

(a). All formulas require data inputs for pH and temperature to calculate a criterion. The minimum and maximum pH values used for criteria calculation are 6.5 to 9.0. The minimum and maximum temperature values used for criteria calculation are 7°C to 30°C.

Toxic Substance Chemical Abstracts Service (CAS) Registry Number	Aquatic Life Protection						Human Health Protection	
	Freshwater		Marine Water		Brackish Water		Drinking Water Supply <sup>1</sup>	Non-Drinking Water Supply <sup>2</sup>
	Acute	Chronic	Acute	Chronic	Acute	Chronic		
Aldrin309-00-2	3.00	--	1.300	--	1.300	--	4x10 <sup>-5</sup>	4x10 <sup>-5</sup>
Benzene 71-43-2	2,249	1,125	2,700	1,350	2,249	1,125	0.58	6.59
Benzidine 92-87-5	250	125	--	--	250	125	8x10 <sup>-5</sup>	1.7x10 <sup>-4</sup>
Bromodichloromethane 75-27-4	--	--	--	--	--	--	0.52	6.884
Bromoform (Tribromomethane) 75-25-2	2,930	1,465	1,790	895	1,790	895	3.9	34.7
Carbon Tetrachloride (Tetrachloromethane) 56-23-5	2,730	1,365	15,000	7,500	2,730	1,365	0.22	1.2
Chlordane 57-74-9	2.40	0.0043	0.090	0.0040	0.090	0.0040	1.9x10 <sup>-4</sup>	1.9x10 <sup>-4</sup>
Chloroform (Trichloromethane) 67-66-3	2,890	1,445	8,150	4,075	2,890	1,445	5.3	70
2-Chlorophenol 95-57-8	258	129	--	--	258	129	0.10	126.4
3-Chlorophenol 108-43-0	--	--	--	--	--	--	0.10	--
4-Chlorophenol 106-48-9	383	192	535	268	383	192	0.10	--
Cyanide 57-12-5	45.9	5.4	1.0	--	1.0	--	663.8	12,844
DDE 72-55-9	52.5	10.5000	0.700	0.1400	0.700	0.1400	1.9x10 <sup>-4</sup>	1.9x10 <sup>-4</sup>
DDT 50-29-3	1.10	0.0010	0.130	0.0010	0.130	0.0010	1.9x10 <sup>-4</sup>	1.9x10 <sup>-4</sup>

**Table 1**  
**Numeric Criteria for Specific Toxic Substances**  
**[In micrograms per liter (µg/L)]**

Toxic Substance Chemical Abstracts Service (CAS) Registry Number	Aquatic Life Protection						Human Health Protection	
	Freshwater		Marine Water		Brackish Water		Drinking Water Supply <sup>1</sup>	Non-Drinking Water Supply <sup>2</sup>
	Acute	Chronic	Acute	Chronic	Acute	Chronic		
Dibromochloromethane 124-48-1	--	--	--	--	--	--	0.39	5.08
1,2-Dichloroethane (EDC) 107-06-2	11,800	5,900	11,300	5,650	11,300	5,650	0.36	6.8
1,1-Dichloroethylene 75-35-4	1,160	580	22,400	11,200	1,160	580	0.05	0.58
2,4-Dichlorophenoxyacetic acid (2,4-D) 94-75-7	--	--	--	--	--	--	100.00	--
2,3-Dichlorophenol 576-24-9	--	--	--	--	--	--	0.04	--
2,4-Dichlorophenol 120-83-2	202	101	--	--	202	101	0.30	232.6
2,5-Dichlorophenol 583-78-8	--	--	--	--	--	--	0.50	--
2,6-Dichlorophenol 87-65-0	--	--	--	--	--	--	0.20	--
3,4-Dichlorophenol 95-77-2	--	--	--	--	--	--	0.30	--
1, 3-Dichloropropene 542-75-6	606	303	79	39.5	79	39.5	0.33	5.51
Dieldrin 60-57-1	0.2374	0.0557	0.710	0.0019	0.2374	0.0019	5x10 <sup>-5</sup>	5x10 <sup>-5</sup>
Endosulfan <sup>7</sup> 115-29-7	0.22	0.0560	0.034	0.0087	0.034	0.0087	0.47	0.64
Endrin 72-20-8	0.0864	0.0375	0.037	0.0023	0.037	0.0023	0.26	0.26
Ethylbenzene 100-41-4	3,200	1,600	8,760	4,380	3,200	1,600	247	834
Heptachlor 76-44-8	0.52	0.0038	0.053	0.0036	0.053	0.0036	7x10 <sup>-5</sup>	7x10 <sup>-5</sup>
Hexachlorobenzene 118-74-1	--	--	--	--	--	--	2.5x10 <sup>-4</sup>	2.5x10 <sup>-4</sup>
Hexachlorobutadiene <sup>3</sup> 87-68-3	5.1	1.02	1.6	0.32	1.6	0.32	0.09	0.11
Hexachlorocyclohexane (gamma BHC; Lindane) 58-89-9	5.30	0.21	0.160	--	0.160	--	0.11	0.20
Methyl chloride (Chloromethane) 74-87-3	55,000	27,500	27,000	13,500	27,000	13,500	--	--
Methylene chloride (Dichloromethane) 75-09-2	19,300	9,650	25,600	12,800	19,300	9,650	4.4	87
Phenol (Total) <sup>4</sup> 108-95-2	700	350	580	290	580	290	5.00	50.0
Polychlorinated Biphenyls, Total <sup>6</sup> (PCBs) 1336-36-3	2.00	0.0140	10.000	0.0300	2.00	0.0140	5.59x10 <sup>-5</sup>	5.61x10 <sup>-5</sup>
TDE (DDD) 72-54-8	0.03	0.0060	1.250	0.2500	0.03	0.0060	2.7x10 <sup>-4</sup>	2.7x10 <sup>-4</sup>
2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) <sup>5</sup> 1746-01-6	--	--	--	--	--	--	0.71x10 <sup>-6</sup>	0.72x10 <sup>-6</sup>
1,1,2,2-Tetrachloroethane 79-34-5	932	466	902	451	902	451	0.16	1.8
Tetrachloroethylene 127-18-4	1,290	645	1,020	510	1,020	510	0.65	2.5
Toluene 108-88-3	1,270	635	950	475	950	475	6,100	46,200
Toxaphene 8001-35-2	0.73	0.0002	0.210	0.0002	0.210	0.0002	2.4x10 <sup>-4</sup>	2.4x10 <sup>-4</sup>

Table 1 Numeric Criteria for Specific Toxic Substances [In micrograms per liter (µg/L)]								
Toxic Substance Chemical Abstracts Service (CAS) Registry Number	Aquatic Life Protection						Human Health Protection	
	Freshwater		Marine Water		Brackish Water		Drinking Water Supply <sup>1</sup>	Non-Drinking Water Supply <sup>2</sup>
	Acute	Chronic	Acute	Chronic	Acute	Chronic		
1,1,1-Trichloroethane 71-55-6	5,280	2,640	3,120	1,560	3,120	1,560	200.0	--
1,1,2-Trichloroethane 79-00-5	1,800	900	--	--	1,800	900	0.56	6.9
Trichloroethylene 79-01-6	3,900	1,950	200	100	200	100	2.8	21
2-(2,4,5-Trichlorophenoxy) propionic acid (2,4,5-TP; Silvex) 93-72-1	--	--	--	--	--	--	10.00	--
Vinyl Chloride (Chloroethylene) 75-01-4	--	--	--	--	--	--	2.37x10 <sup>-2</sup>	0.45

<sup>1</sup>Applies to surface water bodies designated as a Drinking Water Supply and also protects for primary and secondary contact recreation and fish consumption.

<sup>2</sup>Applies to surface water bodies not designated as a Drinking Water Supply and protects for primary and secondary contact recreation and fish consumption.

<sup>3</sup>Includes Hexachloro-1,3-butadiene.

<sup>4</sup>Total phenol as measured by the 4-aminoantipyrine (4AAP) method.

<sup>5</sup>Advances in scientific knowledge concerning the toxicity, cancer potency, metabolism, or exposure pathways of toxic pollutants that affect the assumptions on which existing

criteria are based may necessitate a revision of dioxin numerical criteria at any time. Such revisions, however, will be accomplished only after proper consideration of designated water uses. Any proposed revision will be consistent with state and federal regulations

<sup>6</sup> Total refers to the sum of the Aroclor analyses: PCB-1016 (CAS 12674-11-2), PCB-1221 (CAS 11104-28-2), PCB-1232 (CAS 11141-16-5), PCB-1242 (CAS 53469-21-9), PCB-1248 (CAS 12672-29-6), PCB-1254 (CAS 11097-69-1), and PCB-1260 (CAS 11096-82-5).

<sup>7</sup> Endosulfan is the sum of Endosulfan α (959-98-8) and Endosulfan β (33213-65-9).

Table 1A Numeric Criteria for Metals and Inorganics [In micrograms per liter (µg/L) or parts per billion (ppb)]				
Toxic Substance Chemical Abstracts Service (CAS) Registry Number	Aquatic Life Protection			Human Health Protection
	Freshwater	Marine Water	Brackish Water <sup>d</sup>	Drinking Water Supply <sup>e</sup>
Arsenic <sup>a</sup> 7440-38-2	Acute: 339.8 Chronic: 150	Acute: 69 Chronic: 36	Acute: 69 Chronic: 36	10
Cadmium <sup>a,b</sup> 7440-43-9	Acute: $e^{(1.1280[\ln(\text{hardness})] - 1.6774)} \times \text{CF}_1$ Chronic: $e^{(0.7852[\ln(\text{hardness})] - 3.4900)} \times \text{CF}_2$	Acute: 45 Chronic: 10	Acute: * Chronic: *	10
Chromium III (Tri) <sup>a,b</sup> 16065-83-1	Acute: $e^{(0.8190[\ln(\text{hardness})] + 3.6880)} \times 0.316$ Chronic: $e^{(0.8190[\ln(\text{hardness})] + 1.5610)} \times 0.86$	Acute: 515 Chronic: 103	Acute: * Chronic: *	50
Chromium VI (Hex) <sup>a</sup> 18540-29-9	Acute: 16 Chronic: 11	Acute: 1,100 Chronic: 50	Acute: 16 Chronic: 11	50
Copper <sup>a,b,h</sup> 7440-50-8	Acute: $e^{(0.9422[\ln(\text{hardness})] - 1.3844)} \times 0.960$ Chronic: $e^{(0.8545[\ln(\text{hardness})] - 1.3860)} \times 0.960$	Acute: 3.63 Chronic: 3.63	Acute: * Chronic: *	1,000
Lead <sup>a,b</sup> 7439-92-1	Acute: $e^{(1.2730[\ln(\text{hardness})] - 1.4600)} \times \text{CF}_3$ Chronic: $e^{(1.2730[\ln(\text{hardness})] - 4.7050)} \times \text{CF}_3$	Acute: 209 Chronic: 8.08	Acute: * Chronic: *	50
Mercury 7439-97-6	Acute: 2.04 <sup>e</sup> Chronic: 0.012 <sup>f</sup>	Acute: 2 <sup>e</sup> Chronic: 0.025 <sup>f</sup>	Acute: 2 <sup>e</sup> Chronic: 0.012 <sup>f</sup>	2.0
Nickel <sup>a,b</sup> 7440-02-0	Acute: $e^{(0.8460[\ln(\text{hardness})] + 3.3612)} \times 0.998$ Chronic: $e^{(0.8460[\ln(\text{hardness})] + 1.1645)} \times 0.997$	Acute: 74 Chronic: 8.2	Acute: * Chronic: *	--

Table 1A Numeric Criteria for Metals and Inorganics [In micrograms per liter (µg/L) or parts per billion (ppb)]				
Toxic Substance  Chemical Abstracts Service (CAS) Registry Number	Aquatic Life Protection			Human Health Protection
	Freshwater	Marine Water	Brackish Water <sup>d</sup>	Drinking Water Supply <sup>e</sup>
Zinc <sup>a,b</sup> 7440-66-6	Acute: $e^{(0.8473[\ln(\text{hardness})] + 0.8604)} \times 0.978$ Chronic: $e^{(0.8473[\ln(\text{hardness})] + 0.7614)} \times 0.986$	Acute: 90 Chronic: 81	Acute: * Chronic: *	5,000
Conversion Factor (CF)	CF <sub>1</sub> calculated as: $1.136672 - [\ln(\text{hardness})(0.041838)]$ CF <sub>2</sub> calculated as: $1.101672 - [\ln(\text{hardness})(0.041838)]$ CF <sub>3</sub> calculated as: $1.46203 - [\ln(\text{hardness})(0.145712)]$			

\* For hardness-dependent criteria, values are calculated using average hardness (mg/L CaCO<sub>3</sub>) from two-year data compilations contained in the latest Louisiana Water Quality Data Summary or other comparable data compilations or reports, as described in LAC 33:IX.1113.C.6.

a Freshwater and saltwater metals criteria are expressed in terms of the dissolved metal in the water column. The standard was calculated by multiplying the previous water quality criteria by a conversion factor. The conversion factor represents the EPA-recommended conversion factors found in EPA-822-R-02-047, November 2002.

b Hardness-dependent criteria for freshwater are based on the natural logarithm formulas multiplied by conversion factors for acute and chronic protection. The minimum and maximum hardness values used for criteria calculation are 25 mg/L and 400 mg/L CaCO<sub>3</sub>, as specified in 40 CFR 131.36.

c Applies to surface water bodies designated as drinking water supply and also protects for primary and secondary contact recreation and fish consumption.

d According to LAC 33:IX.1113.C.6.d, the most stringent criteria (freshwater or marine) will be used.

e Conversion factor is from: Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria, October 1, 1993. Factors were expressed to two decimal places.

f It is not appropriate to apply a conversion factor to the chronic value for mercury since it is based on mercury residues in aquatic organisms rather than toxicity.

g Reserved

h Upon request the administrative authority may grant the use of the Biotic Ligand Model for deriving site-specific copper criteria utilizing the procedures identified in EPA's Aquatic Life Ambient Freshwater Quality Criteria - Copper (2007), EPA-822-R-07-001. Site-specific criteria derived using the Biotic Ligand Model are new and revised water quality standards that require EPA review under section 303(c) of the Clean Water Act.

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 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 25:2402 (December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30:1474 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:457 (March 2007), LR 33:829 (May 2007), LR 35:446 (March 2009), amended by the Office of the Secretary, Legal Division, LR 42:736 (May 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 45:1188 (September 2019), LR 46:1550 (November 2020), LR 48:1498 (June 2022), LR 49:

### §1115. Application of Standards

A. - C.7.c. ...

d. For the application of ammonia aquatic life criteria, the following flows may be used.

i. Acute ammonia aquatic life criteria will be evaluated using the IQ10 flow and the water body categorizations listed in Table 2a of this Section.

ii. Chronic ammonia aquatic life criteria will be evaluated using the 30Q10 flow and the water body categorizations listed in Table 2a of this Section.

8. - 13.f. ...

### D. Ammonia Criteria Application

1. The application of the appropriate ammonia criteria formula in development of permit limitations will be determined using a performance-based approach as described in the state's Water Quality Management Plan (WQMP), Volume 3, Permitting Guidance Document for Implementing Surface Water Quality Standards. The mussels present criteria formulas, as expressed in LAC 33:IX.1113.C.7.a.i.(a), will be the default formulas utilized in permit implementation. The mussels absent formulas, as expressed in LAC 33:IX.1113.C.7.a.i.(b), may be utilized in permit implementation after satisfactory completion of a mussels survey indicating no evidence of historical or current presence of mussels of the family Unionidae, and with approval from both the administrative authority and EPA.

C A T G	Description	Aquatic Life		
		Flow	Fraction of Flow or Radial Distance (feet)	
			ZID <sup>a</sup>	MZ <sup>b</sup>
1	Streams with 7Q10 flow greater than 100 cfs <sup>c</sup>	7Q10	10 cfs or 1/30 of the flow, whichever is greater	100 cfs or 1/3 of the flow, whichever is greater
2	Streams with 7Q10 flow less than or equal to 100 cfs	7Q10	1/10	1
3	Tidal channels with flows greater than 100 cfs	1/3 of the average or typical flow averaged over one tidal cycle irrespective of flow direction	10 cfs or 1/30 of the flow, whichever is greater	100 cfs or 1/3 of the flow, whichever is greater
4	Tidal channels with flows less than or equal to 100 cfs	1/3 of the average or typical flow averaged over one tidal cycle irrespective of flow direction	1/10	1
5	Freshwater lakes and ponds	Not Applicable	25 feet	100 feet
6	Coastal bays and lakes	Not Applicable	50 feet	200 feet
7	Gulf of Mexico	Not Applicable	100 feet	400 feet

<sup>a</sup>ZID = zone of initial dilution

<sup>b</sup>MZ = mixing zone

<sup>c</sup>cfs = cubic feet per second

C A T G	Description	Human Health	
		Flow	
		Noncarcinogens	Carcinogens
1	Streams with 7Q10 flow greater than 100 cfs	7Q10	Harmonic Mean
2	Streams with 7Q10 flow less than or equal to 100 cfs	7Q10	Harmonic Mean
3	Tidal channel	The average or typical flow averaged over one tidal cycle irrespective of flow direction	
4	Freshwater lakes and ponds	Not Applicable	Not Applicable
5	Coastal bays and lakes	Not Applicable	Not Applicable
6	Gulf of Mexico	Not Applicable	Not Applicable

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 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2403 (December 1999), LR 26:2548 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:831 (May 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:1554 (November 2020), LR 49:

**§1117. References**

A. - A.16. ...

17. U.S. Environmental Protection Agency. April 2013. *Aquatic Life Ambient Water Quality Criteria for Ammonia-Freshwater 2013*. Office of Water. EPA 822-R-18002.

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 25:2403 (December 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2507 (October 2005), LR 33:2163 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:737 (May 2016), amended by the Office of the

Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Small Business Analysis**

This Rule may have an impact on small business as described in R.S. 49:974.1 - 974.8. Directly affected permittees may incur costs associated with monitoring, treatment of wastewater prior to discharge, and reporting.

**Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ112. Comments must be received no later than October 5, 2023, at 4:30 p.m., and should be sent to William Little, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, P.O. Box 4302, Baton Rouge, LA 70821-4302, by fax (225) 219-4068, or E-mail to DEQ.Reg.Dev.Comments@la.gov. Copies of the proposed regulation can be purchased by

contacting the LDEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ112. The proposed regulation is available on the internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

### Public Hearing

A public hearing will be held via Zoom on September 28, 2023, at 1:30 p.m. Interested persons are invited to attend and submit oral comments via PC, Mac, Linux, iOS or Android at <https://deqlouisiana.zoom.us/j/89588076475?pwd=S2JpWXVvYUVVVFN2c2VLeEdQUHI4Zz09>, password 436469, or by telephone by dialing (636) 651-3182 using conference code 725573. Should individuals with a disability need an accommodation in order to participate, contact William Little at the address given below or at (225) 219-3985.

The proposed regulation is available for inspection at the following LDEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Courtney J. Burdette  
Executive Counsel

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Freshwater Ammonia Aquatic Life Criteria

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to the state as a result of the proposed rule. Local governments who operate a publicly owned treatment works may incur costs associated with monitoring, treatment of wastewater prior to discharge, and reporting. Although data is not available for every potentially affected facility, LDEQ has received information that indicates the costs for installing new treatment technology would be significant. Local governments may also be subject to additional testing costs to demonstrate compliance with ammonia-nitrogen limits.

The proposed rule will revise Chapter 11 of the Water Quality regulations to add freshwater ammonia criteria recommended by EPA to protect aquatic species present in freshwater water bodies of Louisiana. The proposed rule changes will adopt and clarify the applicability of freshwater ammonia criteria.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is not anticipated to have any impact on the revenues of state or local governmental units.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Directly affected permittees may incur costs associated with monitoring, treatment of wastewater prior to discharge, and reporting. LDEQ expects costs to be incurred by publicly and privately owned treatment works that discharge 100,000 gallons per day (GPD) of treated wastewater or more and some industrial facilities with a Louisiana Pollutant Discharge Elimination System (LPDES) permit. Although data is not

available for every potentially affected facility, LDEQ has received information that indicates the costs for installing new treatment technology would be significant. Facilities may also be subject to additional testing costs to demonstrate compliance with ammonia-nitrogen limits.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the rule change.

Courtney J. Burdette  
Executive Counsel  
2308#028

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Office of the Governor Boxing and Wrestling Commission

London Ring Fighting  
(LAC 46:XI.101 and Chapter 9)

The State Boxing and Wrestling Commission does hereby exercise the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. to adopt the following rules. By this Notice of Intent, the commission will amend §101 to define a new ring sport, London Ring Fighting, and to promulgate new Chapter 9, London Ring Fighting, is a traditional ring sport where fighters are gloveless.

As more requests for these types of events are received, this commission determined it necessary to immediately establish a new chapter, with stringent rules, in order to achieve proper oversight of this ring sport to protect the health and welfare of the contestants and general public.

### Title 46

## PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part XI. Boxing and Wrestling

#### Chapter 1. General Rules

#### §101. Definitions

A. - B. ...

\* \* \*

*London Ring Fighting*—the sport of boxing conducted without the use of boxing gloves or other padding on the participant's hands.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), LR 32:242 (February 2006), LR 45:237 (February 2019), amended by Office of the Governor, Boxing and Wrestling Commission LR 49:

#### Chapter 9. London Ring Fighting (LRF)

#### §901. Application of General Rules and Professional Boxing Rules and Mixed Technique Event Rules

A. All general rules, excluding provision in §127, Charity Events, shall apply to all LRF events.

B. All Chapter 3, Professional Boxing, rules will apply to LRF events excluding §§307, 309, 318, 320 and 322. Additionally, the following Chapter 9, London Ring Fighting, rules will apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 49:

**§903. Weight Class**

A. Except with the approval of the commission or its commissioner, the classes for unarmed combatants competing in LRF events and the weights for each class are shown in the following schedule.

Weight Class	Weight Difference Allowed
Mini Flyweight (up to and including 108 pounds)	not more than 3 pounds
Flyweight (over 108 to 111 pounds)	not more than 3 pounds
Bantamweights (over 112 to 118 pounds)	not more than 3 pounds
Featherweights (over 119 to 126 pounds)	not more than 3 pounds
Jr. Lightweight (over 127 to 130 pounds)	not more than 4 pounds
Lightweight (over 131 to 135 pounds)	not more than 5 pounds
Jr. Welterweight (over 136 to 140 pounds)	not more than 5 pounds
Welterweight (over 141 to 147 pounds)	not more than 7 pounds
Jr. Middleweight (over 148 to 154 pounds)	not more than 7 pounds
Middleweight (over 155 to 160 pounds)	not more than 7 pounds
Super Middleweight (over 161 to 168 pounds)	not more than 7 pounds
Light Heavyweight (over 169 to 175 pounds)	not more than 7 pounds
Cruiserweight (over 176 to 190 pounds)	not more than 12 pounds
Heavyweight (over 190 pounds)	

B. After the weigh-in of an unarmed combatant competing in LRF events:

1. weight loss in excess of two pounds is not permitted for an unarmed combatant who weighed in at 145 pounds or less;
2. weight loss in excess of three pounds is not permitted for an unarmed combatant who weighed in at over 145 pounds;
3. the weight loss described in Paragraph 2 of this Subsection must not occur later than two hours after the initial weigh-in.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 49:

**§905. Rounds, Duration and Intermission**

A. Rounds shall be a minimum of 120 seconds long for male contestants and 60 seconds long for female fighters.

B. There shall be a 60-second intermission between rounds, unless otherwise directed or authorized by the commission. The referee, at the request of the ringside physician, may extend this intermission, if necessary to examine a participant, for up to 30 additional seconds.

C. No bout may be scheduled for longer than five rounds nor less than three rounds. Each championship contest will be scheduled for five rounds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 49:

**§907. Fouls**

A. All LRF events shall be subject to the rules for fouls under Chapter 3, Professional Boxing, §321, Fouls, Deductions, of Points Because of a Foul and Accidental Fouling. Subsection 321.A of this Rule shall be amended as follows: any participant persistently using foul tactics may be disqualified by either the referee or the commission and in addition be subject to such penalty as the commission may impose. Foul tactics include, but are not limited to:

1. hitting below the belt;
2. hitting an opponent who is down or who is getting up after being down;
3. holding an opponent with both hands or arms in an attempt to hold their opponent;
4. deliberately maintaining a clinch;
5. butting with the head or shoulder or using the knee;
6. hitting with inside or butt of the hand, the wrist or the elbow; except a fighter may strike with the palm of his hand when in a clinch;
7. hitting or "flicking" with an open hand;
8. wrestling or roughing at the ropes;
9. purposely going down without being hit;
10. striking deliberately at that part of the body over the kidneys;
11. use of the pivot, backhand and rabbit punch;
12. the use of profane or abusive language;
13. engaging in any unsportsmanlike trick or action which causes injury to an opponent;
14. hitting on the break;
15. hitting after the bell has sounded the end of the round;
16. hitting an opponent whose head is between and outside of the ropes;
17. pushing an opponent about the ring or into the ropes;
18. hitting with an open hand;
19. kicking or kneeling an opponent;
20. eye gouging of any kind;
21. biting;
22. hair pulling;
23. fishhooking;
24. groin attacks of any kind;
25. putting a finger into any orifice or into any cut or laceration on an opponent;
26. small joint manipulation;
27. striking to the spine or the back of the head;
28. throat strikes of any kind, including without limitation, grabbing the trachea;
29. clawing, pinching or twisting the flesh;
30. grabbing the clavicle;
31. holding the shorts or hands of an opponent;
32. spitting at an opponent;

33. engaging in any unsportsmanlike conduct that causes an injury to an opponent;
34. holding the ropes or the fence;
35. attacking an opponent on or during the break;
36. attacking an opponent who is under the care of the referee;
37. attacking an opponent after the bell has sounded the end of the period of unarmed combat;
38. flagrantly disregarding the instructions of the referee;
39. timidity, including, without limitation, avoiding contact with an opponent, intentionally or consistently dropping the mouthpiece or faking an injury;
40. interference by the corner; and
41. throwing in the towel during the competition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 49:

### **§909. Wrapping of Hands**

A. Hands may be wrapped with gauze and tape that ends no closer than one inch from the fighter's knuckles. The wrap must include the wrist and may travel up to three inches past the junction of the wrist bone.

B. Gauze may be applied to the wrist, palm of the hand, back of the hand and thumb. The length of gauze to be utilized may not exceed a length of 15 feet per hand.

C. Tape may be applied to the wrist, palm of the hand, back of the hand and thumb. The tape shall not be greater than one inch in width and shall not exceed 10 feet in length per hand.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission 2022

### **§911. London Ring Fighting Ring**

A. All LRF events shall be subject to Chapter 3, Professional Boxing, §320, Boxing Ring and Ropes, which is hereby supplemented to permit the use of a circular ring.

B. LRF events may use a circular ring which is defined as follows.

1. The ring must be a minimum of no less than 18 feet or past a maximum of 26 feet within the ropes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 49:

### **§913. Toeing the Line**

A. Any LRF event may use the following rules referred to as "toeing the line". If the promoter wishes to use the toeing the line rules, he must notify the commission in his event request form.

1. In every ring utilizing the toeing the line rule, there are 2 four-foot long lines painted in the center of the ring at a distance of two feet apart.

2. At the beginning of every round, both fighters will place at least one foot onto the line designated by the position of their corner before the match can be started by a signal from the referee.

3. If the participant is slow or stalling in approaching the line for the referee to start the round, the fighter can be either warned, have points deducted or be disqualified from the fight.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 49:

### **§915. Two Ringside Physicians**

A. At all LRF events there shall be in attendance two physicians who are licensed in the state of Louisiana. Both physicians must be in attendance at ringside at all times during the fight:

1. a fight/round shall not begin unless the referee insures that both ringside physicians are present at ringside; and

2. at least one of the two ringside physicians shall be certified as an expert in the area of plastic surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 49:

### **§917. Judges and Referees**

A. Judges and referees for LRF events will be licensed officials in accordance with Chapter 3, Professional Boxing, §311, Judges and Referees, herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 49:

### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a no impact on family functioning, stability or autonomy as described in R.S. 49:972.

### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service and no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

### **Public Comments**

All interested persons are invited to submit written comments, views or positions, on these proposed rules, in writing to John Green, Jr., Secretary, Louisiana State Boxing

and Wrestling Commission, 1135 Hodges St., Lake Charles, LA 70601 within 20 days of publication.

L. "Buddy" Embanato, Jr.  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: London Ring Fighting**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rules will result in a cost of approximately \$1,000 to the Louisiana State Boxing and Wrestling Commission (LSBWC) in FY 24 to publish the Notice of Intent and final rule in the Louisiana Register, as well as minimal costs to implement the proposed rules. These include clerical costs to LSBWC in depositing taxes earned from events as well as mileage costs for commissioners who are requested to attend London Ring Fighting (LRF) events.

The proposed rules establish regulations governing the sport of London Ring Fighting, a form of boxing which does not utilize boxing gloves or other padding. The regulations cover weight classes, duration of rounds, fouls, hand wraps, physicians required, and other rules indicative of bare knuckles fighting.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rules are expected to result in a substantial increase in Self Generated Revenues to LSBWC through a five percent tax levied on gross receipts. For informational purposes, three events conducted under LSBWC's emergency rules governing LRF earned \$21,000 in receipts (approximately \$7,000 per event) toward the commission's SGR. Comparatively, wrestling and Mixed Martial Arts events typically earn \$2,000 to \$3,000 in taxes, reservation fees and licenses per event. Based on prior earnings, LSBWC anticipates revenues of approximately \$50,000 per year. Actual revenues realized will depend upon the number of events held each year and is indeterminable. Any revenues in excess of the commission's expenses will be remitted to the state general fund.

In addition, if the LRF rules incentivize additional promoters, matchmakers, referees, managers, announcers, or competitors to operate in Louisiana, LSBWC will receive SGR for annual licensing fees. These fees are \$500 for promoters, \$250 for matchmakers, and \$25 for all others.

Additionally, municipalities and parishes with more than 300,000 inhabitants are authorized by statute to levy an amusement tax of up to five percent on athletic competitions. While the city of New Orleans has levied a two percent amusement tax, it has not collected amusement tax revenues since 2006.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Individuals who officiate at LRF events (judges, referees, etc.) will benefit economically from their employment at these events. Local venues and ring equipment rental services across the state will also benefit economically from rentals for LRF events.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

LRF is in direct competition with regular boxing. LSBWC reports that boxing events in Louisiana have consistently decreased over the last 20 years to 2 or 3 events per year.

LSBWC reports that LRF is extremely popular with the public. Accordingly, these events are expected to increase employment of local officials employed at these events.

Addie L. Fields  
Administrative Assistant  
2308#019

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Division of Administration  
Licensing Board for Contractors**

Contractors  
(LAC 46:XXIX. Chapters 1-7)

In accordance with the provisions of R.S. 49:950 et seq., which is the Administrative Procedure Act, and through the authority granted in R.S. 37:2150-2165, which is the Contractor Licensing Law, the Licensing Board for Contractors (LSLBC) hereby gives notice of its intent to update its rules and regulations regarding contracting matters under the jurisdiction of the LSLBC.

Act 195 of the 2022 Regular Legislative Session represented comprehensive legislation overhauling the statutes of the LSLBC. The changes presented in these rules will align with those statutory changes and codify current practices including the enumeration, defining, and consolidating of licensing classifications, subclassifications, and specialties.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXIX. Contractors**

**Chapter 1. Applications and Licensing**

**§101. Authority**

A. These rules and regulations are enacted under the authority of and in accordance with R.S. 37:2153.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Office of the Governor, State Licensing Board for Contractors, LR 44:2143 (December 2018), amended LR 49:

**§103. Definitions**

A. As used in these rules and regulations, words and phrases shall be defined as provided in R.S. 37:2150.1, in R.S. 37:2150-2165, and as otherwise defined in these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Office of the Governor, State Licensing Board for Contractors, LR 44:2143 (December 2018), amended LR 49:

**§105. Requirements**

A. Before a license or registration is issued, the following conditions must be met.

1. The application is complete and all required information has been provided to the board.

2. All applicable fees, fines, or other sums due to the board are paid in full.

3. All examination or other eligibility requirements have been successfully completed.

B. Any person holding a license or registration as a residential construction contractor, home improvement contractor, and mold remediation contractor shall obtain and maintain workers' compensation and general liability insurance, covering the construction activities for which he is licensed, obtained from an insurer authorized to sell those forms of insurance coverage. Insurance certificates evidencing current workers' compensation and general liability insurance shall be submitted to the Licensing Board for Contractors with each new application and every renewal application. In the event of a lapse of insurance coverage, a cease- and-desist order may be issued and such lapse shall be grounds for suspension or revocation of the license by the board.

C. Any business entity holding a license or registration shall obtain and maintain an active status with the Louisiana Secretary of State.

D. The issuance of any licenses or registrations will be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150 - 2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 1:401 (September 1975), amended LR 3:11 (January 1977), LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), amended Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150, 156 (January 2012), LR 44:2143 (December 2018), LR 49:

#### **§107. Report of Changes**

A. It shall be the responsibility of a person licensed or registered by the board to provide to the board all of the following information upon application for a license or registration and to notify the board in writing within 30 days of any change to the following information:

1. the licensee's type of business structure (sole proprietorship, partnership, limited liability company, corporation, etc.);
2. the licensee's business address (physical and U.S. postal service mailing address);
3. a telephone, cell phone, and facsimile number;
4. the licensee's email address;
5. the licensee's name;
6. the identity and address of the licensee's registered agent;
7. the identity of each officer and the office held;
8. the identity or address of each partner;
9. the identity or address of each member;
10. the licensee's federal tax identification number;
11. the licensee's state of incorporation;
12. for residential, home improvement, or mold remediation contractors, any change in insurance including, but not limited to, suspension or cancellation;
13. a bankruptcy judgment whether voluntary or involuntary; and
14. any order by a court of competent jurisdiction for a license or registrant to cease operations or whose operations are closed due to operation of any law.

B. The failure of a person licensed or registered by the board to notify the board of changes to any of the enumerated items in Paragraph A of this Section within 30 days of the change may result in a suspension of license or disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:2144 (December 2018), LR 49:

#### **§109. Qualifying Party**

**[Formerly §109, 111, 113]**

A. A qualifying party shall be required to successfully complete any trade examinations and meet or complete any other eligibility requirements.

B.1. The qualifying party or parties authorized to take the examination are those defined in R.S. 37:2156.1D.

2. An employee selected as qualifying party by the licensee shall be required to complete a qualifying party verification before examination attesting to his/her eligibility that he/she is a full-time employee of the person for whom he/she is seeking to qualify working at least 32 hours per week and that he/she meet the criteria to be classified as an *employee* as defined by the Internal Revenue Service. The qualifying party section of the online application will be certified by the employer.

C. An employee who has not been in full-time employment immediately preceding the application due to an absence resulting from deployment in active military service may be considered as a full-time employee if the employee has been re-employed in accordance with R.S. 29:410 and, considering the employee's period of employment immediately preceding the absence resulting from deployment in active military service, the employee otherwise satisfies the requirement of full-time employment.

D. If a qualifying party for a particular trade terminates employment or ownership/membership with a licensee, the licensee's license remains valid with the following restrictions. The licensee may continue existing work or bid on new work in the licensed trade classification but may not begin such work until the qualifying party is replaced.

E. When a qualifying party's employment or association with the licensee is terminated for any reason, the licensee shall comply with R.S. 37:2156.1(D)(1) by notifying the board in writing within 30 days of the termination. The licensee shall submit and qualify a new person as its qualifying party within 60 days of the termination of the prior qualifying party. If the licensee fails to qualify a new qualifying party within 60 days as required herein, the licensee's license may be suspended or revoked, or have a classification(s) removed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:136 and 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 and 19:1127 (September 1993),

amended by the Office of the Governor, Licensing Board for Contractors, LR 23:1495 (November 1997), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 and 38:151 (January 2012), LR 44:2144 and 44:2145 (December 2018), LR 49:

**§111. Examination Scheduling**  
**[Formerly §117]**

A. A qualifying party candidate who has been approved to take an examination shall be given a means to schedule the examination.

B. A candidate who fails to appear for the scheduled examination date and time shall forfeit the examination fee and be required to submit a new fee before the candidate will be allowed to schedule a new examination date.

C. A candidate who fails an examination cannot retake the examination for 30 days and shall be allowed to take the examination only if all other eligibility requirements have been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, State Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), LR 44:2145 (December 2018), LR 49:

**§113. Examination Administration Procedures**  
**[Formerly §119]**

A. Administrative check-in procedures begin one-half hour before the examinations begin. Candidates must report to the testing center for check-in at least 15 minutes prior to the examination's start time. Any candidate reporting after the 15-minute start time may not be allowed admittance to the examination room. Every candidate must present valid government-issued photographic identification to be admitted to the examination room.

B. The board considers and treats the specific content and format of its exams as proprietary and confidential, being intellectual property solely owned by the board. Individuals taking any LSLBC exam, at any testing location owned or approved by the board, acknowledge that no personal items of any sort may be brought into the testing room. This specifically includes, but is not limited to, watches, bulky outerwear, paper or reference material, or any electronic device capable of storing, sending, or receiving data. Any item required to take the exam will be provided by the exam proctor and must be returned at the completion of the exam. A locker or other method of storage will be provided for personal items. The testing center is not responsible for lost, stolen, or misplaced items. Failure of a candidate to comply with examination requirements will result in a forfeiture of the scheduled exam. Any violation of the above requirements, or any effort to otherwise defraud the examination process, shall result in the candidate's exam being immediately discontinued and invalidated. The candidate will be notified that they are required to appear before the board at its next regularly scheduled meeting for consideration of the violation where the board will take appropriate action. This may include a finding that the candidate is ineligible to take or retake any exam, ineligible to obtain any additional classifications to an existing license,

and/or revocation of any existing license or qualifying party status for a period of up to one year from the date of the board's order. If the candidate fails to appear at the scheduled board meeting, the board may issue the foregoing penalties plus a monetary penalty.

C. All examination activities are subject to being filmed, recorded, or monitored.

D. A candidate taking an examination shall not be allowed access to telephones or other communication devices during the course of the examination. Candidates shall not leave the testing area during the time of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), LR 44:2145 (December 2018), LR 49:

**§115. Test Item Challenges**  
**[Formerly §121]**

A. A candidate who believes that an individual test item may not have a correct answer or may have more than one correct answer shall be afforded an opportunity to challenge the test item. The candidate shall record his or her comments digitally through the exam interface or in writing on a form supplied by the test monitor at the candidate's request during the examination. Comments will not be accepted at any other time. Comments should provide a detailed explanation as to why the candidate feels the item is incorrect. General comments (e.g., "This item is wrong.") will not be investigated.

B. Examination comments will be reviewed by board staff.

C. If a test item comment is deemed to be valid, the grade may be changed based upon test item comment(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), LR 44:2145 (December 2018), LR 49:

**§117. Examination Reviews**  
**[Formerly §123]**

A. Candidate may request a review of their examination after two unsuccessful attempts to pass the same examination, provided the last test score is within ten points of a passing grade. The request must be made through the LSLBC Licensing Web Portal within 60 days of the failed examination date. Only questions missed by the qualifying party may be reviewed. Standard security procedures will be observed at review sessions. Candidates who have reviewed an examination are not eligible to retake the same examination for 14 days after the review session. Candidates who fail to appear for a scheduled review session are disqualified from reviewing that examination at a future date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 21:1215 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012), LR 44:2146 (December 2018), LR 49:

**§119. Application of Subsidiary**  
**[Formerly §125]**

A. Any application for a license for a subsidiary shall be considered as a new application and subject to all laws and rules and regulations governing a new application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), LR 44:2146 (December 2018), LR 49:

**§121. Approval Withheld**  
**[Formerly §127]**

A. If the board withholds approval of an application for a license or registration, or an application for a qualifying party, the applicant or qualifying party shall have the right to apply to the board for a hearing to consider the application. After due consideration of the applicant's presentation to the board, the board shall be entitled to withhold approval or grant approval of the application after consideration of the licensing requirements of the Contractors Licensing Law and these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended LR 11:341 (April 1985), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), LR 44:2146 (December 2018), LR 49:

**§123. Licensure and Exemption of Exam for Individuals with Military Training and Experience, Military Spouses and Dependents**  
**[Formerly §129]**

A. The board shall issue a license or registration to an applicant who is a member of the military, including United States Department of Defense civilian employees who have been assigned to duty in Louisiana, or an applicant who is married to or is a dependent of a member of the military or a United States Department of Defense civilian employee, if the member or United States Department of Defense civilian receives military orders for a change of station to a military installation or assignment located in this state or if the member or United States Department of Defense civilian has established this state as his state of legal residence as reflected in the member's or United States Department of Defense civilian's military record if, upon application to the board, all of the following conditions are satisfied by the applicant:

1. holds a current and valid occupational license in another state in an occupation with a similar scope of practice, as determined by the board.

2. has held the occupational license in the other state for at least one year.

3. has passed any examinations, or met any education, training, or experience standards as required by the board in the other state.

4. is held in good standing by the board in the other state.

5. does not have a disqualifying criminal record as determined by the board under the laws of this state.

6. has not had an occupational license revoked by a board in another state because of negligence or intentional misconduct related to the applicant's work in the occupation.

7. did not surrender an occupational license because of negligence or intentional misconduct related to the person's work in the occupation in another state.

8. does not have a complaint, allegation, or investigation pending before a board in another state which relates to unprofessional conduct or an alleged crime. If there is an existing complaint, allegation or investigation pending, the board shall not issue or deny a license or registration until the complaint, allegation, or investigation is resolved, or the applicant otherwise satisfies the criteria for licensure in this state to the satisfaction of the board.

9. pays all applicable fees and meets all other requirements for licensure.

B. The board shall issue a license or registration to an applicant who is a member of the military, or an applicant who is married to or is a dependent of a member of the military or United States Department of Defense civilian employee who has been assigned duty in Louisiana, upon application based on work experience in another state if, upon application to the board, all of the following conditions are satisfied by the applicant:

1. worked in a state that does not use an occupational license or governmental certification to regulate a lawful occupation, but the board regulates this lawful occupation with a similar scope of practice.

2. worked for at least three years in the lawful occupation.

3. has not had an occupational license revoked by a board in another state because of negligence or intentional misconduct related to the applicant's work in the occupation.

4. did not surrender an occupational license because of negligence or intentional misconduct related to the person's work in the occupation in another state.

5. does not have a complaint, allegation, or investigation pending before a board in another state which relates to unprofessional conduct or an alleged crime. If there is an existing complaint, allegation, or investigation pending, the board shall not issue or deny a license or registration until the complaint, allegation, or investigation is resolved, or the applicant otherwise satisfies the criteria for licensure in this state to the satisfaction of the board.

6. pays all applicable fees and meets all other requirements for licensure.

C. The board shall issue a license or registration to an applicant who is a member of the military or United States Department of Defense civilian employee who has been assigned duty in Louisiana, or an applicant who is married to or is a dependent of a member of the military or a United States Department of Defense civilian employee based on holding a private certification and work experience in another state if, upon application to the board, all of the following conditions are satisfied by the applicant:

1. worked in a state that does not use an occupational license or government certification to regulate a lawful occupation, but that occupation is lawfully regulated by this board through a license or registration.

2. has worked for at least two years in the lawful occupation.

3. holds a current and valid private certification in the lawful occupation.

4. the private certification organization holds the applicant in good standing.

5. has not had an occupational license revoked by a board in another state because of negligence or intentional misconduct related to the applicant's work in the occupation.

6. did not surrender an occupational license because of negligence or intentional misconduct related to the person's work in the occupation in another state.

7. does not have a complaint, allegation, or investigation pending before a board in another state which relates to unprofessional conduct or an alleged crime. If there is an existing complaint, allegation or investigation pending, the board shall not issue or deny a license or registration until the complaint, allegation, or investigation is resolved or the applicant otherwise satisfies the criteria for licensure in this state to the satisfaction of the board.

8. pays all applicable fees and meets all other requirements for licensure.

D. The education, training, or experience requirements for an occupational license issued by the board will be determined by the presentation from the applicant of satisfactory evidence that the applicant received comparable education, training or experience as a member of the United States armed forces or any national guard or other reserve component.

E. The applicant will be required to meet all other requirements for licensure.

F. Upon receipt of all required and complete documents, the board will provide the applicant with a written decision regarding the application for an occupational license within 30 calendar days after receiving an application.

G.1. The applicant may appeal any of the following decisions made by the board, in a court of general jurisdiction:

a. denial of a license.

b. determination of the classification.

c. determination of the similarity of the scope or practice of the occupational license issued.

H. A person who obtains a license or registration pursuant to this rule is subject to all laws regulating the occupation in this state and the jurisdiction of this board.

I. The term *military* means the armed forces of the United States, including the Army, Navy, Marine Corps, Coast Guard, Air Force, and the reserve components thereof, the National Guard of any state, the Military Reserves of any state, or the naval militia of any state.

J. The term *dependent* means:

1. a resident spouse or resident unmarried child under the age of 21 years;

2. a child who is a student under the age of 24 years and who is financially dependent upon the parent; or

3. a child of any age who is disabled and dependent upon the parent.

K. The provisions of this Section shall not apply to any applicant receiving a dishonorable discharge or a military spouse whose spouse received a dishonorable discharge.

L. This Section preempts laws by township, municipal, county and other governments in the state which regulate occupational licenses and government certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3651

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 40:2575 (December 2014), LR 44:2146 (December 2018), LR 47:364 (March 2021), LR 49:

## §125. Ownership of License

### [Formerly §131]

A. The license for which a person becomes the qualifying party belongs to the licensee, a corporate license belongs to the corporation; a partnership license belongs to the partnership; a limited liability company license belongs to the limited liability company, and an individual license belongs to the individual, regardless of the status of the qualifying party of the entity.

B. A domestic business entity licensed or registered by the board as a limited liability company, business corporation, partnership in commendam, or partnership, that converts under the provisions of R.S. 12:1601 et seq., or is a surviving entity following a merger pursuant to 26 U.S.C. 368(a)(1)(f) where ownership of the entity does not change, shall be recognized by the board without having to file a new application for a license or registration provided that these changes have been reported to the Louisiana Secretary of State. Prior to updating a license or registration of the converted entity or surviving entity, the converted entity or surviving entity must furnish a copy of the revised certificate(s) of insurance in the new name of the converted entity or surviving entity for any coverage required for the issuance of the updated license or registration.

C. An updated license or registration issued pursuant to Subsection B of this Section shall have an effective date retroactive to the effective date of the conversion as stated on the certificate of conversion, or the merger as stated on the certificate of merger.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165 and R.S. 12:1308.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:136 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012), LR 40:2575 (December 2014), LR 44:2147 (December 2018), LR 49:

## §127. Name

### [Formerly §133]

A. A person licensed or registered by the board shall bid, contract, and perform work in the name as it appears on the current license or registration and the official records of the Licensing Board for Contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office

of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:2147 (December 2018), LR 49:

**§129 Contractor's Recordkeeping**  
**[Formerly §135]**

A. It shall be the responsibility of each person licensed or registered by the board to maintain current records for five years showing compliance with contractor licensing laws and rules and regulations for all contracts, subcontracts and subcontractors performing work or providing services on a construction project. Upon request by the board or any employee of the board, such records shall be made available for review and/or copies provided to the board employee in person or by electronic means. The failure to maintain current records or the failure to furnish copies of any requested records or documents within 72 hours after receipt of notice requesting production of the records shall constitute a violation of this rule and may result in disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:135 (March 1982), amended LR 12:761 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:601 (July 1990), LR 19:1125 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:2147 (December 2018), LR 49:

**§131. Fee for Licenses**  
**[Formerly §137]**

A. The annual fee for licenses for the following year may be set by the board at its July meeting each year. If a new fee is not set, the fee(s) for the prior year shall continue to be in full force and effect until changed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 2:271 (September 1976), amended LR 8:136 (March 1982), LR 10:199 (March 1984), LR 11:341 (April 1985), LR 12:761 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 44:2147 (December 2018), LR 49:

**§133. Name**  
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:2147 (December 2018), repealed LR 49:

**§135 Contractor's Recordkeeping**  
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:135 (March 1982), amended LR 12:761 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR

16:601 (July 1990), LR 19:1125 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:2147 (December 2018), repealed LR 49:

**§137. Fee for Licenses**  
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 2:271 (September 1976), amended LR 8:136 (March 1982), LR 10:199 (March 1984), LR 11:341 (April 1985), LR 12:761 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 44:2147 (December 2018), repealed LR 49:

**Chapter 3. Classifications**

**§301. Classifications, Subclassifications, and Specialties**

A. In accordance with R.S. 37:2156.1(L), the board provides a designation of classifications, subclassifications, and specialties in the following rules.

B. Major Classifications: Building Construction; Highway, Street, and Bridge Construction; Heavy Construction; Municipal and Public Works Construction; Electrical; Mechanical; Plumbing; Hazardous Materials; Mold Remediation; and Residential Construction. Major classifications may include various subclassifications. A licensee holding a major classification is permitted to estimate, bid, quote, and perform any scope of work included in any of its subclassifications with the exception of residential construction.

C. Subclassification: a specific scope of work within a major classification that allows a contractor to estimate, bid, quote, and perform work in accordance with its definition.

D. Specialty Classification: a scope of work that allows a contractor to estimate, bid, quote, and perform work only as described in that specific classification.

E. All classifications require a written examination, a credential or license from another regulatory body, or both, unless otherwise noted.

F. A license is required when the project cost exceeds \$50,000 except where otherwise noted.

1. Asbestos Removal and Abatement: requires Louisiana Department of Environmental Quality asbestos certification and refers to the abatement or removal of friable asbestos in buildings, houses, structures, pipes, etc. A license is required when the value exceeds \$1. Asbestos removal and abatement is a subclassification of hazardous materials.

2. Auger and Dry Conventional Boring: the construction and installation of pipelines using pipe jacking, auger boring, slurry boring, pipe ramming, jet cutting, utility tunneling, slurry shield, micro tunneling, and/or soil compaction. Does not refer to the construction of pipelines using horizontal directional drilling, pipe bursting, slip lining, cured-in-place pipe, pigging, pipe cleaning and similar technologies.

3. Building Construction: the building, maintenance, repair, raising, leveling, development, or demolition of any and all structures as well as the landscaping, earthwork, parking areas, driveways, sidewalks, etc.

4. Carpentry: the construction, maintenance, or repair of rough and finish carpentry and/or millwork.

5. Coastal Restoration and Habitat Enhancement: the restoration and enhancement of wetland habitats and coasts, including the construction of terraces and sand fences, oyster reefs, revetments, break waters, jetties, and other features intended for this purpose and the related planting and seeding of grass and plants. Also includes relevant dredging and placement or disposal of dredged materials, the intent of which is to protect shores, restore and protect land, and to improve and restore ecosystems of coastal and inland waterways.

6. Concrete Construction Excluding Highways, Streets, and Bridges: the construction, maintenance, or repair of concrete parking lots, sidewalks, driveways, concrete foundations, concrete columns, beams, walls, floors, roofs, curtain walls, precast and prestressed concrete foundations, structures, slabs, tennis courts, etc. Includes forms, slipforms, reinforcing rods and wire mesh, and the use of technologies for grouting, guniting, shotcreting and pumping. Does not include concrete for highways, streets, or bridges.

7. Concrete Reinforcement and Post Tensioning: the construction, maintenance, or repair of rebar, wire mesh, reinforcing rods, dowels, pre- and post-tensioning systems, etc. for the reinforcement of concrete.

8. Culverts and Drainage Structures: the construction, installation, maintenance, or repair of culverts, wingwalls, catch basins, and other drainage structures. Culverts and drainage structures is a subclassification of highway, street, and bridge construction.

9. Curb, Gutter, Driveways, Sidewalks, Retaining Walls, Patios, Foundations: the construction, installation, maintenance, or repair of concrete curbs and gutters adjacent to pavements as well as driveways, sidewalks, patios, foundations. Also includes retaining walls of various types.

10. Dredging: the dredging of waterways for navigation, erosion control, coastal restoration and associated sediment removal, disposal, and relocation. Also includes sludge removal from treatment ponds using dredging technologies. Dredging is a subclassification of heavy construction.

11. Driveways, Parking Areas, Asphalt, and Concrete: the construction, maintenance, or repair of asphalt or concrete pavements. Includes sidewalks, parking areas, and driveways. Driveways, parking areas, asphalt, and concrete is a subclassification of building construction and highway, street, and bridge construction.

12. Drywall: the installation, maintenance, or repair of gypsum board products and their associated finishes. It does not include installation of wood or metal studs and framing. Drywall is a subclassification of building construction.

13. Earthwork, Drainage, and Levees: land clearing, grubbing, snagging, and draining. Also includes earthmoving, grading, digging, cutting, filling, backfilling, compaction, trenching, excavation, and spreading of soil materials. Also includes the construction of ditches, canals, ponds, and levees. May involve the installation of ditch linings, erosion control, wing walls, culverts, drains, and catch basins. Also involves ground freezing and the use of piezometers, sumps, and any other apparatus used in the removal or isolation of ground water. In addition, may

involve the installation of various geotextile products for separation of water or soils. Earthwork, drainage and levees is a subclassification of highway, street, and bridge construction.

14. Electrical: the installation, construction, alteration, improvement, movement, maintenance, repair, or demolition of wiring, cabling, fixtures, appliances, equipment, and/or hardware for the supply of electricity to any structure, building, or project provided the value exceeds \$10,000. The installation of low voltage, including Cat 5, Cat 6, coaxial cables, etc., or fiber optic equipment and infrastructure requires Electrical if any portion of the work involves the installation of equipment, mounting hardware, wiring, etc. which penetrate walls, ceilings, floors, closed spaces, or the building envelope. Penetration of walls, floors, ceilings, closed spaces, or the building envelope includes creating new pathways through walls, floors, ceilings, etc., and running cables through existing pathways through walls, floors, ceilings, etc. Electrical is not required for the purchase or installation of non-attached equipment, which merely involves plugging equipment into an existing wall outlet.

15. Electrical Controls, Instrumentation and Calibration: the installation or fabrication of controls for electrical work including instrumentation, HVAC controls, "Smart house" controls, security alarm panels, fire alarm panels, etc. A license is required when the value exceeds \$10,000. Electrical controls, instrumentation and calibration is a subclassification of electrical.

16. Electrical Transmission Lines: the construction, installation, maintenance, or repair of electrical transmission and distribution lines, poles, and towers for outside the plant. Also includes electrical power substations and all internal components, including transformers, circuit breakers, reclosers, switches, fuses, rigid, strain, and overhead bus structures, insulators, wave jumpers, wave traps, and related electrical transmission towers within or leading directly to the substation. A license is required when the value exceeds \$10,000. Electrical transmission lines is a subclassification of electrical and heavy construction.

17. Flooring and Decking: the installation, maintenance, or repair of all types of stone, marble, granite, slate and resilient flooring and flooring systems (vinyl, bamboo, parquet, rubber, polyethylene, cork, linoleum, etc.), ceramic tile, terrazzo systems and slabs carpeting, and decking, poured and sealed concrete or epoxy flooring, as well as floor underlayments, etc. Does not include flooring materials used on walls and ceilings, etc. Flooring and decking is a subclassification of building construction.

18. Foundations and Pile Driving: the driving, casting, jetting, vibrating, or drilling of structural and sheet piles for buildings, bridges, wharves, docks, cofferdams, caissons, seawalls, etc., and to the construction, installation, or repair of the same. Includes augured pressure grouted piling, pressure grouting, preplaced aggregate concrete underlayment, slurry walls, slabs, foundation walls, tremies, and all other types of deep and shallow foundations. Allows a contractor to raise and level buildings and houses. Foundations and pile driving is a subclassification of heavy construction.

19. Foundations for Buildings, Equipment, or Machinery: the construction, installation, maintenance, or

repair of foundations for buildings, equipment or machinery including deep or shallow foundations and slabs. Allows a contractor to raise and level buildings and residential structures. Foundations for buildings, equipment or machinery is a subclassification of building construction.

20. Glass, Glazing, Store Fronts, Metal Partitions, Panels and Siding: the construction, installation, maintenance, or repair of commercial store front systems, interior and exterior panels and partitions, glass and glazing, and doors. Also refers to prefabricated windows and wood, vinyl, aluminum, and other siding.

21. Hazardous Materials: requires the proper credentialing from the Louisiana Department of Environmental Quality for Asbestos, Lead, and Underground Storage Tanks and refers to the handling, treatment, abatement, cleanup and/or removal of hazardous and toxic materials and waste and other materials regulated by the Louisiana Department of Environmental Quality such as asbestos, lead, and underground storage tanks. A license is required when the value exceeds \$1.

22. Hazardous Waste Treatment or Removal: the cleanup, removal, and/or storage of materials defined by the Louisiana Department of Environmental Quality as hazardous or toxic. A license is required when the value exceeds \$1. Hazardous waste treatment and removal is a subclassification of hazardous materials.

23. Heat, Air Conditioning, Ventilation, Duct Work, and Refrigeration: the installation, maintenance or repair of air conditioning, ventilation, refrigeration, coolers, freezers, and ice rinks. A license is required when the value exceeds \$10,000. Heat, air conditioning, ventilation, duct work and refrigeration is a subclassification of mechanical.

24. Heavy Construction: construction activities related to industrial facilities, waterway and flood diversion projects, railroads, and oilfields.

25. Highway, Street, and Bridge Construction: construction, maintenance, or repair of highways, streets, bridges, and all related work, including general earthwork and general paving such as sidewalks, driveways, and parking lots.

26. Home Improvement: the reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, demolition, or the construction of an addition to any pre-existing building which is used or designed to be used as a residence or dwelling unit or to any structure which is adjacent to such residence or building. No examination or credential is required. A license is required when the value exceeds \$7,500. Home improvement is limited to a value of \$75,000.

27. Horizontal Directional Drilling: the construction, installation, maintenance, or repair of pipelines using trenchless technologies including horizontal directional drilling, hydro vacuum excavation, air vacuum excavation, or road boring technologies. Includes technologies which pull the pipe through. Does not include the construction, installation, maintenance, or repair of pipelines using jack and bore technologies (dry, wet, or slurry), micro tunneling, pipe bursting, slip lining, cured-in-place pipe, pigging, pipe cleaning and similar technologies.

28. Industrial Cleaning and Material/Waste Handling: the cleaning and maintenance of tanks, pipelines, buildings, equipment, catalysts, etc. using hydro blasting, vacuum and

material pumping services, chemical cleaning, pigging, etc. Includes nonhazardous waste treatment or removal as well as the removal of construction and storm debris and waste. Also includes construction of non-hazardous landfills.

29. Industrial Pipe Work and Insulation: the fabrication, installation, or repair of process piping systems, components and insulation related to industrial facilities, chemical industries, food and dairy industries, refineries, etc. Industrial pipe work and insulation is a subclassification of Mechanical and Heavy Construction.

30. Insulation: the installation, maintenance, or repair of insulation used for industrial, commercial, and residential structures, piping, and equipment.

31. Insulation for Cold Storage and Buildings: the installation, maintenance, or repair of all types of insulation for cold storage and buildings, including all types of insulation for this purpose, to include firestopping, fireproofing, metalizing, and foam systems. Insulation for cold storage and buildings is a subclassification of building construction.

32. Labor Only: the furnishing of the supply of labor only for the use of a contractor or subcontractor. Does not include contracts for supply of materials nor responsibility for the supervision of a project. This classification is for companies that provide labor only for contractors, when the scope of work, including labor and materials, exceeds \$50,000 (or \$10,000 for Electrical/Mechanical/Plumbing work, or \$1 for Hazardous Materials work). No examination or credential is required. Labor Only is a subclassification of building construction; highway, street, and bridge construction; heavy construction; municipal and public works construction; electrical, plumbing; mechanical; and hazardous materials.

33. Landscaping, Grading, and Beautification: requires Louisiana Department of Agriculture licensure and refers to landscaping, irrigation, and finish grading, both installation and maintenance, and the removal of tree and plant materials from curbside for all types of properties including highways, buildings, and industrial facilities. Does not include hardscaping. Landscaping, grading, and beautification is a subclassification of building construction; Highway, Street, and Bridge Construction; Heavy Construction; and Municipal and Public Works Construction.

34. Lathing, Plastering, and Stuccoing: the installation, maintenance, or repair of all plastering or stucco including interior and exterior walls, swimming pools, etc. Lathing, plastering, and stuccoing is a subclassification of building construction.

35. Lead based paint abatement and removal: requires an approval letter from the Louisiana Department of Environmental Quality to perform either commercial and industrial lead removal or target housing and child-occupied facility lead removal and refers to the removal or abatement of lead-based paint. A license is required when the value exceeds \$1. Lead based paint abatement and removal is a subclassification of hazardous materials.

36. Limited specialty services: any scope of work that exceeds \$50,000 not specifically defined under any other classification. No examination or credential is required.

37. Masonry, brick, stone: the construction, installation, maintenance, or repair of masonry structures, veneers, refractories, or manholes, including brick, firebrick, stone,

concrete block, structural tile, glass block and all related accessories. Masonry, brick, stone is a subclassification of building construction.

38. Mechanical: hydraulic and pneumatic systems, including such components as heating, ventilation, air conditioning, refrigeration, hydronic and steam systems, pressure vessels, plumbing, gas piping, process piping, mechanical equipment, air and process heaters and seals, and air vacuums and filters. A license is required when the value exceeds \$10,000. A mechanical contractor who performs plumbing work with a value over \$10,000 must possess a master plumber license with the State Plumbing Board of Louisiana.

39. Mold Remediation: requires 24 hours of board approved training in mold remediation and assessment and refers to removal, cleaning, sanitizing, demolition, or other treatment, including preventative measures, of mold contaminated materials not purposely grown at that location. A license is required when the value exceeds \$7,500.

40. Municipal and Public Works Construction: the installation, maintenance, or repair of the infrastructure of water, sewer, gas, and storm water treatment and/or distribution systems for municipalities. It also includes power plants, electrical transmission lines, and underground electrical conduit. This classification is limited to only these scopes of work as specified.

41. Oil field construction: the construction, installation, maintenance, or repair of oil and gas drilling rigs, decks and associated equipment, earthwork, access roads, foundations, mat roads, monitoring wells, retention tanks and ponds, pipework, pits, and pumps. Also includes the drilling of oil and gas wells and fabrication of oil field equipment, as well as valves, fittings, "Christmas Trees" etc. to regulate the flow of gas or oil on a drilling rig, oil well servicing, workover, and plugging and abandoning wells. Does not include transmission pipelines beyond the drilling field. Oil field construction is a subclassification of heavy construction.

42. Painting, Coating, and Blasting: the painting of immovable property as well as coatings and linings of various types.

43. Permanent or Paved Highways and Streets (Asphalt): the construction, installation, maintenance, or repair of asphalt roads, streets, and highways. Permanent or paved highways and streets (Asphalt) is a subclassification of highway, street, and bridge construction.

44. Permanent or Paved Highways and Streets (Concrete): the construction, installation, maintenance, or repair of concrete pavements. Permanent or paved highways and streets (Concrete) is a subclassification of highway, street, and bridge construction.

45. Pile driving: the driving of structural and sheet piles for buildings, bridges, wharves, docks, cofferdams, caissons, seawalls, etc. Pile driving is a subclassification of building construction.

46. Pipe work (water lines): the construction, installation, maintenance, or repair of distribution mains and pump stations and related components for water utility systems. Pipe work (waterline) is a subclassification of municipal and public works construction.

47. Plumbing: the construction, installation, maintenance, or repair of potable and non-potable tap water and/or sewer water systems within a building structure or house. A license is required when the value exceeds \$10,000. Plumbing is also a subclassification of mechanical.

48. Pneumatic Tubes and Conveyors: the installation, maintenance, or repair of pneumatic tube systems and other types of conveyor systems and related components. Pneumatic tubes and conveyors is a subclassification of building construction.

49. Railroads: the construction, installation, maintenance, or repair of railroad tracks, switches, accessories, and depots. Railroads is a subclassification of heavy construction.

50. Residential Construction: the construction of a residential structure as defined in 37:2150.1(16), when the cost of the undertaking exceeds \$75,000. Residential construction also refers to home improvement contracting as provided for in 37:2150(8) when the cost of the undertaking exceeds \$75,000 dollars. It shall not include the manufactured housing industry or those persons engaged in building residential structures that are mounted on metal chassis and wheels.

51. Residential Swimming Pools: the construction, installation, maintenance, or repair of swimming pools, whirlpools, hot tubs, and all related accessories for residential structures. A license is required when the value exceeds \$7,500. Residential swimming pools is a subclassification of Residential Construction.

52. Rigging, House Moving, Wrecking, and Dismantling: the rigging, hoisting, and general demolishing work of buildings, houses, bridges, and other structures. Allows a contractor to raise, level, and move buildings and residential structures. Rigging, house moving, wrecking, and dismantling is a subclassification of building construction.

53. Roofing and Sheet Metal, Siding: the construction, installation, maintenance, or repair of roof systems for buildings and structures. Includes roof decks, as well as waterproofing for associated parapet walls including flashings and other accessories. Also includes general sheet metal and all types of siding. Roofing and sheet metal, siding is a subclassification of building construction.

54. Solar Energy Equipment: the construction, installation, or repair of solar photovoltaic and/or thermal systems to produce electricity or heating for houses, buildings, swimming pools, plumbing systems, etc. Must hold one or more of the following classification(s): Building Construction, Electrical, Mechanical, or Residential Construction. A license is required when the value exceeds \$10,000.

55. Steel Erection and Installation: the fabrication, erection, welding, bolting, construction, or repair of structural steel, reinforcing steel, ornamental iron, reinforcing rods and wire mesh, metal buildings, metal framing, metal siding, metal roofing, and sheet metal structures. Includes such structures as metal building frames and steel structures for highway bridges, oil drilling rigs, towers, complete storage facilities, grain elevators, silos, warehouses, tanks, floating roofs and metal covers, canopies, etc. Does not include steel piping except the terminal piping

connection to tanks. Includes all painting, coating, and blasting of such structures. Steel erection and installation is a subclassification of building construction.

56. Swimming Pools: the construction, installation, maintenance, or repair of all types of in ground swimming pools, whirlpools, water features and fountains and all associated components. Swimming pools is a subclassification of building construction.

57. Telecommunications, Low Voltage: all low voltage electrical applications. No examination or credential is required. A license is required when the value exceeds \$10,000. Telecommunications is a subclassification of electrical.

58. Tower Construction: the construction, erection, or repair of towers of various types including fire towers, water towers, and telecommunications towers. Includes access road, instrumentation shed, fencing, foundation, antennas, structural steel, etc. and all activities related to tower construction.

59. Underground Storage Tanks: requires Louisiana Department of Environmental Quality certification and refers to the construction, maintenance, and repair of underground storage tanks as well as the backfill, connected piping, and other components. A license is required when the value exceeds \$1. Underground storage tanks is a subclassification of hazardous materials.

60. Water Cooling Towers and Accessories: the construction, installation, maintenance, or repair of water-cooling towers and all related accessories. Water cooling towers and accessories is a subclassification of building construction.

61. Water Well Drilling: requires Louisiana Department of Natural Resources licensure and refers to the drilling of water wells for potable water systems and other water needs.

62. Wharves, Docks, Harbor Improvements and Terminals: the construction, maintenance or repair of shipyards, wharves, docks and related terminals, piers, waterfront pile driving and related equipment, dolphins, breakwaters, revetments, bulkheads, seawalls, retaining walls, cofferdams, caissons, underwater welding, marine diving and salvaging, underwater construction, and related dredging and draglines for harbors and other construction in navigable waterways. Wharves, docks, harbor improvements and terminals is a subclassification of heavy construction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2156.1L.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 49:

### **§303. Raising a Residential Structure**

A. *House Raising* is defined as the process of either separating a structure or building from its foundation, lifting the structure or building from under the foundation, or any other method of lifting the structure or building for the purpose of relocation or changing the structure or building's elevation. It does not include lifting or moving a portion of the structure or building for the purpose of leveling due to settlement.

B. Only those persons holding one of the below licensed contractor classifications may bid or perform raising of residential structures when the dollar value exceeds seven thousand five hundred dollars:

1. building construction;
2. rigging, house moving, wrecking, and dismantling;

3. foundations for buildings, equipment, or machinery;

4. foundations and pile driving.

C. Those persons holding a license for residential construction may bid or contract for raising, leveling, or shoring of residential structures, but must contract with a licensed contractor in accordance with 303.A of this Part to perform the work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 49:

### **§305. Demolition**

A. Demolition of residential structures when the value exceeds seven thousand five hundred dollars may only be performed by persons holding a classification of:

1. residential construction;
2. building construction;
3. rigging, house moving, wrecking, and dismantling;
4. home improvement, up to the statutory limits of the registration (\$75,000).

B. Demolition of commercial structures when the value exceeds \$50,000 may only be performed by persons holding a classification of:

1. building construction;
2. rigging, house moving, wrecking, and dismantling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 49:

### **§307. Dewatering**

A. Dewatering is the removal of water or water damaged building materials and does not require a license. The removal of structural items is not considered to be dewatering. The replacement or installation of new materials may require a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 49:

### **§309. Project Classification**

A. Any person bidding or performing the work of a general contractor for which a license is required must be licensed under the classification for which the majority of the work is classified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 49:

### **§311. Solar Energy Equipment**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2156.3.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 40:2575 (December 2014), amended LR 44:2148 (December 2018), repealed LR 49:

### **§313. Division of Contract—Value of Project**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR

38:155 (January 2012), LR 44:2149 (December 2018), repealed LR 49:

## **Chapter 5. Residential**

### **§501. Definitions**

A. Any person bidding or performing the work of a general contractor on a residential project in the amount for which a license is required must be licensed under the classification residential construction. This requirement shall not include individuals who build no more than one residence per year for their own personal use as their principal residence.

B. With respect to modular housing, “cost of the project” shall not include the cost of the component parts of the modular home in the condition each part leaves the factory, in accordance with R.S. 40:1730.71.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 44:2149 (December 2018), LR 49:

### **§503. Residential Swimming Pools Licensing [Formerly §507]**

A. Only contractors holding one or more of the license classifications of building construction, swimming pools, or residential swimming pools are permitted to build or repair residential swimming pools when the value of the project exceeds \$7500.

B. Licensed residential construction contractors may bid or sign contracts to build, renovate, or repair residential swimming pools but must contract with a contractor holding a license to build, renovate, or repair the swimming pool if the licensed residential contractor does not hold a license for the classifications authorized to build, renovate, or repair residential swimming pools.

C. Any person who violates the provisions of this Section may be subject to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 42:52 (January 2016), amended LR 44:2150 (December 2018), LR 49:

### **§505. Maintenance of Skills [Formerly §513]**

A. A residential construction contractor shall be required to complete a minimum of six hours of continuing education annually by a board approved provider. The residential construction contractor shall maintain evidence of all required continuing education for five years and make this documentation available to the board upon request. A contractor who holds a residential construction contractor license and a valid, current commercial license in the major classifications of building construction; highway, street, and bridge construction; heavy construction; or municipal and public works construction, shall be exempt from this continuing education requirement.

B. A residential construction contractor who fails to complete the minimum required continuing education classes each year may subject the residential construction contractor’s license to disciplinary action including suspension or revocation by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012), LR 40:2574 (December 2014), LR 44:2150 (December 2018), LR 49:

### **§507. Residential Swimming Pools Licensing Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 42:52 (January 2016), amended LR 44:2150 (December 2018), LR 49:

### **§509. Home Improvement Registration Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012), amended LR 40:2577 (December 2014), LR 44:2150 (December 2018), LR 49:

### **§511. New Home Warranty Act Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012), amended LR 44:2150 (December 2018), repealed LR 49:

### **§513. Maintenance of Skills Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012), LR 40:2574 (December 2014), LR 44:2150 (December 2018), LR 49:

## **Chapter 7. Enforcement and Hearings**

### **§701. Enforcement of Act and Rules**

A. The board may bring suit to enjoin violations of the Contractors Licensing Law and these rules and regulations. The executive director and/or his designated agent and/or the legal counsel for the board is hereby authorized to institute such suit on behalf of the board, to sign the verification of any petition, and to take any actions necessary in connection with the institution of such legal proceedings as directed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:2151 (December 2018), LR 49:

### **§703. Correction without Complaint**

A. If a possible violation is known to the board, the board may correct it or take appropriate action without formal complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by

the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:2151 (December 2018), LR 49:

#### **§705. Failure to Insure or Bond**

A. Any person required to be licensed by the board that bids a project requiring a bid bond, the posting of a bond for the project, or certificates of insurance evidencing mandated coverage and fails to provide such valid bonds or coverage when due shall be in violation of this Act and these rules and regulations.

B. Upon being awarded a bid, the person licensed shall not cancel, or otherwise fail to maintain the required insurance coverage or bonding as required in the bid proposal.

C. Any person who violates the provisions of this Section may be subject to disciplinary action by the board including suspension and revocation of the contractor's licenses, and fines and administrative costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 44:2151 (December 2018), LR 49:

#### **§707. License Revocation and Suspension [Formerly §709]**

A. Any person duly licensed or registered under the provisions of the Contractors Licensing Law who violates any provisions of the Contractors Licensing Law or any rule or regulation of the board may, after due hearing, be required to pay fines and costs and have its license or registration suspended or revoked by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), LR 44:2152 (December 2018), LR 49:

#### **§709. Residential Subcommittee Review [Formerly §713]**

A. The residential subcommittee has the authority to issue, suspend, or revoke residential licenses or home improvement registrations issued to residential construction contractors, mold remediation contractors, and home improvement registrants subject to the final approval of the Licensing Board for Contractors.

B. The residential subcommittee has the authority to conduct hearings on alleged violations by residential building contractors, mold remediation contractors and home improvement contractors in accordance with the provisions of R.S. 37:2158.

C. In addition to or in lieu of any of the penalties provided in this Chapter, the subcommittee is empowered to issue a cease-and-desist order. Further, the subcommittee may seek the other civil remedies provided in R.S. 37:2164 for violations of this Chapter, subject to the final approval of the Licensing Board for Contractors.

D. The residential subcommittee shall make recommendations to the Contractors Board regarding their findings and determinations as a result of the hearings on said alleged violations.

E. Any person licensed as a residential building contractor, home improvement contractor, or mold remediation contractor whose alleged violations were heard by the subcommittee and a recommendation rendered, may request to appear at the next regularly scheduled board meeting or at any other board meeting where their alleged violations are brought before the board for final action, and may be given an opportunity to address the board regarding the subcommittee's recommendation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012), LR 44:2152 (December 2018), LR 49:

#### **§711. Penalties [Formerly §715]**

A. In accordance with the provisions of R.S. 37:2164, the board and subcommittee, subject to final approval by the Licensing Board for Contractors, shall have the authority to issue a fine not to exceed 10 percent of the total contract being performed for each violation for the causes listed in R.S. 37:2158.

B. When a fine, administrative fee, or other monetary penalty is assessed by either the board or the residential subcommittee, that amount is payable within 60 days or as provided by law. The failure to pay fines is a basis upon which the board may deny issuance or renewal of a license or registration. If fines are not paid within 60 days or as provided by law, the board may pursue collection of the fines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012), LR 40:2577 (December 2014), LR 44:2152 (December 2018), LR 49:

#### **§713 Hearings [Formerly §717]**

A. Hearings regarding any disciplinary proceedings or any other matters to be considered by the board may be conducted by the board's legal counsel at regular or special meetings whenever deemed necessary and special hearing officers may be hired at the board's discretion. Hearings shall be conducted in accordance with the Administrative Procedure Act.

B. Written notice of the hearing date shall be given to a party who is the subject of a disciplinary proceeding or other matter before the board at least five days prior to such hearings or special meetings. The board members shall be notified at least three days prior to such hearings or special meetings. The notice shall include the time, place and purpose of the hearing or special meeting and may be held at any place within the state.

C. Confirmation of the written notice to a party who is subject to a disciplinary proceeding or other matter before

the board required by this Section may be proved by any one of the following:

1. a signed return receipt of certified or registered mail, confirming delivery and receipt of the notice;
2. a signed confirmation by a board employee that actual physical delivery was made to the party, contractor, or agent of the contractor delivered to the address provided to the board by the party or contractor or the last known address discovered during the investigatory process;
3. a confirmation of facsimile transmission to the number provided to the board by the party or contractor;
4. a copy of the delivery notice by electronic mail transmission to the electronic address provided to the board by the party or contractor;
5. a printed electronic confirmation of delivery to the party or contractor and/or confirmation of signature from the U.S. Postal Service;
6. a written, electronic, or facsimile response to the notice or subpoena provided therewith, from the party, contractor or its representative; or
7. appearance by the party, contractor or its authorized representative at the hearing.

D. As authorized by R.S. 49:977.4, the board may hear and decide petitions for declaratory orders and rulings as to the applicability of any statutory authority or of any rule or order of the board. Such orders and rulings shall have the same status as board decisions or orders in adjudicated cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2165.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 4:69 (March 1978), LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012), LR 44:2152 (December 2018), LR 49:

#### **§715. Penalties**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012), LR 40:2577 (December 2014), LR 44:2152 (December 2018), repealed LR 49:

#### **§717. Hearings**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 4:69 (March 1978), LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012), LR 44:2152 (December 2018), repealed LR 49:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of these proposed rules on the family has been considered. It is anticipated that changes to the Rules of the State Licensing Board for

Contractors will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of the changes to the rules have been considered. It is anticipated that these proposed rules will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

Pursuant to R.S. 49:974.5, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule. The proposed changes to the rules are not anticipated to have an adverse impact on small businesses. Changes will reduce fees for contractors licensed with this agency by reducing duplicative classifications.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of these proposed rules has been considered. It is anticipated that these proposed rules will have no known impact on providers of services for individuals with developmental disabilities.

#### **Interested Persons**

Interested persons may submit written comments on the proposed regulations to the Licensing Board for Contractors, attention Judy Dupuy, Board Administrator, 600 North Street, Baton Rouge, LA 70802 through September 8, 2023.

#### **Public Hearing**

If it becomes necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedures Act, a hearing will be held at 9:00 a.m. on September 26, 2023, at the Louisiana State Licensing Board for Contractors, 600 North Street, Baton Rouge, LA 70802.

Michael McDuff  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Contractors**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The purpose of the proposed changes to the Louisiana State Licensing Board for Contractors (LSLBC) rules is to align the board's administrative code with LSLBC statutes which were overhauled in Act 195 of the 2022 Regular Legislative Session and to codify current practices including the enumeration, defining, and consolidating of licensing classifications, subclassifications, and specialties. There is an anticipated one-time increase of approximately \$5,000 in expenditures by LSLBC to implement program changes to its licensing tracking system to realign the existing classifications to reflect the consolidation. No other state or local government entities will be affected.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Pursuant to La. R.S. 37:2156.1L, the Licensing has authority to consolidate, add, or remove subclassifications or specialties as it deems appropriate. The LSLBC has 85 subclassifications/specialty classifications which require no examination. These specialties are being consolidated into one

major classification called Limited Specialty Services. Several other classifications, similar in scope and which require examination, are also being consolidated. Contractors are currently charged a fee based on the number of classifications they request up to 4 classifications. Currently 986 contractors carry between 2-4 of these subclassifications/specialty classifications, consolidation of which will result in a reduction in estimated revenue to the LSLBC of \$136,990 and a subsequent savings to contractors. As estimated, 658 contractors with two affected classifications will realize a reduction in fees of \$95; 200 contractors with 3 affected classifications will realize a reduction in fees of \$190; and 128 contractors with 4 or more affected classifications will realize a reduction in fees of \$285.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Contractors will be positively impacted by a reduction in fees while retaining the number of classifications that they desire.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The changes to these rules have no anticipated impact on competition and employment.

Judy Dupuy  
Board Administrator  
2308#059

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

Adult Residential Care Providers  
Licensing Standards  
(LAC 48:I.6831 and 6832)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.6831 and 6832 as authorized by R.S. 36:254 and R.S. 40:2166.1-2166.8. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 367 of the 2023 Regular Session of the Louisiana Legislature directs the Department of Health to amend the licensing standards for certain inpatient healthcare facilities in order to establish minimum requirements for visitation, including during a declared public health emergency (PHE). In compliance with Act 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of adult residential care providers in order to update the requirements for visitation by members of the clergy, immediate family members, and other designated persons during a declared PHE.

**Title 48**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 68. Adult Residential Care Providers**

**Subchapter B. Administration and Organization**

**§6831. Visitation by Members of the Clergy during a Declared Public Health Emergency**

A. - H. ...

I. Subject to the requirements of §6831.E-G, each ARCP shall allow members of the clergy to visit residents of the ARCP during a declared PHE when a resident, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. - 2. ...

3. An ARCP's policy and procedure on clergy visitation, at a minimum, requires the following:

a. that the ARCP shall give special consideration and priority for clergy visitation to residents receiving end-of-life care;

b. that a clergy member may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention (CDC), as applicable; if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods, or protocols, then the ARCP shall utilize those methods and protocols;

c. that a clergy member may not be allowed to visit an ARCP resident if such clergy member has obvious signs or symptoms of an infectious agent, or infectious disease, or if such clergy member tests positive for an infectious agent, or infectious disease;

d. that a clergy member may not be allowed to visit an ARCP resident if the clergy member refuses to comply with the provisions of the ARCP's policy and procedures or refuses to comply with the ARCP's reasonable time, place, and manner restrictions;

e. that a clergy member may be required to wear PPE as determined appropriate by the ARCP, considering the resident's medical condition or clinical considerations; at the ARCP's discretion PPE may be made available by the ARCP to clergy members.

f. that an ARCP's policy and procedure include provisions for compliance with a Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

g. that the resident shall have the right to consensual, nonsexual physical contact such as hand holding or hugging with a member of the clergy; and

h. that an ARCP's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in ARCPs issued by any federal government agency during a declared PHE.

4. An ARCP shall submit a written copy of its visitation policies and procedures on clergy member visitation, to the Health Standards Section of the Department of Health (LDH) at the initial licensure survey.

5. After licensure, the facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. An ARCP shall within 24 hours after establishing its written policies and procedures on clergy member visitation, make its written policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1500 (October 2021), amended LR 49:

**§6832. Visitation by Immediate Family Members and Other Designated Persons during a Declared Public Health Emergency**

A. A licensed ARCP shall comply with any federal law, regulation, requirement, order, or guideline regarding visitation in ARCPs issued by any federal government agency during a declared PHE. The provisions of the licensing rules in §6832.B-E shall be preempted by any federal statute, regulation, requirement, order or guideline from a federal government agency that requires an ARCP to restrict resident visitation in a manner that is more restrictive than the rules.

B. - D. ...

E. Subject to the requirements of §6832.A-C, each ARCP shall allow immediate family members and other designated persons to visit a resident of the ARCP during a declared PHE when a resident, or his legal or designated representative, requests a visit with immediate family members and other designated persons, subject to the following conditions and requirements:

1. - 2. ...

3. An ARCP's policy and procedure on visitation by immediate family members and other designated persons, at a minimum, requires the following:

a. that the ARCP shall give special consideration and priority for visitation by immediate family members and other designated persons to residents receiving end-of-life care;

b. that visitation by immediate family members of the residents and other designated persons may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the CDC, as applicable; if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the ARCP shall utilize those methods and protocols;

c. that an immediate family member or other designated person may not be allowed to visit an ARCP resident if such immediate family member or other designated person has obvious signs or symptoms of an infectious agent or infectious disease, or if such immediate family member or other designated person tests positive for an infectious agent or infectious disease;

d. that an immediate family member or other designated person may not be allowed to visit an ARCP resident if the immediate family member or other designated persons refuses to comply with the provisions of the ARCP's policy and procedure or refuses to comply with the ARCP's reasonable time, place, and manner restrictions;

e. that immediate family members and other designated persons may be required to wear PPE as determined appropriate by the ARCP, considering the resident's medical condition or clinical consideration; at the ARCP's discretion, PPE may be made available by the ARCP to immediate family members and other designated persons;

f. that an ARCP's policy and procedure include provisions for compliance with a Louisiana SHO order or

emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

g. that the resident and an immediate family member or other designated person shall have the right to consensual, nonsexual physical contact such as hand holding or hugging; and

h. that an ARCP's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in ARCPs issued by any federal government agency during a declared PHE.

4. An ARCP shall submit a written copy of its visitation policies and procedures on family members and other designated persons' visitation, to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. An ARCP shall within 24 hours after establishing its written policies and procedures on family members and other designated persons' visitation, make its written policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1500 (October 2021), amended LR 49:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring that the requirements for visitation during a declared public health emergency by clergy, immediate family members, and other persons designated by residents of the facility comply with legislative mandates.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

**Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

**Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

**Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

**Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Adult Residential Care Providers  
Licensing Standards**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$1,080 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect revenue collections as this measure has no impact on licensing fees.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing the licensing of adult residential care providers (ARCPs) in order to update the requirements for visitation by members of the clergy, immediate family members, and other designated persons during a declared public health emergency (PHE), in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule will be beneficial to ARCPs and residents of the facility by ensuring that the requirements for visitation by clergy, immediate family and other persons during a PHE comply with legislative mandates. It is anticipated that implementation of this proposed rule will not result in costs to ARCPs for FY 23-24, FY 24-25, and FY 25-26.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2308#043

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

Ambulatory Surgical Center  
Licensing Standards  
(LAC 48:I.Chapter 45)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 45 as authorized by R.S. 36:254 and R.S. 40:2131-2141. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 35 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to require licensed healthcare facilities that provide any surgical procedure using heat-producing equipment to adopt and implement policies for a surgical smoke plume evacuation plan to mitigate and remove the surgical smoke plume. In compliance with Act 35, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of ambulatory surgical centers (ASCs) in order to require ASCs to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 45. Ambulatory Surgical Center**

**Subchapter A. General Provisions**

**§4503. Definitions**

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*Surgical Smoke Plume*-the byproduct of using heat-producing equipment on tissue during surgery.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and 40:2131-2141.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1732 (September 2017), amended LR 49:

**§4507. Initial Licensure Application Process**

- A. ...
- B. The initial licensing application packet shall include:
  - 1. - 4. ...
  - 5. proof of each insurance coverage as follows:
    - a. - b. ...

c. professional liability insurance of at least \$100,000 per occurrence/\$300,000 per annual aggregate, or proof of self-insurance of at least \$100,000, along with proof of enrollment as a qualified health care provider with the Louisiana Patient's Compensation Fund (PCF):

i. if the ASC is not enrolled in the PCF, professional liability limits shall be \$1 million per occurrence/\$3 million per annual aggregate; and

B.5.d. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1734 (September 2017), amended LR 49:

#### **§4515. Renewal of License**

A. The ASC shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet shall include:

1. - 5. ...

6. proof of each insurance coverage as follows:

a. - b. ...

c. professional liability insurance of at least \$100,000 per occurrence/\$300,000 per annual aggregate, or proof of self-insurance of at least \$100,000, along with proof of enrollment as a qualified health care provider with the Louisiana Patient's Compensation Fund (PCF):

A.6.c.i. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1736 (September 2017), amended LR 49:

### **Subchapter F. Safety, Sanitization and Emergency Preparedness**

#### **§4575. General Provisions**

A. The ASC shall have policies and procedures, approved and implemented by the medical staff and governing body, that address provisions for:

1. sanitizing, disinfecting and sterilizing supplies, equipment and utensils;

2. the safe use of cleaning supplies and solutions that are to be used and the directions for use, including:

a. ...

b. cleaning of the OR/procedure rooms between surgical and nonsurgical procedures; and

3. surgical smoke plume evacuation to mitigate and remove surgical smoke plume during a surgical procedure that uses heat-producing equipment, including but not limited to electrosurgery and lasers.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1752 (September 2017), amended LR 49:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Ambulatory Surgical Center Licensing Standards**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$756 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect revenue collections as this measure has no impact on licensing fees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the licensing of ambulatory surgical centers (ASCs) in order to require ASCs to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, in compliance with Act 35 of the 2023 Regular Session of the Louisiana Legislature. It is anticipated that implementation of this proposed rule may result in an indeterminable impact to ambulatory surgical centers for FY 23-24, FY 24-25, and FY 25-26, as a result of policies the providers may adopt and implement to address evacuation of the surgical smoke plume.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2308#044

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

Crisis Receiving Centers  
Licensing Standards  
(LAC 48:I.5303)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.5303 as authorized by R.S. 36:254 and R.S. 40:2180.11 et seq. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 363 of the 2023 Regular Session of the Louisiana Legislature allows coroners and deputy coroners who are physicians to execute emergency certificates via actual examination or telemedicine examinations. In compliance with Act 363, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of crisis receiving centers in order to update the definitions to appropriately reflect the providers who may execute a coroner's or physician's emergency certificate.

**Title 48  
PUBLIC HEALTH—GENERAL  
Part I. General Administration  
Subpart 3. Licensing and Certification  
Chapter 53. Level III Crisis Receiving Centers  
Subchapter A. General Provisions  
§5303. Definitions**

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*Coroner's Emergency Certificate (CEC)*—a certificate issued by the coroner or his/her deputy pursuant to R.S. 28:53, or current law.

\*\*\*

*PEC*—Repealed.

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*Physician's Emergency Certificate (PEC)*—an emergency certificate executed by a physician, physician assistant, psychiatric mental health nurse practitioner, or other nurse practitioner, or psychologist pursuant to R.S. 28:53, or current law.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and R.S. 40:2180.11 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:102 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 47:472 (April 2021), LR 48:301 (February 2022), LR 49:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

**Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

**Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

**Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

**Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public

hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Crisis Receiving Centers  
Licensing Standards**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$432 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that the implementation of this proposed rule will not affect federal revenue collections as this measure has no impact on licensing fees.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This proposed rule amends the provisions governing the licensing of crisis receiving centers in order to update the definitions to appropriately reflect the providers who may execute a coroner's or physician's emergency certificate, in compliance with Act 363 of the 2023 Regular Session of the Louisiana Legislature. Act 363 allows coroners and deputy coroners who are physicians to execute these certificates via actual examination or telemedicine examinations. Implementation of this proposed rule is not anticipated to result in costs to providers in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by ensuring that the providers who may execute a coroner's or physician's emergency certificate are accurately reflected in the *Louisiana Administrative Code*.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2308#045

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

Disproportionate Share Hospital Payments  
Reimbursement Methodology  
(LAC 50:V.2901 and 2903)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.2901 and §2903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the

provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing disproportionate share hospital (DSH) payments to increase the reimbursement for DSH eligible services provided by hospitals through a cooperative endeavor agreement with the Office of Behavioral Health (OBH) in order to align the payment rate for OBH-approved DSH days to the Medicaid inpatient psychiatric per diem rate on file for free-standing psychiatric hospitals.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part V. Hospital Services**

**Subpart 3. Disproportionate Share Hospital Payments  
Chapter 29. Public-Private Partnerships  
§2901. Qualifying Criteria**

A. Free-Standing Psychiatric Hospitals. Effective for dates of service on or after January 1, 2013, a free-standing psychiatric hospital may qualify for this category by being:

1. a Medicaid enrolled non-state privately owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. - b. ...

2. a Medicaid enrolled non-state publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. - b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:2259 (November 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

**§2903. Reimbursement Methodology**

A. - A.2. ...

B. Effective for dates of service on or after December 1, 2023, payment for DSH eligible services provided through a cooperative endeavor agreement with the Department of Health shall be equal to the Medicaid per diem rate on file for free-standing psychiatric hospitals.

1. Cost and lengths of stay will be reviewed for reasonableness before payments are made. Reasonableness will be determined at the sole discretion of the department. Payments shall be made on a monthly basis.

2. Payment for DSH eligible services at the Medicaid rate shall be contingent on qualifying hospitals maintaining and timely submitting all department required documentation for DSH eligible services throughout the review and audit process.

3. Payments shall be limited to \$552.05 per day if the department determines that the qualifying hospital is not maintaining or timely submitting the required documentation for DSH eligible services throughout the review and audit process.

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

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

40:2259 (November 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:323 (February 2017), LR 49:

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

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service and will have no impact on the total direct and indirect cost to the provider to provide the same level of service, but may enhance the provider's ability to provide the same level of service as described in HCR 170, since this proposed Rule increases payments for the services they already render.

#### **Public Comments**

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are

invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Disproportionate Share Hospital Payments—Reimbursement Methodology**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$716,191 for FY 23-24, \$1,214,293 for FY 24-25, and \$1,214,293 for FY 25-26. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that implementation of this proposed rule will increase federal revenue collections by approximately \$1,498,705 for FY 23-24, \$2,581,560 for FY 24-25, and \$2,581,560 for FY 25-26. It is anticipated that \$324 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing disproportionate share hospital (DSH) payments to increase the reimbursement for DHS eligible services provided by hospitals through a cooperative endeavor agreement with the Office of Behavioral Health in order to align the payment rate for OBH-approved DSH days to the Medicaid inpatient psychiatric per diem rate on file for free-standing psychiatric hospitals. Implementation of this proposed rule is anticipated to increase Medicaid payments to qualifying hospitals by \$2,214,248 for FY 23-24, \$3,795,853 for FY 24-25, and \$3,795,853 for FY 25-26.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2308#046

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health Bureau of Health Services Financing**

Hospice Licensing Standards  
(LAC 48:I.8201, 8259, and 8561)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.8201 and adopt §8259 and §8261 as authorized by R.S. 36:254 and R.S. 40:2181-2192. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 367 of the 2023 Regular Session of the Louisiana Legislature directs the Department of Health to amend the licensing standards for certain inpatient healthcare facilities in order to establish the minimum requirements for visitation, including during a declared public health emergency. House Resolution 152 of the 2023 Regular Session of the Louisiana Legislature requires the department to amend the administrative Rule governing the geographic location of hospice providers to authorize such providers to serve patients in any parish within a 50 mile radius of their geographic location. In compliance with Act 367 and HR 152, the Department of Health, Bureau of Health Services Financing, proposes to amend the provisions governing the licensing of hospice providers to adopt guidelines for visitation during a declared public health emergency by clergy, immediate family members and other designated persons, and to revise the definition of geographic area to specify any parish within a 50 mile radius of the hospice premises.

#### **Title 48**

#### **PUBLIC HEALTH—GENERAL**

#### **Part I. General Administration**

#### **Subpart 3. Licensing and Certification**

#### **Chapter 82. Minimum Standards for Licensure of Hospice Agencies**

#### **Subchapter A. General Provisions**

#### **§8201. Definitions**

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

\* \* \*

*Geographic Area*—area around location of licensed agency that includes any parish within 50 mile radius of the hospice premises. Each hospice shall designate the geographic area in which the agency will provide services.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 15:482 (June 1989), amended LR 24:2257 (December 1998), amended by the Department of Health, Bureau of Health Services Financing, LR 44:588 (March 2018), LR 46:344 (March 2020), LR 47:1307 (September 2021), LR 49:

#### **Subchapter E. Hospice Inpatient Facility**

#### **§8259. Visitation by Members of the Clergy during a Declared Public Health Emergency**

A. For purposes of §8259 and §8261, a public health emergency (PHE) is a declaration made pursuant to the Louisiana Health Emergency Powers, R.S. 29:790 et seq., or current law.

B. For purposes of this Section, clergy shall be defined as follows:

1. a minister, priest, preacher, rabbi, imam, Christian Science practitioner; or
2. other similar functionary of a religious organization; or
3. an individual reasonably believed to be such a clergy member by the person consulting him.

C. For purposes of §8259 and §8261, patient shall mean a patient of a licensed inpatient hospice in Louisiana, or the legal or designated representative of the patient.

D. A licensed inpatient hospice shall comply with any federal law, regulation, requirement, order or guideline regarding visitation in an inpatient hospice issued by any federal government agency during a declared PHE. The provisions of the licensing rules in §8259.E-H shall be preempted by any federal statute, regulation, requirement, order, or guideline from a federal government agency that requires an inpatient hospice to restrict patient visitation in a manner that is more restrictive than the rules.

E. An inpatient hospice shall comply with any Louisiana state health officer (SHO) order or emergency notice regarding visitation in an inpatient hospice during a declared PHE.

F. An inpatient hospice shall comply with an executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in an inpatient hospice during a declared PHE.

G. The provisions of this Section regarding visitation by members of the clergy shall apply to all inpatient hospice facilities licensed by the Department of Health (LDH).

H. Subject to the requirements of §8259.D-F, each inpatient hospice shall allow a member of the clergy to visit patients of an inpatient hospice during a declared PHE when a patient, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. Each inpatient hospice shall have a written policy and procedure addressing visitation by members of the clergy. A copy of the written policy and procedure shall be available, without cost, to the patient and his legal or designated representative, upon request. The inpatient hospice shall provide a link to an electronic copy of the policy and procedure to a member of the clergy, upon request.

2. An inpatient hospice's policy and procedure regarding clergy visitation may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the inpatient hospice, in consultation with appropriate medical personnel, for the purpose of mitigating the possibility of transmission of any infectious agent or infectious disease or for the purpose of addressing the medical condition or clinical consideration of an individual patient.

3. An inpatient hospice's policy and procedure on clergy visitation, at a minimum, requires the following:

a. that a clergy member may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention (CDC), as applicable;

i. if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the inpatient hospice shall utilize those methods and protocols;

b. that a clergy member may not be allowed to visit an inpatient hospice patient if such clergy member has obvious signs or symptoms of an infectious agent or infectious disease, or if such clergy member tests positive for an infectious agent or infectious disease;

c. that a clergy member may not be allowed to visit an inpatient hospice if the clergy member refuses to comply

with the provisions of the inpatient hospice's policy and procedure or refuses to comply with the inpatient hospice's reasonable time, place, and manner restrictions;

d. that a clergy member may be required to wear personal protective equipment (PPE) as determined appropriate by the inpatient hospice, considering the patient's medical condition or clinical considerations;

i. the inpatient hospice's discretion PPE may be made available by the inpatient hospice to clergy members;

e. that an inpatient hospice's policy and procedure include provisions for compliance with a Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

f. that the patient shall have the right to consensual, nonsexual physical contact such as hand holding or hugging with a member of the clergy; and

g. that an inpatient hospice's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in an inpatient hospice issued by any federal government agency during a declared PHE.

4. An inpatient hospice shall submit a written copy of its visitation policies and procedures on clergy member visitation, to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the inpatient hospice shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. An inpatient hospice shall within 24 hours after establishing its written policies and procedures on clergy member visitation, make its written policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

**§8561. Visitation by Immediate Family Members and Other Designated Persons during a Declared Public Health Emergency**

A. For the purposes of this Section, immediate family member shall mean the following in order of priority:

1. spouse;
2. natural or adoptive parent, child, or sibling;
3. stepparent, stepchild, stepbrother, or stepsister;
4. father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, or sister-in-law;
5. grandparent or grandchild;
6. spouse of a grandparent or grandchild; or
7. legal or designated representative of the patient.

B. A licensed inpatient hospice shall comply with any federal law, regulation requirement, order, or guideline regarding visitation in an inpatient hospice issued by any federal government agency during a declared PHE. The provisions of the licensing rules in §8561.C-F shall be preempted by any federal statute, regulation, requirement, order or guideline from a federal government agency that requires an inpatient hospice to restrict patient visitation in a manner that is more restrictive than the rules.

C. Inpatient hospices shall comply with any Louisiana SHO order or emergency notice regarding visitation in inpatient hospices during a declared PHE.

D. Inpatient hospices shall comply with any executive order or proclamation issued by the governor of the state of Louisiana regarding visitation in an inpatient hospice during a declared PHE.

E. The provisions of this Section regarding visitation by immediate family members of the patient and other designated persons, shall apply to all inpatient hospices licensed by LDH.

F. Subject to the requirements of §8561.B-D, each inpatient hospice shall allow immediate family members and other designated persons to visit a patient of the inpatient hospice during a declared PHE when a patient, or his legal or designated representative, requests a visit with immediate family members and other designated persons, subject to the following conditions and requirements:

1. Each inpatient hospice shall have a written policy and procedure addressing visitation by immediate family members and other designated persons. A copy of the written policy and procedure shall be available, without cost, to the patient and his legal or designated representative, upon request. The inpatient hospice shall provide a link to an electronic copy of the policy and procedure to immediate family members and other designated persons, upon request.

2. An inpatient hospice's policy and procedure regarding visitation by immediate family members and other designated persons may adopt reasonable time, place, and manner restrictions, provided that such restrictions are implemented by the inpatient hospice, in consultation with appropriate medical personnel, for the purpose of mitigating the possibility of transmission of any infectious agent or infectious disease or for the purpose of addressing the medical condition or clinical considerations of an individual patient.

3. An inpatient hospice's policy and procedure on visitation by immediate family members and other designated persons, at a minimum, requires the following:

a. that immediate family members of the patient and other designated persons, may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the CDC, as applicable;

i. if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the inpatient hospice shall utilize those methods and protocols;

b. that an immediate family member or other designated person may not be allowed to visit an inpatient hospice inpatient if such immediate family member or other designated person has obvious signs or symptoms of an infectious agent or infectious disease, or if such immediate family member or other designated person tests positive for an infectious agent or infectious disease;

c. that an immediate family member or other designated person may not be allowed to visit an inpatient hospice patient if the immediate family member or other designated person refuses to comply with the provisions of the inpatient hospice's policy and procedure, or refuses to comply with the inpatient hospice's reasonable time, place, and manner restrictions;

d. that the patient and immediate family members and other designated persons may be required to wear PPE as determined appropriate by the inpatient hospice,

considering the patient's medical condition or clinical consideration;

i. at the inpatient hospice's discretion, PPE may be made available by the inpatient hospice to immediate family members and other designated persons;

e. that an inpatient hospice's policy and procedure include provisions for compliance with a Louisiana SHO order or emergency notice and with any governor's executive order or proclamation limiting visitation during a declared PHE;

f. that the patient and an immediate family member or other designated person, shall have the right to consensual, nonsexual physical contact such as hand holding or hugging; and

g. that an inpatient hospice's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in an inpatient hospice issued by any federal government agency during a declared PHE.

4. An inpatient hospice shall submit a written copy of its policies and procedures on immediate family member or other designated person visitation, to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the inpatient hospice shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. An inpatient hospice shall within 24 hours after establishing its written policies and procedures on immediate family member or other designated person visitation, make its written policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2181-2192.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by allowing clergy, immediate family members, and other designated persons to visit hospice patients during a declared public health emergency.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will

have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Hospice Licensing Standards**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$1,512 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections as this measure has no impact on licensing fees.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing the licensing of hospice providers to adopt guidelines for visitation during a declared public health emergency (PHE) by clergy, immediate family members and other designated persons, in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. Additionally, the proposed rule revises the definition of geographic area to specify any parish within a 50 mile radius of the hospice premises, in compliance with House Resolution 152 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule will be beneficial to

hospice patients by allowing visits by clergy, family members and other persons during a declared PHE. It is anticipated that implementation of this proposed rule will not result in costs to hospice providers in FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by establishing standards for visitation during a declared PHE and clarifying the geographic service area.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2308#047

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

Hospital Licensing Standards  
(LAC 48:I.9303, 9336, 9387, and 9443)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 93 and §9443 as authorized by R.S. 36:254, 40:2100-2115, and 29:760. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 540 of the 2022 Regular Session of the Louisiana Legislature established procedures for competent adult victims of sexually oriented criminal offenses to be provided with reproductions of written documentation resulting from their forensic medical exam in the possession of healthcare providers. Act 35 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to require licensed healthcare facilities that provide any surgical procedure using heat-producing equipment to adopt and implement policies for a surgical smoke plume evacuation plan to mitigate and remove the surgical smoke plume. Act 367 of the 2023 Regular Session of the Louisiana Legislature directed the department to amend the licensing standards for certain inpatient healthcare facilities in order to establish minimum requirements for visitation, including during a declared public health emergency (PHE).

In compliance with Acts 540, 35, and 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of hospitals in order to permit competent adult victims of sexually oriented criminal offenses to receive written documentation resulting from their forensic medical exam in the possession of the hospital, to require hospitals to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, and to update the requirements for visitation by members of the clergy during a declared PHE.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 93. Hospitals**

**Subchapter A. General Provisions**

**§9303. Definitions**

A. The following definitions of selected terminology are used in connection with Chapter 93.

\* \* \*

*Surgical Smoke Plume*—the byproduct of using heat-producing equipment on tissue during surgery.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:177 (February 1995), LR 29:2400 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:513 (March 2010), LR 37:3028 (October 2011), LR 38:1413 (June 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1475 (October 2019), LR 49:

**Subchapter B. Hospital Organizations and Services**

**§9336. Visitation by Members of the Clergy during a Declared Public Health Emergency**

A. For purposes of this Section, a public health emergency (PHE) is a declaration made pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or current law.

B. - D. ...

E. Subject to compliance with the requirements of this Section, each hospital shall allow members of the clergy to visit patients of the hospital during a declared PHE when a patient, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. - 2. ...

3. a hospital's policy and procedure on clergy visitation, at a minimum, requires the following:

a. that the hospital shall give special consideration and priority for clergy visitation to patients receiving end-of-life care;

b. that a clergy member may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention, as applicable;

c. that a clergy member may not be allowed to visit a hospital patient if such clergy member has obvious signs or symptoms of an infectious agent or infectious disease, or if such clergy member tests positive for an infectious agent or infectious disease;

d. that a clergy member may not be allowed to visit a hospital patient if the clergy member refuses to comply with the provisions of the hospital's policy and procedure or

refuses to comply with the hospital's reasonable time, place, and manner restrictions;

e. that a clergy member may be required to wear personal protective equipment as determined appropriate by the hospital, considering the patient's medical condition or clinical considerations. At the hospital's discretion, personal protective equipment may be made available by the hospital to clergy members;

f. that a hospital's policy and procedure include provisions for compliance with a state health officer (SHO) order limiting visitation during a declared PHE;

g. that a patient shall have the right to consensual, nonsexual physical contact such as hand holding or hugging with members of the clergy; and

h. that a hospital's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in hospitals during a declared PHE issued by any federal government agency that are more restrictive than this Section.

4. A hospital shall submit a written copy of its visitation policies and procedures to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the hospital shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A hospital shall within 24 hours after establishing its visitation policies and procedures, make its policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 29:760.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 48:1580 (June 2022), amended LR 49:

#### **Subchapter H. Medical Record Services**

##### **§9387. Organization and Staffing**

A. - K. ...

L. Upon request of a competent adult victim of a sexually oriented criminal offense as defined in R.S. 15:622, or current law, the hospital that performed the forensic medical exam shall provide a reproduction of any written documentation which is in the possession of the hospital resulting from the forensic medical exam of the victim.

1. The documentation shall be provided to the victim no later than 14 days after the hospital receives the request or the hospital completes the documentation, whichever is later.

2. The reproduction of written documentation provided for in this Subsection shall be made available at no cost to the victim and may only be released at the direction of the victim who is a competent adult. This release does not invalidate the victim's reasonable expectation of privacy nor does the record become a public record after the release to the victim.

M. A hospital record may be kept in any written, photographic, microfilm, or other similar method or may be kept by any magnetic, electronic, optical or similar form of data compilation which is approved for such use by the department. No magnetic, electronic, optical or similar method shall be approved unless it provides reasonable safeguards against erasure or alteration.

N. A hospital may at its discretion, cause any hospital record or part to be microfilmed, or similarly reproduced, in order to accomplish efficient storage and preservation of hospital records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2415 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **Subchapter L. Surgical Services (Optional)**

##### **§9443. Surgery Suite and Equipment**

A. - E. ...

F. There shall be policies and procedures for a surgical smoke plume evacuation plan to mitigate and remove surgical smoke plume during a surgical procedure that uses heat-producing equipment, including but not limited to electrosurgery and lasers.

1. - 6. Repealed.

G. The emergency equipment in the surgical suite shall include:

1. a communication system that connects each operating room with a control center;
2. cardiac monitor;
3. resuscitator;
4. defibrillator;
5. aspirator (suction equipment); and
6. tracheotomy set.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2420 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by allowing victims of sexually oriented criminal offenses to receive written documentation from their forensic medical exam and ensuring that the requirements for visitation by members of the clergy during a declared public health emergency comply with legislative mandates.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973, since competent adult victims of sexually oriented criminal offenses will not be charged for obtaining written documentation resulting from their forensic medical exam.

#### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

### Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170, but may result in an indeterminable impact on the direct or indirect cost to the provider related to the reproduction of written documentation from the forensic medical exam of competent adult victims of sexually oriented criminal offenses since the documents must be provided at no cost to the patient.

### Public Comments

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

### Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Hospital Licensing Standards

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$1,188 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect revenue collections as this measure has no impact on licensing fees.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the licensing of hospitals in order to permit competent adult victims of sexually oriented offenses to receive written

documentation resulting from their forensic medical exam which is in possession of the hospital, in compliance with Act 540 of the 2022 Regular Session of the Louisiana Legislature. Additionally, the proposed rule complies with Act 35 of the 2023 Regular Session of the Louisiana Legislature by requiring hospitals to adopt and implement policies for a surgical smoke plume evacuation plan for surgical procedures using heat-producing equipment, and also updates the requirements for visitation by members of the clergy during a declared public health emergency (PHE), in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. This proposed rule will be beneficial by allowing competent adult victims of sexually oriented criminal offenses to receive written documentation from their forensic medical exam and ensuring that the requirements for visitation by members of the clergy during a declared PHE comply with legislative mandates. This proposed rule may result in indeterminable costs to hospitals related to reproduction of written documentation from the forensic medical exam for competent adult victims of sexually oriented criminal offenses for FY 23-24, FY 24-25, and FY 25-26, since the documents must be provided at no cost to the patient. There may also be an indeterminable impact as a result of policies the provider may adopt and implement to address evacuation of the surgical smoke plume.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2308#048

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health Bureau of Health Services Financing

Intermediate Care Facilities for Persons with  
Developmental Disabilities—Licensing Standards  
(LAC 48:I.8531 and 8591)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.8531 and §8591 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 367 of the 2023 Regular Session of the Louisiana Legislature directs the Department of Health to amend the licensing standards for certain inpatient healthcare facilities in order to establish the minimum requirements for visitation, including during a declared public health emergency (PHE). In compliance with Act 367, the Department of Health, Bureau of Health Services Financing, proposes to amend the provisions governing the licensing standards of intermediate care facilities for persons with developmental disabilities (ICFs/DD) to update the requirements for visitation by close family members of a resident during a declared PHE.

The department also proposes to adopt provisions requiring the ICF/DD to develop policies and procedures to ensure that residents, family members and/or responsible parties or guardians are notified upon admission of registered sex offenders by the facility.

**Title 48**  
**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 85. Intermediate Care Facilities for Persons  
with Developmental Disabilities**

**Subchapter B. Administration and Organization**

**§8531. Governing Body**

A. - I.10. ...

J. The ICF/DD is not required to admit registered sex offenders; however, if the ICF/DD admits a registered sex offender, then the ICF/DD shall develop policies and procedures to ensure that residents, their family members, and/or their responsible parties or guardians are notified upon admission of sex offenders living in the facilities. Such policies and procedures must include provisions for addressing the safety and well-being of other residents, staff, and visitors. The requirement of notification shall continue for as long as the information is considered a public record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3190 (December 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

**Subchapter F. Provider Responsibilities**

**§8591. Visitation by Close Family Members of a  
Resident during a Declared Public Health  
Emergency**

A. - F. ...

G. Subject to compliance with the requirements of §8591.B-D, each ICF/DD shall allow close family members of the residents to visit a resident of the ICF/DD during a declared PHE when a resident, or his legal or designated representative, requests a visit with close family members of the resident, subject to the following conditions and requirements:

1. - 2. ...

3. An ICF/DD's policy and procedure on visitation by close family members shall, at a minimum, require the following:

a. that the ICF/DD shall give special consideration and priority for visitation by close family members and other designated persons to residents receiving end-of-life care;

b. that visitation by close family members and other designated persons may be screened for infectious agents or infectious diseases and will pass such screening prior to each visitation, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention, as applicable; if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the ICF/DD shall utilize those methods and protocols;

c. that a close family member or other designated person may not be allowed to visit an ICF/DD resident if such close family member or other designated person has obvious signs or symptoms of an infectious agent or infectious disease, or if such close family member or other designated person tests positive for an infectious agent or infectious disease;

d. that a close family member or other designated person may not be allowed to visit an ICF/DD resident if the

close family member and other designated person refuses to comply with the provisions of the ICF/DD's policy and procedure or refuses to comply with the ICF/DD's reasonable time, place, and manner restrictions;

e. that close family members and other designated persons may be required to wear personal protective equipment as determined appropriate by the ICF/DD, considering the resident's medical condition or clinical considerations;

e.i. - f. ...

g. that an ICF/DD's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines issued by any federal government agency regarding visitation in ICF/DDs during a declared PHE;

h. that the resident and close family members shall have the right to consensual, nonsexual physical contact such as hand holding or hugging; and

i. that includes provisions for off-site visitation, allowing a close family member to visit an ICF/DD resident away from the facility campus; the policy and procedure shall include requirements for allowing the resident to return to the facility upon certain conditions, such as meeting testing and isolation requirements recommended by the CDC, the Centers for Medicare and Medicaid Services (CMS), a Louisiana SHO order or emergency notice, or a governor's executive order or proclamation.

4. An ICF/DD shall submit a written copy of its visitation policies and procedures on close family member visitation, to the Health Standards Section surveyors of the LDH at the initial licensure survey.

5. After licensure, an ICF/DD shall make its visitation policies and procedures available for review by the Department of Health at any time, upon request.

6. An ICF/DD shall within 24 hours after establishing its written policies and procedures on close family member visitation, make its written policies and procedures easily accessible from the home page of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1308 (September 2021), amended LR 49:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring that the requirements for visitation by close family members of an ICF/DD resident during a declared public health emergency comply with legislative mandates.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

**Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses

has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

#### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Intermediate Care Facilities for Persons with Developmental Disabilities—Licensing Standards**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$864 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections as this measure has no impact on licensing fees.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing the licensing of intermediate care facilities for persons with developmental disabilities (ICFs/DD) in order to update the requirements for visitation by close family members of a resident during a declared public health emergency (PHE) in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. Additionally, the proposed rule adopts provisions requiring ICFs/DD to develop policies and procedures to ensure that residents, family members and/or responsible parties or guardians are notified upon admission of registered sex offenders by the facility. The proposed rule will be beneficial to ICF/DD residents and providers by ensuring that the requirements for visitation by close family members of the resident during a PHE and notification of registered sex offender admission by the facility comply with legislative mandates. It is anticipated that implementation of this proposed rule will not result in costs to ICFs/DD in FY 23-24, FY 24-25, and FY 25-26.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2308#049

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health Bureau of Health Services Financing**

Medicaid Reimbursement for Licensed Midwife or Certified  
Nurse Midwife Services  
(LAC 50:IX.15161, 15163 and XV.27101)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15161 and §15163, and amend LAC 50:XV.27101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 207 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to implement a Medicaid reimbursement rate for midwifery services that is, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice. In compliance with Act 207, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amended the provisions governing free-standing birthing centers to increase the reimbursement rate for services rendered by these providers

(Louisiana Register, Volume 49, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the August 1, 2023 Emergency Rule.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part IX. Professional Services Program**

##### **Subpart 15. Reimbursement**

#### **Chapter 151. Reimbursement Methodology**

##### **Subchapter G. Midwifery Services**

##### **§15161. General Provisions**

A. Certified nurse midwives and licensed midwives shall be reimbursed as a percentage of physician reimbursement according to the established fee schedule.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

##### **§15163. Reimbursement Methodology**

A. Effective for dates of service on or after August 1, 2023, services related to pregnancy and childbirth provided by certified nurse midwives (including licensed midwives), shall be reimbursed at 95 percent of the physician fee on file.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

#### **Part XV. Services for Special Populations**

##### **Subpart 18. Free-Standing Birthing Centers**

#### **Chapter 271. Reimbursement**

##### **§27101. Reimbursement Methodology**

A. - A.3. ...

B. Effective for dates of service on or after August 1, 2023, the reimbursement amounts for certified nurse midwives and licensed nurse midwives will be as follows:

1. certified nurse midwives providing birthing services within a FSBC shall be reimbursed at 95 percent of the published fee schedule rate for physician services rendered in the Professional Services Program; and

2. licensed midwives providing birthing services within a FSBC shall be reimbursed at 95 percent of the published fee schedule rate for physician services in the Professional Services Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:2360 (November 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

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

##### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972, since it will ensure that beneficiaries have continued access to care by licensed midwives and certified nurse midwives.

##### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

##### **Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have a positive impact on small businesses, since it increases reimbursement to providers of midwifery services.

##### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170, since this proposed Rule increases payments to providers for the services they already render.

##### **Public Comments**

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

##### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Medicaid Reimbursement for Licensed Midwife or Certified Nurse Midwife Services**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$44,085 for

FY 23-24, \$61,155 for FY 24-25, and \$62,989 for FY 25-26. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will increase federal revenue collections by approximately \$167,096 for FY 23-24, \$228,125 for FY 24-25, and \$234,969 for FY 25-26. It is anticipated that \$270 will be collected in FY 23-24 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the August 1, 2023 Emergency Rule, which adopted provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amended the provisions governing free-standing birthing centers to increase the reimbursement rate for services rendered by these providers, in compliance with Act 207 of the 2023 Regular Session of the Louisiana Legislature. The Act requires that the Medicaid reimbursement rate for midwifery services be, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice. This proposed rule will ensure that Medicaid beneficiaries have continued access to these services. Implementation of this proposed rule is anticipated to increase reimbursement to licensed midwives and certified nurse midwives by \$210,641 for FY 23-24, \$289,280 for FY 24-25, and \$297,958 for FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc  
Medicaid Executive Director  
2308#050

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

**Nurse Aide Training and Competency Evaluation Program  
(LAC 48:I.10001 and 10033)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.10001 and §10033 as authorized by R.S. 36:254. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 80 of the 2023 Regular Session of the Louisiana Legislature revised the qualifications for certified nurse aides (CNAs) to permit individuals who successfully complete one semester of a registered or practical nursing program, which includes a course on foundational nursing skills, to apply to take an approved nurse aide competency evaluation examination and after successfully passing the examination the CNA is allowed to register with the Louisiana Certified Nurse Aide Registry without completing

a nurse aide training program. In compliance with Act 80, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the Nurse Aide Training and Competency Evaluation Program in order to update the qualifications for certified nurse aides to allow certification of individuals who have successfully completed a semester of a registered or practical nursing program, which includes a course on foundational nursing skills, to take an approved nurse aide competency evaluation examination and to update the registration requirements for the Louisiana Certified Nurse Aide Registry.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 100. Nurse Aide Training and Competency  
Evaluation Program**

**Subchapter A. General Provisions**

**§10001. Definitions**

\*\*\*

*Certified Nurse Aide*—an individual who meets one of the following requirements and is listed as certified and in good standing on the Louisiana Certified Nurse Aide Registry (LCNAR):

1. has completed a nurse aide training and competency evaluation program (NATCEP) approved by the state as meeting the requirements of 42 Code of Federal Regulations (CFR) 483.151-483.154; or

2. has been determined competent as provided in 42 CFR 483.150(a) and (b); or

3. has successfully completed one semester of a registered or practical nursing program, which includes a course on foundational nursing skills, and has successfully passed an approved nurse aide competency evaluation examination.

\*\*\*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2074 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1242 (May 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

**Subchapter C. Louisiana Certified Nurse Aide Registry**

**§10033. General Provisions**

A. The Department of Health (LDH) shall develop and maintain the Louisiana Certified Nurse Aide Registry (LCNAR) for individuals who have successfully completed a nurse aide training and/or competency evaluation program. Each individual listed on the LCNAR will have the following information maintained and retrievable:

A.1. - D. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1246 (May 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

### Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

### Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

### Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on direct or indirect cost to the provider to provide the same level of service, but may have a positive impact on the staffing level requirements and qualifications and on the provider's ability to provide the same level of service as described in HCR 170, since the proposed Rule permits another option for nurse aides to become certified and to register with the Louisiana Certified Nurse Aide Registry.

### Public Comments

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

### Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Nurse Aide Training and Competency Evaluation Program

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$540 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections as this measure has no impact on licensing fees.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the Nurse Aide Training and Competency Evaluation Program in order to update the qualifications for certified nurse aides (CNAs) to allow certification of individuals who have successfully completed a semester of a registered or practical nursing program, which includes a course on foundational nursing skills, to take an approved nurse aide competency evaluation examination and after successfully passing the examination the CNA is allowed to register with the Louisiana Certified Nurse Aide Registry, in compliance with Act 80 of the 2023 Regular Session of the Louisiana Legislature. It is anticipated that this proposed rule will not result in costs to providers for FY 23-24, FY 24-25, and FY 25-26, but will be beneficial by adding another method for certification which may expand the potential pool of CNAs available for employment.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule is expected to have a positive effect on employment, as it provides another method for nurse aides to become certified and listed on the Louisiana Certified Nurse Aide Registry.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2308#051

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health Bureau of Health Services Financing

Nursing Facilities  
Licensing Standards  
(LAC 48:1.9767, 9769, and 9771)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:1.Chapter 97 as authorized by R.S. 36:254 and R.S. 40:2009.2-2116. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 3 of the 2023 Regular Session of the Louisiana Legislature allows the Department of Health the option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan. Act 367 of the 2023 Regular Session of the Louisiana Legislature directed the department to amend the licensing standards for certain inpatient healthcare facilities in order to establish the minimum requirements for visitation, including during a declared public health emergency (PHE). In compliance with Acts 3 and 367, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the licensing of nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness plan and to amend the provisions governing visitation by clergy, immediate family members and other designated persons during a declared PHE.

#### **Title 48**

#### **PUBLIC HEALTH—GENERAL**

#### **Part I. General Administration**

#### **Subpart 3. Licensing and Certification**

#### **Chapter 97. Nursing Facilities**

#### **Subchapter B. Organization and General Services**

#### **§9767. Emergency Preparedness**

A. - A.5. ...

B. Emergency Preparedness Plan Approval Process

1. - 4.b....

5. Revision and Resubmission of Emergency Preparedness Plan

a. - b. ...

c. The department shall review the nursing home's updated and revised emergency preparedness plan to confirm that all required changes, amendments, or revisions have been incorporated into the plan, and it shall approve the emergency preparedness plan and issue an approval letter to the nursing home. If the required changes, amendments, or revisions have not been incorporated, the department shall reject the emergency preparedness plan and issue a letter of rejection to the nursing home. The department may revoke or deny renewal of a license to a nursing home that has received a letter of rejection of its emergency preparedness plan.

6. - 8.f. ...

9. Annual Review of Emergency Preparedness Plan

a. - f.iv. ...

(a). The department may revoke or deny renewal of a license to a nursing home that has received a letter of rejection of its emergency preparedness plan.

B.9.v. - K.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.2-2009.44.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 42:1905 (November 2016), amended LR 48:1290 (May 2022), LR 49:1076 (June 2023), LR 49:

#### **§9769. Visitation by Members of the Clergy during a Declared Public Health Emergency**

A. For purposes of §9769 and §9771, a public health emergency (PHE) is a declaration made pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or current law

B. - H. ...

I. Subject to the requirements of §9769.E-G, each nursing facility shall allow members of the clergy to visit residents of the nursing facility during a declared public health emergency (PHE) when a resident, or his legal or designated representative, requests a visit with a member of the clergy, subject to the following conditions and requirements:

1. - 2. ...

3. A nursing facility's policy and procedure on clergy visitation, at a minimum, requires the following:

a. that the nursing facility shall give special consideration and priority for clergy visitation to residents receiving end-of-life care;

b. that a clergy member may be screened for infectious agents or infectious diseases, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention, as applicable; if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the nursing facility shall utilize those methods and protocols;

c. that a clergy member may not be allowed to visit a nursing facility resident if such clergy member has obvious signs or symptoms of an infectious agent or infectious disease, or if such clergy member tests positive for an infectious agent or infectious disease;

d. that a clergy member may not be allowed to visit a nursing facility resident if the clergy member refuses to comply with the provisions of the nursing facility's policy and procedure or refuses to comply with the nursing facility's reasonable time, place, and manner restrictions; and

e. that a clergy member may be required to wear personal protective equipment as determined appropriate by the nursing facility, considering the resident's medical condition or clinical considerations; at the nursing facility's discretion, personal protective equipment may be made available by the nursing facility to clergy members.

f. ...

g. that a resident shall have the right to consensual, nonsexual physical contact such as hand holding or hugging with a member of the clergy; and

h. that a nursing facility's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency.

4. A nursing facility shall submit a written copy of its visitation policies and procedures to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the nursing facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A nursing facility shall within 24 hours after establishing its visitation policies and procedures, make its policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.2-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1309 (September 2021), amended LR 49:

**§9771. Visitation by Immediate Family Members and Other Designated Persons during a Declared Public Health Emergency**

A. - D. ...

E. Subject to the requirements of §9771.A-C, each nursing facility shall allow immediate family members and other designated persons to visit a resident of the nursing facility during a declared public health emergency (PHE) when a resident, or his legal or designated representative, requests a visit with immediate family members and other designated persons, subject to the following conditions and requirements:

1. - 2. ...

3. A nursing facility's policy and procedure on visitation by immediate family members and other designated persons, at a minimum, requires the following:

a. that the nursing facility shall give special consideration and priority for visitation by immediate family members and other designated persons to residents receiving end-of-life care;

b. that visitation by immediate family members of the residents and other designated persons may be screened for infectious agents or infectious diseases and will pass such screening prior to each visitation, utilizing at least the current screening or testing methods and protocols recommended by the Centers for Disease Control and Prevention, as applicable; if there is a current Louisiana SHO order or emergency notice that requires more rigorous screening or testing methods and protocols, then the nursing facility shall utilize those methods and protocols;

c. that an immediate family member or other designated person may not be allowed to visit a nursing facility resident if such immediate family member or other designated person has obvious signs or symptoms of an infectious agent or infectious disease, or if such immediate family member or other designated person tests positive for an infectious agent or infectious disease;

d. that an immediate family member or other designated person may not be allowed to visit a nursing facility resident if the immediate family member or other designated person refuses to comply with the provisions of the nursing facility's policy and procedure or refuses to comply with the nursing facility's reasonable time, place, and manner restrictions;

e. that immediate family members and other designated persons may be required to wear personal protective equipment as determined appropriate by the nursing facility, considering the resident's medical condition or clinical considerations; at the nursing facility's discretion, personal protective equipment may be made available by the nursing facility to immediate family members and other designated persons;

f. ...

g. that a nursing facility's policy and procedure include provisions for compliance with any federal law, regulations, requirements, orders, or guidelines regarding visitation in nursing facilities issued by any federal government agency during a declared public health emergency;

h. that includes provisions for off-site visitation, allowing an immediate family member or other designated person to visit a nursing facility resident away from the facility campus; and

i. that a resident and an immediate family member or other designated person shall have the right to consensual, nonsexual physical contact such as hand holding or hugging.

4. A nursing facility shall submit a written copy of its visitation policies and procedures to the Health Standards Section of LDH at the initial licensure survey.

5. After licensure, the nursing facility shall make its visitation policies and procedures available for review by LDH at any time, upon request.

6. A nursing facility shall within 24 hours after establishing its visitation policies and procedures, make its policies and procedures easily accessible from the homepage of its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.2-2116.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:1310 (September 2021), amended LR 49:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by ensuring that the requirements for visitation by clergy, immediate family members, and other persons designated by nursing facility residents during a declared public health emergency comply with legislative mandates.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

**Small Business Analysis**

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

**Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, but may impact the provider's ability to provide the same level of service as described in HCR 170 if the nursing facility receives a letter of rejection of its emergency preparedness plan and LDH chooses to revoke or deny renewal of its license.

**Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The

deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

**Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on September 28, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Nursing Facilities  
Licensing Standards**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$1,296 will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections as this measure has no impact on licensing fees.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule amends the provisions governing the licensing of nursing facilities to reflect the department's option to revoke or deny renewal of the license of a facility that has received a letter of rejection of its emergency preparedness, in compliance with Act 3 of the 2023 Regular Session of the Louisiana Legislature. The proposed rule also amends the provisions governing visitations by clergy, immediate family and other designated persons during a declared public health emergency (PHE), in compliance with Act 367 of the 2023 Regular Session of the Louisiana Legislature. This will be beneficial to nursing facility residents and providers by ensuring that the requirements for visitation by clergy, immediate family and other designated persons during a declared PHE comply with legislative mandates. It is anticipated that implementation of this proposed rule will not result in costs to nursing facilities in FY 23-24, FY 24-25, and FY 25-26, but may adversely impact facilities that receive letters of rejection of their emergency preparedness plans if the department elects to revoke or deny renewal of the facility's license.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2308#052

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Office

**NOTICE OF INTENT**

**Department of Health  
Office of Public Health**

**Registration of Foods, Drugs, Cosmetics and  
Prophylactic Devices (LAC 49:I.Chapter 5)**

The Department of Health, Office of Public Health (LDH/OPH), pursuant to rulemaking authority granted by R.S. 3:1483(L), hereby amends the following Rule for the protection of public health. This Rule is promulgated specifically in accordance with R.S. 49:962 of the Administrative Procedure Act (R.S. 49:950, et seq.).

This proposed Rule is necessary to prevent imminent peril to the public health, safety, or welfare and is also done pursuant to the express statutory authority granted by La. R.S. 3:1483(L). Current LDH/OPH rules in LAC 49 Chapter 5 concerning the registration of consumable hemp products do not explicitly prohibit the registration of products utilizing dosage vehicles designed or intended for other than oral consumption or topical use, or require that applicants submit any documentation concerning same. This proposed Rule will provide LDH/OPH with explicit authority concerning dosage vehicles to: i) require proof that consumable hemp products for which registration is sought are not designed or intended for other than oral consumption or topical use, or to facilitate same, ii) deny requested registration of consumable hemp products that are designed or intended for other than oral consumption or topical use, or to facilitate same, and iii) authorize LDH/OPH to revoke the registration of consumable hemp products that are designed or intended for other than oral consumption or topical use, or to facilitate same.

This proposed Rule also provides that a consumable hemp product packaged, labeled, or marketed in a manner that physically or functionally combines individual servings, resulting in a functional or suggested product serving size that exceeds eight milligrams of total THC per serving, shall not be registered and shall be subject to revocation of registration. The proposed Rule also speaks specifically to the topic of "serving", and includes streamlined requirements for registration and registration renewal.

**Title 49**

**PUBLIC HEALTH—FOOD, DRUGS,  
AND COSMETICS**

**Part I. Regulations**

**Chapter 5. Registration of Foods, Drugs, Cosmetics  
and Prophylactic Devices**

**§501. Definitions**

**[Formerly 49:2.2100]**

A. ...

\* \* \*

*E-Cigarette*—a battery-operated device that is typically designed to resemble a traditional cigarette and is used to inhale a (usually nicotine-containing) vapor atomized by the device’s heating element.

\* \* \*

*Vape Cartridge*—the part of a vape pen containing the liquid to be inhaled by the user.

*Vape Pen*—a type of e-cigarette.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1483(L), R.S. 40:4(A)(13), R.S. 40:5(A)(8)(17) and R.S. 40:604.

HISTORICAL NOTE: Adopted by the Louisiana State Board of Health, September 1968, amended by the Department of Health, Office of Public Health, LR 46:358 (March 2020), amended LR 47:479 (April 2021), amended LR 48:1290 (May 2022), amended by the Department of Health, Office of Public Health, LR 49:

### **§517. Registration of Consumable Hemp Products**

A. - B. ...

C. In lieu of the annual examination and administration charge normally collected under R.S. 40:628(B), the applicant for a consumable hemp product registration must provide (both initially and on or before July 1 of each year) the department with a packet that includes:

1. a completed application form;
2. a cashier’s check, money order, or electronic payment made payable to the department in the amount of \$50 per each separate and distinct product;
3. specimen copies of labeling for each separate and distinct product in electronic format;
4. laboratory accreditation verification documentation;
5. laboratory certificate of analysis (COA) for each separate and distinct product;
6. attestation that the product was produced from hemp. However, the department reserves the right to request a copy of the current grower or processor’s license issued by the authority of competent jurisdiction for the firm responsible for the hemp crop from which the products are derived;
7. for each separate and distinct product, photographs or renderings of the product that accurately depict the entirety of the product, including all accessories or physical items included or sold with the product, whether attached or not. The department may require the submission of a specimen of the actual product and all included accessories if it determines in its sole discretion that submitted renderings or photographs do not allow a sufficient determination that the product meets all applicable requirements of this Chapter; and
8. for each separate and distinct product, a detailed written description of how individual servings will be packaged and marketed for sale. A product whose label fails to comply with the requirements of §533 of this Chapter will not be registered. A product packaged, labeled, or marketed in a manner that physically or functionally combines individual servings, resulting in a functional or suggested product serving size that exceeds eight milligrams of total THC per serving, shall not be registered and shall be subject to revocation of registration pursuant to §518 of this Chapter.

D. If all required packet contents, as set forth in Subsection C of this Section, are submitted and a product meets the applicable requirements of this Chapter and R.S. 3:1483, the department shall register the product by entering the application information into the consumable hemp

products database. In instances of an annual renewal of a product, the department may allow for the applicant to attest/certify that the required information has not changed since the last application in lieu of repeat submission.

E. No person is authorized to distribute any consumable hemp product in the state of Louisiana unless such product is currently registered and entered into the consumable hemp products database by the department, except that if a firm submits product labeling and supporting documentation for review to the department and does not receive a written response within 15 business days of that initial submission, the product may be sold after the fifteenth business day by any permitted wholesaler or retailer until the submitting party receives notice in writing from the department that the product in question is accepted or rejected for registration. Upon the expiration of the 15 business days, the department will send written notice, via electronic mail only, confirming the “pending” status of any application and, if known, a date by which a final determination will be made.

F. Any firm may apply to the department for the designation of its products as “Louisiana Hemp Products,” provided that those products are produced from hemp grown in Louisiana and are processed at a Louisiana-based manufacturer. These items shall be designated with a special mark on the department’s list of registered products once they have been registered with the department.

G. No consumable hemp product shall be registered if one or more of the following conditions concerning dosage vehicles apply:

1. it is explicitly or clearly intended or characterized as being for inhalation, or to facilitate same; this prohibition shall not apply to hemp rolling papers;
2. it is explicitly or clearly intended or characterized as being for subcutaneous or transdermal use, or to facilitate same; this prohibition shall not apply to transdermal patches that are not designed for or capable of piercing the skin;
3. it is explicitly or clearly intended or characterized as being for intravenous or intramuscular infusion or injection, or to facilitate same;
4. it is explicitly or clearly intended or characterized as being for rectal or vaginal insertion, including, but not limited to, vaginal or anal suppositories; this prohibition shall not apply to products that are topical personal lubricants; or
5. it includes, is contained within, or constitutes a vape cartridge, vape pen, e-cigarette or a substantially similar item designed to facilitate inhalation.

H. Notice of final denial of a requested product registration shall state the specific reason(s) for the denial and shall include notice of right to an administrative hearing concerning same, which right shall expire unless the applicant files, in the manner specified therein, a written request for an administrative hearing with the department within 20 calendar days of receipt of the notice. Any such request timely received shall be forwarded by the department to the Louisiana Division of Administrative Law. In addition to any method of service authorized by this Title, service of the notice on the applicant may be effected through any means authorized by LAC 51:I.109. Additionally, service may be made by electronic mail sent to any email address provided by the registrant to the department as part of or subsequent to the permitting or

registration process, and shall be deemed effective even if returned as undeliverable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1483(L) and R.S. 40:604.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Office of Public Health, LR 46:359 (March 2020), amended LR 47:479 (April 2021), LR 48:1290 (May 2022), LR 49:

### **§518. Revocation of a Consumable Hemp Product Registration**

A. The department may revoke the registration of a consumable hemp product if:

1. any of the enumerated criteria set forth in §517.G of this Chapter apply to the product;

2. any materials, including product information, specifications, photographs, or renderings, provided to the department in connection with the registration approval were erroneous or misleading, if non-erroneous or non-misleading materials would have resulted in denial of registration;

3. the product, including any accessories or physical items included therewith, is materially modified in a way that makes the photographs, renderings, or specimen submitted in connection with the registration no longer an accurate depiction thereof; or

4. the product, product label, product packaging, or product marketing violates any provision or requirement of this Chapter or R.S. 3:1483.

B. Revocation shall occur through issuance and service of an order revoking registration. The order shall state with specificity the nature of the violation(s), including citations to the provision(s) of this Chapter that have been violated. In addition to any method of service authorized by this Title, service on the registration holder may be effected through any means authorized by LAC 51:1.109. Additionally, service may be made by electronic mail sent to any email address provided by the registrant to the department as part of or subsequent to the registration process, and shall be deemed effective even if returned as undeliverable.

C. An Order Revoking Registration shall include notice of right to an administrative hearing concerning same, which right shall expire unless the registrant files, in the manner specified therein, a written request for an administrative hearing with the department within 20 calendar days of receipt of the order. If such a written request is timely filed, then it shall be forwarded by the department to the Louisiana Division of Administrative Law. The order shall be stayed pending the decision of the Division of Administrative Law, subject to the provisions in Subsection D of this Section.

D. If the state health officer determines, in his sole discretion, that the product in question constitutes a nuisance dangerous to the public health or a danger to the public life, health, or safety, and includes that finding in the order revoking registration, the order shall be deemed an emergency order and shall not be stayed pending the decision of the Division of Administrative Law. Further, as of the effective date of this emergency rule, any registration of any product that, based on a determination by the department, in its sole discretion:

1. exceeds the THC limits set forth in R.S. Title 3, Chap. 10-a, Part VI, including, but not limited to, the milligrams per serving limit;

2. meets the criteria of §517.G1 or §517.G5 of this Chapter;

3. contains any type of cannabinoid that does not naturally occur in hemp; or

4. violates the criteria of §533 of this Chapter shall be deemed to meet the criteria for revocation under an Emergency Order.

E. This Section shall apply to any consumable hemp product registered with the department, regardless of registration date. This Section is expressly intended to apply to consumable hemp products registered both prior to and after June 26, 2023, the effective date of this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1483(L) and R.S. 40:604.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Office of Public Health, LR 49:

### **§533. Consumable Hemp Products Labeling Requirements: Serving Sizes and THC Content**

A. ...

B. Serving sizes shall be delineated as follows:

1. for tinctures, extracts, concentrates, and other liquid-type products, there shall be an included measuring device capable of administering a single serving;

2. for beverages, the packaging must clearly enable a consumer to determine when a single serving has been consumed;

3. for all other products (e.g. tablets, capsules, cookies, gummies, etc.), an individual unit shall constitute a single serving and shall be separate and unattached to other units within a package. Thus, multiple servings shall not be combined and subject to scoring or separating in order to produce a single serving.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:4(A)(13), R.S. 3:1483(L) and R.S. 40:604.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Office of Public Health, LR 46:359 (March 2020), amended, LR 47:479 (April 2021), LR 48:1290 (May 2022), LR 49:

#### **Family Impact Statement**

The proposed Rule should not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;

2. the authority and rights of persons regarding the education and supervision of their children;

3. the functioning of the family;

4. family earnings and family budget;

5. the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

#### **Poverty Impact Statement**

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

**Small Business Analysis**

The proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

**Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

- 1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
- 2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
- 3. the overall effect on the ability of the provider to provide the same level of service.

**Public Comments**

Interested persons may submit written comments on the proposed rule. Such comments must be received no later than Monday, September 11, 2023 at COB, 4:30 p.m., and should be addressed to Michael Vidrine, Director, Sanitarian Services, P.O. Box 4489, Baton Rouge, LA 70821.

**Public Hearing**

Interested persons may submit a written request to conduct a public hearing either by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on Monday, September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:00 a.m. on Monday, September 25, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen R. Russo, JD  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Registration of Foods, Drugs, Cosmetics and Prophylactic Devices**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change is anticipated to increase Louisiana Department of Health (LDH), Office of Public Health expenditures by approximately \$479 SGF in FY24 associated with publication costs.

In compliance with Act 498 of the 2022 RLS, the LDH proposes to amend Chapter 5 of Title 49, Registration of Foods, Drugs, Cosmetics, and Prophylactic Devices by updating the

regulatory framework for consumable hemp products. Specifically, the rule provides LDH with the authority to:

Require proof that consumable hemp products for which registration is sought are not designed or intended for other than oral consumption or topical use.

Deny requested registration of consumable hemp products that are designed or intended for other than oral consumption or topical use.

Authorize LDH to revoke the registration of consumable hemp products that are designed or intended for other than oral consumption or topical use.

The rule also clarifies language and makes technical updates related to registering consumable hemp products.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units as a result of this proposed rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Given that LDH will revoke or deny registration of consumable hemp products that are not designed or intended for oral consumption or topical use, manufacturers or retailers of these products may be negatively impacted as they will not be able to sell these products in Louisiana.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule has no known effect on competition and employment.

Doris G. Brown  
Assistant Secretary  
2308#040

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Office of Public Health**

Sanitary Code—Food Service Establishment Violations  
(LAC 51:I.113 and XXIII.101 and 4311)

The Department of Health, Office of Public Health (LDH/OPH), pursuant to R.S. 40:4, R.S. 40:5, and in cognizance of SR159 (2022 Regular Session), hereby amends the proposed Sections of Title 51 for the protection of public health.

The proposed Rule will ensure that a violation by a food service establishment of R.S. 40:5.5.4, which deprives Louisiana consumers of their right to know whether the establishment serves crawfish or shrimp imported from a foreign country, which may pose a health risk, is classified in the Sanitary Code as both a “Critical Item” and a “Class A” violation.

**Title 51**

**PUBLIC HEALTH—SANITARY CODE**

**Part I. General Provisions**

**Chapter 1. General**

**§113. Suspension/Revocation/Civil Fines or Penalties [formerly paragraph 1:007-21]**

A. - A.2. ...

3. impose a civil fine:

a. these civil fines shall not exceed \$10,000 per violator per calendar year applicable to each specific establishment, facility, or property that the violator owns,

manages, operates or leases. The schedule of civil fines by class of violations shall be as follows.

i. Class A. Violations that create a condition or occurrence, which may result in death or serious harm to the public. These violations include, but are not limited to the following: cooking, holding or storing potentially hazardous food at improper temperatures; failure to follow schedule process in low acid canned foods or acidified food production; poor personal hygienic practices; failure to sanitize or sterilize equipment, utensils or returnable, multi-use containers; no water; unapproved water source; cross contamination of water; inadequate disinfection of water before bottling; sewage back up; sewage discharge on to the ground; sewage contamination of drinking water; failure to comply with human drug current good manufacturing practices (CGMP); inadequate labeling of foods or drugs regarding life threatening ingredients or information; failure to provide consumer advisories; failure to comply with any applicable requirement of R.S. 40:5.5.4; non-compliant UV lamps or termination control switch on tanning equipment; the inadequate handling and disposal of potentially infectious biomedical wastes; or failure to obtain food safety certification in accordance with §305 of Part XXIII. Class A civil fines shall be \$100 per day per violation.

3.a.ii. - 5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. 40:4, and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1694 (October 2001), repromulgated LR 28:1210 (June 2002), amended LR 28:2529 (December 2002), LR 41:148 (January 2015), LR 49:

### **Part XXIII. Retail Food Establishments**

#### **Chapter 1. Definitions**

##### **§101. Definitions**

**[formerly paragraph 23:001]**

A. Terms not defined or referenced herein shall have the meanings as defined in LAC 51:I. In any instance where a term defined herein is also defined in one or more Parts of LAC 51:I, the definition contained in this Part shall govern this Part.

\* \* \*

*Critical Item*—a provision of this code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation, such as, but not limited to a potentially hazardous food stored at improper temperature, poor personal hygienic practices, not sanitizing equipment and utensils, no water, contaminated water sources, sewage backup or improper sewage disposal, severe insect or rodent infestation, failure to comply with any applicable requirement of R.S. 40:5.5.4, and chemical contamination.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. R.S. 40:4, and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:311 (February 2002), repromulgated LR 28:1405 (June 2002), amended LR 28:2531 (December 2002), LR 49:

### **Chapter 43. Inspections and Enforcement**

#### **§4311. Enforcement, Critical Violations**

**[formerly paragraph 22:43-2]**

A. Critical items, (as defined in this Part) noted at the time of inspection shall be corrected immediately or by a time set by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(13), R.S. R.S. 40:4, and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:336 (February 2002), amended LR 28:1430 (June 2002), LR 49:

##### **Family Impact Statement**

The proposed Rule should not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

##### **Poverty Impact Statement**

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

##### **Small Business Analysis**

The proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

##### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

##### **Public Comments**

Interested persons may submit written comments on the proposed Rule. Such comments must be received no later than Monday, September 11, 2023 at COB, 4:30 p.m., and

should be addressed to Michael Vidrine, Director, Sanitarian Services, P.O. Box 4489, Baton Rouge, LA 70821.

**Public Hearing**

Interested persons may submit a written request to conduct a public hearing either by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on Monday, September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:00 a.m. on Monday, September 25, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen Russo, JD  
Secretary  
and  
Joseph Kanter, MD, MPH  
State Health Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Sanitary Code  
Food Service Establishment Violations**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
 

The proposed rule change is anticipated to increase LDH expenditures by approximately \$479 SGF in FY24 associated with publication costs.

In compliance with SR 159 of the 2023 RLS, the LDH proposes to amend Chapter 1 of Title 51 regarding Suspension/Revocation/Civil Fines or Penalties. Specifically, the rule provides that failure to notify to patrons of food service establishments of the origin of crawfish and shrimp is a critical violation of the sanitary code and is subject to civil fines, not to exceed \$10,000 per violation per year.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 

The rule changes provides that it is a critical violation of the Sanitary Code if a food service establishment does not inform patrons of the country of origin of certain seafood. Current rule provides that a critical violation of sanitary codes may result in an establishment being assessed a maximum penalty of \$10,000 per violation per year. The amount of revenue that may be collected in fines from food service establishments that fail to comply with this notification requirement cannot be estimated at this time but is anticipated to be minimal.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Owners of food service establishment that serve crawfish and shrimp may incur a fine of \$10,000 per violation per year if they fail to notify to patrons of the origin of crawfish and shrimp.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule has no known effect on competition and employment.

Doris G. Brown  
Assistant Secretary  
2308#041

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT  
Department of Health  
Office of Public Health**

School Based Health Centers  
(LAC 50:XV.9101 and 9103)

Under the authority of R.S. 40:31.3, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the secretary, acting through the Department of Health, Office of Public Health (LDH/OPH), intends to amend and adopt parts of Chapter 91 of Title 50.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 5. Early and Periodic Screenings, Diagnosis, and Treatments**

**Chapter 91. School Based Health Centers**

**Subchapter A. General Provisions**

**§9101. Purpose**

A. The Adolescent School Health Initiative Act of 1991 authorized the development of an adolescent school based health initiative to facilitate and encourage the provision of comprehensive health centers in public middle and secondary schools. Such health centers are referred to in this Chapter as “School Based Health Centers” (SBHCs).

B. A SBHC is a health center that:

- 1. is located on a school campus (including mobile units);
- 2. is organized through school, community, and health provider relationships;
- 3. is administered by a sponsoring facility;
- 4. provides health services (including, but not limited to, both behavioral and physical health) to children and adolescents through health professionals in accordance with state and local law, including laws related to licensure and certification;
- 5. provides, at a minimum, health services during school hours to children and adolescents by health professionals in accordance with established standards of care, evidence-based practice, laws, regulations and requirements, including parental consent.

C. For purposes of Subparagraph B.3 the term *sponsoring facility* includes any of the following:

- 1. a hospital;
- 2. a federally qualified health center (FQHC);
- 3. a for-profit or non-profit health care agency; or
- 4. a school or a school system, in partnership with a health facility.

D. SBHCs provide convenient access to preventive and acute care services for students who might otherwise have limited or no access to health care. This care may be provided onsite or through telehealth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1419 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:365 (February 2012), amended by the Department of Health, Office of Public Health, LR 49:

### **§9103. Registry of School Based Health Centers**

A. The Louisiana Department of Health, Office of Public Health will establish and maintain a registry of all SBHCs. This registry shall be publicly available on the website of the Louisiana Department of Health.

B. SBHCs are required to submit the following information to the registry:

1. name of sponsoring agency;
2. name of school(s) where the SBHC is located;
3. additional schools served by the SBHC (\*feeder schools);
4. location of the SBHC (address, including parish);
5. services provided at facility; and
6. point of contact, including name, phone number, and email.

C. The instructions or method of submitting the information required by this Section to the registry shall be made available on the Louisiana Department of Health website.

D. All SBHCs shall submit their initial information, as described in Subsection B. of this Section, to the registry by June 30, 2024.

E. All SBHCs shall review, confirm or update their information by June 30 of each year. Additionally, any change in information shall be provided to the registry within 30 days from the date of the change.

\*The Office of Public Health-Adolescent School Health Program defines feeder school as: any school that meets all three of the following criteria:

- (1) the school is near the SBHC and/or in the same school district as the host school,
- (2) the SBHC can be accessed by a student from the school without assistance from a parent/legal guardian, and
- (3) the school had at least 50 students visit the SBHC during the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:31.3

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 49:

### **Family Impact Statement**

The proposed Rule should not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;

5. the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

### **Poverty Impact Statement**

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

### **Small Business Analysis**

The proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

### **Public Comments**

Interested persons may submit written comments on the proposed Rule. Such comments must be received no later than Monday, September 11, 2023 at COB, 4:30 p.m., and should be addressed to Ayesha Umrigar, P.O. Box 629, Baton Rouge, LA 70821.

### **Public Hearing**

Interested persons may submit a written request to conduct a public hearing either by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on Monday, September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:00 a.m. on Monday, September 25, 2023 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after September 11, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the

Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Stephen R. Russo, JD  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: School Based Health Centers**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change is anticipated to increase Louisiana Department of Health (LDH), Office of Public Health expenditures by approximately \$1,331 SGF in FY24 associated with publication costs.

In compliance with Act 318 of the 2023 RLS, the LDH proposes to amend Chapter 91 of Title 50 regarding School Based Health Centers, the rule provides that Office of Public Health shall maintain a registry of health centers in schools.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of the proposed change will have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Assigned personnel at these health centers in schools will be required to provide the listed information to be included in the Louisiana Department of Health, Office of Public Health registry. The rule proposed will result in a nominal increase to the personnel's workload, resulting the personnel submitting the required information for the health center.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule has no known effect on competition and employment.

Doris G. Brown  
Assistant Secretary  
2308#042

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of Motor Vehicles**

Driving Schools  
(LAC 55:III.145 and 151)

Under the authority of R.S. R.S. 32:402.1(A)(1) and R.S. 40:1461, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:961 et seq., the Office of Motor Vehicles hereby proposes to amend sections in Chapter 1, regarding driving schools. The amended Sections, §145 and §151 removes a medical certification requirement, corrects and an e-mail address, and authorizes alternative methods of training for the 6-hour classroom instruction for students 18 years of age and older. This Rule shall become effective upon the promulgation of the Rule in the *Louisiana Register*.

**Title 55**

**PUBLIC SAFETY**

**Part III. Motor Vehicles**

**Chapter 1. Drivers License**

**Subchapter A. General Requirements**

**§145. Qualifications for Private Driving School  
Owners and Instructors**

A. - B.4. ...

5. Repealed.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1975 (August 2012), amended LR 43:1761 (September 2017), LR 45:1602 (November 2019), LR 49:

**§151. Regulations for All Driver Education Providers**

A. - F.3. ...

4. DPS shall be advised via e-mail at [ladrivingschools@dps.la.gov](mailto:ladrivingschools@dps.la.gov) within 10 business days of a vehicle that is removed from service and shall be provided the required information on replacement vehicles. OMV shall provide the school e-mail notification within three business days that the information has been received. The school shall send the odometer reading of vehicles for the first and last day of service and proof of registration for the vehicle(s) removed or added to service.

F.5. - J.6. ...

K. Alternative Method of Instructions of the 6-Hour Pre-Licensing Course

1. Driving schools shall only use platforms and equipment that have been approved by DPS.

2. Class schedules using the alternative methods shall be submitted to OMV at least 48 hours prior to beginning the class.

a. Driving schools shall notify DPS of any changes in platform or meeting ID/passcodes.

b. The audio and video shall be clear and not distorted when viewing or listening.

c. Driving schools shall give DPS access to view the class live via the approved platform.

3. Instructors shall conduct classes from a location free of any distractions.

4. Driving schools shall use their current DPS approved 6-hour lesson plans for the courses.

5. The school shall verify the identity of the individual taking the online course.

6. Driving schools shall limit the class size to 25 students per class per school.

7. All enrolled students for a class taught using an alternative method must be online and present for the full class. If a student fails to do so, the instructor must document the time missed and the student must make up the time at a later date in a format approved by DPS.

a. A student shall not be issued a certificate unless they have completed their full hours of classroom instruction.

b. All instructors shall take student attendance before class, after all breaks, and lunch.

8. During instruction, the instructor shall ensure that all students are alert and focus on the classroom lesson. No additional electronic devices should be allowed other than those devices that are used for classroom lessons.

a. During the online instruction, students shall be in a sitting position and dressed in proper attire for a classroom environment. It is highly recommended that students be located in an area free of distractions when possible.

b. Students equipment must have video capabilities and shall be visible at all times during class. If a student does not have video capabilities, they will not be eligible to attend class using the alternative method of delivery and must attend an in-classroom course.

9. Driving schools shall keep a class roster, which shall be available for DPS to review. This will be necessary since students not being physically able to sign.

10. Driving schools shall follow all other rules as outlined in conducting in-classroom classes. This includes all required forms properly completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1980 (August 2012), amended LR 41:151 (January 2015), LR 43:1767 (September 2017), LR 45:1603 (November 2019), LR 49:

#### **Family Impact Statement**

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

The proposed Rule is not anticipated to have an impact on poverty as defined by R.S. 49:973.

#### **Small Business Analysis**

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

#### **Provider Impact Statement**

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

#### **Public Comments**

All interested persons may submit written comments through September 14, 2023, to Stephen A. Quidd, Executive Management Officer, Office of Motor Vehicles, Louisiana Department of Public Safety and Corrections, at P. O. Box 64886, Baton Rouge, LA 70896, or faxed to (225)925-6303.

#### **Public Hearing**

A public hearing on the proposed Rule will be held on September 18, 2023, at the Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles Headquarters, 7979 Independence Blvd., Suite 301, Baton Rouge, La. 70806, (225) 925-6281, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the above number at least seven

working days in advance of the hearing. For assistance, call (225) 925-6281 (voice and TDD). Any interested person should call before coming to the public hearing as the hearing will be cancelled if the requisite number of comments, as provided in R.S.49:961(B), are not received.

Karen St. Germain  
Commissioner

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Driving Schools**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will not result in costs or savings to state or local governmental units. The proposed rule removes a medical certification required for driving schools, makes technical corrections to an email address, and authorizes driving schools to use alternative methods for training for the six-hour classroom instruction for students 18 years of age and older.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no impact on state or local governmental revenues. The proposed rule does not establish new fees or impact collections of any fees currently authorized by law.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule does not have any effect on the estimated costs and/or economic benefits of affected persons or non-governmental groups. Driving schools were previously allowed to use alternative methods during the COVID-19 pandemic. Therefore, the proposed rule is not anticipated to have any effect on the costs of driving schools.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no anticipated or foreseen impact on competition and employment.

Karen G. St. Germain  
Commissioner  
2308#060

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Public Safety and Corrections Office of Motor Vehicles**

Notification of Removal of License Plate  
by a Motor Vehicle Dealer  
(LAC 55:III.328)

Under the authority of R.S. 47:505, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:961 et seq., the Office of Motor Vehicles proposes to adopt a new section, §328, in Chapter 3, regarding the removal a license plates by motor vehicle dealers who receive a lease return or who receive a previously-owned vehicle with the intention to sell the vehicle. This Rule shall become effective upon the promulgation of the Rule in the *Louisiana Register*.

**Title 55**

**PUBLIC SAFETY**

**Part III. Motor Vehicles**

**Chapter 3. License Plates and Removal of Plates, Registrations, and Title Transactions**  
**Subchapter A. Types of License Plates and Removal of Plates**

**§328. Notification of Removal of License Plate by a Motor Vehicle Dealer**

A. Any dealer of motor vehicles who receives a lease return or a previously owned vehicle with the intention of reselling such vehicle shall remove the license plate from such vehicle before resale

B. The dealer, upon removal of the license plate, shall destroy the plate.

1. Acceptable methods of destroying the plate are:

a. return the license plate to the Office of Motor Vehicles or one of its authorized public tag agents;

b. render the plate in such a state that it may not be used on a motor vehicle.

C. After the dealer so removes the plate, he shall submit electronic notification to the Department of Public Safety and Corrections, Office of Motor Vehicles. Electronic notification shall be submitted to the electronic reporting system operated by the Department, or to a system approved by the department and owned and operated by an authorized public tag agent.

D. Electronic notification shall be made within 24 hours of the removal of the plate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:505.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 49:

**Family Impact Statement**

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed Rule is not anticipated to have an impact on poverty as defined by R.S. 49:973.

**Small Business Analysis**

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

**Provider Impact Statement**

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

**Public Comments**

All interested persons may submit written comments through September 14, 2023, to Stephen A. Quidd, Executive Management Officer, Office of Motor Vehicles, Louisiana Department of Public Safety and Corrections, at P. O. Box 64886, Baton Rouge, LA 70896, or faxed to (225)925-6303.

**Public Hearing**

A public hearing on the proposed Rule will be held on September 18, 2023, at the Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles Headquarters, 7979 Independence Blvd., Suite 301, Baton Rouge, La. 70806, (225) 925-6281, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the above number at least seven working days in advance of the hearing. For assistance, call (225) 925-6281 (voice and TDD). Any interested person should call before coming to the public hearing as the hearing will be cancelled if the requisite number of comments, as provided in R.S.49:961(B), are not received.

Karen St. Germain  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Notification of Removal of License Plate by a Motor Vehicle Dealer**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will not result in any costs or savings to state or local governmental units. The proposed rule requires a motor vehicle dealer to submit an electronic notification to the Office of Motor Vehicles (OMV) within 24 hours of the removal of the license plate from a returned lease vehicle or a previously owned vehicle intended for sale or trade as required by Act 174 (HB 532) of the 2023 Regular Legislative Session.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no impact on state or local governmental revenues. The proposed rule does not establish new fees or impact collections of any fees currently authorized by law.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Motor vehicle dealers are already required to enter trade vehicles into OMV's temporary tag database at the time the vehicle is traded in and a new vehicle is purchased. To implement this proposed rule, OMV will leverage the temporary tag database for reporting removed and canceled license plates by motor vehicle dealers. Therefore, the proposed rule is not anticipated to have any impact on motor vehicle dealers.

The proposed rule directly impacts Louisiana citizens that have flags for insurance lapse in the OMV system because of late notification. The proposed rule reduces the time frame that motor vehicle dealers have to submit electronic notifications of canceled license plates from 30 days to 24 hours. This is anticipated to reduce the number of flags for insurance lapses generated by the OMV system as a result of motor vehicle dealers not submitting timely notifications. Approximately 20% of the calls to OMV are Louisiana citizens trying to remove these flags. Therefore, citizens will benefit by not having to call or visit an OMV office to clear up insurance lapse flags.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated or foreseen impact on competition and employment.

Karen G. St. Germain  
Commissioner  
2308#058

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Uniform Construction Code Council**

Uniform Construction Code  
(LAC 17:I.103 and 107)

In accordance with the provisions of R.S. 40:1730.26 and R.S. 40:1730.28, relative to the authority of the Louisiana State Uniform Construction Code Council (LSUCCC) to promulgate and enforce rules and in accordance with R.S. 49:953(B), the Administrative Procedure Act, the Department of Public Safety and Corrections, Office of the State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC) hereby gives notice that it proposes to amend and adopt the following rule. The purpose of adopting and amending the currently adopted construction codes is to replace them with more recent technology, methods and materials for the 2021 editions of the *International Residential Code and International Energy Conservation Code*. It is also to satisfy the legislative requirements of ACT 635 of the 2022 Regular Session. This rule will make corrections and add clarity to the previously

**§107. International Residential Code  
(Formerly LAC 55:VI.301.A.3.a)**

A.1. ...

* * *		
Repeal	Item (3.)	
Amend	Section N1103.3.7 Building Cavities	Building framing cavities directly adjacent to and within the building thermal envelope shall not be used as ducts or plenums.
Amend	Section N1103.6 Mechanical Ventilation	The buildings complying with Section N1102.4.1 providing mechanical ventilation shall comply with the requirements of Section M1505 or with other approved means of ventilation. Outdoor air intakes and exhausts shall have automatic or gravity dampers that close when the ventilation system is not operating
* * *		

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the

adopted rule and will take the place of the emergency rule filed June 30, 2023.

**Title 17  
CONSTRUCTION**

**Part I. Uniform Construction Code**

**Chapter 1. Adoption of the Louisiana State Uniform Construction Code**

**(Formerly LAC 55:VI.Chapter 3)**

**§101. Louisiana State Uniform Construction Code  
(Formerly LAC 55:VI.301.A)**

A. In accordance with the requirements set forth in R.S.40:1730.28, effective February 1, 2018 the following is hereby adopted as an amendment to the *Louisiana State Uniform Construction Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S.40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 41:2380 (November 2015), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 42:1672 (October 2016), LR 44:75 (January 2018), repromulgated LR 45:912 (July 2019), amended LR 49:1136 (June 2023), LR 49:

Department of Public Safety and Corrections, Office of State Fire Marshal, LR 41:2383 (November 2015), amended LR 42:1672 (October 2016), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 44:79 (January 2018), amended LR 44:2218 (December 2018), repromulgated LR 45:916 (July 2019), amended LR 45:1789 (December 2019), amended LR 48:2582 (October 2022), LR 49:1142 (June 2023), LR 49:

**§117 International Energy Conservation Code  
(Formerly LAC 55:VI.301.A.7)**

A. International Energy Conservation Code (IECC) 2021 Edition and standards referenced in that code for regulation of construction in this state.

* * *		
Amend	Section	
Amend	Section C301.1 General	All parishes in Louisiana shall be Climate Zone 2A.
Amend	Section C301.2 Warm Humid counties	All parishes in Louisiana shall be Climate Zone 2A warm humid climates.
Amend	Section C402.1.3 Insulation component R-value-based method.	

* * *		
Repeal	Section C405.5.3 Gas Lighting	
Repeal	Section C405.11 Automatic receptacle control	
Repeal	Section C405.11.1 Automatic receptacle control	
Adopt	Residential Provisions	
Amend	Section R102.1.1 Above code programs	The code official serving as the authority having jurisdiction for building codes, shall be permitted to deem a national or state energy-efficiency program to exceed the energy efficiency required by this code. Buildings approved in writing by such an energy-efficiency program shall be considered to be in compliance with this code. The requirements identified in Table N1105.2, as applicable, shall be met and the building thermal envelope is greater than or equal to levels of efficiency and solar heat gain coefficients (SHGC) in Tables 402.1.1 and 402.1.3 of the 2009 International Energy Conservation Code.
* * *		
Repeal	Section R402.4.1.1 Installation.	
Amend	Section R402.4.1.2 Testing	Effective July 1, 2024, blower door testing shall be performed by individuals certified to perform blower door tests by a nationally recognized organization that trains and provides certification exams for the proper procedures to perform such tests. The building or dwelling unit shall be tested for air leakage. The maximum air leakage rate for any building or dwelling unit under any compliance path shall not exceed 7.0 air changes per hour or 0.28 cubic feet per minute (CFM) per square foot [0.0079 m <sup>3</sup> /(s × m <sup>2</sup> )] of dwelling unit enclosure area. Testing shall be conducted in accordance with ANSI/RESNET/ICC 380, ASTM E779 or ASTM E1827 and reported at a pressure of 0.2 inch w.g. (50 Pascals).-The responsible BCEO shall accept written blower door test reports from these certified individuals to verify the minimum requirements of Section N1102.4.1.2. A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope have been sealed. Where multiple dwelling units or other occupiable conditioned spaces are contained within one building thermal envelope, each unit shall be considered an individual testing unit, and the building air leakage shall be the weighted average of all testing unit results, weighted by each testing unit's enclosure area. Units shall be tested separately with an unguarded blower door test as follows:
Adopt	Item (1.)	(1).Where buildings have fewer than eight testing units, each testing unit shall be tested.
* * *		
Repeal	Item (3.)	
Amend	Section R403.3.7 Building Cavities	Building framing cavities directly adjacent to and within the building thermal envelope shall not be used as ducts or plenums.
Amend	Section R403.6 Mechanical Ventilation	The buildings complying with Section N1102.4.1 providing mechanical ventilation shall comply with the requirements of Section M1505 or with other approved means of ventilation. Outdoor air intakes and exhausts shall have automatic or gravity dampers that close when the ventilation system is not operating.
* * *		

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 49:1136 (June 2023), amended LR 49:

#### Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family formation/functioning, stability, and autonomy as described in R.S. 49:972.

#### Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in the R.S. 49:973.

#### Small Business Analysis

In compliance with Act 820, of the 2008 Regular Legislative Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.6.

#### Provider Impact Statement

As described in HCR 170 of the 2014 Regular Legislative Session, the impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted via the U.S. Mail to Mark Joiner, Office of State Fire Marshal, 8181 Independence Blvd. Baton Rouge, LA 70806. Written comments may also be hand-delivered to Mark Joiner, Office of State Fire Marshal, 8181 Independence Boulevard, Baton Rouge, LA 70806. All written comments are required to be signed by the person submitting the comments, dated, and received on or before September 10, 2023 at 4:30 p.m. If necessary, a public hearing will be scheduled pursuant to R.S. 49:953(A)(1)(a).

Chief Daniel H. Wallis  
State Fire Marshal

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Uniform Construction Code**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule will not result in any costs or savings to state and local governmental units. This proposed rule is a cleanup rule that makes corrections, adds clarity and sentence structure to the original rule filed March 2023 and takes the place of an emergency rule filed June 30, 2023.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will not affect revenue collections of state or local governments.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule will not impact persons, small businesses or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule will not affect competition or employment.

Daniel H. Wallis  
Fire Marshal  
2308#018

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of State  
Office of the Secretary of State**

**Department Non-Statutory Fees (LAC 4:I.401)**

Editor's Note: This Notice of Intent is being reprinted to correct a submission error. The original Notice of Intent can be viewed in its entirety on page 1174-1178 of the June 20, 2023 Louisiana Register.

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under the authority of R.S. 3:1447, R.S. 9:2782, R.S. 18:1293, R.S. 24:172, R.S. 24:173.1, R.S. 25:1282, R.S. 25:1284, R.S. 36:742, R.S. 40:1151.2, R.S. 43:19, R.S. 44.1 et seq., R.S. 44:402, R.S. 44:405, R.S. 44:406, R.S. 44:408, R.S. 44:415, R.S. 44:420, R.S. 44:421, R.S. 49:222(A), R.S. 49:227, R.S. 49:228, Hague Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents, and Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (22 CFR Part 96), the Department of State is proposing to adopt a non-statutory fee schedule for the Department of State. In addition, the Department of State is proposing to adopt rules and fees for the State Archives Facilities.

**Title 4  
ADMINISTRATION  
Part I. General Provisions**

**Chapter 4. Department of State**

**§401. Department of State Non-Statutory Fee Schedule**

A. The Department of State has established non-statutory fee schedules for various filings, services, and publications. If a product referred to in the schedules shown below has to

be mailed, the cost for mailing said product would be added to the fee charged.

**1. Department of State General Fees**

Item	Fee
Express Delivery (Cost Per Package)	Actual Cost
Non-Sufficient Funds Charge	\$25.00
Photocopies (Per Page)	\$0.25
Postage (Per Package)	Actual Cost
Public Records Request Fee (Certify Public Records) (Cost Per Certification Form)	\$20.00
Public Records Request Fee (Cost Per Page up to 8 1/2" X 14") (Two-sided copy is charged as two pages) (Including Facsimile)	\$0.25
Public Records Request Fee (Cost Per Page for Printed Copy Greater Than 8 1/2" X 14") (Two-sided copy is charged as two pages)	Actual Cost
Public Records Request Fee (Cost Per Page for CD-ROM or USB Drive)	\$0.25
Public Records Request Fee (Cost Per Page for Electronic File Emailed)	\$0.25

**2. Business Services Division—Commercial**

Item	Fee
Corporations –	
Complete Corporation Information	
Computer Data Transfer	
Weekly, Per Initial Load	\$2,500.00
50 Files at \$200 Per Week	\$10,000.00
Total	\$12,500.00
Monthly, Per Initial Load	\$2,500.00
11 Monthly Files at \$400	\$4,400.00
Total	\$6,900.00
Monthly Trade Names Only, 12 Monthly Files	
Total	\$1,725.00
Customized Computer List (Per Page)	\$25 for 1 <sup>st</sup> 40 Records Plus \$0.01 Per Each Additional Record
Miscellaneous Corporations Fees --	
Agent for Service of Process	\$15.00
Certificate for Service of Process	\$20.00
Political Subdivision	\$10.00
Power of Attorney	\$25.00
Uniform Commercial Code –	
Direct Access Fee, Annual Subscription, Unlimited Usage	\$400.00
Monthly Updates Information Computer Data Transfer, Annual Fee, Monthly Updates Subscription	\$6,900.00

**3. Legal Division—Commissions**

Item	Fee
Adoptions (Apostilles or Authentication Certificates) (Cost Per Certificate)	\$10.00
Apostille Certificate (Cost Per Certificate)	\$20.00
Certificate of Authentication (Cost Per Certificate)	\$20.00
Certificate of a Pardon (Cost Per Certificate)	\$20.00
Certified Document (Executive Orders or Proclamations) (Per Document)	\$20.00
Replacement Commission Certificate	\$20.00
Replacement Identification Card	\$5.00

**4. Election Services—Publications**

Item	Fee
Bond Registration Certificate (Municipal Bonds) (Optional)	\$10.00
Certified Copy (In Addition to Per Page Fee)	\$20.00

Item	Fee
Certified Copy of "Living Will" Declaration Registration	\$20.00
"Living Will" Replacement of Identification Card	\$5.00
Proces Verbal	
Recordation	\$10.00
Proces Verbal (Cost Per Page)	\$2.00
Public Officials Signature Registration Certificate	\$10.00
Publications	
Ballot Box	\$5.00
Buckram Bound Acts of Legislature	
2010/I, II and III (2010 Regular Session)	\$172.00
2011/I and II (2011 Regular and 1st Extraordinary Sessions)	\$120.00
2012/I, II and III (2012 Regular Session)	\$174.00
2013/I and II (2013 Regular Session)	\$120.00
2014/I and II (2014 Regular Session)	\$170.00
2015/I and II (2015 Regular Session)	\$205.00
2016/I and II (2016 Regular Session)	\$340.00
2017/I and II (2017 Regular Session and 1st and 2nd Extraordinary Sessions)	\$250.00
Future Issues (Printed Annually) *	Varies
Code of Governmental Ethics	\$5.00
Corporation Law	\$25.00
Election Code	\$20.00
Lawrason Act	\$5.00
Legislative Calendar of the Legislature	\$25.00
Official Journal of the Proceedings of the House of Representatives	\$25.00
Official Journal of the Proceedings of the Senate	\$25.00
Report of Secretary of State CY 2009 and CY 2010	\$63.00
Report of Secretary of State CY 2011 and CY 2012	\$60.00
Report of Secretary of State CY 2013 and CY 2014	\$70.00
Report of Secretary of State CY 2015 and CY 2016	\$40.00
Report of Secretary of State (Future Issues) (Printed Bi-Annually) *	Varies
Roster of Officials 2012	\$25.00
Roster of Officials 2016	\$30.00
Roster of Officials (Future Issues) (Printed Every 4 Years)**	Varies

The department shall publish the cost in *The Advocate* annually for these publications and will post the costs on the department's website after the cost for each publication is determined.

\*Pursuant to R.S. 43:22, the formula for the cost for publishing the Buckram Bound Acts of Legislature is as follows: Printing Estimate + 10 percent of the Printing Cost + Postage/Quantity of Books Ordered.

\*\*The cost for these publications may vary and is based upon the following: Printing Estimate + Department Staff Costs + Postage/Quantity of Books Ordered.

### 5. State Archives Division—Archives Reproduction and Research Section <sup>1</sup>

Item	Fee
Digital Imaging -	
600 Pixels Per Inch .TIFF Digital Image (Not for Commercial Use) (For Existing Original Photograph Collections Only) (See Reproduction Rights Fee) 2	\$10.00
Reproduction Rights Fee (Commercial Use Only) (Per Image) 3	\$100.00
Oversized Digital Image Capture	\$20.00
Legislative Committee Hearing/Meeting	
For Public (Cost Per Digital Audio File)	\$20.00
For State Agency (Cost Per Digital Audio File)	\$10.00
Photocopy Reproduction --	
Confederate Pension Records Applications (Per Individual) (Cost Per One Application)	\$20.00
Military Service Records (Confederate Soldiers Military Records From Louisiana and World War I Discharge Records) (Cost Per Individual)	\$15.00
Other Historical Documents (Per Act 602 of the 2006	\$10.00

Item	Fee
Regular Legislative Session) (Louisiana Governmental Agencies Only) (Cost Per Set)	
Proces Verbal	
Certification	\$20.00
Proces Verbal (Cost Per Page)	\$2.00
Self-Service Charges	
Book Scanner (Cost Per Page or Digital Image)	\$0.25
Computer Printouts (Cost Per Page)	\$0.25
Microfilm (Cost Per Page or Digital Image)	\$0.50
Photocopies (Cost Per Page or Digital Image)	\$0.25
Staff Reproduction of Archival Material	
Document Certification (Cost Per Record)	\$20.00
Public Vital Records (Certified) (Cost Per Record)	\$10.00
Public Vital Records (Certified Letter of "No Record After Reasonable Search") (Per Individual, Per Spelling Variation)	\$20.00
Public Vital Records, Photocopy/Digital Image (Non-certified) (Cost Per Record)	\$5.00
Flash Drive—2GB (with State Seal) (Includes first 10 Digital Images)	\$15.00
Microfilm Duplication of Existing Roll (Cost Per Roll)	
16mm Reel	\$30.00
35mm Reel	\$45.00

<sup>1</sup> Fees are for research and must be collected for both successful and unsuccessful searches. No research will be conducted until payment is approved or received.

<sup>2</sup> Refer to the Louisiana State Archives Policy on the Reproduction of Archival Images (Form LH10).

<sup>3</sup> Refer to the Louisiana State Archives Policy on the Reproduction of Archival Images (Form LH10) and Request for Permission to Publicly Display Images for Commercial Use (Form LF12).

a. The following forms will be used when requesting reproduction of archival images and requesting permission to publicly display images for commercial use:

i. Policy on the reproduction of Archival Images (Form LH10); and/or

ii. Request for Permission to Publicly Display Images for Commercial Use (Form LFP12).

### 6. State Archives Division—Audiovisual Archives

Item	Fee
Audio and Video Fees -	
Low Resolution video preview files provided in MP4 format	No cost
Materials Charge (Cost per storage media)	\$15.00
Multimedia Archives License Fee Schedule -	
Feature Film (per second)	
United State Only	\$80.00
Worldwide	\$90.00
Film Festival Only (per second)	
Within State of Louisiana Only	\$15.00
United States	\$20.00
Worldwide	\$25.00
Television Broadcast (per second)	
Within State of Louisiana Only	\$30.00
United States	\$40.00
Worldwide	\$50.00
Television Broadcast Non-Commercial PBS Station (per second)	
Within State of Louisiana only	\$15.00
United States only	\$20.00
Worldwide	\$25.00
Premium Streaming Service (Netflix, Hulu, etc.) (per second)	
United States only	\$40.00
Worldwide	\$50.00
Educational, Non-commercial Distribution Only (per second)	

Item	Fee
Within State of Louisiana only	\$15.00
United States only	\$20.00
Worldwide	\$25.00
Television Commercial (per second)	
Within State of Louisiana only (single market)	\$30.00
United States only	\$40.00
Worldwide	\$50.00
Corporate Presentation (per second)	
Located Within State of Louisiana only	\$15.00
Located United States only	\$20.00
Located Worldwide	\$25.00
Live Event (per second)	
Located Within State of Louisiana only	\$15.00
Located United States only	\$20.00
Located Worldwide	\$25.00
Live Event Non-Profit (per second)	
Located Within State of Louisiana only	\$10.00
Located United States only	\$15.00
Located Worldwide	\$20.00
Concert (per second)	
Located Within State of Louisiana only	\$20.00
Located United States only	\$25.00
Located Worldwide	\$30.00
Concert Non-Profit (per second)	
Located Within State of Louisiana only	\$15.00
Located United States only	\$20.00
Located Worldwide	\$25.00
Museum Exhibit (per second)	
Located Within State of Louisiana only	\$10.00
Located United States only	\$15.00
Located Worldwide	\$20.00
Music Video (per second)	
Within State of Louisiana only	\$10.00
United States only	\$15.00
Worldwide	\$20.00
Industrial Communication (non-broadcast) (per second)	
Within State of Louisiana only	\$20.00
United States only	\$25.00
Worldwide	\$30.00
Web Player—Commercial (web hosted and protected from download) (per second).—Term limits apply	
Worldwide	\$30.00
Webplayer—Non-Commercial (web hosted and protected from download) (per second)—Term limits apply	
Worldwide	\$15.00
Radio Transmission (per second)	
Within State of Louisiana only	\$15.00
United States only	\$20.00
Worldwide	\$25.00
All media, Not known, Worldwide	\$100.00

7. State Archives Division—Imaging and Preservation Services (For Agencies Only) <sup>1</sup>

Item	Fee
Paper Record Conversion Services	
Paper to Microfilm or Digital (per image)*	\$0.10
Paper to Microfilm and Digital (per image)*	\$0.15
Microfilm Conversion Services	
Microfilm to Digital (per image, TIF or PDF)*	\$0.07
Microfilm to Digital (per image, TIF and PDF)*	\$0.08
Additional indexing (per field, per series)	\$0.05
Image Capture	
Digital to Microfilm (TIF or PDF, per image)*	\$0.07
Additional Services/Add-ons	
2 <sup>nd</sup> Diazo Duplicate Reel (16 mm)	\$15.00
2 <sup>nd</sup> Diazo Duplicate Reel (35 mm)	\$20.00
2 <sup>nd</sup> Silver Original Reel 16mm (Dual Reels 100')	\$18.00
2 <sup>nd</sup> Silver Original Reel 16mm (Dual Reels 215')	\$20.00

Item	Fee
Add-on Image to Microfiche Jacket	\$0.30
Load Reel onto Cartridge	\$12.00
Microfiche Jacket	\$0.60
Microfilm Duplication of Existing Roll (Cost Per Roll)	
16 mm Reel	\$25.00
35 mm Reel	\$40.00
Delivery of Digital Media Storage Type	
External Hard Drive (per drive)	At Cost
Media by Data Exchange (FTP, per gigabyte)	No Charge
Archival Supplies utilized for original materials returned to agency post-digitization (boxes, folders, etc.)	At Cost

<sup>1</sup>Above pricing may include the following services as applicable: pickup, document preparation, filming, processing, storage of original reel at the Louisiana State Archives Facility, duplicate reel sent to agency, disposal of original documents, and/or return of documents per agency instruction or approval. For more details or job price quotes, please contact the imaging and preservation services program at (225) 922-1000.

\*Conversion services for digital media includes basic editing, quality control, and the first two fields of indexing.

8. State Archives Division—Records Center (For State Agencies Only)

Item	Fee
Package of Cubic Foot Boxes (25 Boxes in Package)	At Cost
Intake and Disposal Fee	At Cost

Due to the fluctuation in the department's procurement cost of the storage boxes, and destruction by outside vendors, the actual cost for storage boxes and destruction will be assessed and will be posted on the department's website.

B. Method of Payment

1. The acceptable methods of payment for fees specified in Subsection A above are credit card (see bankcard convenience fee below), check, money order, or cash. Checks and money orders should be made to the Department of State.

2. There is a service charge for using a bankcard for transactions conducted via internet, postal mail, email, FAX, and telephone requests. If using a credit or debit card for an in-person transaction, there is no service charge. Since the bankcard convenience fee has to be approved by the State Treasurer, the fee will be posted on the department's website. This amount may vary.

3. Payments from state entities are to be processed through authorized state accounting systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1447, R.S. 9:2782, R.S. 18:1293, R.S. 24:172, R.S. 24:173.1, R.S. 25:1282, R.S. 25:1284, R.S. 36:742, R.S. 40:1151.2, R.S. 43:19, R.S. 43:22, R.S. 44:1 et seq., R.S. 44:402, R.S. 44:405, R.S. 44:406, R.S. 44:408, R.S. 44:415, R.S. 44:420, R.S. 44:421, R.S. 49:222(A), R.S. 49:227, R.S. 49:228, Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, and Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (22 CFR 96).

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, LR 43:2537 (December 2017), amended LR 44:2222 (December 2018), LR 49:

**§403. Department of State Public Records Request**

A. The Department of State processes public records requests during regular business hours (Monday through Friday from 8 a.m. to 4:30 p.m.) each business day. The department does not process requests on Saturdays, Sundays, or state holidays.

B. All requests shall be made in writing and may be made by completing a form that will be provided on the department's website. If the copies are to be certified, the person making the request should notify the department when making his request. Certified copies are not available when transmitting records via email, except for commercial records.

C. When submitting a request in writing or in-person, the requestor should use the following address: Department of State, Attention: Legal Division (Public Records Request), 8585 Archives Blvd., P. O. Box 94125, Baton Rouge, LA 70804-9125. Requests may also be made online by answering all of the questions provided on the form and submitting the request to the following email address: PublicRecordsRequest@sos.la.gov.

D. Every public records request shall provide a detailed description of the documents being requested. In addition, the requestor shall inform the department as to the format (i.e., hard copy, electronic copy, USB drive, CD, tape, etc.) to use when submitting the documents to the requestor. In addition, he must stipulate the delivery method (U.S postal service, express mail, electronic delivery, in-person, or fax) that will be used to submit documents to requestor.

E. After the department processes the request, an estimate of the costs will be submitted to the requestor utilizing the costs specified in §401 above plus the cost of delivery. All payments can be made utilizing a credit card (see §401.B.2 above for convenience fee), check, or money order. Once the department receives the funds from the requestor, the department will release the documents to the requestor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 44:1 et seq., and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, LR 43:2539 (December 2017), amended LR 49:

**§405. Louisiana State Archives Facilities**

A. All organizations wishing to rent facilities at the Louisiana State Archives building should review the Rental Policy and Damage Assessment Checklist, found on the department's website, and will be required to complete a Louisiana State Archives Event Registration Request Form. On the form, the organization will be required to acknowledge agreement with the indemnification provision specified on the form. The completed form should be mailed to the Louisiana Department of State, Archives Division, P.O. Box 94125, Baton Rouge, LA 70804-9125. The form may also be mailed to the Archives Division. If there are any questions, call the state archives facility at (225) 922-1000.

Item	Fee
Non-Profit Government Agency	
After hours rental	\$150.00
For Profit/Commercial	
1/2 day rental	\$125.00
Full day rental	\$200.00
After hours rental	\$400.00
Damage Assessment	\$500.00

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 44:408, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, LR 43:2540 (December 2017), amended LR 49:

**Family Impact Statement**

The proposed Rule regarding remote online notarization should not have any known or foreseeable impact on any family as defined by R.S. 49:927 or on family formation, stability and autonomy. Specifically, there should be no known of foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

**Poverty Impact Statement**

The proposed Rule should not have any known or foreseeable impact on poverty as defined by R.S. 49:973. Specifically, there should be no known of foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

**Small Business Analysis**

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

**Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HRC 170 of the 2014 Regular Session of the Louisiana Legislature. In particular, there should be no known of foreseeable effect on:

1. the effect of the staffing level requirement or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

**Public Comments**

Interested persons may submit written comments relative to the proposed Rule or request a public hearing on the proposed Rule until 4:30 p.m., September 9, 2023, by U.S. mail to the Louisiana Department of State, Attn: Steve Hawkland, 8585 Archives Ave., Baton Rouge, LA 70809.

**Public Hearing**

To confirm whether or not a public hearing will be held, interested persons should first call Steve Hawkland at (225)

287-7475 after September 10, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

R. Kyle Ardoin  
Secretary of State

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Department Non-Statutory Fees

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule amendment will not result in any costs to the Department of State. There will be the ability to now recoup the costs of microfilming/imaging projects which have been passed on to the agency's contracted vendor for overflow work, as the vendor's fees have increased over what the Department of State is allowed to charge. Other state agencies as well as local government entities may be impacted to the extent they are subject to the fee increases. Potential increases are not anticipated to be significant.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Overall, the estimated revenue collections for the Department of State are generally expected to increase minimally. Fees for the audiovisual archives have been substantially restructured to become more competitive with industry standards, but revenue collections cannot be projected due to the nature of the requests for this material, and the primary customer is not governmental agencies at any level but instead private individuals and businesses.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

The estimated costs to persons, small businesses or non-governmental groups may increase to the extent they are subject to the fee increases.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendment will have no estimated effect on competition and employment.

Shanda R. Jones  
Undersecretary  
2308#011

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Bowfishing Permit  
(LAC 76:VII.387)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules and regulations governing the issuance of a recreational bowfishing permit for both the private and charter sectors of the recreational fishery. In order to effectively manage important saltwater recreational species, the Department of Wildlife and Fisheries needs to define the universe of anglers harvesting saltwater species or species available in the saltwater areas of the state utilizing bowfishing gear. The authority for promulgation of this Rule is included in the Administrative

Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:6(25)(a) and (34), and R.S. 56:326.3 to the Wildlife and Fisheries Commission.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and compiling public comments and submissions for the commission's review and consideration. In the absence of any further action by the commission following an opportunity to consider all public comments regarding the proposed Rule, the secretary is authorized and directed to prepare and transmit a summary report to the legislative oversight committees and file the final Rule.

### Title 76

### WILDLIFE AND FISHERIES

### Part VII. Fish and Other Aquatic Life

### Chapter 3. Saltwater Sport and Commercial Fishery §387. Recreational Bowfishing Permit

A. Any person 18 years of age or older taking, or attempting to take saltwater recreational fish with bowfishing gear, or engaging in bowfishing activity south of the designated saltwater line described in R.S. 56:322 must have in their immediate possession a recreational bowfishing permit. Any person on a trip aboard a charter vessel or a vessel that is representing itself as a charter vessel, who pays a fee for that trip, is not required to have this permit, but the permit is required for the captain of that charter vessel. The recreational bowfishing permit shall be available for inspection by a duly authorized agent of the department.

B. Permits may be obtained at no cost, from the Department of Wildlife and Fisheries (DWF) or DWF authorized methods, by persons who hold any valid license authorizing the taking and possessing of saltwater species of fish. Permits shall be valid one year from the date issued.

C. Failure to comply with the provisions of this Section shall constitute a class one violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a) and (34), and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 49:

### Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issue its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

### Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

### Small Business Analysis

This proposed Rule has no known impact on small businesses as described in R.S. 49:965.2 through R.S. 49:965.8.

### Provider Impact Statement

This proposed Rule has no known impact on providers as described in HCR 170 of 2014.

### Public Comments

Interested persons may submit comments relative to the proposed Rule to Jason Adriance, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, or

via e-mail to jadriance@wlf.la.gov prior to noon on Thursday, October 5, 2023.

Andrew J. Blanchard  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bowfishing Permit**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will increase expenditures incurred by the Louisiana Department of Wildlife and Fisheries (LDWF) for developing and maintaining an online bowfishing permit system. Development costs are expected to total \$90,617 in FY24. Ongoing maintenance costs are expected to be \$73,236 per year.

The proposed rule change requires all persons engaged in "bowfishing" (fishing with archery gear) in areas below the saltwater line to possess a recreational bowfishing permit to allow LDWF to monitor bowfishing activities and impacts on Louisiana fisheries. The proposed change also requires all charter vessel operators offering bowfishing services in saltwater areas to possess a recreational bowfishing permit but exempts persons aboard charter vessels from the requirement to possess the permit. The permits will be offered at no cost to anglers and charter boat operators by the LDWF.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change is expected to have no effect on revenue collections of the LDWF or other state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change is expected to impose no additional financial cost on anglers and charter vessel operators. The proposed rule change may be associated with some additional inconvenience or effort because individual bowfishing anglers will be required to go through the process of obtaining the permit.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change is anticipated to have no impact on competition and employment in Louisiana.

Bryan McClinton  
Undersecretary  
2308#030

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Red Drum—Harvest Regulations  
(LAC 76:VII.363)**

The Wildlife and Fisheries Commission does hereby give notice of intent to amend a Rule (LAC 76:VII.363) by modifying the daily size, bag, and possession limit for recreationally harvested red drum from a 16 inch minimum size limit and a 27 inch maximum size limit to an 18 inch minimum size limit total length and a 24 inch maximum size

limit total length. Further modifications to the Rule also prohibit the retention of any red drum above the maximum size limit of 24 inches total length and prohibits the retention of red drum by captain and crew on charter or headboats. Red drum bag, possession, and size limits were previously established by the Louisiana Legislature in R.S. 56:325.1(A)(2)(a), R.S. 56:325.1(B)(1), and R.S. 56:325.1(B)(2). However, based upon biological and technical data, the commission may establish new bag, possession and size limits in accordance with the Administrative Procedure Act, which supersede any such limits established in law. The proposed changes are a result of biological data that indicate the red drum stock is experiencing overfishing resulting in an escapement rate that is below the 30 percent minimum limit, which is leading to a declining biomass. In order to increase the escapement rate and avoid the stock biomass declining to an overfished condition, management changes are necessary. The authority for amendment of this Rule is included in the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:6(25)(a), R.S. 56:325.1, and 56:326.3 to the Wildlife and Fisheries Commission.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and compiling public comments and submissions for the commission's review and consideration. In the absence of any further action by the commission following an opportunity to consider all public comments regarding the proposed Rule, the secretary is authorized and directed to prepare and transmit a summary report to the legislative oversight committees and file the final Rule.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery §363. Red Drum—Harvest Regulations**

**A. Recreational Regulations**

1. The daily take and possession limit for red drum (*Sciaenops ocellatus*) caught recreationally within or without Louisiana waters shall be three fish per day.

2. The minimum legal size for the recreational taking of red drum shall be 18 inches total length with the mouth closed. The maximum legal size for the taking of red drum shall be 24 inches total length with the mouth closed. Possession of red drum over the prescribed maximum size of 24 inches total length, when measured with the mouth closed, is prohibited.

3. Captain and crew members shall not retain a daily limit of red drum while operating or representing themselves as a charter vessel or headboat. Captain and crew may engage in fishing activity to assist their clients to catch, retrieve, or land red drum, or to demonstrate to their clients how to catch red drum.

B. No person who, pursuant to state or federal law, is subject to the jurisdiction of the state shall violate any federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the *Code of*

*Federal Regulations* as amended Title 50 and 15, for red drum while fishing in the EEZ, or possess, purchase, sell, barter, trade, or exchange red drum within or without the territorial boundaries of Louisiana in violation of any state or federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the Code of Federal Regulations as amended Title 50 and 15 law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:320.2(C), R.S. 56:325.1, R.S. 56: 325.1(A)(2), and R.S. 56:326.3.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 27:2266 (December 2001), amended LR 49:

#### **Family Impact Statement**

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issue its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

#### **Poverty Impact Statement**

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

#### **Small Business Analysis**

This proposed Rule has no known impact on small businesses as described in R.S. 49:965.2 through R.S. 49:965.8.

#### **Provider Impact Statement**

This proposed Rule has no known impact on providers as described in HCR 170 of 2014.

#### **Public Comments**

Interested persons may submit comments relative to the proposed Rule to Jason Adriance, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, or via e-mail to [jadriance@wlf.la.gov](mailto:jadriance@wlf.la.gov) prior to noon on Thursday, October 5, 2023.

Andrew J. Blanchard  
Chairman

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Red Drum—Harvest Regulations**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no anticipated implementation costs or savings to the Department of Wildlife and Fisheries (LDWF) or local governmental units as a result of the proposed rule change.

The proposed rule change would establish a take limit for red drum (also known as "redfish") of three fish per day and prohibit the harvest of red drum less than 18 inches long or more than 24 inches long. The proposed rule change is an attempt to increase escapement rates to reduce the chances of overfishing redfish in the future.

It prohibits the retention of red drum by captains and crew on charter boats or head boats.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There may be a decrease in revenue collections to LDWF and to local governmental units if the rule change results in a decrease in saltwater angler activity. A decrease in fishing trips may result in a drop in the issuance of fishing licenses and lower sales tax revenue from lower supply purchases (e.g. lodging, gas, gear, bait). The potential for fewer fishing trips taken is speculative; therefore, any decrease in revenues to state and local governmental units is indeterminable at this time.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change may result in a decrease in angler activity and spending and thus a decline in income among businesses that serve saltwater anglers as a result of the red drum harvest reduction.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change could have a minor negative effect on employment in sectors that serve saltwater anglers by reducing harvests and thus angler activity and spending.

Bryan McClinton  
Undersecretary  
2308#031

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

# Attorney General Opinions

## ATTORNEY GENERAL OPINION

### Office of Attorney General

OPINION 23-0083

Pardon and Parole

LAC 22:V.213.M does not permit the Board to waive the one-year eligibility period contained in LAC 22:V.203.

Francis M. Abbott  
Executive Director  
Louisiana Board of Pardons and  
Committee on Parole  
P.O. Box 94304  
Baton Rouge, LA 70804

Dear Mr. Abbott:

You requested the opinion of this office regarding the administrative rules for the Louisiana Board of Pardons and Parole (the “Board”). Specifically, you asked whether the waiver provision contained in LAC 22:V.213 (“Rule 213”) may be used to waive the provisions contained in LAC 22:V.203.E (“Rule 203”).

Rule 203 establishes the eligibility requirements for clemency consideration. Rule 203(E) provides, “Any offender sentenced to death may submit an application within one year from the date of the direct appeal denial. See also §213, Capital Cases.”

Rule 213 sets forth the procedural requirements for an offender to submit an application to the Board for the Board’s consideration of a recommendation to the governor for a stay of execution of a death sentence. Rule 213 also sets forth the hearing procedures pursuant to which the Board considers the applications. Rule 213(M) purportedly permits the Board to waive any procedural requirements regarding the application or hearing procedures contained in Rule 213:

Each of the provisions of this policy are subject to waiver by the board when it finds that there exists good and adequate cause to suspend said provisions and adopt a different procedure which it finds to be better suited to the exigencies of the individual case before it.

The Rule 213(M) waiver applies to “the provisions of this policy,” i.e., the procedures for consideration of clemency applications in capital cases, as set forth in Rule 213. Rule 203 provides eligibility requirements for clemency applications and touches upon an array of application types not limited to capital cases. Although Rule 203(E) cross-references Rule 213 to direct the reader to that rule’s procedural requirements, this does not subject Rule 203(E)’s one-year eligibility requirement to waiver by virtue of Rule 213(M). However, even assuming *arguendo* that the eligibility period provided in Rule 203(E) falls within the reach of Rule 213(M)’s waiver authority, such a waiver

would be contrary to law for the reasons set forth below. See La. R.S. 49:955, La. R.S. 49:961, and La. R.S. 15:572.4.

The Authority Note for Rule 213, states that the Board promulgated Rule 213 pursuant to La. R.S. 15:572.4, La. R.S. 15:574.12, and La. R.S. 44:1 et seq. None of these statutes support the waiver provision in Rule 213(M). The legislature may confer upon administrative agencies the power to “fill up the details” of a law by prescribing administrative rules and regulations. *Adams v. State Dep’t of Health*, 458 So.2d 1295, 1298 (La. 1984). However, administrative agencies are limited to ascertaining the facts upon which the laws are to be applied and enforced. *State v. Taylor*, 479 So.2d 339, 341 (La. 1985). An administrative board or agency may not exceed the statutory authority set forth by the legislature. It may be permissible for the Board to waive certain requirements set forth in rule by the Board; however, the procedures for waiving the rule must be themselves adopted and adequately set forth in rule. The broad and ill-defined waiver in Rule 213(M) ostensibly empowers the Board to repeal portions of its own rules and enact new ones at will, on an ad-hoc basis, and without any notice to the public. Such a result is impermissible under Louisiana law.

The Administrative Procedure Act (the “APA”), La. R.S. 49:950, et seq., expressly provides for public access and notice to agency decision-making in the promulgation and repeal of rules. The APA defines a “rule” as follows:

“Rule” means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. “Rule” includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

#### **La. R.S. 49:951(8) (emphasis added)**

Explicitly included in the APA definition of a rule is the repeal of an existing rule. Thus, in enacting *or repealing* a rule, agencies must adhere to the procedures set forth in the APA. The APA not only provides the public with notice and access to agency decision-making, the APA also provides for legislative oversight and gubernatorial veto of proposed rules prior to enactment or repeal. The waiver provision contained in Rule 213(M) circumvents the requirements of

the APA. Rule 213(M) permits the Board to waive—essentially repeal—any requirement set forth in Rule 213 and adopt new procedures or rules without public notice or legislative or gubernatorial oversight. A waiver in rule may be permissible in some circumstances, provided that the requirements and procedures for the waiver are properly set forth in the rule. The waiver in Rule 213(M) does not set forth the policies the Board must follow to waive the provisions in Rule 213, nor does the rule provide any means of notice to the public of the waivers granted by the Board.

In extraordinary circumstances, the APA permits the adoption of an emergency rule as an alternative to the ordinary rulemaking provisions contained in La. R.S. 49:961. However, an emergency rule may only be adopted for the following reasons:

- (a) To prevent imminent peril to the public health, safety, or welfare.
- (b) To avoid sanctions or penalties from the United States.
- (c) To avoid a budget deficit in the case of the medical assistance program.
- (d) To secure new or enhanced federal funding.
- (e) To effectively administer provisions of law related to the imposition, collection, or administration of taxes when required due to time constraints related to congressional, legislative, or judicial action.

**La. R.S. 49:962(A)(1)**

In the matter at hand, however, there exists no factual basis for the Board to engage in emergency rulemaking. Even to the extent that the nature of the Board rules at issue here demonstrate that your request concerns death row inmates, the carrying out of the death penalty upon lawfully convicted and sentenced individuals does not satisfy any of the five reasons set forth by the legislature in La. R.S. 49:962(A)(1). No exigency exists where there are currently no warrants issued for execution and where it has been officially reported that the drugs needed to carry out a lethal injection are not available.

Considering the foregoing, it is the opinion of this office that Rule 213(M) does not permit the Board to waive the one-year eligibility period contained in Rule 203.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

<sup>1</sup> See *Hoffman, et al. v. Jindal, et al.*, 2022 WL 16571312 (M.D. La. 2022).

Jeff Landry  
Attorney General

2308#070

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Office of Animal Health Services

Letter of Authorization—Granting Hunting Season Variance

August 8, 2023

Pursuant to LAC 7:XXI.1719.A, farm-raised white-tailed deer may be harvested by killing from October 1 through January 31. LAC 7:XXI.1719.C authorizes the Commissioner of Agriculture and Forestry to establish, by written order, variances of these dates as the commissioner deems necessary to carry out the purposes of R.S. 3:3101-3108.

In light of the foregoing, and in consideration of its application for a variance, Commissioner of Agriculture and Forestry, Mike G. Strain, hereby authorizes:

Makcar Holdings, LLC License No. 1001,  
1891 Kidron Road,  
Harrisonburg, LA 71340,

through its owner, Ross Sampey

to open its hunting grounds for the purpose of harvesting farm-raised white-tailed deer from August 15, 2023, until September 30, 2023.

This notice will be published in the next issue of the Louisiana Register, in accordance with LAC 7:XXI.1719.C.

Mike G. Strain, D.V.M.  
Commissioner

2308#036

## POTPOURRI

### Board of Elementary and Secondary Education

Public Hearing—Bulletin 741—Louisiana Handbook for School Administrators (LAC 28:CV.717, 2321, and 2322)

On June 14, 2023, the State Board of Elementary and Secondary Education (BESE) approved, as a Notice of Intent, revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §717. Reports of High School Credit, §2321. Appeals and Eligibility Requirements, and §2322. Senior Projects. This Notice of Intent was published on pages 1299-1303 of the July 20, 2023, issue of the *Louisiana Register*. Requests for a public hearing regarding the July 20, 2023, Notice of Intent was received. In accordance with R.S. 49:953.A(2)(a) and R.S. 49:953.A(2)(b)(i), BESE will hold a public hearing on August 25, 2023, at 2:00 p.m., in Room 1-100, the Louisiana Purchase Room, located in the Claiborne Building, 1201 North Third Street, Baton Rouge, Louisiana.

Interested persons may attend and submit oral or written comments. BESE will consider all written and oral comments; however, only written comments received by

BESE will be included in the report, and submitted to the Louisiana legislative oversight committees. Written comments must be hand-delivered or mailed to the BESE office. Hand-delivered comments must be date-stamped by BESE office staff on the date received. Comments sent via U.S. Mail must be dated and must include the original signature of the person submitting the comments. If mailing, please send to: Mrs. Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804. For hand-delivered comments, the BESE office is located at: 1201 North Third Street, Baton Rouge, LA in the Claiborne Building, Suite 5-190. All comments must be received no later than 1 p.m. on August 25, 2023.

Any individual who needs special assistance in order to attend or speak at this public hearing should notify Shan Davis, BESE Executive Director, within ten (10) working days prior to the Hearing Date, in writing at, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, via email at Shan.Davis@LA.GOV or by telephone at (225) 342-5840. Any questions should be directed to Erin LeBlanc at 225-342-5841 or call the board office at (225) 342-5840.

Shan N. Davis  
Executive Director

2308#024

## POTPOURRI

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

Risk Assessment for Freshwater  
Ammonia Aquatic Life Criteria  
(LAC 33:IX.1105, 1109, 1113, 1115, and 1117)(WQ112)

Editor's Note: The corresponding Notice of Intent can be viewed in this edition of the *Louisiana Register* on pages 1458-1464)

In accordance with Section 963 of Title 49 of the Louisiana Revised Statutes, the Louisiana Department of Environmental Quality submits the following R.S. 49:963(B) report. (2308Pot1)

## RISK ASSESSMENT

### RULE TITLE: Freshwater Ammonia Aquatic Life Criteria

- I. A STATEMENT IDENTIFYING THE SPECIFIC RISKS BEING ADDRESSED BY THE POLICY, STANDARD, OR REGULATION AND ANY PUBLISHED, PEER-REVIEWED SCIENTIFIC LITERATURE USED BY THE DEPARTMENT TO CHARACTERIZE THE RISKS [R.S. 49:963(B)(1)(a)]

Water quality standards are provisions of state or federal law, which consist of designated uses for surface waters and water quality criteria based upon the designated uses. Water

quality standards are developed to protect public health and welfare, protect aquatic species, and enhance the overall quality of surface waters. Code of Federal Regulations, Part 40, Section 131.4 requires states to review, establish, and revise water quality standards. Code of Federal Regulations Part 40, Section 131.11 (a) requires that criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. Additionally, "States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use."

In accordance with 40 CFR 131.11(b), states should establish numerical values based on (i) 304(a) Guidance; (ii) 304(a) guidance modified to reflect site-specific conditions; or (iii) other scientifically defensible methods. EPA initially published aquatic life criteria recommendations for ammonia in 1976, followed by a 1985 criteria revision, then a 1999 revision, each revision incorporating newer data and better models. The draft nationally recommended freshwater ammonia criteria were published on December 30, 2009, and provided the public an opportunity to comment and provide scientific views. Supporting and related material published by the EPA, and comments submitted by the public on the draft freshwater ammonia criteria are available in the EPA Docket Center and are identified by Docket ID No. EPA-HQ-OW-2009-0921 (<https://regulations.gov/docket/EPA-HQ-OW-2009-0921/document>). EPA evaluated the new data and information and incorporated acceptable data in the development of the final recommended freshwater ammonia criteria. See EPA 822-R-18-022, *Aquatic Life Ambient Water Quality Criteria for Ammonia-Freshwater*. On August 22, 2013, EPA published final nationally recommended ambient water quality criteria for the protection of aquatic life from the effects of ammonia in freshwater (78 FR 52192).

The magnitude of ammonia toxicity to aquatic life is highly dependent on the temperature and the pH of the ambient water body. Thus, EPA presents the 2013 nationally recommended freshwater ammonia criteria as formulas, including inputs for local pH and temperature data, as well as toxicity values for the most sensitive species. The final 2013 nationally recommended criteria formulas were adjusted to specifically include toxicity values for Unionid mussel species, for which data was not previously available. Unionid mussel species are prevalent in most of the Eastern United States, including Louisiana (<https://gbif.org/species/3461>). LDEQ is obligated to consider criteria that are protective of aquatic species that will result in enhancement of the overall quality of surface waters of the state.

II. A COMPARATIVE ANALYSIS OF THE RISKS ADDRESSED BY THE POLICY, STANDARD, OR REGULATION RELATIVE TO OTHER RISKS OF A SIMILAR OR ANALOGOUS NATURE TO WHICH THE PUBLIC IS ROUTINELY EXPOSED [R.S. 49:963(B)(1)(b)]

No risks of a similar or analogous nature comparable to the toxic component of ammonia in surface waters could be identified. As compared to other toxic pollutants, the risk posed by ammonia is ubiquitous, as it is a common toxic pollutant discharged by all municipal treatment works (publicly and privately owned) and a large number of industry types, such as refineries, food processors, and fertilizer manufacturers. LDEQ's universe of facilities with individual LPDES permits is approximately 1,200. Based upon facility type, LDEQ has identified approximately 500 sanitary treatment plants (publicly and privately owned), 18 major industrial and 130 minor industrial facilities, which have the potential to discharge

significant concentrations of ammonia. Therefore, approximately 54 percent of the universe of individual LPDES permits have the potential to discharge ammonia at toxic levels to surface waters. No other toxic criteria adopted into LAC 33:IX, Chapter 11 (Louisiana Water Quality Standards) are as prevalent in wastewaters discharged into *Waters of the State*, as defined by LAC 33:IX.1105. Other pollutants that are commonly present in wastewater discharges, such as fecal coliform, biological oxygen-demanding pollutants and suspended solids are not considered toxic in nature. Therefore, the risks addressed by proposed rule WQ112 cannot be compared to other risks of a similar or analogous nature.

III. AN ANALYSIS BASED UPON PUBLISHED, READILY AVAILABLE PEER-REVIEWED SCIENTIFIC LITERATURE, DESCRIBING HOW THE PROPOSED AND FINAL POLICY, STANDARD, OR REGULATION WILL ADVANCE THE PURPOSE OF PROTECTING HUMAN HEALTH OR THE ENVIRONMENT AGAINST THE SPECIFIED IDENTIFIED RISKS [R.S. 49:963(B)(1)(c)]

Ammonia concentration in effluent is currently reported by 384 facilities covered by individual LPDES permits. As stated in Section II, a larger number of facilities have the potential to discharge a significant concentration of ammonia in effluent. Discharge Monitoring Reports (DMRs) from LPDES permitted facilities between January 2016 and December 2021 included concentration values between 0.1 and 462 mg/L with an average value of 4.58 mg/L. The nationally recommended criteria, calculated using a temperature value of 20 degrees C and a pH of 7 results in a 1.9 mg/L (chronic, 30-day average) and a 17 mg/L (acute, 1-hour average) criteria. Surface waters in Louisiana are often higher in temperature and pH can vary widely among surface waters of the state. Calculations using temperature and pH from Louisiana's Water Quality Monitoring Network (<https://waterdata.deq.louisiana.gov/>) indicate that criteria values less than the nationally recommended criteria are often necessary to protect aquatic life. For example, utilizing the mussels present/salmonids absent formulas, an average temperature of 25 degrees C and pH value of 7.4, the resulting water quality criteria values are 1.1 mg/L (chronic, 30-day average) and 7.05 mg/L (acute, 1-hour average). According to the EPA nationally recommended freshwater ammonia criteria formulas, the higher the average temperature and pH, the lower the criteria. Average temperatures in Louisiana surface waters often exceed 25 degrees C and are sometimes as high as 27 degrees C. Utilizing the above-referenced DMR dataset approximately 41 percent of DMR values exceed 1.1 mg/L. Approximately 18 percent exceed of DMR values exceed 7.05 mg/L.

Taking into account the higher than average surface water temperatures and available DMR data, controlling ammonia discharges into surface waters from point sources becomes a necessity to meet the requirements of the Clean Water Act and the Code of Federal Regulations. As mentioned in Section I of this report, 40 CFR 131.11(a), states are required to review both water quality data and information on dischargers, and must adopt criteria for toxic pollutants that are sufficient to protect the designated use. Nearly all of LDEQ's delineated subsegments are assigned the designated use of Fish and Wildlife Propagation (FWP). Documented species of Unionid mussels are widespread throughout the state (<https://gbif.org/species/3461>). Adoption of appropriate freshwater ammonia criteria will provide protection for the aquatic life, as well as enhancing the overall water quality. However, LDEQ recognizes that species survey data is not 100 percent complete across all state waters. Proposed rule WQ112 is proposing to adopt the mussels present criteria formulas, and the mussels absent criteria formulas which will be implemented in LPDES permits through a performance-based approach. A performance-based approach relies on the adoption of a process

rather than a specific outcome and does not require site-specific decisions to be codified in the regulations, so long as the process is transparent, predictable, repeatable and also provides the opportunity for the public participation. In conjunction with proposed rule WQ112, LDEQ is proposing revisions to the Water Quality Management Plan, Volume 3, Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards, which defines the process for implementing the mussels present or mussels absent criteria formulas in LPDES permits through a survey of the receiving water body to determine current and historical presence or absence of Unionid mussels. The inclusion of both sets of criteria formulas and the performance-based approach in LPDES permitting provides the required protection of all aquatic species in Louisiana.

IV. AN ANALYSIS AND STATEMENT THAT, BASED ON THE BEST READILY AVAILABLE DATA, THE PROPOSED OR FINAL POLICY, STANDARD, OR REGULATION PRESENTS THE MOST COST-EFFECTIVE METHOD PRACTICALLY ACHIEVABLE TO PRODUCE THE BENEFITS INTENDED REGARDING THE RISKS IDENTIFIED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH [R.S. 49:963(B)(1)(d)]

Sections I-III of this report demonstrate the necessity and the requirement for LDEQ to adopt freshwater ammonia criteria that is protective of the designated use of Fish and Wildlife Propagation. The implementation of criteria into LPDES permits, meaning the development of Water Quality Based Effluent Limitations (WQBELs), is the key for the desired result of achieving water quality standards, while including the most cost-effective options to the regulated community for compliance with those standards. The presence of Unionid mussels and the criteria protective of those mussels yield the most stringent WQBELs, while the mussels absent formulas yield less stringent WQBELs. Utilizing the mussels present formulas, calculations of WQBELs completed for some facilities to date yield numbers that would require advanced treatment technology, a cost burden to the state's publicly and privately owned treatment works, landfills and some industries. The adoption of a performance-based approach allows a regulated entity or group of regulated entities within the same receiving stream or watershed to complete a survey, defining the presence or absence of Unionid mussel species. This method is allowed for by EPA guidance through *Flexibilities for States Applying EPA's Ammonia Criteria Recommendations* (April 2013, EPA-820-F-13-001) and the *Technical Support Document for Conducting and Reviewing Freshwater Mussel Occurrence Surveys for the Development of Site-specific WQC for Ammonia* (August 2013, EPA 800-R-13-003).

In addition to the performance-based approach, provisions for compliance schedules have been included in the proposed revisions to the *Water Quality Management Plan, Volume 3: Permitting Guidance Document for Implementing Louisiana Surface Water Quality Standards*. A standard, 3-year compliance schedule will be included in all reissued permits that include more stringent, water quality based ammonia limits. Extended compliance schedules (with no definite limit) may be granted on a case-by-case basis. Considerations for granting an extended compliance schedule include the time to identify and design upgrades to the facility, the time to secure funding, procure equipment and contractors, and the construction and start-up periods. The combination of compliance schedules, the adoption of a performance-based approach in LPDES permits and accompanying implementation procedures will yield the most appropriate criteria, protective of the receiving water body, which may also prevent unnecessarily stringent WQBELs that will be a burden to the regulated community. The combination of criteria and implementation options is the most cost-effective method

available to LDEQ and affected facilities, while maintaining compliance with all state and federal regulations, and achieving the ultimate goals of the Clean Water Act.

Courtney J. Burdette  
Executive Counsel

2308#025

**POTPOURRI**

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

Water Quality Management Plan—Volume 3:  
Permitting Guidance Document for Implementing  
Louisiana Surface Water Quality Standards

Under the authority of the Environmental Quality Act, R.S. 30:2071 et seq., the secretary gives notice that procedures have been initiated to amend Volume 3 of the Louisiana Water Quality Management Plan (WQMP). (2308Pot2)

Volume 3 is a component of the WQMP, as required by Sections 208 and 303(3) of the federal Clean Water Act, and establishes procedures to effectively incorporate water quality standards into wastewater discharge permits. Volume 3 of the WQMP provides a consistent approach to the application of narrative and numerical water quality standards, derivation of water quality based effluent limitations, and implementation of Total Maximum Daily Loads (TMDLs).

Federal regulations, 40 CFR 130.6(e) requires that Water Quality Management Plans be updated as needed. Freshwater ammonia criteria are being proposed in Rule WQ112. In accordance federal and state regulations (40 C.F.R. § 130.5 and 130.6(c)(2); LAC 33:IX.1119.B), updates to Volume 3 of the WQMP are being made to establish a process for developing freshwater ammonia effluent limitations and schedules of compliance. Other minor updates to Volume 3 of the WQMP are being proposed: (1) Revisions to critical flow and harmonic mean flow determinations and (2) Revisions to Appendix G, clarifying the applicability of TMDLs.

You may access the complete draft revision of Volume 3 by entering Document ID number 13911532 into the search engine in LDEQ's Electronic Document Management System (EDMS): <https://edms.deq.louisiana.gov/edmsv2/advanced-search>. Only the proposed changes (additions and deletions) to Volume 3 are open for public comment at this time. Additions are indicated by redline and deletions are indicated by ~~striketrough~~.

Written comments regarding the proposed revision must be received no later than October 5, 2023, at 4:30 p.m., and should be sent to Christy Clark, Office of the Environmental Services, Water Permits Division, P.O. Box 4313, Baton Rouge, LA 70821-4313 or by E-mail to [Christy.Clark@la.gov](mailto:Christy.Clark@la.gov).

Courtney J. Burdette  
Executive Counsel

2308#026

POTPOURRI

Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission

Public Hearing—Substantive Change to Notice of Intent  
Spotted Seatrout Management Measures  
(LAC 76:VII.341)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission published a Notice of Intent to amend its rules in the November 20, 2022 edition of the Louisiana Register. The commission proposes to amend the original Notice of Intent to modify the proposed statewide minimum size and bag limits for spotted seatrout. The original Notice of Intent proposed a statewide 13.5 inch minimum size limit with a 15 fish bag and possession limit, but was rejected by the Legislative Oversight Committee on February 1, 2023. The commission proposes to amend the original Notice of Intent to establish the current minimum size limit of 13 inches and a maximum size limit of 20 inches with an allowance for two fish over the maximum length limit, maintain the proposed 15 fish bag limit, and eliminate the ability for charter guides and/or their deckhands to keep a bag limit while conducting a for-hire trip. The amendments to the proposed Notice of Intent also include a requirement for a stock assessment to be provided to the commission no later than the April 2027 meeting and a sunset of the proposed changes at 12 a.m. on January 1, 2028 unless regulations are modified prior to that date. These changes are being made based upon public comment provided during the comment period for the original Notice of Intent and during a Legislative Oversight hearing held on February 1, 2023. **Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery**

**§341. Spotted Seatrout Management Measures**

A.-B. ...

C. Recreational Regulations

1. The daily take and possession limit for spotted seatrout (*Cynoscion nebulosus*) caught recreationally within or without Louisiana waters shall be 15 fish per day and in possession.

2. The minimum legal size for the recreational taking of spotted seatrout (*Cynoscion nebulosus*) shall be 13 inches total length. The maximum legal size for the recreational taking of spotted seatrout shall be 20 inches total length, however, no person shall have in possession while fishing, or while on the water, more than two spotted seatrout which, when whole, is or was over the prescribed maximum size of 20 inches total length overall when measured with the mouth closed.

3. Captain and crew members shall not retain a bag limit of spotted seatrout while operating or representing themselves as a charter vessel or headboat. Captain and crew may engage in fishing activity to assist passengers to catch,

retrieve, or land spotted seatrout, or to demonstrate to passengers how to catch spotted seatrout.

4. Not later than the regular monthly commission meeting of April 2027, the department shall present a stock assessment of spotted seatrout to the commission, provide data on whether the size and bag limits above are still needed in order to recover the stock, provide alternative management measures for potential size and bag limit increases if the stock has recovered to target, or provide further needed restrictions if the stock has not recovered to target.

5. On January 1, 2028, unless further action is taken by the commission prior to that date, the size and bag limit for spotted seatrout will revert to a minimum size limit of 12 inches total length and a bag limit of 25 fish per person, except as provided in Subparagraph 5.a.

a. Within those areas of the state, including coastal territorial waters, south of Interstate 10 from its junction at the Texas-Louisiana boundary eastward to its junction with Louisiana Highway 171, south to Highway 14, and then south to Holmwood, and then south on Highway 27 through Gibbstown south to Louisiana Highway 82 at Creole and south on Highway 82 to Oak Grove, and then due south to the western shore of the Mermentau River, following this shoreline south to the junction with the Gulf of Mexico, and then due south to the limit of the state territorial sea, under the authority of the provisions of R.S. 56:325.1(A), the daily take and possession limit shall be 15 fish, regardless of where taken, with no more than 2 spotted seatrout exceeding 25 inches total length. Those spotted seatrout exceeding 25 inches in length shall be considered as part of the daily recreational take and possession limit.

**AUTHORITY NOTE:** Promulgated in accordance with Act 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a), R.S. 56:305.5, R.S. 56:305.7, R.S. 56:325.1 (A) and (B), R.S. 56:325.3, R.S. 56:326.3, Act 1316 of the 1995 Regular Session of the Louisiana Legislature, and Act 1164 of the 2003 Regular Session of the Louisiana Legislature.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended LR 22:238 (March 1996), LR 24:360 (February 1998), LR 26:2333 (October 2000), LR 30:1509 (July 2004), LR 30:2498 (November 2004), repromulgated LR 32:125 (January 2006), amended LR 32:1071 (June 2006), LR 37:355 (January 2011), LR 49:

**Public Hearing**

In accordance with R.S. 49:966(H)(2), a public hearing on proposed substantive changes will be held by the Department of Wildlife and Fisheries on September 21, 2023 at 10 a.m. in the Joe L. Herring Louisiana Room of the Wildlife and Fisheries Headquarters Building, 2000 Quail Drive, Baton Rouge, LA, 70808. Interested persons are invited to attend and submit oral comments on the proposed amendments.

Andrew J. Blanchard  
Chairman

2308#017

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